

SUPREME COURT OF NIGERIA
30TH JANUARY, 2004. SC. 249/2000
CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A.
KALGO, S. O. UWAIFO, D. O. EDOZIE, JJSC

OLAIDE IBRAHIM

(Trading under the name DEFENDANT/APPELLANT
and style of Ibrahim, Adegbola
Shitta & Associates)

AND

1. S. A. OJOMO (now deceased)
2. MRS. OLATOMI ORIMOLADE
3. MRS. OYINLOLA JIMOH PLAINTIFFS/RESPONDENTS
4. DR. OLAFENWA DUROJAIYE

(The Administrators and Administratrixes
of the estate of M. E. OJOMO (Deceased))

ADMINISTRATION OF ESTATES - Concurrence of personal representatives - Administration of Estates Law s. 4(2) - As there is no evidence of concurrence of the administrators - And no order of court - The conveyance executed by only two of the Administrators is void - And not binding on plaintiffs (H7)

ADMINISTRATION OF ESTATES - "Concurrence therein" - S. 4(2) Administration of Estates Law - Meaning - Evidence of such concurrence is not limited to the execution of the conveyance by all the personal representatives - Though it can be manifested thereby (H2)

ADMINISTRATION OF ESTATES - Several personal representatives - Where they all agree that the deceased's real estate vested in them - Should be alienated - One or some of them can validly execute a conveyance in that regard (H3)

APPEALS - Supreme Court - Has Jurisdiction to make necessary find-

ings - In appropriate cases where the trial court failed to do so (H6)

EVIDENCE - Proof - Burden in civil cases - Is cast on the party who asserts the affirmative of a particular issue (H4)

EVIDENCE - Proof - Administration of estates - Defendant failed to establish his assertion - Regarding concurrence of the former Administrators in the redevelopment project - Involving the conveyance of the properties in dispute to him (H5)

STATUTES - Interpretation - Where the words are clear or unambiguous - Those words shall be so construed - As to give effect to their literal meaning and enforced accordingly (H1)

FACTS

The plaintiffs/respondents are the present administrators of the estate of their late father, Chief Michael Eledumo Ojomo who died intestate. Before the Lagos high court they claimed against the defendant/appellant the following reliefs

(a) The sum of Six Million Naira being special and general damages for trespass committed by the defendant on their property at No 42 and 44 Doherty street, Lagos

(b) Perpetual injunction restraining the defendant and their agents or privies from further committing any acts of trespass on the said land or intermeddling with the administration of the sand property.

(c) An account of all monies collected from the various tenants in the said properties from 1st July 1987. The plaintiffs' case was that upon their fathers' death, they let out the properties at No 42 and 44 Doherty street Lagos to tenants. Sometimes in 1987, without the consent of the family and the beneficiaries, the defendant disrupted the tenants of the estate by demolishing the property at No. 42 Doherty street Lagos and was threatening to demolish No. 44. The plaintiffs claimed that at no time did the former Administrators of their father's estate enter into any agreement with the defendant to redevelop the properties as the family never

decided to develop same.

The defendant who is a property developer on the other hand claimed that it was based on an agreement (Exh. D11) between him and members of the plaintiffs' family that he moved into the property. The agreement was executed by the former Administrators pursuant to which he paid the sum of N15,000 into their estate account at U.B.A Broad Street, Lagos. But the said agreement was not executed by all the administrators. The trial court held inter alia, that as the defendant paid the sum of N15, 000.00 into the estate account, he acquired an equitable interest in the properties in dispute and having entered into them with the consent and permission of the plaintiffs' predecessors in office, trespass cannot be maintained against him. Accordingly the plaintiffs claim was dismissed. Aggrieved by that decision, the plaintiffs lodged an appeal against it before the court of appeal Lagos division which allowed the appeal and entered judgment for the plaintiffs to whom he awarded N10,000.00 damages for trespass with an order of injunction restraining the defendant and his privies from further committing any acts of trespass on the properties. Defendant has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Was the Court of Appeal right in holding that Exhibit D.11 was void on the ground that there was no concurrence of all the former Administrators/Administratrix in the execution of the document having regard to the provisions of section 4 (2) Cap 2 Administration of Estates law of Lagos State 1973 and thereby adjudging the entry of the Defendant on the property in dispute trespassory?”

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

Statutes - Interpretation

1. It is a cardinal principle in the construction of a statute that where the words of a statute are clear or unambiguous, those words shall be so construed as to give effect to their ordinary or literal meaning and enforced accordingly: see Ekeogu v Aliri (1991) 3 N.W.L.R. (Pt.179) 258. (p. 379 E)

“Concurrence therein” - S. 4(2) Administration of Estates Law

2. I am of the view that the expression “concurrence therein” appearing in subsection 4(2) of the Administration of Estates Law Cap 2, Laws of Lagos State supra means the agreement or consent of all the personal representatives in the conveyance of the real estate of the deceased. Evidence of such concurrence can be manifested by the execution of the conveyance by all the personal representatives but it is not limited to that. (p. 379 G)

Several personal representatives

3. Where there are several personal representatives and they are all in agreement that the deceased’s real estate vested in them should be disposed or alienated, one or some of them can validly execute a conveyance in that regard but if there was no concurrence of all of them such a conveyance executed by one or some of them can only be valid with an order of court. This view appears to be in accord with the decision in the English Court in the case of Fountain Forestry v Edwards (1975) 1 Ch. 1. This case therefore illustrates the principle under consideration to the effect that where the real estate of the deceased is vested in several personal representatives, it could be conveyed by one or some of them if there is a concurrence among all of them in the transaction. It would therefore be erroneous with respect, if the two lower courts held the view that Exhibit DII was void merely because all the personal representatives did not execute it. The conveyance was not void but binding if there is evidence of concurrence therein by all the three former Administrators/Administratrix. (p. 380 A/ H)

Proof - Burden in civil cases

4. In civil cases, the burden of proof is cast on the party who asserts the affirmative of a particular issue: see N.B.N. Ltd v Opeola (1994) 1 N.W.L.R. (Pt. 319) 126. The burden rests on the party whether plaintiff or defendant who substantially asserts the affirmative of an issue: see Messrs Lewis & Peat (N.R.I) Ltd v A.E. Akhimien (1976) 7 SC p.157 at

169. In the instant case, the Defendant having asserted and the plaintiffs having denied that the former Administrators/Administratrix discussed and reached agreement on the redevelopment of the property in dispute with the Defendant's firm, the onus was on the latter to prove by credible evidence that assertion. (p. 382 A) B

