

**SUPREME COURT OF NIGERIA**

24TH JUNE, 2005. SC. 72/2002

**CORAM:- S. M. A. BELGORE, S. U. ONU, A. I. KATSINA-ALU,  
U. A. KALGO, A. O. EJIWUNMI, JJSC**

MRS. ENO EKPUK ..... APPELLANT  
AND  
MRS. BASSEY ITA OKON ..... RESPONDENT

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ACTIONS - Abuse of court's process - Issues - Sameness of - Where issues raised in two suits - Between same parties are the same - Respondent's counsel will be wrong - To submit that the issues raised by parties are different (H1)

APPEALS - Decisions - Courts of co-ordinate jurisdiction - Should not overturn each other's decision (H2)

**FACTS**

The plaintiff/respondent instituted an action against the defendant/appellant seeking a declaration for entitlement to the administration of the estate of late Captain Ita Okon and an injunction restraining the defendant from meddling in the said estate. The respondent was married to the late Captain under native law and custom in April, 1965. At that time the Captain was in Liverpool, England. The appellant who was the Captain's sister arranged the marriage on behalf of her brother. The respondent afterwards travelled to England to join her husband. There the couple went through another ceremony of marriage under the English Marriage Law in 1967. They returned however to Nigeria in 1974. The couple had no issue and therefore adopted a child in 1975. The respondent also claimed that the Captain had a child outside their marriage.

Before their return to Nigeria the Captain took ill and was found to have thrombotic episodes which left him partially blind and paralysed. From around 1983, the couples lived separately and about the end of January 1989 the Captain filed a divorce suit against the respondent, but

before the action could be resolved, he died. The trial court dismissed the respondent's claim and made an order that the respondent should surrender all the properties of the late Captain. Dissatisfied with the judgment, the respondent appealed to the Court of Appeal where she lost. She then instituted a fresh action against the appellant at the High Court of Cross River State. At the end of the trial, the court upheld the claims of the respondent. The appellant dissatisfied with the judgment appealed to the Court of Appeal, where it was also dismissed. The appellant has further appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

*“2. Whether the suit does not constitute an abuse of the court’s process in view of the earlier court decisions in consolidated High Court Suit Nos. C/149/86 and C/ 41/87 which resulted in Appeal No. CA/E/44/90 concerning the same subject matter, facts, issues and the parties.*

*4. Was the respondent not estopped in commencing Suit No. C/321/94 in view of the consolidated Suit Nos. C/149/86 and C/41/87 resulting in Appeal No. CA/E/44/90 which subject matters, facts, issues and parties are the same.”*

**HELD** (Unanimously allowing the appeal per **EJIWUNMI JSC**)

***Abuse of court's process - Issues***

1. A careful perusal of the above issues clearly reveal that the court below ought to have considered whether the case instituted by the respondent amounted to an abuse of process. The question raised in respect of issue (4) to my mind should have led the court below to consider whether an appellate court is bound by an earlier decision of a court of co-ordinate jurisdiction and should therefore not hear a matter already decided by a court of co-ordinate jurisdiction where the parties and the issues raised are the same as the earlier decision of the court of co-ordinate jurisdiction.

In the instant appeal, I have laboured to set out the facts that led to this appeal and the decision of the two Courts of Appeal that made pronouncements on the respective appeals before the courts. The question then is, whether the learned counsel for the respondent is right in his submission that the facts and the issues raised thereon are not the same and

not between the same parties. After a careful consideration of the facts and the issues raised in the appeals in the two decisions of the Courts of Appeal, I must reject the contention of learned counsel for the respondent. (pp. 1568 G & 1569 F)

### ***Decisions - Courts of co-ordinate jurisdiction***

2. Moreover, it is also clear that by the decision of the Court of Appeal in Suit No. CA/E/44/90 reported in (1992) 6 NWLR (Pt.248) 473; that court affirmed the reasons given by the trial court for not allowing the respondent to administer the estate of her late husband.

