

SUPREME COURT OF NIGERIA
FRIDAY 13TH DECEMBER, 2013. SC. 135/2005
**CORAM:- M. MOHAMMED, N. S. NGWUTA, M. U. PETER-
ODILI, O. ARIWOOLA, K. M. O. KEKERE-EKUN, JJSC**

MISS NKIRU AMOBI

(A.K.A. NKIRU NZEGWU) APPELLANTS

AND

1. MRS. GRACE O. NZEGWU

2. BUKOLA CHIEDU NZEGWU RESPONDENTS

3. THEOPHILUS NZEGWU

JURISDICTION - Fundamentality - Jurisdiction is threshold issue that must first be resolved - Since if court lacks jurisdiction to hear a matter - The entire proceedings no matter how well conducted would amount to nullity (H1)

COURTS - Competence - Basis - Court is competent to hear matter - When the subject matter is within its jurisdiction - No feature in the case prevents it from exercising jurisdiction - And is properly constituted as regards its members (H2)

ADMINISTRATION OF ESTATES - Court - Jurisdiction - From the address available to court - The deceased lived and owned property in Lagos - Within jurisdiction of the trial court (H3)

APPEALS - Court - Finding - Correctness of - Supreme Court will not interfere with the finding of CA - On the available evidence before the trial court - That is not considered to be perverse (H4)

ADMINISTRATION OF ESTATES - Letter of administration - Grant - HC has wide powers to make the grant - And where application for grant is not specific - The court may by Administration of Estate Laws. 22 - Limit the grant as it sees fit (H5)

APPEALS - Issues - Basis - Issues must fall within grounds of appeal - And grounds must relate to decision appealed against - And should be a challenge to validity of ratio of that decision (H6)

SUPREME COURT - Fresh issues - Raised without leave - Appellant cannot raise the issues for first time in the court without leave - And submission upon the said issues are discountenanced (H7)

STATUTES - Interpretation - Where words of statute are unambiguous - They must be given their ordinary meaning - Except where this would lead to absurdity (H8)

MATRIMONIAL CAUSES - Family law - Divorce - Decree nisi - MC Act s. 58(4) - 1st respondent remains deceased lawful wife - As a decree nisi shall not become absolute by force of the section - Where one of the parties has died (H9)

APPEALS - Court - Obiter dictum - Remarks by the trial Judge on prosecuting appellant for bigamy - Constitute obiter dicta - And cannot form the basis of appeal (H10)

FACTS

Before the High Court of Lagos State, plaintiffs/respondents instituted this action against defendant/appellant seeking for an order directing the grant to them of Letters of Administration of the Estate of late Engineer Theophilus Nzegwu. Appellant counter claimed against respondents. The deceased was married to 1st respondent in London United Kingdom under the Act. The marriage later on broke down irretrievably, leading to institution of a divorce proceeding by the couple at the Anambra State High Court, Onitsha. On 30/09/1996, the Anambra High Court with the consent of the couple granted a decree nisi dissolving the marriage. Meanwhile, deceased had on 07/07/1995 during the subsistence of his marriage to 1st respondent, contracted another marriage with appellant under the Onitsha Customary Law.

Shortly afterwards deceased allegedly married appellant under the Marriage Act. However, deceased died intestate on 31/10/1996 at Onitsha before the decree nisi could be made absolute. Deceased had before his death, transferred two of his landed properties in parts of Lagos State to appellant. Few months after the death of deceased, 1st respondent made applications to the Anambra and Lagos

States High Courts for a grant of Letters of Administration over deceased property. Appellant had on each occasion entered caveat against the grant of the Letter. Hearing thus commenced in the matter instituted by respondents. At the end of the hearing, the court granted reliefs claimed by respondents and dismissed appellant's counter claim. Appellant was displeased with the judgment and quickly filed appeal at the Court of Appeal, contending inter alia that the Lagos State High Court had no jurisdiction to entertain the matter. The court heard the appeal, dismissed it and affirmed the judgment of trial court. Aggrieved, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court below was right in holding that the High Court of Lagos State had the jurisdiction to grant Letters of Administration to administer the estate of Late Engineer Theophilus I. O. Nzegwu who hailed from, lived and died in Onitsha, Anambra State.

2. Whether the learned Justices of the Court of Appeal were right when they held that the 1st Respondent, as against the Appellant was entitled to Letters of Administration over the estate of Engineer Theophilus I. O. Nzegwu (Deceased) and in affirming the exercise of discretion of the learned trial Judge to grant Letters of Administration to the 1st Respondent.

3. Whether the learned Justices of the court of Appeal were right when they held that the order or directive of the learned trial judge that the Appellant be "arrested", "charged", "tried" and "convicted" for bigamy was a passing remark and therefore not appealable.

HELD (Unanimously dismissing the appeal per **KEKERE-EKUN JSC**)

JURISDICTION - Fundamentality

1. I have given careful consideration to the submissions of both learned counsel in respect of this issue. There is no doubt that jurisdiction is a threshold issue, which must be resolved first before any other consideration. The law is trite that where a court lacks jurisdiction to hear a matter the entire proceedings, no matter how well conducted would amount to a nullity.

COURTS - Competence - Basis

2. A court is competent to entertain a cause or matter in the following circumstances:

- B **a. When the subject matter of the case is within the court's jurisdiction.**
- b. When there is no feature of the case which prevents the court from exercising its jurisdiction.**
- C **c. When it is properly constituted as regards its members and the qualification of the members of the bench and no member is disqualified for one reason or another.** (p. 3967 H)

ADMINISTRATION OF ESTATES - Court - Jurisdiction

- D **3. The lower court found that having regard to the only address available to the court, the deceased lived and owned property in Lagos, within the jurisdiction of the trial court. As noted earlier, the issue of the court's jurisdiction did not arise at the trial court. Having been raised for the first time at the**
- E **Court of Appeal, that court was entitled to consider the evidence as presented before the trial court to determine whether that court had jurisdiction to entertain the claim or not. I agree with learned counsel for the respondents that the appellant's counsel belaboured himself unnecessarily with the distinction**
- F **between "address" and "residence". The fact is that there was no contrary evidence to discredit the contention that the deceased lived and owned property within the jurisdiction of the trial court, although he died in Onitsha, Anambra State. The**
- G **1st respondent gave her address as Plot 1303A Akin Adesola Street, Victoria Island, Lagos. Under cross-examination, she stated that the deceased lived with her up to two week prior to his death at that address. At best the evidence before the court showed that the deceased resided both in Onitsha and**
- H **Lagos and that he owned property in Lagos State.**
(p. 3969 F)

APPEALS - Court - Finding - Correctness of

4. An appellate court is usually reluctant to interfere with the

decision of a lower court, which had the opportunity of seeing and hearing the witnesses testify, unless such decision is perverse, not based on a proper and dispassionate appraisal of the evidence and finding of fact on both sides, or where on the face of the record it is evident that justice has not been done. B

In the instant case, the finding of the lower court based on the available evidence before the trial court cannot be considered to be perverse. It is well founded and this court will not interfere with it. (p. 3970 B) C

ADMINISTRATION OF ESTATES - Letter of administration - Grant
5. I am inclined to agree with the learned Justices of the lower court that from the above provision, the powers of the High Court to grant Letters of Administration are very wide. The respondents sought a grant in respect of the estate and “effects” of the deceased. As rightly found by the lower court, the prayer was for the grant of administration in respect of the entire estate of the deceased, both real and personal. Even where an application for a grant is not specific, by the provisions of Section 22 of the Administration of Estates Law referred to above, the Court may still exercise its discretion by limiting the grant as it sees fit. D E

I agree with the lower court that the respondents’ prayer was a valid one and that the trial court had the requisite power to grant it. I am of the humble view that having made a prayer in similarly general terms in paragraph 6 of her statement of defence and counterclaim, it does not lie in the appellant’s mouth to complain that the prayer is vague. If her counterclaim had succeeded the relief would have been granted as prayed. (p. 3972 B) F G

APPEALS - Issues - Basis

6. The law is settled that issues for determination in an appeal must fall within the scope of the grounds of appeal filed. The grounds of appeal in turn must relate to the decision appealed against and should be a challenge to the validity of the ratio of that decision. (p. 3975 F) H

SUPREME COURT - Fresh issues - Raised without leave

7. I have carefully examined the judgments of the court below and of the trial court. I have also examined the pleadings of the parties and the evidence on record. Neither of these issues was raised therein. Specifically, neither of these issues formed the ratio of the decision of the lower court now appealed against. They are being raised before this Court for the first time without leave. The appellant is not entitled to do so. The submissions of learned counsel for the appellant in respect of these two sub-issues raised without leave are accordingly discountenanced. (p. 3976 B)

STATUTES - Interpretation

8. The law is settled that in construing the provisions of a statute, where the words are clear and unambiguous they must be given their natural and ordinary meaning, except where this would lead to absurdity or injustice.