Proof - Defendants failed to establish his assertion

5. It seems to me crystal clear that the Defendant failed woefully to establish his assertion in paragraphs 4 and 5 of his further Amended Statement of Defence regarding the concurrence of the former Administrators/Administratrix in the redevelopment project involving the conveyance of the properties in dispute to the Defendants. (p. 382 H) C

Jurisdiction of Supreme Court to make necessary findings D

6. As I had stated earlier on, the trial court made no pronouncement on the issue but the jurisdiction of this court to make necessary findings in appropriate cases where the trial court failed to do so is not in doubt. In the case of Akibu v Okpaleye & Anor (1974) 11 SC 189 at 202, this E court, per Sowemimo, J.S.C. restated the principle thus: -

“Although this court rehears a case on appeal, it does this only on the records and where it is quite clear that evidence has been led in the lower court which establishes a fact, it will make the necessary finding which the lower court failed to make: see Thomas v Thomas (1947) A.C. 484, pp 487, 488; also Fatoyinbo v Williams (1956) 1 F.S.C. 87”. F (p. 383 A)

Concurrence of personal representatives G

7. Since from the record in the present proceedings, there is no evidence that all the former Administrators/Administratrix of the estate of Chief M.O. Ojomo agreed or concurred in the conveyance of the properties in dispute nor obtained an order of court to convey the said properties as H required by section 4 (2) of the Administration of Estates Law, Lagos Sate supra, the document, Exhibit D.11 executed by only two of the former Administrators/Administratrix in purported conveyance of the said

properties to the Defendant and his firm is void and not binding on the plaintiffs nor on the estate vested in them. I will therefore resolve the lone issue formulated by me against the Defendant/Appellant in favour of the plaintiffs/Respondents. (p. 383 D)

B

NOTABLE POINT OF INTEREST

UWAIFO JSC

1. Need for concurrence of the administrators

- C The law in section 4(2) of the 1973 Law is about the concurrence of the administrators or executors, as the case may be, in any form or manner, or long as it is clear they did. This could be by credible oral evidence, or a minutes book containing the concurrence, or some correspondence to that effect. That concurrence may be carried into effect by one or two of
- D the administrators or executors executing the necessary deed of conveyance or other document. (p. 393 A)

REPRESENTATION

- E S. A. Bashua Esq. for the appellant
Segun Onakoya Esq. for the respondents.

CASES REFERRED TO

- F Yusuf v Dada (1990) 4 N.W.L.R. (Part 146) 657
Nwosu v Imo State Environmental Sanitation Authority (1990) 2 N.W.L.R. (Pt. 135) 688 at 714
Okoye v Dumez Nig. Ltd (1985) 1 N.W.L.R. (Pt.4) 783
Obijuru v Ozims (1985) 2 N.W.L.R. (Pt. 6) 187
- G Ekeogu v Aliri (1991) 3 N.W.L.R. (Pt.179) 258
Okumagba v Egbe (1965) 1 N.M.L.R 62
African Newspaper of Nigeria Ltd & 2 ors v The Federal Republic of Nigeria (1985) 2 N.W.L.R. (Pt. 6) 137
- H Ojokolobo v Alamu (1987) 3 N.W.L.R. (Pt.61) 377.
Fountain Forestry v Edwards (1975) 1 Ch. 1
Okechukwu v Ndah (1967) N.M.L.R. 368
Akinfosile v Ajose (1960) S.C.N.L.R. 447

N.B.N. Ltd v Opeola (1994) 1 N.W.L.R. (Pt. 319) 126

STATUTE REFERRED TO

Administration of Estates Law cap 2 Laws of Lagos State 1973 s. 4(2)

B

LEAD JUDGMENT BY EDOZIE JSC

The Respondents herein were the plaintiffs at the Lagos High Court in Suit No. LD/1929/90 where they claimed against the Appellant as Defendant as per the Further Amended statement of claim dated 31st March, 1992 and the Amended Writ of Summons dated 15th April, 1992 the following reliefs:- C

“(a) *The sum of six million Naira being special and general damages for trespass committed by the defendant on their properties at Nos 42 and 44 Doherty Street, Lagos.* D

(b) *Perpetual injunction restraining the Defendant and their agents or privies from further committing any acts of trespass on the said land or intermeddling with the administration of the said property.*

(c) *An account of all monies collected from the various tenants in the said properties from 1st July, 1987”* E

The defendant in his further Amended Statement of Defence denied the plaintiffs’ claim. At the trial each party called witnesses to substantiate its claim or defence. From the pleadings and the evidence led at the trial, the facts of the case may be summarized as hereunder: F

The subject-matter in dispute between the parties is the properties at Nos 42 and 44 Doherty Street, Lagos which forms part of the estate of Chief Michael Eledumo Ojomo who died intestate on 4th November, 1974. On 24th February 1975, three of his children were granted letters of Administration as Administrators and Administratrix of the said properties. The three children are Clement Adegbemisoye Eledumo, Festus Ayodele Eledumo Ojomo (deceased) and Mrs. Adejoke Delano nee Ojomo (P.W.I.). for convenience they will be referred to as the former Administrators/Administratrix. Following an application by some of the beneficiaries of the estate of Chief Michael Eledumo Ojomo, the letters of Administration granted to the former Administrators/Administratrix dated 24th G H

February 1975 was revoked by an order of the High Court dated 16th July 1980 and on 17th October, 1981 fresh letters of Administration of the real and personal property of the estate were granted to the following children of the deceased:- (1) Sunday Adedoyin Ojomo (now deceased)
 B (2) Mrs. Olatomi Orimolade, (3) Mrs. Oyinlola Jimoh (4) Dr. (Mrs.) Olafenwa Durojaiye who are the plaintiffs in this case and may be referred to as the present Administrators/Administratrix.