Now, without considering those reasons, the Court of Appeal in the instant appeal proceeded to order that the respondent should take such steps as necessary to administer the estate of her late husband. By that decision, it is manifest that the Court of Appeal clearly overturned the earlier decision of the Court of Appeal which had refused to grant that order to the respondent for the reasons given. I must therefore hold that having regard to the principles enunciated above, the submission of learned counsel for the appellant that the Court of Appeal was wrong to have overturned the decision of a court of coordinate jurisdiction was right. I will therefore resolve this issue in favour of the appellant. (p. 1569 H)

### **REPRESENTATION**

Chief G. A. Udousoro, for the Appellant.

R. E. Bassey, for the Respondent.

### **CASES REFERRED TO**

Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All ER 293

Alapati v. Governor of Rivers State (1991) 8 NWLR (Pt.211) 575

Ita v. Bekonson (2001) FMLR (Pt.62) 1877

Egbo v. Lajuma (1988) 3 NWLR (Pt.80) 108.

### **LEAD JUDGMENT BY EJIWUNMIJSC**

The main question that falls for determination in this appeal appears to be, whether the Court of Appeal was right in upholding the judgment of

the trial court upon these set of facts and also with regard to the previous actions before the courts below, apart from that which resulted in this appeal.

The background facts of this case that led to this appeal may be put  
 B thus. The respondent was first married to the late Captain Ita Orok Okon  
 under native law and custom in April, 1965. At the time when that marriage  
 took place, and though Captain Ita Orok was in Liverpool, England, the  
 appellant being his sister, arranged the marriage on behalf of her brother.  
 C The respondent thereafter travelled to England to join her husband. There  
 the couple went through another ceremony of marriage under the English  
 Marriage Law sometime in 1967. They thereafter lived and cohabited in  
 London and Cardiff before returning to Nigeria in 1974. During that period,  
 Ita Orok Okon was studying under the scholarship of the Nigerian Ports  
 D Authority. Upon the completion of his course of studies, he returned to  
 Nigeria and was employed by the Nigerian Ports Authority as a Marine  
 Captain. In that capacity, he worked in Apapa, Lagos where he lived with  
 his wife, the respondent. He was later transferred to Calabar where they  
 E went together and continued to live together until that relationship suffered  
 a severe setback. As a result, the couple started living separately. Before  
 that happened however, the couple had bought a house in London which  
 they sold before returning to set up a home in Nigeria. With the proceeds  
 F of the sale, the couple built a house of flats at 28, Eyo Ita Street, Calabar,  
 and also built a second house at 9, Nsefik Layout in Calabar.

I must in this narration refer to three events that occurred during  
 the marital life of the couple. The first is that during their sojourn in the  
 U.K., Ita Orok Okon, now deceased, took ill and was hospitalized. It was  
 G discovered that he had thrombotic epitods as one of the main arteries to  
 his brain clotted up. Though he was operated upon, it was not possible to  
 do anything to the artery and in consequence, he became partially blind and  
 partially paralysed. But he carried on with his life and work inspite of his  
 H disabilities. Secondly, there was no direct issue of the marriage. The  
 couple however, adopted a baby boy in 1975 at the Magistrate Court, Ikeja,  
 Lagos and named him Edem Orok Ita Okon. The respondent also claimed  
 that the deceased had a daughter by another woman while he was in school

and she allegedly lived with the parents of the deceased. That daughter named Mabel Okon was 27 years old at the time of the death of the deceased on 4th February, 1986. Thirdly, the couple before the death of the deceased lived apart from each other from about 1983. And about the end of January 1984, the deceased filed a divorce suit against the respondent for the dissolution of the marriage. But before that action could be resolved, the deceased died on the 4th of February, 1986. Following the death of her husband, Marine Captain Ita Orok Okon, the respondent as plaintiff, instituted an action in Suit No. C/149/86 against Mrs. Eno Okon Ekpuk, the appellant herein and one Bassey Offiong. The second suit (Suit No. C/41/87) was instituted against the Administrator General of Cross River State thus:

*“(a) A declaration that the plaintiff is entitled to the administration of the estate of Captain Ita Okon (late) to the exclusion of all others particularly the defendants.*

*(b) An injunction restraining the defendants by themselves, their servants and/or agents from meddling in the said estate.”*

As these two cases relate to the administration of the estate of the late Captain Ita Orok Okon, they were consolidated and tried by Koofrey, CJ., Cross River State. In a reserved judgment delivered on 5th January, 1990, the learned trial Chief Judge dismissed the respondent’s case in the consolidated action with N500.00. The court also made a consequential order :-

*“That the plaintiff (respondent) should surrender all the properties of the late Captain Ita Orok Okon including those owned jointly with her to the Administrator-General, the defendant in Suit No. C/41/87 for proper administration in the interest of all parties concerned in the estate of the late Captain Ita Orok Okon.”*

As the plaintiff (respondent) was not satisfied with that judgment, she appealed to the Court of Appeal. For the determination of that appeal, the Court of Appeal (coram: Awogu, Oguntade, Akintan, JJCA), considered the following as the issues that properly arose from the appeal:-

*“(1) Whether the learned Chief Judge’s findings of fact and conclusions were wrong and/or perverse so as to warrant an interference*

*by an appellate court having regard to the circumstances of this case and particularly the strained relationship between the plaintiff and her late husband's relatives surviving.*

B (2) *Whether in the circumstances of this case, it was wrong in law to have granted administration to the 1st defendant to administer the late Captain's Estate.*

C (3) *Whether the learned trial Chief Judge committed any procedural or illegal acts in the course of the trial which has caused a substantial miscarriage of justice necessitating the setting aside of the judgment."*

Then immediately after those issues were set down, Akintan, JCA., (as he then was), and who wrote the leading judgment, made the following observations:-

D *"Strictly speaking, the main issue for determination in this appeal is the 6th issue formulated by the appellant. This is so, having regard to the fact that the plaintiff's claim was for a declaration that she was entitled to the administration of her late husband's estate to the exclusion of all others, particularly the defendants/respondents ....."*

E And after a careful consideration of the accepted facts and the issues raised thereon as itemized above, the court unanimously dismissed the appeal and affirmed the judgment of the trial Chief Judge. But the court below for the reasons given in the said judgment, allowed the appeal in respect of the consequential orders made by the learned trial Chief Judge.

F Now, having lost in the Court of Appeal with respect to the consolidated cases that were instituted by the plaintiff, who is now the respondent to the instant appeal, the respondent commenced a fresh action by an Originating Summons in the Calabar Judicial Division in the High Court of Cross River State against Mrs. Eno Okon Ekpuk, the sister of her husband and who was also a defendant in the consolidated suit. The said originating summons reads:-

G "LET ENO OKON EKPUK (Alias Mrs. Grace Okwosa) of No. 28, H Eyo Ita Street, Calabar Cross River State of Nigeria within eight days after the service, of this Summons on her, inclusive of the day of such service cause an appearance to be entered for her to this summons, which is issued upon the application of MRS. BASSEY ITA OKON of No. 9, Nsefik

Layout, Marian Road, Calabar Cross River State WHO CLAIMS to be a joint owner of the estate of Late Captain Ita Orok Okon which LETTERS OF ADMINISTRATION was wrongly and unlawfully issued to the defendant by the PROBATE REGISTRAR and under the hand and seal of the CHIEF JUDGE of Cross River State, for the determination of the B following questions:

1. Whether the probate Registrar was competent to issue Letters of Administration to the defendant without regards to the interest of the plaintiff, her sons and the Caveat filed by the plaintiff.

2. Whether the issuance of the Letters of Administration by the Probate Registrar over the joint property of the plaintiff is not a negation of the decision of the Court of Appeal in Suit No. CA/E/44/90.