The provisions of the Matrimonial Causes Act reproduced above do not qualify a decree nisi as one obtained by consent or otherwise. The court and indeed learned counsel are not entitled to read into a provision what it does not contain nor to interpret the provision in such a way as to conform with the court's or counsel's view of what they consider the law should be. (p. 3977 B)

Family law - Divorce - Decree nisi

9. The argument of learned counsel for the appellant that the three month period provided for by section 58 (1) (b) of the Matrimonial Causes Act for the decree nisi to become absolute could be waived or is inapplicable where the decree nisi was obtained by consent of the parties is, with due respect to learned counsel, misconceived. Section 58(4) of the Act clearly states that a decree nisi shall not become absolute by force of the section where one of the parties has died. The finding of the two courts below that the 1st respondent was still the lawful wife of the deceased, the decree nisi granted on 30/9/96 not having become absolute at the time of his death

on 31/10/96 and that the purported marriages contracted with the appellant while his marriage to the 1st respondent subsisted could not have been lawful, cannot be faulted. This issue must therefore be and is hereby resolved against the appellant. (p. 3978 C)

B

APPEALS - Court - Obiter dictum

10. An obiter dictum is a statement made in passing, which does not reflect the reasoning of the court or ground upon which a case is decided.

In the instant case, it is quite evident from the pleadings of the parties that the issue for determination before the trial court was who as between the parties was entitled to the grant of letters of administration in respect of the estate of the deceased. There were no divorce proceedings or criminal charges pending before the court. The ratio decidendi of the judgment of the trial court, which was affirmed by the Court of Appeal was that the appellant herein was not entitled to the relief sought as she was not the lawful wife of the deceased intestate at the time of his death. The opinion and subsequent directive of the court regarding the charge, prosecution and conviction of the appellant for the offence of bigamy were therefore not based on the pleadings or any other issue in contention between the parties. The learned trial judge clearly went outside the case before him in this regard. The remarks constitute obiter dicta and cannot form the basis of an appeal. (p. 3980 E)

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NOTABLE POINTS OF INTEREST

NGWUTA JSC

1. “Nisi” - Meaning of

The word Nisi is an elliptical expression affixed to the decree and denotes that the decree so granted is conditioned upon another order making it absolute. See Advanced Law Lexicon Book 3, page H 3199. (p. 3983 A)

ARIWOOLA JSC

2. Marriage under the Act - Meaning of

Marriage under the Marriage Act generally means the legal union of a couple as spouses. In other words, it is *“the voluntary union for life of one man and one woman to the exclusion of all others.”*
(p. 3993 C)

B REPRESENTATION

S. Lamid Esq. with Mrs. B. Akpe, for Appellant
B. A. Onuoha Esq., for Respondent

C CASES REFERRED TO

- Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 565
Lijadu v. Franklin (1965) All NLR 110
Asaboro v. Aruwaji (1974) SC 31
A.G. Ondo State v. A.G. Ekiti State (2001) 17 NWLR (pt. 743) 706
D Ademola v. Probate Registrar (1971) 1 ALL NLR 155
Ugu v. Tabi (1971) 1 All NLR 192
Ibhafidon v. Igbinosun (2000) 4 SC (pt. 1) 96
Balogun v. Agboola (1974) 1 ALL NLR 66
Ebba v. Ogodo (1984) 4 SC 84
E Madukolu v. Nkemdilim (1962) 2 SCNLR 341
Galadima v. Tabmbai (2000) 6 SC (pt. 1) 196
Araka v. Ejeagwu (2000) 12 SC (pt. 1) 99
Dangana v. Usman (2012) 2 SC (pt. III) 103
Agbaje v. Fashola (2008) 6 NWLR (pt. 1082) 90
F Obusez v. Obusez (2001) 15 NWLR (pt. 736) 377

STATUTES & RULES REFERRED TO

- Probates (Re-Sealing) Act, ss. 2, 6
G Administration of Estates Law Cap. 3 Laws of Lagos State 1994, s. 22
Matrimonial Causes Act, s. 58(1)(b)(4)
Constitution of the Federal Republic of Nigeria 1999, s. 241(1)(f)(i)
Marriage Act, s. 39
H High Court of Lagos State (Civil Procedure) Rules 1994, O. 58 r. 1 (1)

BOOKS REFERRED TO

S. O. Imhanobe: Understanding Legal Drafting & Conveyancing

(2002) p. 116

Advanced Law Lexicon Book 3, p. 3199

Blacks Law Dictionary 9th Edition, pp. 471 and 472

LEAD JUDGMENT BY KEKERE-EKUN JSC

This is an appeal against the judgment of the Court of Appeal B
Enugu Division delivered on 15/12/2004 dismissing the appellant's
appeal and upholding the decision of the High Court of Anambra
State, sitting at Onitsha, which granted the respondent's reliefs as
claimed.

The facts of the case are that on 28/6/1958 the late Engineer C
Theophilus I. O. Nzegwu married the 1st Respondent (Mrs. Grace O.
Nzegwu) in London, UK. The 2nd and 3rd respondents are the sur-
viving issues of the marriage. The said marriage broke down irre-
trievably consequent upon which the deceased and the 1st respon- D
dent filed a petition and cross-petition for the dissolution of the mar-
riage. On 30/9/96 the High Court of Anambra State sitting at Onitsha,
with the consent of the parties granted a decree nisi dissolving the
marriage.

On 7th July 1995, during the subsistence of his legal mar- E
riage to the 1st respondent, the deceased entered into a marriage
with the appellant under Onitsha Customary Law. On 23/10/96, less
than 30 days after the grant of the decree nisi, the deceased allegedly
married the appellant under the Marriage Act. Unfortunately the F
deceased died intestate on 31/10/96 at Onitsha Anambra State be-
fore the decree nisi could be made absolute.

Before his death he had by way of assignment transferred two
properties in Lagos at Plot 1303A Akin Adesola Street, Victoria Island
and Plot 147A & B Ogunlana Drive, Surulere to the Appellant. G

On 6/12/96 the 1st respondent applied to the Probate Regis-
try at the High Court of Anambra State for Letters of Administration
in respect of the deceased's estate. The appellant entered a caveat
against the application and the 1st respondent discontinued same.
Sometime in 1998 the respondents again applied for Letters of Ad- H
ministration but this time to the Probate Registry at the High Court of
Lagos State. The Appellant entered a caveat on 19/11/98.