They initiated the action leading to this appeal against the defendant a property developer who entered into the properties in dispute and commenced redevelopment thereof ostensibly on the agreement he had entered into with some of the former Administrators/Administratrix. The plaintiffs' case was that upon their father's death, they let out the properties at Nos 42 and 44 Doherty street Lagos to tenants including one Mrs.
 D Anifowoshe trading under the name Ade Top Nig. Ltd and from all the tenants they realized the sum of N37,000.00 per annum. Sometime in 1987, without the consent of the family and the beneficiaries who were then of age, the Defendant disrupted the tenants of the estate by demolishing the property at No. 42 Doherty Street Lagos and was threatening to demolish No. 44 Doherty Street, Lagos. It was the plaintiffs' case that at no time did the former Administrators/Administratrix enter into any agreement with the Defendant to redevelop the properties as the family
 E never decided to develop same.
 F

The defendant's case was that he the Defendant is a property developer. One Mr. Olusola Cole informed him of the plan to redevelop the properties in question. Mr. Cole arranged for him to hold a meeting with the Ojomo family at Owo. The family interviewed him and asked him to submit a proposal, which he did. The proposal was accepted and agreement was reached whereby he was to be granted a long-term lease to redevelop the properties at his expense and later rent them and recover his investment before surrendering the properties to the family. The agreement
 G Exh. D11 was executed by the former Administrators/Administratrix consequent upon which he paid the sum N15, 000 into the estate account at U.B.A. Broad Street, Lagos. As he was informed there were no tenants in the buildings, he entered into the premises and having found the houses
 H

empty, he commenced the demolition of the old buildings in July 1987. He had demolished the whole of No. 42 and part of No 44 Doherty Street when Mrs. Anifowoshe the proprietress of Ade Top Nig. Ltd, one of the tenants approached him requesting to be taken back as tenant after the reconstruction but as they could not reach agreement on the rent payable, she sued the Defendant but the suit was later discontinued. B

Upon the foregoing facts, the learned trial Judge found as of fact that the Agreement Exh. D11 was executed by the Defendant and two of the former Administrators/Administratrix and that the Administratrix Mrs. Adejoke Delano did not sign it and relying on section 4(2) of the Administration of Estates law, cap 2 Laws of the Lagos State 1973 and the case of Yusuf v Dada (1990) 4 N.W.L.R. (Part 146) 657, he held that the building lease Exh. D11 was defective. Furthermore he held that as the Governor's consent had not been obtained before Exhibit D.11 was purportedly executed as required by the Land Use Act No. 6 of 1978, the said Exh. D.11 was void by virtue of section 26 of the said Land Use Act. However, the trial court accepted that the Defendant pursuant to Exhibit D11 paid the sum of N15, 000.00 into the estate account and held that by that, the Defendants had acquired an equitable interest in the properties in dispute and having entered into the properties with the consent and permission of the plaintiffs' predecessors in office and title an action in trespass cannot be maintained against him. Accordingly the plaintiffs' claim was dismissed. D E F

Aggrieved by that decision, the plaintiffs lodged an appeal against it before the court of Appeal Lagos Division which court in the lead judgment delivered on 15th day of June 1999 by Oguntade JCA allowed the appeal and entered judgment for the plaintiffs to whom he awarded N10, 000.00 damages for trespass with an order of injunction restraining the defendant and his privies from further committing any acts of trespass on the properties situate at Nos 42 and 44 Doherty Street, Lagos. G

Against that judgment of the court of Appeal, the Defendant has H appealed to this court. The Notice of Appeal dated 10th June, 1999 is predicated on eight grounds of appeal which without their particulars read as follows:

“Ground 1 The learned Justices of the Court of Appeal erred in law when they held that the persons who transferred the interest to the defendant could not validly do so unless they acted in concurrence with the 3rd personal representative Mrs. Adejoke Delano.

B Ground 2 The learned Justices of the Court of Appeal erred in Law when they held that once Exhibit D.11 is void, the Defendant/Appellant cannot have any equitable interest.

C Ground 3 The learned Justices of the Court of Appeal erred in Law by treating Exhibit D.11 as void because the 3rd personal representative did not sign it.

D Ground 4 The learned Justices of the Court of Appeal misdirected themselves in Law by equating signing of a document to mean concurrence when such is not contained in section 4(2) Cap 2 Administration of Estate Law of Lagos State 1973.

Ground 5 The learned Justices of the Court of Appeal erred in law by finding that the Defendant/Appellant is in trespass because Exhibit D.11 is void.

E Ground 6 The learned Justices of the Court of Appeal erred in law by finding that the Defendant is in trespass because his possession was based on Exhibit D.11.

F Ground 7 The learned Justices of Court of Appeal award of damages was not in accordance with the principles.

Ground 8 The learned Justices of the Court of Appeal erred in law by granting perpetual injunction restraining the Defendant.”

The parties through their counsel filed and exchanged briefs of arguments and on 30th November 2003 when the appeal was heard they adopted their respective briefs with oral addresses in expatiation of some arguments in the briefs. Based on the grounds of appeal, five issues were identified in the Defendants/Appellants’ brief which were adopted in the Plaintiffs/Respondents’ brief for the determination of the appeal. These are:

“First Issue

Did the plaintiff/Respondents pleaded (sic) the facts that concurrence of all the individual that constitute the Administrator and

Administratrix were to be obtained by the Defendant/Appellant.

Second Issue

Did the plaintiffs plead the issue that because one of the previous Administrator and Administratrix did not sign Exhibit D.11 that made the Defendant to be in trespass.

B

Third Issue

Was the Court of Appeal right when the Court of Appeal found that the lower court was in error to have held that since the Defendant was in possession (plaintiff) could not claim in trespass.

C

Fourth Issue

Was the Court of Appeal right when they found that the issue of equitable interest did not arise when evidence of the Defendant that the giving of possession was with the consent of the entire family.

D

Fifth Issue

Was the Court of Appeal right to grant damages for trespass and injunction when there was no appeal against the finding of the court on same.”

With due respect to both counsel, the issues as formulated above leave much to be desired. Issue 1 and 2 relating to pleadings do not appear to have been derived from any of the grounds of appeal nor from the decision appealed against. There is no indication as to which grounds of appeal the issues are related to. Issues for determination in an appeal should be formulated in general practical terms and tailored to the real issues in controversy in the case: Nwosu v Imo State Environmental Sanitation Authority (1990) 2 N.W.L.R. (Pt. 135) 688 at 714. Prolivity or proliferation of issues is not ideal as it tends to obscure the core issue to be determined and tends to reduce the issue to trifles. Appeals are not won on large number or quantity of grounds of appeal but on the quality of the content of the grounds of appeal and issue. In my view, having regard to the judgment appealed against and the grounds of appeal, the fundamental issue germane to the determination of this appeal may be formulated thus: -

“Was the Court of Appeal right in holding that Exhibit D.11 was void on the ground that there was no concurrence of all the former Ad-

ministrators/Administratrix in the execution of the document having regard to the provisions of section 4 (2) Cap 2 Administration of Estates law of Lagos State 1973 and thereby adjudging the entry of the Defendant on the property in dispute trespassory?"