3. Whether the issuance of the Letters of Administration to the defendant by the Probate Registrar is not an abuse of the process of the courts having regards to the subsisting Suit No.CA/173 (sic) filed by the Defendant for that purpose and pending in the High Court No.5.

4. Whether by virtue of the decision of the Court of Appeal in Suit No. CA/E/44/90 and the renunciation of the Estate by the Administrator-General, the plaintiff as joint owner is not a competent person to administer her estate in the absence of her deceased husband.

5. Whether the decision to issue Letters of Administration to the defendant without calling on the plaintiff to state her claims contravenes Section 33 of the Constitution of the Federal Republic of Nigeria 1979 and the Rules of Natural Justice. Equity and Good Conscience.

#### RELIEFS SOUGHT

1. A declaration that the purported Letters of Administration issued to the defendant over the joint property of the plaintiff is illegal, null and void and of no effect whatsoever.

2. An order cancelling and or setting aside the Letters of Administration purportedly issued to the defendant and dated 27th day of May, 1994.

3. A declaration that No. 28, Eyo Ita Street, and No. 9, Nsefik Layout Calabar, is the joint property of late Mr. Orok Okon and the Plaintiff, Mrs. Bassey Ita Okon.

4. The sum of N50,000.00 as general damages.”

The plaintiff also filed an affidavit in support of the Originating Summons in which the plaintiff deposed thus in paragraphs 10, 11, 12, 13, 14, 15 & 16 of the said affidavit:

B “10. That rather the Letters were issued to the Administrator-General who managed the estate at a loss and with complete disregard of my interest and the interest of our adopted child Master Edem Ita Okon who is now 19 years old.

C 11. That I was dissatisfied with the decision of the High Court and I took the matter on appeal. A copy of the High Court Judgment is herein attached and marked as Exhibit ‘G’.

D 12. That though the Court of Appeal affirmed the decision of the High Court granting letters of Administration to the Administrator-General, the same court set aside the consequential orders of the High Court wherein I was ordered to surrender all our property jointly owned with my late husband to the Administrator-General. A copy of the Court of Appeal decision is herein attached and marked as Exhibit ‘H’.

E 13. That after the decision of the Court of Appeal in Exhibit ‘H’, the Administrator-General quietly renounced the Estate as it was clear to them that they cannot administer the remainder of the Estate of the surviving spouse. A copy of the letter renouncing the administration of the Estate is  
F herein attached and marked Exhibit T.

14. That surreptitiously and without waiting for the court to give judgment in Suit No. C/173/90, the defendant obtained Exhibit ‘A’ to administer our joint estate. A copy of the Writ in Suit No. C/173/90 is attached herein as Exhibit ‘K’.

G 15. That acting under Exhibit ‘A’ the defendant had filed Suit CRT/318/94 in which she intends to obtain a court order ejecting me from my properties. A copy of the Summons is herein attached as Exhibit ‘L’.

H 16. Presently, the property known as No. 28, Eyo Ita Street, Calabar is under the auctioneer’s hammer as per Exhibit ‘M’ herein attached.”

To this affidavit, the defendant also filed a counter-affidavit.

The trial before Binang, J., was then held on the basis of the



Originating Summons and the several documents attached to the affidavit filed in support. These included the judgment of the trial High Court, Exhibit G in the consolidated suits C/149/86 and C.41/87 heard by Kooffreh CJ; Exhibit H, the judgment of the Court of Appeal Suit No. CA/E/44/90; copy of the Letter of the Administrator-General renouncing the Administration of the Estate of the late Capt. Ita Orok Okon. At the end of this trial, Binang, J., upheld the claims of the plaintiff and entered judgment for the plaintiff thus:

“1. I declare that the purported Letters of Administration (Exhibit A) issued to the defendant over the joint property of the plaintiff is illegal, null and void and of no effect whatsoever.