On 10/2/99 the respondents instituted an action against the
appellant at the High Court of Lagos State seeking an order "direct-

ing the grant to them of Letters of Administration of the Estate of Engineer Theophilus I. O. Nzegwu”

Pleadings were filed and exchanged. The appellant filed a counterclaim. The parties led evidence in respect of their respective claims. At the conclusion of the trial, the High Court on 22/3/2001 granted the respondents’ reliefs as claimed and dismissed the appellant’s counterclaim. The learned trial Judge also made an order directing the Attorney-General and the Director of Public Prosecutions to “arrest, try and convict” the appellant for bigamy. His Lordship further directed the respondent’s counsel *“to lodge a complaint with the Police and cause the Defendant/Appellant to be arrested and charged to court for flagrantly committing an offence under Section 39 of the Marriage Act.”* Not surprisingly, the appellant was dissatisfied with the entire decision and appealed to the Court of Appeal. On 15/12/2004 the Court of Appeal (hereinafter referred to as the Lower Court) dismissed the appeal and affirmed the judgment of the High Court. Still dissatisfied, the appellant has now appealed to this Court vide her notice and grounds of appeal dated 16/4/2004 containing four grounds of appeal.

The parties herein duly filed and exchanged their respective briefs of argument in compliance with the rules of this court. Both parties formulated three issues for determination from the grounds of appeal. The Appellant’s issues as contained in her brief of argument dated 21/10/2005 but deemed filed on 30/1/2013, are:

1. Whether the Court below was right in holding that the High Court of Lagos State had the jurisdiction to grant Letters of Administration to administer the estate of Late Engineer Theophilus I. O. Nzegwu who hailed from, lived and died in Onitsha, Anambra State.

2. Whether the learned Justices of the Court of Appeal were right when they held that the 1st Respondent, as against the Appellant was entitled to Letters of Administration over the estate of Engineer Theophilus I. O. Nzegwu (Deceased) and in affirming the exercise of discretion of the learned trial Judge to grant Letters of Administration to the 1st Respondent.

3. Whether the learned Justices of the court of Appeal were right when they held that the order or directive of the learned trial judge that the Appellant be “arrested”, “charged”, “tried” and “con-

victed” for bigamy was a passing remark and therefore not appeal-able.

The respondents’ brief dated 25/4/2006 was deemed filed on 5/5/2006. The issues formulated are:

1. Was the Court below right in holding that the trial Court did indeed have jurisdiction to entertain the grant of the Letters of Administration over the estate of the deceased? B

2. Was the court below right in affirming the decision of the trial court granting the Letters of Administration to the respondents to the exclusion of the appellant?

3. Whether in view of the findings of the two courts below, the appellant has the basis to lay claims to the grant of Letters of Administration over the estate of the deceased to her and the competence to maintain this appeal? C

The appeal shall be determined on the issues as formulated D by the appellant, which fully encapsulate the issues in controversy between the parties. Issue 1 is however modified to read:

“Whether the Court below was right in holding that the High Court of Lagos State had the jurisdiction to grant Letters of Administration to administer the estate of the deceased.” E

It is necessary at this stage to note that the respondents filed a notice of preliminary objection dated 10/7/2013 and filed on 15/7/2013. It was however withdrawn at the hearing of the appeal on 24/9/2013. It is accordingly struck out. F

Issue 1

Referring to the evidence of the deceased in the divorce proceedings before the High Court of Anambra State and the evidence of the 1st respondent in the proceedings before Akande, J. at the High Court of Lagos State in respect of the application for the grant of Letters of Administration, SHOLA LAMID ESQ., learned counsel for the appellant argued that it was not in dispute that the deceased lived and died in Onitsha, Anambra State. He noted that the lower Courts affirmation of the trial court’s decision was based on Exhibit C, a deed of assignment dated 29/7/96 between the deceased and the appellant in respect of the property at Plot 1303A Akin Adesola Street, Victoria Island, Lagos because the said exhibit showed the address of the deceased to be Plot 1303A Akin Adesola Street Victoria Island, Lagos. He argued that there is a difference between “resi- H

dence” and “address” and that the fact that a party states his address does not mean that such address constitutes his residence.

He referred to several dictionary definitions of both words and the textbook S. O. Imhanobe: *Understanding Legal Drafting and Conveyancing* (2002) page 116 and submitted that there is nothing B in Exhibit C to suggest that the address stated therein was the residence of the deceased. He referred to the proceedings before the High Court of Lagos State and submitted that as the learned trial Judge refused to consider Exhibit C on the ground that the property C referred to therein was the subject of another suit pending before the High Court, it was wrong for the lower court to have relied on it in reaching the conclusion that the deceased resided in Lagos. Referring to Exhibits B and C he argued further that Exhibit C transferred the property to the appellant on the day the deed was made and D there was therefore no basis for the finding of the Court of Appeal that the said property was the residence of the deceased at the time of his death. He submitted that the only evidence as to where the deceased lived and died was the evidence of the parties themselves as contained in the proceedings earlier referred to.

E In order to determine whether the trial Court had jurisdiction to grant the Letters of Administration in this case, learned counsel referred to Order 58 Rule 1 (1) of the High Court of Lagos State (Civil Procedure) Rules 1994. He examined the expression “subject F to” as contained in the said provision by reference to the case of *Tukur Vs Govt. of Gongola State* (1989) 4 NWLR (Pt.117) 565. He argued that in order to invoke the jurisdiction of the High Court of Lagos State, the deceased must have been domiciled in Lagos. He maintained that it was the High Court of Anambra State that had G jurisdiction to issue Letters of Administration over the estate of the deceased and that the administrator or administratrix would then have the option of resealing the grant in Lagos State. He referred to Sections 2 and 6 of the Probates (Re-Sealing) Act. He also referred us to: *Lijadu Vs Franklin* (1965) All NLR 110; *Asaboro v. Aruwaji H* (1974) SC 31.

Learned counsel for the appellant observed that in the course of his judgment the learned trial Judge declined to make any finding in respect of Exhibits B and C on the ground that “it was not before the court that the plaintiffs were asking for Letters of Administration

in respect of the real and personal property of the deceased”. He noted that nevertheless, the court went ahead to make an omnibus grant of Letters of Administration in respect of deceased’s property. He argued that there was no appeal against this finding and therefore the Court of Appeal erred in setting it aside. He submitted that an applicant for the grant of Letters of Administration must be specific as to the nature of the grant applied for, which could be for either a limited grant or a full grant. He submitted that having failed to specify the nature of the grant applied for, it was not open to the court below to speculate and infer any other meaning to the claim. He referred to: *A.G. Ondo State vs A.G. Ekiti* (2001) 17 NWLR (Pt.743) 706 @ 790. He also relied on Section 22 of the Administration of Estates Law of Lagos State and the cases of: *Ademola Vs Probate Registrar* (1971) 1 ALL NLR 155 @ 161; *Ugu v. Tabi* (1971) 1 All NLR 192 @ 202 - 204.

In conclusion on this issue, learned counsel urged us to hold that the plaintiffs’ claims before the trial court and indeed the entire action was incompetent and the court had no jurisdiction to entertain it. He urged us to answer this issue in the negative and resolve it in the appellant’s favour.

In reaction to the above submissions, B. A. ONUOHA ESQ, learned counsel for the respondent submitted that contrary to the appellant’s contention that the deceased was resident in Anambra State prior to his death, evidence elicited from PW1 (the 1st respondent) under cross-examination revealed that the deceased in fact lived with her at Plot 1303A Akin Adesola Street, Victoria Island, Lagos up to two weeks before he died. He submitted that this evidence corroborates the finding of the court below that there was no evidence outside Exhibit C that showed the address of the deceased. He argued further that the lower court was correct to rely on the said evidence as proof of the deceased’s residence at the time of his death. He was of the view that the attempt to distinguish between “residence” and “address” by learned counsel for the appellant is merely an attempt to confuse issues. He submitted further that the following facts are not in dispute:

- i. That the deceased in Exhibit C gave his address as Plot 1303A Akin Adesola Street, Victoria Island.
- ii. That the deceased died in Onitsha Anambra State.

iii. That the deceased had his estate in Lagos as found by the lower court (where the issue was raised for the first time).