B In considering this lone issue formulated above, it is pertinent to refer to relevant passages in the judgment of the Court of Appeal where in the leading judgment of Oguntade JCA, the learned Justice made pronouncements pertinent to the issue under consideration. At p.346 from line 18 et seq, His Lordship said: -

C *"From the evidence given before the trial judge and the passage reproduced above, it was clear that Administrator and Administratrix of the estate of M.E. Ojomo who died intestate on 4/11/74 was first appointed on 24/2/75. They were Clement Adegbemisoje Eledumo, Festus D Ayodele Eledumo Ojomo and Adejoke Delano. The position remained so till when Exhibit D.11 was purportedly executed. Under section 4 (2) of the Administration of Estates Law Cap 2 Law of Lagos State where two or more personal representatives are dealing with the real Estate of a E deceased person, such personnel representatives when executing a conveyance shall act with the concurrence of all the personnel representatives. The case of Yusuff vs Dada supra to which the learned trial Judge referred is clear authority that personal representatives dealing with the F real estate of deceased person have a joint and entire interest in the estate of the deceased and each has no separate interest which he can individually transfer. Where each purports to do so, nothing passes. It seems to me that the learned trial judge had been on the right track in calling to mind the provisions of section 4 (2) of the Administration of Estates Law Cap G 2 Laws of Lagos State and the case of Yussuf vs Dada supra.*

The trial judge mistakenly one must say having started on the right course deviated into considering the cases of Okoye v Dumez Nig. Ltd (1985) 1 N.W.L.R. (Pt.4) 783, Obijuru v Ozims (1985) 2 N.W.L.R. (Pt. H 6) 187 as conferring on the defendant an equitable interest. The latter cases i.e. Okoye v Dumez Nig. Ltd and Obijuru v Ozims (supra) dealt with an entirely different matter which was irrelevant to the issue which the trial judge has to consider. These cases deal with the equitable inter-

est derivable under a registrable instrument in favour of a purchaser who has paid and been put in possession. In those cases, it was not in dispute that the vendors who had sold the properties had the right to convey the proprietary interest in the properties to the purchasers. In the instant case, we have a situation where the person who transferred the interest to the defendant could not validly do so unless they acted in concurrence with the 3rd personal representative Mrs. Adejoke Delano who had not joined in the execution of D.11. Clearly therefore, the two personal representatives had no interest which they could pass to the defendant vide Exhibit D.11. The question of equitable interest does not arise at all.

At p.348, bottom line et seq, the learned Justice continued:-

In this case, it was common ground that the properties at 42/44 Doherty Street, Lagos belonged to the estate of late M.E. Ojomo. Three persons were the personal representatives of the said property. The defendant needed the concurrence of the three to be able to enter the premises. But he had the authority of only two. The authority of those two was as good as nothing. It is therefore correct to say that the defendant had no valid authority to enter to demolish the premisesAs the only authority relied upon by the defendant to support his entry was Exhibit D.11, which has turned out to be useless the defendant ought to have been found liable in trespass.

And finally at p.352 from line 14 et seq, the court concluded thus: -

“The result of the authorities for the purpose of this case translates into this. Once I have found that the document exhibit D.11 by which the defendant gained possession is void, the defendant’s entry to the land is void ab initio and amounts to trespass.”

It is manifest from the above passages that the court below took the view that Exhibit D.11 was void since it was not executed by all the three former Administrators/Administratrix and the Appellants have forcefully argued that this is in violation of the Administration of Estates Law Cap 2 Laws of Lagos State, 1973. As the provision of section 4(2) of the said Administration of Estates Law supra is the fulcrum upon which this appeal revolves, it is necessary to reproduce it in extenso. It enacts: -

“4 (2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this part of this law shall not, save as otherwise provided as respects trust estates, be made without concurrence therein of all such representatives or an order of court.....”

(Underlining for emphasis)

The operative words are ‘concurrence therein’. Does the expression imply that all the personal representatives must execute the conveyance which by section 2 of the Administration of Estates Law supra includes a mortgage, charge, lease, assent etc. Learned counsel for the Appellants has forcefully canvassed that the expression “concurrence therein” does not imply that all the personal representatives must execute the instrument of transfer and that the execution by one or two of several personal representatives was valid provided that all of them concurred or agreed to the transaction. He alluded to a passage in the judgment of the trial court at Page 234, line 1 et seq of the record where it said: -

“On the basis of the above cited authorities, the Defendant having entered upon the land the subject matter of this suit with the consent and permission of the plaintiff’s predecessors in office and title cannot be said to have interfered with the plaintiffs’ possession.”

and submitted that the trial court having found as of fact that there was a concurrence by all the former Administrators/Administratrix, and that finding having not been reversed by the court below, the execution of the lease Exhibit D.11 by the two former Administrators/Administratrix was valid and not void.

In support of his contention that the expression “Concurrence therein” as used in section 4 (2) of the Administration of the Estates Law supra does not imply the execution of a conveyance by all the personal representatives, learned counsel called in aid, a passage from Williams & Mortimer, Executors, Administrators and probate, 1970 Edition, page 463 where it was stated thus: -

“Where more than one executor or administrator is appointed, the joint office is treated as that of an individual. Each executor represents the estate for all purposes subject only to the statutory exceptions. They

have joint and entire interest or intestate which is incapable of being divided...”

(Underlining for emphasis)

In his response, learned counsel for the plaintiffs maintained that Exhibit D.11 relied upon by the Defendant is void, not being in conformity with section 4 of Administration of Estates Law *supra*. B

Having given a careful consideration to the submissions of both learned counsel, I am of opinion that there is considerable force in the submission of the learned counsel for the Defendant/Appellant on the meaning of section 4(2) of the Administration of Estates Law Cap 2, Laws of Lagos State, 1973 which at the risk of repetition but for emphasis reads thus: - C

“4(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this part of this law shall not, save as otherwise provided as respects trust estates, be made without concurrence therein of all such representatives or an order of court...” D