2. The said Letters of Administration purportedly issued to the defendant dated 27th day of May, 1994 is hereby cancelled and or set aside.

3. I declare that No. 28, Eyo Ita Street, Calabar and No. 9, Nsefik Layout, Calabar is the joint properties of late Capt. Ita Orok Okon and the plaintiff Mrs. Bassey Ita Orok Okon his surviving spouse.

4. Since the Administrator-General had denounced the Estate, the plaintiff should take steps to administer the Estate to the benefit of all beneficiaries.”

As the defendant was not satisfied with the judgment and orders of the court, per Binang, J., she appealed to the court below. That court (Coram Edozie, JCA., (as he then was), Opene and Ekpe, JJCA), dismissed the appeal in its entirety. Pursuant thereto, the plaintiff now appellant, filed a notice of appeal with five grounds. These grounds need not be set down in this judgment as the issues raised for the determination in the brief filed on her behalf by her learned counsel sufficiently covered the grounds of appeal so filed. The respondent also filed the respondent’s brief and adopted therein the issues raised in the appellant’s brief. They read thus:-

“(1) Was it proper for the court to sit on appeal over the decision of the Court of Appeal, Enugu in Appeal No. CA/E/44/90 which disqualified the respondent from the administration of the estate of late Captain Ita Orok Okon when by its judgment, the Court of Appeal, Calabar restored

the administration of the estate to the respondent.

(2) Was the Court of Appeal, Calabar right in holding that Suit No. C/321/94 does not constitute an abuse of the court's process in view of the consolidated Suit No. C/49/86 and C/41/87 which resulted in Appeal No. CA/E/44/90 reported in (1992) 6 NWLR (Pt.248) p.473.

(3) Was the Court of Appeal not influenced by irrelevant matters in considering the appeal as a whole which has occasioned a miscarriage of justice.

(4) Assuming that the respondent was entitled to further commence the suit against the appellant, was it proper to commence the suit by Originating Summons instead of Writ of Summons in view of the disputed nature of the case and was it proper for the Court of Appeal not to strike the case out?

(5) Did the High Court, Calabar have jurisdiction to entertain the suit challenging the act of the Probate Registrar in issuing Letters of administration to the appellant which was not an appeal in view of Order 49 and 50 of Cross River State (Civil) Procedure Rules and was it proper for the Court of Appeal to refuse to strike the suit out.

In determination of this appeal, it is my intention to first consider issues (1) & (2) together. The other issues would then be considered depending on the outcome of the consideration of the first two issues.

In respect of Issue 1, it is manifest that the substance of the argument of the learned counsel for the appellant, is that the court below was wrong to have sat as an appeal court over the decision of the Court of Appeal, Enugu which confirmed the disqualification by the High Court, Calabar in the consolidated suits which disqualified the respondent from the administration of the estate. And he therefore submits that the Court of Appeal had no jurisdiction to ignore the earlier decision of a court of coordinate jurisdiction in Suit No. CA/E/44/90 reported in (1992) 6 NWLR (Pt.248) 473. In support of his submission, the following cases were cited; *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 All ER 293; *Alapati v. Governor of Rivers State* (1991) 8 NWLR (Pt.211) 575; *Ita v. Bekonson* (2001) FMLR (Pt.62) 1877; *Egbo v. Lajuma* (1988) 3 NWLR (Pt.80) 108.

The learned counsel for the respondent, Rapheal Ekuni Bassey,

who filed the brief for the respondent, took the opposite view in his submissions in that brief. The thrust of his argument is that it is wrong and erroneous from the set of circumstances for the appellant to contend that the Court of Appeal, Calabar was bound by the decision of the Court of Appeal, Enugu. This is because, argued learned counsel for the respondent, that the facts and circumstances of the two cases are not the same. And he further argued that the respondent in Suit No. C/321/94 did not relitigate any issue to which Suit No. CA/E/44/90 had adjudicated upon as alleged by the appellant. B