With regard to the reliance by the learned trial judge on Exhibit C notwithstanding the observation that the property therein was subject of another proceeding, learned counsel submitted that in so far as the documents were admissible and duly admitted in evidence without opposition, the trial court and the court below were entitled to make use of them in determining the residence of the deceased prior to his death. He noted that the trial court made no effort to pronounce on the validity or otherwise of the assignment therein contained.

On the authority of *Asaboro Vs Aruwaji* (supra) relied upon by learned counsel for the appellant, Mr. Onuoha urged us to uphold the concurrent findings of both lower courts that the deceased was resident and had his estate in Lagos. He submitted that the evidence on record reasonably justifies the finding and that the appellant has not shown any special circumstances to warrant interference therewith.

With regard to the submission, that the respondents' claim before the trial court was incompetent for failing to specify the type of grant applied for learned counsel submitted that the appellant has failed to show that the said court wrongly exercised its discretion in granting the relief sought.

He submitted that the cases of *Ademola Vs Probate Registrar* (supra), *Ugu vs Tabi* (supra) and *Erewa Vs Idehen* (supra) relied upon by learned counsel for the appellant were inapplicable in the instant case on the ground that those cases were concerned with the application for limited grant of Letters of Administration, which is not the case in this appeal. He submitted that, as observed by the learned Justices of the court below, Section 22 of the Administration of Estates Law of Lagos State is wide enough to accommodate the respondents' prayer. He referred to the judgment of the trial court at page 92 of the record and contended that the court was well aware that the relief sought was not for a limited grant but for a grant over the entirety of the estate of the deceased and that it exercised its discretion in line with the provisions of section 22 of the Administration of Estates Law. He submitted that it was this exercise of discretion that the lower court held had been regularly exercised. He urged

us to discountenance the submissions of learned counsel for the appellant in this regard.

In the appellants reply brief dated 21/8/2013 but deemed filed on 24/9/2013 (the day we heard the appeal), it was argued that there was no pleading to the effect that the deceased lived and died in Lagos State. He submitted that evidence led on facts not pleaded goes to no issue. He cited several authorities in support of this submission.

He argued further that by the Deed of Assignment, Exhibit C, the deceased had divested himself of his interest in Plot 1303A Akin Adesola Street, Victoria Island as shown by Exhibit B (certified true copy of the title Registration). He contended that having divested himself of his title in the said properties, he was not entitled to them at his death. He argued that at the time of his death he had no property in Lagos he could call his own. He submitted further that before the court could place reliance on Exhibit C, the facts in relation thereto must have been pleaded, which the respondents failed to do. He also submitted that it would not be correct to argue that there are concurrent findings of fact by the two courts below because the issue of the court's jurisdiction was raised for the first time at the Court of Appeal. He argued that even if the said finding was made concurrently by both lower courts, such finding would not be allowed to stand where it is shown to be perverse or to contain errors of law, substantive and/or procedural, which led to a miscarriage of justice. He referred to: *Ibhafidon Vs Igbinosun* (2000) 4 SC (Pt.1) 96 @ 104; *Omoborinola II vs Military Governor, Ondo State* (1998) 14 NWLR (Pt.584); *Balogun Vs Agboola* (1974) 1 ALL NLR 66; *Ebba Vs Ogodo* (1984) 4 SC 84.

I have given careful consideration to the submissions of both learned counsel in respect of this issue. There is no doubt that jurisdiction is a threshold issue, which must be resolved first before any other consideration. The law is trite that where a court lacks jurisdiction to hear a matter the entire proceedings, no matter how well conducted would amount to a nullity.

A court is competent to entertain a cause or matter in the following circumstances:

a. When the subject matter of the case is within the court's jurisdiction.

b. When there is no feature of the case which prevents the court from exercising its jurisdiction.

c. When it is properly constituted as regards its members and the qualification of the members of the bench and no member is disqualified for one reason or another. See: Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Galadima v. Tabmbai (2000) 6 SC. (Pt.1) 196; Araka v. Ejeagwu (2000) 12 SC (Pt.1) 99; Dangana & Anor v. Usman & Ors. (2012) 2 SC (Pt.III) 103 @ 109 - 110.

Order 58 Rule 1 (1) of the High Court of Lagos State (Civil Procedure) Rules 1994 (then applicable to this case) provides:

“1(1) Subject to the provisions of Rules 39 and 40 of this order, when any person subject to the jurisdiction of the court dies, all petitions for the granting of any Letters of Administration of the estate of the deceased person, with or without a will attached, and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court at the Probate Registry.”

In the instant case it is contended on behalf of the appellant that the trial court ought not to have assumed jurisdiction to hear the case on the ground that the deceased lived and died at Onitsha, Anambra State. It is worthy of note that the issue of jurisdiction was not raised before the trial court. It was raised for the first time at the Court of Appeal. For this reason, the option open to that court was to consider the evidence and material before the trial court to determine whether there was anything that divested the court of jurisdiction to entertain the matter.

In paragraph 10 of the respondents’ statement of claim at page 15 of the record, the respondents pleaded thus:

“10. The defendant’s claim that the deceased transferred 147b Ogunlana Drive, Surulere, Lagos to her is presently pending before the Lagos High Court between the plaintiffs herein and the defendant. The defendant’s claim concerning Plot 1303A Akin Adesola Street, Victoria Island will now be made the subject of the said suit, the defendant not having previously laid claim to the said property. The plaintiffs are contending in the said action that any assignment of property belonging to the deceased was invalid.”

Therefore, contrary to the submission of learned counsel for the appellant, the respondents had pleaded that the property at plot 1303A Akin Adesola Street, Victoria Island, Lagos belonged to the

deceased and that the issue of the alleged assignment of same to the appellant was to be made the subject of the proceedings already pending in another suit involving another property at Surulere, Lagos. It was the contention of the appellant in paragraph 5 of her amended statement of defence and counter claim at page 23 of the record that the two properties having been assigned to her by the deceased did not form part of his estate in respect of which Letters of Administration could be granted. In their reply to the appellant's pleading, the respondents maintained that the validity of the alleged assignments to the appellant were already in issue in the pending suit before the Lagos State High Court. The essence of these pleadings is that the deceased owned properties in Lagos State. Both the appellant and the 1st respondent confirmed this fact in the course of their evidence before the trial court.

Furthermore, there were in evidence, Exhibits B and C tendered by the appellant herself. Exhibit B is a certified true copy of the registration of title in respect of Plot 1303A Akin Adesola Street Victoria Island, Lagos while Exhibit C is a certified true copy of the deed of assignment in respect of the property known as No. 147 Ogunlana Drive, Surulere, Lagos. In Exhibit C, the commencement of the deed of assignment reads in part:

"THIS DEED OF ASSIGNMENT made this 29th day of July 1996 BETWEEN THEOPHILUS IFEANYI OFILI NZEGWU of PLOT 1303A Akin Adesola Street, Victoria Island, Lagos State (hereinafter called "The Assignor"...)"

The lower court found that having regard to the only address available to the court, the deceased lived and owned property in Lagos, within the jurisdiction of the trial court. As noted earlier, the issue of the court's jurisdiction did not arise at the trial court. Having been raised for the first time at the Court of Appeal, that court was entitled to consider the evidence as presented before the trial court to determine whether that court had jurisdiction to entertain the claim or not. I agree with learned counsel for the respondents that the appellant's counsel belaboured himself unnecessarily with the distinction between "address" and "residence". The fact is that there was no contrary evidence to discredit the contention that the deceased lived and owned property within the jurisdiction of the

trial court, although he died in Onitsha, Anambra State. The 1st respondent gave her address as Plot 1303A Akin Adesola Street, Victoria Island, Lagos. Under cross-examination, she stated that the deceased lived with her up to two week prior to his death at that address. At best the evidence before the court showed that the deceased resided both in Onitsha and Lagos and that he owned property in Lagos State.