It is a cardinal principle in the construction of a statute that where the words of a statute are clear or unambiguous, those words shall be so construed as to give effect to their ordinary or literal meaning and enforced accordingly: see Ekeogu v Aliri (1991) 3 N.W.L.R. (Pt.179) 258; Okumagba v Egbe (1965) 1 N.M.L.R 62, African Newspaper of Nigeria Ltd & 2 ors v The Federal Republic of Nigeria (1985) 2 N.W.L.R. (Pt. 6) 137 and Ojokolobo v Alamu (1987) 3 N.W.L.R. (Pt.61) 377. Longman’s Dictionary of Contemporary English defines the word ‘concurrence’ as agreement. Black’s law Dictionary, 6th Edition at page 291, talks of “concurrence” as “a meeting or coming together; agreement or union in action; meeting of minds, union in design; consent.” **I am of the view that the expression “concurrence therein” appearing in subsection 4(2) of the Administration of Estates Law Cap 2, Laws of Lagos State *supra* means the agreement or consent of all the personal representatives in the conveyance of the real estate of the deceased. Evidence of such concurrence can be manifested by the execution of the conveyance by all the personal representatives** E
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but it is not limited to that. Where there are several personal representatives and they are all in agreement that the deceased's real estate vested in them should be disposed or alienated, one or some of them can validly execute a conveyance in that regard but if there was no concurrence of all of them such a conveyance executed by one or some of them can only be valid with an order of court. This view appears to be in accord with the decision in the English Court in the case of Fountain Forestry v Edwards (1975) 1 Ch. 1 dealing with the interpretation of section 2(2) of the English Administration of Estates Act 1925 which also provides that a conveyance of real estate including chattels real cannot be made without the concurrence therein of all the representatives (still living) to whom a grant has been made in respect of the property conveyed or without an order of the court, a provision identical with section 4(2) of the corresponding Lagos State Law under consideration. In the aforesaid case, Robert Edwards, one of two administrators entered into a contract for the sale of land forming part of the deceased's estate, which was expressed to be made between both administrators and the plaintiffs, as purchasers. Robert Edwards was expressed to sign for himself and the co-administrator who did not herself sign the contract. As the co-administrator was unwilling to complete the transaction by signing the conveyance, the plaintiffs sued the two administrators claiming specific performance on the basis that one administrator could bind the other under the general law. It was held that Robert Edward having purported to sign the contract on behalf of himself and his co-administrator, had warranted that he had authority to bind the latter but since that authority was in fact lacking, there was no contract of which specific performance could be granted. In other words, if there had been concurrence between the two administrators, the execution of the conveyance by one of the administrators would have been binding on the co-administrator who did not sign. **This case therefore illustrates the principle under consideration to the effect that where the real estate of the deceased is vested in several personal representatives, it could be conveyed by one or some of them if there is a concurrence among all of them in the transaction. It would there-**

fore be erroneous with respect, if the two lower courts held the view that Exhibit DII was void merely because all the personal representatives did not execute it. The conveyance was not void but binding if there is evidence of concurrence therein by all the three former Administrators/Administratrix. B

This leads me to an examination as to whether there was such concurrence. In this connection, I disagree with the contention of learned counsel for the Defendants/Appellants that there was a finding by the trial court that there was such a concurrence. A finding one way or the other in that regard is very crucial to the determination of this appeal. It was the Defendant who raised that question about the concurrence of all the former Administrators/Administratrix. Thus in paragraphs 4 and 5 of the further Amended Statement of Defence (p.160 of the record) the Defendant pleaded thus: - C D

“4 Defendant avers that the firm of Ibrahim, Adegbola, Shitta and Associates discussed proposals with the Administrators and Administratrix and an oral agreement was reached.

5 Defendant avers that the beneficiaries of the estate were consulted and some of them asked that the developer should give some money to some individual beneficiaries for their benefit which was done.” E

In a reply to the statement of Defence (p.54) the plaintiffs in paragraph 1 thereof denied the above averments and in paragraphs 2 and 3 of the said Reply pleaded further: - F

“2 The plaintiffs in reply to paragraphs 3.4.5.6.7.14 and 21 aver that at no time in 1987 or thereafter did the Administrators and Administratrix of the Estate of M.E Ojomo (deceased) and the beneficiaries of the said estate enter into a discussion or an agreement for the redevelopment of the estate property at Nos 42/44, Doherty Street, Lagos and did not put the Defendant into possession. G

3 Further to the above, no sum of money was advanced by the Defendant for the purposes or consideration for the redevelopment of the said estate property.” H

In civil cases, the burden of proof is cast on the party who asserts the affirmative of a particular issue: see Okechukwu v Ndah (1967)

N.M.L.R. 368; Akinfosile v Ajose (1960) S.C.N.L.R. 447; N.B.N. Ltd v Opeola (1994) 1 N.W.L.R. (Pt. 319) 126. The burden rests on the party whether plaintiff or defendant who substantially asserts the affirmative of an issue: see **Messrs Lewis & Peat (N.R.I) Ltd v A.E.**

B Akhimien (1976) 7 SC p.157 at 169. In the instant case, the Defendant having asserted and the plaintiffs having denied that the former Administrators/Administratrix discussed and reached agreement on the redevelopment of the property in dispute with the Defendant's firm, the onus was on the latter to prove by credible **C evidence that assertion.** In an effort to discharge that burden, Clement Adegbemiso Elenuno (Eledumo) who was one of the former Administrators/Administratrix, testifying in-chief as D.W.I said (p.129, lines 15 to 25)

D *"The family decided in 1985 to rebuild two houses belonging to the estate of late M.E. Ojomo, the properties are No. 42 and 44 Doherty Street, Lagos. It was decided at a meeting at Owo. We kept minutes of the meeting where the decision was taken. This is the minutes of the meeting*
E *where the decision was taken".*

Alhaji Bashua seeks to tender the minutes in evidence. Mr. Onakoya has no objection.

Court :Late M.E. Ojomo family meeting minutes held in John's house at Owo on 2nd November, 1985 is admitted in evidence and marked Exhibit **F** D9.

Answering question under cross-examination, the witness at p.184, lines 23 and 29 said,

G *"I agree there was no agreement to give the property to a developer in Exh. D9".*

And as if that did not sufficiently damnify his case, he continued, still under cross-examination at p.189 line 6 and 7 as follows: -

"... I was the only executor present at the meeting Exhibit D9."

H **It seems to me crystal clear that the Defendant failed woefully to establish his assertion in paragraphs 4 and 5 of his further Amended Statement of Defence regarding the concurrence of the former Administrators/Administratrix in the redevelopment project involv-**

ing the conveyance of the properties in dispute to the Defendants.

As I had stated earlier on, the trial court made no pronouncement on the issue but the jurisdiction of this court to make necessary findings in appropriate cases where the trial court failed to do so is not in doubt. In the case of Akibu v Okpaleye & Anor (1974) 11 SC 189 at 202, this court, per Sowemimo, J.S.C. restated the principle thus: -

“Although this court rehears a case on appeal, it does this only on the records and where it is quite clear that evidence has been led in the lower court which establishes a fact, it will make the necessary finding which the lower court failed to make: see Thomas v Thomas (1947) A.C. 484, pp 487, 488; also Fatoyinbo v Williams (1956) 1 F.S.C. 87”.