The learned counsel filed a reply brief in order to show that the argument of the respondent on this issue was based on false premises. I have earlier in this judgment reviewed in some detail the litigation between the parties that culminated in this appeal. I will not at this stage go over them again. However, the following facts are not in dispute. It is manifest that soon after the death of Capt. Ita Orok Okon, the respondent commenced Suit No. C/149/86 against the appellant and her brother (now deceased) wherein she claimed thus in that action:- C

*“(a) A declaration that the plaintiff is entitled to the Administration of the Estate of Captain Ita Orok Okon (late) to (sic) exclusion of all others particularly the first and second defendants. E*

*(b) An injunction restraining the defendants by themselves, their servants and agents from meddling in the said estate.”*

And in Suit No. C/41/87, the respondent sued the Administrator-General of Cross River State for the same reliefs claimed in Suit No. C/149/86. The learned Chief Judge of Cross River State who had the two suits before him then consolidated them and heard them together. The learned Chief Judge as I have already said above, refused the respondent's claims. That judgment, the substance of which I have reiterated already in this judgment, gave full reasons why she was not entitled to be granted her claim to administer the estate of her late husband, Captain Ita Orok Okon. The trial court also ordered that the Administrator-General be charged with the administration of the estate. The substance of the judgment of the trial Chief Judge was affirmed by the Court of Appeal. However, the Administrator-General subsequently disavowed that order by declining to admin- F  
G  
H

ister the estate.

Following that development, the respondent as already noted in this judgment commenced with the Originating Summons that is, the subject of this appeal. All reliefs sought for by that action are not unconnected with the issuance of Letters of Administration and particularly whether the Probate Registrar was competent to issue Letters of Administration to the appellant. The trial court then granted reliefs to the respondent which included that the respondent “*should take steps to administer the estate to the benefit of all beneficiaries.*” And on appeal, the court below formed the view that the order made by the trial court that the respondent should administer the estate does not “*tantamount to a reversal of the earlier order of this court.*” The ostensible reasoning of the court appears to be based on the fact that the Administrator-General had before then renounced the administration of the estate. And so the court below reasoned that upholding the decision of the trial court does not mean that the earlier decision of the court below was overruled.

Now, it is my view that the court below and with due respect to the learned Justices of that court totally misunderstood the purport of the complaint of the appellant. In order to appreciate this point, it is desirable to refer to two of the issues raised before the court below. These are issues 2 and 4 and they read:-

“2. Whether the suit does not constitute an abuse of the court’s process in view of the earlier court decisions in consolidated High Court Suit Nos. C/149/86 and C/ 41/87 which resulted in Appeal No. CA/E/44/90 concerning the same subject matter, facts, issues and the parties.

4. *Was the respondent not estopped in commencing Suit No. C/321/94 in view of the consolidated Suit Nos. C/149/86 and C/41/87 resulting in Appeal No. CA/E/44/90 which subject matters, facts, issues and parties are the same.*”

**A careful perusal of the above issues clearly reveal that the court below ought to have considered whether the case instituted by the respondent amounted to an abuse of process. The question raised in respect of issue (4) to my mind should have led the court below to consider whether an appellate court is bound by an earlier decision**

**of a court of co-ordinate jurisdiction and should therefore not hear a matter already decided by a court of co-ordinate jurisdiction where the parties and the issues raised are the same as the earlier decision of the court of co-ordinate jurisdiction.** In respect of this principle, I need to refer to the case that established that principle, in *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 All ER 293, where Lord Greene MR., explained the principle at page 298 thus:-