An appellate court is usually reluctant to interfere with the decision of a lower court, which had the opportunity of seeing and hearing the witnesses testify, unless such decision is perverse, not based on a proper and dispassionate appraisal of the evidence and finding of fact on both sides, or where on the face of the record it is evident that justice has not been done. See: *Saleh vs. B.O.N. Ltd* (2006) 6 NWLR (Pt.976) 316 @ 329 - 330 H - A per Musdapher, JSC (as he then was); *Agbaje vs. Fashola* (2008) 6 NWLR (Pt. 1082) 90 @ 153 B-E; *Mafimisebi vs. Ehuwa* (2007) ALL FWLR (Pt.355) 562 @ 605 G. ***In the instant case, the finding of the lower court based on the available evidence before the trial court cannot be considered to be perverse. It is well founded and this court will not interfere with it.***

I have considered the authority of *Asaboro v. Aruwaji* (supra) referred to by learned counsel for the appellant. In that case the deceased died intestate at Ikaro via Ifon in the then Western State of Nigeria. His fixed place of abode was at Ikaro. The High Court of Ibadan, Western State of Nigeria, had granted Letters of Administration in respect of his estate to two administrators and an administratrix. The deceased had some properties in Lagos and it was necessary to reseal the grant obtained in Ibadan in Lagos. It was contended that the administratrix was uncooperative. The administrators therefore brought an action against her before the High Court of Lagos State seeking an order directing the issuance of Letters of Administration in their favour. However, while the case before the Lagos State High Court was pending, the High Court of Ibadan revoked the Letters of Administration granted in favour of the parties and made a grant in favour of some other persons. The Lagos State High Court subsequently ordered the issuance of Letters of Administration in favour of the plaintiffs. On appeal it was held that since the High court of Ibadan had revoked the Letters of Administration, the High

court of Lagos state lacked jurisdiction to issue Letters of Administration in respect of the estate of the deceased. It was held that it is only where the deceased intestate was subject to the jurisdiction of that court that it could issue the said Letters of Administration. In the circumstances of that case it could only re-seal Letters granted in Ibadan, the deceased's fixed place of abode. Since the High Court of Ibadan had revoked the Letters of Administration there was nothing over which the High Court of Lagos State could exercise its powers to re-seal. The appeal against the order directing the issuance of Letters of Administration to the plaintiffs therefore succeeded. In Asaboro's case (supra) there was no dispute as to the fact that the deceased lived and died in Ikaro via Ifon. That is not the situation in the instant case. The issue of re-sealing the grant in Lagos State therefore does not arise. It is for this reason that the case of Lijadu Vs Franklin (supra) also relied upon by learned counsel for the appellant is inapplicable to the facts of this case.

It must be noted that the fact that the trial court declined to make any finding in respect of Exhibit C having regard to the fact that proceedings in respect thereof were pending before another court did not preclude the Court of Appeal from making use of the exhibit, which was properly admitted in evidence, without opposition, in determining that the deceased resided in Lagos. Such finding had no bearing on the validity or otherwise of the alleged assignment therein contained.

Under this issue, learned counsel for the appellant has also urged us to hold that the respondents' claim before the trial court was incompetent for not being specific as to the nature of the grant being sought. First of all, it is necessary to examine the pleadings again and reproduce the claim. By paragraph 12 of the statement of claim the respondents sought the following relief from the trial court:

"12. AND the plaintiffs claim the grant to them of Letters of Administration of the estate and effects of the deceased."

The court below relied on the provisions of Section 22 of the Administration of Estates Law Cap. 3 Laws of Lagos State, 1994 in holding that the trial court properly exercised its discretion in granting the order sought.

The section Provides:

"22. Probate or administration in respect of the real estate of a

deceased person, or any party therefore, be granted either separately or together with probate or administration of his personal estate, may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of administration to real estate may be limited in any way the Court thinks proper.”

I am inclined to agree with the learned Justices of the lower court that from the above provision, the powers of the High Court to grant Letters of Administration are very wide. The respondents sought a grant in respect of the estate and “effects” of the deceased. As rightly found by the lower court, the prayer was for the grant of administration in respect of the entire estate of the deceased, both real and personal. Even where an application for a grant is not specific, by the provisions of Section 22 of the Administration of Estates Law referred to above, the Court may still exercise its discretion by limiting the grant as it sees fit.

In the case of Ugu Vs Tabi (supra) cited by learned counsel for the appellant, the respondent specifically applied for a limited grant of Letters of Administration in respect of the personal property of the deceased intestate but subsequently sought to exert control over the real property. The purport of the decisions in Ademola Vs Probate Registrar (supra) and Erewa Vs Idehen (supra) is that where the grant of Letters of Administration is limited to either the real or personal property of the deceased, the administrator has no power to administer the property (real or personal) not covered by the grant.

I agree with the lower court that the respondents’ prayer was a valid one and that the trial court had the requisite power to grant it. I am of the humble view that having made a prayer in similarly general terms in paragraph 6 of her statement of defence and counterclaim, it does not lie in the appellant’s mouth to complain that the prayer is vague. If her counterclaim had succeeded the relief would have been granted as prayed.

In conclusion, I hereby answer the question posed under this issue in the affirmative. I hold that the trial court had jurisdiction to entertain the respondents’ claim. The issue is accordingly resolved against the appellant and in favour of the respondents.

Issue 2

In support of this issue, SHOLA LAMID Esq., learned counsel for the appellant, referred to the finding of the learned trial judge that the marriage between the deceased and the 1st respondent was subsisting up to the time of his death, the decree nisi dissolving the marriage between the deceased and the 1st respondent not having become absolute before he died. He submitted that the lower court affirmed the decision of the trial court solely on the ground that the 1st respondent is the surviving legal spouse of the deceased. B

Referring to the case of *Obusez Vs Obusez* (2001) 15 NWLR (Pt.736) 377 @ 391 & 398 per Oguntade, JCA, he submitted that it is not the law that the surviving widow of a deceased person is automatically entitled to the grant of Letters of Administration in respect of his estate. He also relied on: *Okon Vs Administrator General, Cross River* (1992) 6 NWLR (Pt.248) 473. He submitted that since both parties had manifested their intention to discontinue with the marriage, having lived apart for a continuous period of at least three years before the presentation of the divorce petition, and having both consented to a decree nisi, the 1st respondent could not be considered a fit and proper person to administer the estate of the deceased. E

He was of the view that it having been shown that there was no love lost between the couple, it would be unfair to the deceased to allow the 1st respondent to administer his estate. He submitted that it could never have been the deceased's intention that the 1st respondent should administer his estate. F

He submitted further that the mere fact that the deceased was married under the Marriage Act did not mean that his estate must be dealt with in accordance with the Act. He referred to the case of *Obusez Vs Obusez* (supra) wherein it was held that the presumption that the distribution of the estate of a deceased person who was subject to customary law but went on to transact a marriage under the Marriage Act would be regulated by the Marriage Act, was a presumption that could be rebutted by evidence of the manner in which the deceased lived his life, which might suggest that he intended customary law to apply. He contended that in the circumstances of the instant case the manner of life of the deceased suggested that he did not wish to be bound by the Marriage Act and/or the Administration of Estates Law. He argued that by consenting to G H

the dissolution of the marriage and to the decree nisi, the parties had manifested a clear intention not to live together any longer as husband and wife. He submitted that although the deceased died before the decree nisi could become absolute, the equitable maxim: “equity regards as done that which ought to be done”, ought to apply. He submitted that the court of equity is a court of justice and not of form. He contended that the requirement of a decree nisi becoming absolute within a specified time is a question of form at which equity frowns. He referred to: *Okoro vs Ntui Ogara* (1964) 6 NLR 99 @ 150.