See also Chief Frank Ebba v Chief Ogodo & Anor (1984) 4 S.C. 84 at 99. **Since from** the record in the present proceedings, there is no evidence that all the former Administrators/Administratrix of the estate of Chief M.O. Ojomo agreed or concurred in the conveyance of the properties in dispute nor obtained an order of court to convey the said properties as required by section 4 (2) of the Administration of Estates Law, Lagos State supra, the document, Exhibit D.11 executed by only two of the former Administrators/Administratrix in purported conveyance of the said properties to the Defendant and his firm is void and not binding on the plaintiffs nor on the estate vested in them. I will therefore resolve the lone issue formulated by me against the Defendant/Appellant in favour of the plaintiffs/Respondents.

In the premise, this appeal fails and it is accordingly dismissed. As to costs, I award to the plaintiffs/Respondents as against the Defendant/Appellant the sum of N10, 000.00.

H

KUTIGIJSC

I have had the privilege of reading before now the judgment just

rendered by my learned brother Edozie, JSC. He has very admirably set out the fact of the case and has unmistakably identified the single fundamental issue germane to the determination of the appeal before us thus:-

B *“Was the Court of Appeal right in holding that Exhibit D.II was void on the ground that there was no concurrence of all the former Administrators/ Administratrix on the execution of the document having regard to the provision of section 4(2) of Cap. 2 Administration of Estates Law, Laws of Lagos 1973 and thereby adjudging the entry of the Defendant on the property in dispute trespassory?”*

C As the provision of Section 4(2) of the Administration of Estates Law is crucial in this appeal, I will set it out in part thus-

D *“4(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this part of this law shall not, save as otherwise provided as respects trust estates, be made without concurrence therein of all such representatives or an order of Court...”*

(underlining is mine)

E There is no doubt at all that the trial High Court did find on the copious evidence on record that the agreement or document, Exhibit D.11 which the Defendant pleaded and heavily relied upon, was void because there was never any concurrence or agreement by all the personal representatives of the estate to grant the building lease to the Defendant as required under F Section 4(2) supra. In fact only two of the three former administrators/ Administratrix signed Exhibit D.11 Needless to add that there was also no order of court. To me this finding completely knocked out the bottom of the Defendant’s case. And the Plaintiffs should have had judgment entered G in their favour. But curiously, the trial Court relying on the fact that the Defendant who is in possession and who pursuant to Exhibit D.11 claimed to have paid the sum of N5,000.00 into the estate account, had thereby acquired an equitable interest in the properties in dispute. If I may ask, what H equitable interest? When there was clearly no agreement or concurrence to lease the property to the Defendant as found by the trial Court itself? The people who purportedly leased the property to the Defendant had no right or authority to do so. Exhibit D. 11 is therefore null and void. And you

cannot put something on nothing. I think the Court of Appeal was right to have adjudged the Defendant a trespasser amongst others.

It is pertinent to reproduce here now what one of the three former administrators/administratrix. Mrs. Adejoke Delano, said while testifying as P.W.1 before the trial Court. She said on page 82 of the record as follows:-

“When we were administrators and administratrixes we never had anything to do with Defendant in respect of developing the property. During our administration of the estate, the family or administrations did not put the Defendant into possession of any of the properties. It is not to my knowledge that the Defendant held series of meetings with the family for the development of the property. It is not to my knowledge that the administrators authorized the payment of N15,000.00 into the Estate Account by the Defendant. I am not aware that N15,000.00 was actually paid into the Estate Account. It is not true that we gave the Defendants authority to eject the tenants and demolish the properties...”

Evidently there was no concurrence or agreement among the administrators to lease the property to the Defendant as claimed. The trial Court so rightly found and the Court of Appeal properly affirmed the finding.

It is for these reasons and those ably stated in the lead judgment of my learned brother Edozie, JSC that I also find no merit in the appeal. It is hereby dismissed. The judgment of the Court of Appeal is confirmed. The Plaintiffs are awarded costs of N10,000.00 against the Defendant.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Edozie JSC. I entirely agree with it.

This appeal calls for the proper interpretation of section 4(2) of the Administration of Estates Law Cap 2, Laws of Lagos State 1973. It reads inter alia:

“34(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estates devolving under this Part of this Law shall not, save as otherwise provided as respects trust estates, be

made without the concurrence therein of all such representatives or an order of the court..... ”

The facts of this case have been ably stated in the judgments of Edozie and Uwaifo JJSC. I shall therefore not re-state them here in.

B The trial Judge considered section 4(2) of the Administration of
 Estates Law 1973 quoted above. This was in relation to the deed of lease
 signed by two out of the three administrators which was admitted in
 evidence as exhibit D 11. The issue for resolution was whether the con-
 veyance to the defendant was made with the concurrence of the three
 C administrator. Relying on section 4(2) of the 1973 Law and the case of
Yusuf v. Dada (1990)4 NWLR (Pt. 146)657 the learned trial Judge in his
 judgment held that the building lease exhibit D11 was defective. He said
 inter alia:

D *"Therefore, in this case, the fact that he Administrators and
 Administratrix did not concur in granting the building lease to the de-
 fendant makes the building lease defective."*

On appeal to the court below, upon the question of concurrence
 E the court below came to the same interpretation albeit erroneous ads the
 trial court. That court said:

*"Under section 4(2) of the Administration of Estates Law Cap. 2
 Cap. Laws of Lagos personal representatives are dealing with the teal
 estate of a deceased person, such personal representatives when execut-
 F ing a conveyance shall act with the concurrence of all the personal repre-
 sentatives."*

The court below concluded thus:

G *"In the instant case we have a situation where the persons who
 transferred the interest to the defendant could not validly do so unless
 they acted in concurrence with the 3rd personal representative Mrs. Adejoke
 Delalu who had not joined in the execution of exhibit D11. Clearly there-
 fore the two personal representatives had no interest which they could
 H pass to the defendant vide exhibit D11."*

I have already indicated that eh interpretation of section 4(2) of the 1973
 Law by the two courts below was erroneous. They did not give a proper
 interpretation to the meaning of the word "concurrence" as used in sec-

tion 4(2). They were under the mistaken belief that it meant the execution by all the administrators of exhibit D11.