*“In considering the question whether or not and those of courts of co-ordinate jurisdiction, it is necessary to distinguish four classes of case. The first is that with which we are not concerned, namely, cases where this court finds itself confronted with one or more decisions of its own or of a court of coordinate jurisdiction which cover the question before it, and there is no conflicting decision of this court or of a court of co-ordinate jurisdiction. The second is where there is such a conflicting decision. The third is where this court comes to the conclusion that a previous decision, although not expressly overruled, cannot stand with a subsequent decision of the House of Lords. The fourth (a special case) is where this court comes to the conclusion that a previous decision was given per incuriam. In the second and third classes of case it is beyond question that the previous decision is open to examination. In the second and third classes of case it is beyond question that the previous decision is open to examination. In the second class, the court is unquestionably entitled to choose between the two conflicting decisions. In the third class of case the court is merely giving effect to what it considers to have been a decision of the House of Lords by which it is bound.”*

**In the instant appeal, I have laboured to set out the facts that led to this appeal and the decision of the two Courts of Appeal that made pronouncements on the respective appeals before the courts. The question then is, whether the learned counsel for the respondent is right in his submission that the facts and the issues raised thereon are not the same and not between the same parties. After a careful consideration of the facts and the issues raised in the appeals in the two decisions of the Courts of Appeal, I must reject the contention of learned counsel for the respondent. Moreover, it**

is also clear that by the decision of the Court of Appeal in Suit No. CA/E/44/90 reported in (1992) 6 NWLR (Pt.248) 473; that court affirmed the reasons given by the trial court for not allowing the respondent to administer the estate of her late husband.

B Now, without considering those reasons, the Court of Appeal in the instant appeal proceeded to order that the respondent should take such steps as necessary to administer the estate of her late husband. By that decision, it is manifest that the Court of Appeal clearly overturned the earlier decision of the Court of Appeal which C had refused to grant that order to the respondent for the reasons given. I must therefore hold that having regard to the principles enunciated above, the submission of learned counsel for the appellant that the Court of Appeal was wrong to have overturned the D decision of a court of coordinate jurisdiction was right. I will therefore resolve this issue in favour of the appellant.

Though the question of abuse of process and other issues raised in this appeal are germane, I do not need to consider them as the resolution E of the first issue in favour of the appellant is sufficiently conclusive to uphold the appeal. In the result, this appeal is hereby allowed. The judgment and orders of the lower court are set aside. I make no order as to costs. Each party to bear his own costs.

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### **BELGORE JSC**

The decision of the Court of Appeal in the first case is subsisting and subsisted when the Court of Appeal considered the appeal in the G second case stalled with Originating Summons. The decision of the Court of Appeal in the first case remains unambiguous that the respondent now before us was precluded from administering the estate in issue. She has not appealed against that decision and to start another case on the same H subject - matter of administration of her late husband's estate - seems to me an abuse of process.

I therefore, agree entirely with the lead judgment of my learned brother, Ejiwunmi, JSC., that this appeal has merit and I also allow it. Each

party to bear his own costs.

### ONUJSC

Having been privileged to read before now the judgment just delivered by my learned brother, Ejiwunmi, JSC., I am in entire agreement with him that the Court of Appeal by its decision clearly overturned the earlier decision of a court of co-ordinate jurisdiction which by its purport is manifestly wrong and a clear ground for allowing the appeal. Accordingly, I too allow the appeal, set aside the judgment and orders of the lower court and make no order as to costs. Each party to bear his own costs.

### KATSINA-ALUJSC

I have read in advance the judgment delivered by my learned brother, Ejiwunmi, JSC. I agree with his reasoning and conclusion.

I would also allow the appeal and set aside the judgments and orders of the two courts below. I too make no order as to costs.

### KALGOJSC

I have the privilege of reading before now the judgment just delivered by my learned brother, Ejiwunmi, JSC. I am satisfied that the appellant's issues 1 and 3 taken and considered together have been carefully considered and have sufficiently resolved the main issues in controversy in the appeal. I am in agreement therefore that it is not necessary in the determination of the appeal to consider issues 2, 4 and 5. I therefore entirely agree with the reasoning and conclusions reached in the said judgment and that there is merit in the appeal. I accordingly allow and set aside the decision of the Court of Appeal.

I abide by the order of costs made in the leading judgment.