He submitted further that the provisions of Section 58 (4) of the Matrimonial Causes Act, which provides that a decree nisi shall not become absolute by force of the section where any of the parties to the marriage died, is inapplicable in this case because the decree nisi was obtained by consent. He contended that in law, once a party consents to an order being made, such consent cannot be withdrawn. He referred to: *Harvey Vs Holden Union Sanitary Authority* (1884) 22 CH D. 249; *Holt v. Jessy* (1876) 3 CH. D 177. He submitted that having regard to the circumstances of this case, the two courts below did not exercise their discretion “*according to the rules of reason, justice and law.*” He submitted that “*the concurrent findings of the two courts below on this issue has proceeded from a violation of some clear principles of law and procedure and have (sic) therefore occasioned a miscarriage of justice.*” He urged us to resolve this issue in the appellants favour.

In response to the above submissions, B. A. ONUOHA ESQ., learned counsel for the respondent submitted that the appellant has failed to show any special circumstance to warrant interference with the concurrent findings of fact of the two lower courts. He referred to: *Amadi Vs Orisakwe* (2005) 7 NWLR (Pt. 924) 385 and *Okeke Vs Agbodike* (1999) 14 NWLR (Pt.638) 215 @ 222 A - B. He submitted that the issues as to whether the 1st respondent was a fit and proper person to be granted Letters of Administration in respect of the deceased’s estate and whether his manner of life suggested that he intended the distribution of his estate to be governed by customary law and the application of the principles of equity in this regard was not part of the case before the two lower courts and therefore goes to no issue in this appeal. He submitted further that in any event,

equity follows the law and in this instance the relevant law is the Matrimonial Causes Act and the Administration of Estates Law of Lagos State. He submitted further that the appellant failed to identify the principles of law and procedure allegedly violated by the two lower courts or the miscarriage of justice arising there from. He urged us to discountenance the submissions and resolve this issue against the appellant. B

In reply to the submissions of learned counsel for the respondents, learned counsel for the appellant submitted that the dissolution of a marriage by consent should be compared to a consent judgment, which could only be set aside on the ground of fraud, mistake or misrepresentation. On the nature of a consent judgment he referred to: *Afegbai Vs A.G. Ondo State* (2001) 7 SC (Pt. II) 1 @ 15. On the issue of miscarriage of justice, he submitted that where the findings of the two lower courts are found to be perverse, it satisfies one of the conditions for setting aside the decision. He argued that the finding of the two lower courts that the 1st respondent is the lawful wife of the deceased by virtue of the decree nisi not having become absolute, which is being complained of, is not a concurrent finding of fact but of law and therefore the requirements for the setting aside of concurrent findings of fact are not applicable. He submitted that even where they constitute concurrent findings of fact, this Court has the power and duty to interfere with such findings where they have led to an improper and wrongful exercise of discretion. He referred to: *Re Adewunmi & Ors.* (1988) 7 SC (Pt. II) 1 @ 10 - 11. D E F

The law is settled that issues for determination in an appeal must fall within the scope of the grounds of appeal filed. The grounds of appeal in turn must relate to the decision appealed against and should be a challenge to the validity of the ratio of that decision. See: *Egbe Vs Alhaji* (1990) 3 SC (Pt. III) 63 @ 109; *Leedo Presidential Hotel Ltd. Vs B.O.N. (Nig.) Ltd.* (1993) 1 NWLR (269) 334 @ 347 A - C. In ground 3 of the notice of appeal, the appellant is challenging the decision of the Court of Appeal upholding the finding of the trial court that the 1st respondent is entitled to be granted Letters of Administration in respect of the deceased estate because she was the lawful wife of the deceased at the time of his death. Under particulars (b) and (d) of the said ground, G H

the appellant raised the issue of whether the 1st respondent was a fit and proper person to be appointed Administratrix of the estate and the fact that having consented to the decree nisi she could not withdraw her consent except on grounds of fraud or misrepresentation. He advanced arguments based on the said particulars in his brief.

B ***I have carefully examined the judgments of the court below and of the trial court. I have also examined the pleadings of the parties and the evidence on record. Neither of these issues was raised therein. Specifically, neither of these issues***
 C ***formed the ratio of the decision of the lower court now appealed against. They are being raised before this Court for the first time without leave. The appellant is not entitled to do so.***

This court held thus in: *Orunengimo & Anor. Vs Egebe & Ors.* (2008) ALL FWLR (Pt.400) 655 @ 671 C - D:

D *"The parties in a case and the court are bound by the issues submitted for trial and remain so bound from the court of trial to the final appellate court. An issue not raised in the pleadings and therefore not tried at the court of trial cannot be raised at the appellate court through the ingenuity of counsel."* See also: *Balogun Vs Adejobi*
 E (1995) 1 SCNJ 242; (1995) 2 NWLR (Pt.376) 131; *Olatunji Vs Adisa* (1995) 2 SCNJ 90; (1995) 2 NWLR (Pt.376) 167.

The submissions of learned counsel for the appellant in respect of these two sub-issues raised without leave are accordingly discountenanced.

F The only issue to be determined under this issue is whether the two courts below were correct in their finding that the 1st respondent was the lawful wife of the deceased at the time of his death. As submitted by learned counsel for the respondents, the following facts
 G are not in dispute:

i. That the 1st respondent and the deceased were married under the Marriage Act in London in 1958.

ii. That on 30/9/96 the High Court of Anambra State sitting at Onitsha granted a decree nisi dissolving the said marriage.

H iii. That the deceased died intestate in Onitsha, Anambra State on 31/10/96 before the decree nisi could become absolute.

The relevant provisions of the Matrimonial Causes Act are Section 58(1) (b) and (4), which provide:

"58. (1) Subject to this section, where in relation to a decree

nisi -

(b) Section 57 of this Act does not apply, the decree nisi shall become absolute by force of this section upon the expiration of a period of three months from the making of the decree.

(4) A decree nisi shall not become absolute by force of this section whether either of the parties to the marriage has died.” B

The law is settled that in construing the provisions of a statute, where the words are clear and unambiguous they must be given their natural and ordinary meaning, except where this would lead to absurdity or injustice. See: Olanrewaju v. Governor of Oyo State (1992) 11 - 12 SCNJ 92; Ahmed v. Kassim (1958) 3 FSC 51; (1958) SCNLR 28; Agbaje v. Fashola (2008) ALL FWLR (Pt. 443) 1302. ***The provisions of the Matrimonial Causes Act reproduced above do not qualify a decree nisi as one obtained by consent or otherwise. The court and indeed learned counsel are not entitled to read into a provision what it does not contain nor to interpret the provision in such a way as to conform with the court’s or counsel’s view of what they consider the law should be.*** See: A.G. Federation v. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt.618) 187 @ 264; Adewunmi v. A.G. Ekiti State & Ors. (2002) 1 SCNJ 27 @ 50. C D E

The court below made the following finding at pages 250 - 251 of the record:

“From the state of the pleadings before the lower court it appears settled that the decree issued in respect of the marriage between the 1st respondent and the deceased was yet to become absolute. The decree nisi was issued on 30th September 1996. Mr. Nzegwu died on 31st October 1996. Yet by Section 58 of the Matrimonial Causes Act, a decree nisi becomes absolute at the expiration of three months after its issuance. Appellant’s marriage to the deceased under the Ibo Customary Law on 7th July 1995 when the latter was still validly married to the 1st respondent under the Marriage Act, as rightly held by the lower court, could not have been lawful given the combined effect of Ss, 33, 35, 39 (1) and 58 of the Matrimonial Causes Act. In effect the lawful marriage between the 1st respondent and the deceased subsisting right to the time of the latter’s death, Appellant cannot legally claim entitlement to administration of the estate on the basis of her being [the] deceased’s surviving lawful wife. The truth is F G H

that Appellant was never legally married to the deceased.