The court has a duty to interpret section 4(2) properly. “Concurrence” as used in section 4(2) can be established even outside the conveyance executed. This could be done by credible oral evidence or evidence of minutes kept by the administrators (if any). Once such concurrence of all the administrators has been reached, it is then lawful for one or two of them to execute the relevant document or deed. Such a deed would then have been validly executed by all the administrators See the English case of Fountain Forestry v. Edwards (1975) I ch. 1. It cannot therefore be right to say that if only two out of three sign in such a circumstance, such conveyance is void by virtue of section 4(2). In the instant case it is not in doubt that exhibit D11 was void, but not just because all three administrators did not sign it. But because the three had not agreed to the transaction which the said exhibit D11 purported to support.

For these reasons and those more fully stated by my learned brother Edozie JSC, I also dismiss the appeal and uphold the orders made by the court below. I award ₦10,000.00 costs in favour of the respondents.

KALGO JSC

I have had the privilege of reading in advance the judgment just delivered by the learned Brother Edozie JSC. I entirely agree with him that there is no merit in this appeal it ought to be dismissed.

The main plank of this appeal centred around the provisions of Section 4 (2) of the Administration of Estates Law (Cap. 2) Laws of Lagos State 1973, and the validity of the agreement entered into between the Appellant and two out of the three administrators of the estate of Chief M.E. Ojomo (deceased), for the development of the two landed properties of the deceased.

Section 4 (2) of the said law provides:-

“Where as respects teal estate there are two or more personal representatives, a conveyance of real estate devolving under this part of this law

shall not save as otherwise provided as respects trust estates, be made without concurrence therein of all such representatives or an order of court.....”

The properties concerned here are landed properties comprising of plot numbers 42 and 44 Doherty Street, Lagos which are no doubt real estates. The agreement is conveying the said properties to the appellant for redevelopment, but the conveyance Exhibit D. 11 was executed in this case by only two out of the three administrators of the said estate. This was the finding of the learned trial judge and affirmed by the Court of Appeal. The 3rd representative an administrative an administratrix, Mrs. Adejoke Delano emphatically denied any agreement authorizing the Defendants/Appellants to demolish and redevelop the properties concerned. There is therefore no “concurrence therein” of the representatives of the estate, as compulsorily required by Section 4 (2) above and so there is no compliance with the provisions of Section 4 (2) of the said law which are very clear and unambiguous. I agree with the Court of Appeal that the questions of equitable interest in favour of the Defendant/Appellant did not and could not arise in the circumstances of this case. Also since the right and interest of the administrators or administratrixes of any estate is joint in the estate, they must operate together and the giving out of such right or interest by some of them to any one does not blind the others who do not give their consent thereto. See Yusuf V. Dada (1990) 4 NWLR (pt. 146) 657. Therefore Exhibit D. 11 relied upon by the Defendant/Appellant is worthless and unenforceable. There was also no order of court made in this case.

I have also examined all the issues for determination raised or formulated by the parties in their respective briefs in this appeal and I entirely agree with the only issue framed by my learned brother Edozie JSC as being fundamental and germane in this appeal having regard to the grounds of appeal filed in this court by the appellant. I entirely agree with his reasoning and conclusions reached in the consideration of this sole issue and I adopt same as mine.

For the above and the more detailed reasons given in the leading judgment of my learned brother Edozie JSC, I also no merit in this appeal

and I hereby dismiss it. I affirm the decision of the Court of Appeal and award N10,000.00 costs in favour of the Plaintiffs/Respondents.

UWAIFO JSC

I read in advance the judgment of my learned brother Edozie JSC and agree fully with it for the reasons he gives. I shall add a few comments.

This case raises a very important legal issue upon which I wish to express my own opinion. The issue is this: if three Administrators of a deceased's estate are in agreement to alienate or deal with his real estate (i.e. landed property) in the course of their administration of the estate but only two signed the conveyance or necessary document, would that be in compliance or not with section 4(2) of the Administration of Estates Law (Cap.2), Laws of Lagos State of Nigeria, 1973 (the 1973 Law) which reads inter alia:

"4. (2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part of this Law shall not, save as otherwise provided as respects trust estates, be made without the concurrence therein of all such representatives or an order of the court..."

I shall give only a skeletal facts of this case. The appellant is a property developer. The respondents are the administrators and administratrixes of the estate of M.E. Ojomo (deceased). They replaced the former administrators and administratrix (i.e. Mr. C.A. Elemudo, Mr. J.A.E. Ojomo (deceased) and Mrs. A. Delano]. The estate in question included properties Nos. 42 and 44 Doherty Street, Lagos. The appellant claimed that he discussed with the said former administrators and administratrix and reached an agreement with them to redevelop the said properties. However, the deed that was later executed was signed by the two administrators. The administratrix did not sign. As already indicated, the former administrators and administratrix (hereinafter referred to as the administrators as may be convenient) were replaced by the present respondents. The respondents did not want the arrangement to be car-

ried through. I need not state the details of how this came about. It is enough to say that the respondents filed this action claiming special damages of N37,000.00 and general damages of N5,963,000.00 for trespass against the appellant.

B The learned trial judge in his judgment considered section 4(2) of the 1973 Law applicable to this case. He did this in relation to the deed of lease signed by two out of the three administrators which was admitted as exhibit D11. The learned trial judge referred to the case of Yusuf v. Dada (1990) 4 NWLR (pt. 146) 657. In that case two passages were
C quoted from page 466 of Williams, Mortimer and Sunnucks Executors Administrators and Probate, 16th edition. The first was in respect of the “doctrine of notice” and the second, the essence of joint representation when more than one executor or administrator is appointed. Under joint
D representation, it was stated thus:

*“Where more than one executor or administrator is appointed, the joint office is treated as that of an individual person. Each executor represents the estate for all purposes subject only to the statutory excep-
E tions. They have a joint and entire interest in the (real or personal) of the testator or intestate which is incapable of being divided. Consequently, if one of two executors or administrators purports to grant or release his interest in the testator’s or interstate’s estate to the other, nothing passes
F because each was possessed of the whole before.”*

I must comment here that what the above means is that in case of multiple executors or administrators, none can purport that the estate is divisible whereof he is in charge of one part and the others their respec-
G tive parts of the estate. That is why no such executor or administrator can purport to grant or release his interest in the estate to the other. The representation of the estate is joint; that is to say, the executors or administrators must agree in their representation of the estate. The learned trials judge relying on the said passage on joint representation said:

H *“Therefore, in this case, the fact that the Administrators and Administratrix did not concur in granting the building lease to the defendant makes the building lease defective. That is not the only thing wrong with the building agreement. There is the submission of learned*

counsel for the plaintiffs Mr. Segun Onakoya to the effect that the building agreement was entered into without the consent of the Governor first had and obtained.”