Where an entitlement is tied to the existence of a particular fact and the fact has been manifested to be incapable of coming into being by the operation of the law, such an entitlement cannot in fact and in law enure to the claimant. In the instant case, where the appellant had tied her claim to entitlement to grant of letters of administration of the deceased's estate by virtue of her being the lawful surviving wife of the deceased, her failure to prove that she was such a wife at the time of death of the deceased was fatal. The lower court's inference that because Appellant was not the lawful surviving wife of the deceased she was disentitled to the grant of administration of the estate is unassailable."

The argument of learned counsel for the appellant that the three month period provided for by section 58 (1) (b) of the Matrimonial Causes Act for the decree nisi to become absolute could be waived or is inapplicable where the decree nisi was obtained by consent of the parties is, with due respect to learned counsel, misconceived. Section 58(4) of the Act clearly states that a decree nisi shall not become absolute by force of the section where one of the parties has died. The finding of the two courts below that the 1st respondent was still the lawful wife of the deceased, the decree nisi granted on 30/9/96 not having become absolute at the time of his death on 31/10/96 and that the purported marriages contracted with the appellant while his marriage to the 1st respondent subsisted could not have been lawful, cannot be faulted. This issue must therefore be and is hereby resolved against the appellant.

Issue 3

The final issue for determination is whether the learned Justices of the Court of Appeal were right when they held that the order or directive of the learned trial Judge that the Appellant be "arrested", "charged", "tried" and "convicted" for bigamy was a passing remark and therefore not appealable.

In support of this issue, learned counsel for the appellant submitted that notwithstanding the fact that the claims before the trial court were in respect of a probate matter and therefore civil in nature, the learned trial judge held inter alia in the course of his judg-

ment:

“There is no doubt that the defendant herein has breached the provision of the applicable relevant law in this judgment and thereby has committed an offence for which she should be arrested, charged, tried and convicted accordingly... Again, by contracting both marriages with the deceased during the subsistence of his marriage with plaintiff the defendant has breached Section 39 of the Marriage Act. She ought therefore to be charged and tried and convicted for bigamy under the said Act as she herself had provided enough evidence in this proceeding to charge her.

.... In addition this Court hereby directs that the State Attorney-General and Commissioner for Justice/D.P.P. take appropriate step to cause the arrest of the defendant for committing an offence under Section 39 (1) of the Marriage Act to which she herself admitted in this proceeding as per Exhibit A [Marriage Certificate] and for her to be properly charged before the appropriate Court with immediate effect. Or the plaintiffs’ counsel lodges a complaint with the police and cause the defendant to be arrested and charged to court for flagrantly for committing an offence under Section 39 of the Marriage Act.” (See pages 67 and 69 of the record)

Learned counsel disagreed with the finding of the Court of Appeal that the above statements were mere passing remarks and therefore not appealable. He argued that the statements expose the appellant to arrest prosecution, conviction and incarceration and thereby constitute a grave danger to her liberty. He submitted that in the circumstances the appellant has a right of appeal as provided for by Section 241 (1) (f) (i) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999. He argued that the decision binds a lower court as well as a court of co-ordinate jurisdiction. He submitted that the crime of bigamy was never in issue in the proceedings before the trial court. He submitted that that where the commission of a crime is alleged in civil proceedings it must be proved beyond reasonable doubt. He proceeded to examine Section 39 of the Marriage Act in relation to the evidence on record and submitted that the offence created thereunder is limited to marriage contracted under the Marriage Act and that in any event the alleged offence was not proved. He urged this court to resolve this issue in the appellant’s favour.

In reply to the submissions of learned counsel for the appel-

lant, learned counsel for the respondents submitted that the arrest and prosecution of the appellant was not part of the case of either of the parties at the trial court and was not made an issue before the court. He submitted that in the circumstances, the remark of the learned trial Judge did not arise from the pleadings or evidence of the parties. He urged the court to uphold the decision of the court below on the authority of *Boothia Maritime Inc. Vs Fareast Mercantile Co, Ltd.* (2001) 9 NWLR (Pt.719) 572.

As stated earlier in this judgment, a ground of appeal must relate to the decision appealed against and should be a challenge to the validity of the ratio decidendi of the decision reached. The ratio decidendi means “the reason for deciding” or the reasoning, principle or ground upon which a case is decided. The legal principle formulated by the court, which is necessary in the determination of the issues raised in the case, in other words the binding part of the decision is its ratio decidendi, as against the remaining parts of the judgment, which merely constitute obiter dicta. See: *Afro Continental (Nig.) Ltd. vs Ayantuyi* (1995) 9 NWLR (Pt.420) 411 @ 435 D - E; *Saude Vs Abdullahi* (1989) 4 NWLR (Pt. 116) 387 @ 429 & 431: *UTC (Nig.) Ltd. vs Pamotei* (1989) 2 NWLR (Pt.103) 244 @ 293.

An obiter dictum is a statement made in passing, which does not reflect the reasoning of the court or ground upon which a case is decided. See: *Odunukwe Vs Ofomata* (2010) 18 NWLR (Pt.1225) 404; *AIC Ltd. Vs NNPC* (2005) 11 NWLR (Pt.937) 563 @ 589.

In the instant case, it is quite evident from the pleadings of the parties that the issue for determination before the trial court was who as between the parties was entitled to the grant of letters of administration in respect of the estate of the deceased. There were no divorce proceedings or criminal charges pending before the court. The ratio decidendi of the judgment of the trial court, which was affirmed by the Court of Appeal was that the appellant herein was not entitled to the relief sought as she was not the lawful wife of the deceased intestate at the time of his death. The opinion and subsequent directive of the court regarding the charge, prosecution and conviction of the appellant for the offence of bigamy were therefore not based on the pleadings or any other issue in conten-

tion between the parties. The learned trial judge clearly went outside the case before him in this regard. The remarks constitute obiter dicta and cannot form the basis of an appeal.

See: Boothia Maritime Inc. v. Fareast Mercantile Co. Ltd. (2001) 9 NWLR (Pt.719) 572 @ 590 G; Balonwu v. Gov. Anambra State (2009) 18 NWLR (Pt.1172) 13. I am therefore of the considered view that the learned Justices of the lower court were right to discountenance the submissions made in respect thereof. This issue must also be and is hereby resolved against the appellant. B

In conclusion, I hold that this appeal is entirely lacking in merit. It fails and is hereby dismissed. The parties shall bear their respective costs in the appeal. C

MOHAMMED JSC

I have been privileged before today of reading the judgment of my learned brother Kekere-Ekun JSC which has just been delivered. I agree that this appeal is entirely lacking in merit and therefore deserves nothing but a dismissal. This is because the deceased Theophilus Nzegwu having died intestate in Onitsha Anambra state also left behind property in Lagos where he also lived with the 1st Respondent before his death. The deceased also left his address as plot number 1303A Akin Adesola Street, Victoria Island Lagos in the Deed of Assignment Exhibit C which he executed just before his death. On this very clear evidence therefore, the trial High court of Lagos in Lagos state was right in assuming jurisdiction in the Plaintiffs/Respondents case before it and in granting their application for the grant of Letters of Administration. For this reason, the Court below was on a right course in affirming the decision of the trial Court on this issue of jurisdiction. D E F G

On the 3rd issue in the Appellant's brief of argument of whether the learned Justices of the Court of Appeal were right in holding that the order or directive of the learned trial Judge that the Appellant be arrested, charged, tried and convicted for bigamy was a mere passing remark and therefore not appealable, the court below was indeed right in taking the stand now being complained of by the Appellant in this issue. It is indeed obvious that on the face of the remarks made by the learned trial Judge, he was plainly reckless in H

not only ordering the arrest, charging and trial of the Appellant but also already concluded convicting the Appellant of the offence of bigamy even before the trial of Appellant. Such passing remarks in judgments have been held by this court in the case of *Boothia Maritima Inc. & ors. v. Fareast Mercantile Co. Ltd.* (2001) 9 N.W.L.R. (Pt.719) 572 at 590, as not appealable decisions as rightly found by the court below.