The learned trial judge was certainly referring to exhibit D11. He thought that just because it was signed by two out of the three administrators, there was a contravention of or non-compliance with section 4(2) of the 1973 Act. As will be shown later, the learned trial judge was in error. He did not, with the utmost respect, quite appreciate the true meaning of the passage on joint representation quoted above, nor the real essence of section 4(2). Although he eventually dismissed the suit, the decision was based on a wrong premise, namely that the transaction gave the appellant an equitable interest “by virtue of the contractual arrangement between the defendant and the plaintiffs’ predecessors in office” which remained binding on the plaintiffs. It was certainly not an issue of equitable interest. If what the learned trial judge said as put in quotes above were to be understood as the contractual arrangement between all three former administrators and the appellant, then that, in my view, would border on concurrence. I would add the further statement made by the learned trial judge that “the defendant (i.e. the appellant) having entered upon the land the subject-matter of this suit with the consent and permission of the plaintiffs’ predecessors in office and title cannot be said to have interfered with the plaintiffs’ possession.” This would appear as if the learned trial judge thought that there was concurrence of all three former administrators, concurrence being a synonym of consent. As shown in the judgment of my learned brother Edozie JSC, there was no evidence of concurrence.

The respondents appealed to the Court of Appeal, Lagos Division. On the vital question, what amounts to concurrence as used in section 4(2) of the 1973 Law, that court came to the same erroneous interpretation as the trial court. Oguntade JCA who wrote the leading judgment said:

Under section 4)(2) of the Administration of Estates Law Cap. 2 H Laws of Lagos State, where there (sic) one two or more personal representatives are dealing with the real estate of a deceased person, such personal representatives when executing a conveyance shall act with the

concurrence of all the personal representatives.”

The learned Justice of Appeal then made reference to Yusuf v. Dada (supra) and would appear to have missed the import of that authority. That case has nothing to do remotely with section 4(2) of the 1973 Law or any similar provision; nor can it help in the understanding of what “*concurrence*” implies as used in that section. On the question of concurrence, the learned Justice concluded thus:

“In the instant case, we have a situation where the persons who transferred the interest to the defendant could not validly do so unless they acted in concurrence with the 3rd personal representative Mrs. Adejoke Delalu who had not joined in the execution of exhibit D11. Clearly therefore, the two personal representatives had no interest which they could pass to the defendant vide exhibit D11.”

Before this court on further appeal, the real issue to be decide, as can be seen from some of the grounds of appeal, is stated in the leading judgment thus:

“Was the Court of Appeal right in holding that exhibit D11 was void on the ground that there was no concurrence of all the former Administrator/Administratrix on the execution of the document having regard to the provisions of section 4(2) Cap. 2 Administration of Estates Law Lagos State 1973 and thereby adjudging the entry of the defendant on the property in dispute trespassory?”

It is pertinent to first decide if indeed it can be said that before exhibit D11 was executed, there was agreement reached between all the former administrators and the appellant as authority for the appellant to redevelop the properties in question. I have already pointed out in this judgment that there was no evidence of such agreement or consent that amounts to the concurrence of all the three administrators.

One of the former administrators, Mrs. Adejoke Delano nee Ojomo, testified, among other things, to the effect that the former administrators never consented and that “we never had anything to do with the defendant in respect of developing the property.” The evidence of d.w.1, Clement Adegbemisoye Elemumo, a former administrator, has revealed there was no such concurrence. The law in section 4(2) of the 1973 Law is about

the concurrence of the administrators or executors, as the case may be, in any form or manner, or long as it is clear they did. This could be by credible oral evidence, or a minutes book containing the concurrence, or some correspondence to that effect. That concurrence may be carried into effect by one or two of the administrators or executors executing the necessary deed of conveyance or other document. B

The two courts below did not give a proper interpretation to the meaning of the word “concurrence” as used in section 4(2) of the 1973 Act. They seemed to have thought that it meant the execution by all the administrators of the relevant documents such as the deed of conveyance. C
Of course, if all the administrators sign the deed of conveyance there can be an argument that there was concurrence between them. But it may well be that one or two, with the concurrence of all the administrators, may be available to execute the conveyance. D

In *Sneesby v. Thorne* (1855) 7 De G.M. & G. 399; (1855) 44 E.R. 156, Smith, one of the two executors, the other being Thorne, erroneously believing that he was acting with the authority of the other, contracted to sell a leasehold house, part of the testator’s estate. The question arose E
whether the purchaser could enforce a specific performance of the contract. The case was considered in *Fountain Forestry v. Edwards* (1975) 1 Ch. 9 on a provision similar to section 4(2) of the 1973 Law, namely section 2(2) of the Land Transfer Act 1897, which provides that F
a conveyance of real estate requires the concurrence of all the personal representatives, where there are two or more such representatives. At page 15, Brightman, J., in explaining the ratio decidendi of *Sneesby v. Thorne* (supra), observed thus:

“He (Smith) purported to contract with the concurrence of Thorne. The contract was expressed to be made by both Thorne and Smith signed not only on his own behalf but also as agent for Thorne. On the face of the contract, therefore, it was an agreement the validity of which depended on Smith having Thorne’s authority. If Smith had Thorne’s authority, well and good. The contract would then have been effectively made by both executors.” G H

But because Smith did not have the concurrence of Thorne (which he

thought he had), the purchaser could not enforce a specific performance of the purported contract. The same result was arrived at in *Fountain Forestry v. Edwards* (supra). Commenting, the learned author of *Hanbury and Maudsley Modern Equity*, 12th edition, page 56, said:

B “*specific performance was refused because the contracting administrator purported to contract with the concurrence of his co-administratrix, when she had not in fact agreed.*”

C In the present case, had all the administrators agreed to the transaction in question, exhibit D11, even though executed by only two of the administrators, would have been valid. The conveyance would have been with the concurrence of all the administrators even though only two signed it; and that would have been in compliance with section 4(2) of the 1973 Law.

D I hold that the court below did not give a proper interpretation to section 4(2) of the 1973 Law. But because of the lack of evidence of the concurrence of the administrators, the document signed by two of them is invalid. For these reasons and those more fully stated by my learned
E brother Edozie JSC, I, too, dismiss the appeal and uphold the orders made by the court below. I award N10.000.00 costs in favour of the respondents.

F

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