In the result, this appeal having failed I also dismiss it with no order on costs.

C _____

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Kekere-Ekun, JSC. I entirely agree with the exhaustive reasoning and conclusion arrived at in the lead judgment. I desire, however, to add a few observations by way of support.

It is not in issue that the 2nd and 3rd Respondents are the offspring of the marriage contracted by the deceased and the 1st Respondent on 28/6/1958 in London.

E The appellant and the 1st Respondent prosecuted this case on the basis of claimed marriage with the deceased, Nzegwu. The main issue, in my view, is the relative marital status of the appellant and the 1st Respondent with the deceased at the time of his death.

F In the petition and cross-petition for the dissolution of the marriage between the deceased and the 1st Respondent, the High Court of Anambra state sitting at Onitsha granted a decree nisi on 30th September, 1996. The deceased died on or about the 31st October, 1996.

G It is important to note that the deceased and the appellant went through a marriage ceremony under Native Law and Custom and under the Act on 7th July 1995 and 23rd October 1995 respectively. From the record, it would appear that the divorce proceedings in suit No.O/16D/95 were commenced in 1995, the same year the deceased and the appellant purportedly contracted marriage under H the custom and under the Act.

The ceremonies took place even before the grant of the decree nisi. At the time of the customary Law marriage and marriage under the Act between the appellant and the deceased, the latter was

legally married to the 1st Respondent and they were still so married even after the entry of the decree nisi.

The word Nisi is an elliptical expression affixed to the decree and denotes that the decree so granted is conditioned upon another order making it absolute. See *Advanced Law Lexicon Book 3*, page 3199. At the time the deceased died, the order dissolving his marriage with the 1st Respondent was inchoate. In law, the marriage was still subsisting at the material time and would have subsisted unless and if the order nisi was made absolute by order of the Court.

Any claim of the appellant founded on a purported marriage (of the appellant) to the deceased is false since at the material time there was no valid marriage, and there could not have been a valid marriage between the appellant and the deceased.

I am in complete agreement with the reasoning and conclusion in the lead judgment that the appeal be dismissed for want of merit and I also dismiss same for the same reason.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Kudirat Kekere-Ekun, JSC and would show my support with some comments.

This is an appeal from the judgment of the Court of Appeal delivered on the 15th day of December, 2004 dismissing the appellant's appeal lodged against the judgment of the trial court delivered on the 22nd of March 2001.

FACTS BRIEFLY STATED

On the 28th June, 1958 Engr. Theophilus I. O. Nzegwu now deceased got married to the 1st respondent in London and the 2nd and 3rd respondents are the surviving offspring of the said marriage. The marriage subsequently broke down and consequent upon which the deceased and the 1st respondent filed a petition and a cross petition respectively for the dissolution of the said marriage. On 30th September, 1996, the High court of Anambra State sitting at Onitsha granted a decree nisi dissolving the said marriage.

However, on the 7th July, 1995 the Deceased got married to the appellant under native law and custom and on the 23rd October 1995 they celebrated a marriage under the Act in Lagos. The appel-

lant lived with the deceased until his death and the appellant was unaware that deceased had an estranged wife and children.

On the 31st October, 1996 the deceased died intestate in Onitsha, Anambra State where he hailed from and lived with the appellant. The deceased left behind real and personal properties in Lagos and Anambra states. However, before his death the deceased had by way of assignment transferred two properties to the appellant which were in Lagos namely Plot 1303 A, Akin Adesola street, Victoria Island Lagos and No. 147 A & B Ogunlana Drive, Surulere, Lagos. He had also transferred other properties individually to the respondents.

Before the burial of the deceased, the 1st respondent on 6/12/96 applied to the Probate Registry in the High court of Anambra State for Letters of Administration of the deceased's estate but the appellant entered a caveat and so the 1st respondent discontinued the said application. Again, sometime in 1998 the respondents applied to the probate Registry of the High Court of Lagos State for Letters of Administration, once again the appellant entered a caveat.

On the 10/2/99 the respondents instituted the action which had led to the present appeal at the Lagos State High Court claiming for the grant to them of the Letters of Administration of the estate of Engr. Theophilus I. O. Nzegwu. On the 22/3/2001 the learned trial judge, Akande J. (as she then was) delivered judgment her granting the reliefs sought by the respondents'. Appellant appealed to the Court of Appeal which dismissed the appeal hence the further appeal to the Supreme Court.

On the 24th September, 2013 date of hearing, the learned counsel for the appellant, Mr. Shola Lamid adopted the Brief of Argument settled by himself, filed on 24/10/05 and deemed filed on the 30/1/13. He also adopted the appellant's Reply Brief filed on 6/9/13 and deemed filed on 24/9/13.

In the appellant's Brief of Argument, learned counsel distilled three issues for determination which are as follows:

1. Whether the court below was right in holding that the High Court of Lagos State had jurisdiction to grant Letters of Administration to administer the estate of late Engr. Theophilus, I. O. Nzegwu who hailed from, lived and died in Onitsha, Anambra State.

2. Whether the learned justices of appeal were right when they

held that the 1st respondent, as against the appellant was entitled to Letters of Administration over the estate of Engr. Theophilus I. O. Nzegwu (Deceased) and in affirming the exercise of discretion of the learned trial judge to grant Letters of Administration to the 1st respondent.

3. Whether the learned justices of appeal were right when they held that the order or directive of the learned trial judge that the appellant be “arrested”, ‘charged’ ‘tried’ and ‘convicted’ for bigamy was a passing remark and therefore not appealable. B

Mr. B. A. Onuoha, learned counsel for the respondents adopted their Brief of Argument he had settled, filed on the 5/5/06 and deemed filed on 30/1/13. In the Brief of Argument were raised three questions, viz: C

1. Was the court below right in holding that the trial court did indeed have the jurisdiction to entertain the grant of the Letters of Administration over the estate of the deceased? D

2. Was the court below right in affirming the decision of the trial court granting the Letters of Administration to the respondents to the exclusion of the appellant.

3. Whether in view of the findings of the two courts below, the appellant has the basis to lay claims to the grant of Letters of Administration of the estate of the deceased to her and the competence to maintain this appeal. E

ISSUES 1 & 2

These issues raise the questions whether there was jurisdiction in the Lagos High Court to grant the Letters of Administration and if it was right that the 1st respondent as against the appellant was entitled to that grant of the Letters of Administration. F

Mr. Lamid, learned counsel contended that it was not in dispute that the deceased hailed from, lived and died in Onitsha, Anambra State. Also, that the divorce petition and cross-petition presented by the parties were done in Onitsha High Court notwithstanding that the marriage was celebrated in London. That Exhibit C, the Deed of Assignment dated 29th July, 1996 by which the Deceased assigned his property in Surulere, Lagos to the appellant would not change the domicile of the deceased from Onitsha to Lagos thereby conferring jurisdiction to the Lagos High Court on the matter of the Letters of Administration which jurisdiction rightly resides G
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with the Anambra State High Court.

For the appellant was further submitted that the Deceased and 1st respondent had been separated for several years and agreed to the dissolution of their marriage contracted under the Act and a decree nisi issued thereby awaiting the decree absolute which did not come before the demise of the deceased. That the circumstances showed the desire and intention of the parties to that marriage that the said union had come to an end thereby abrogating the right of the 1st respondent to the grant of the Letters of Administration and so the two courts were wrong to have ruled in her favour.

For the respondents, Mr. Onuoha of counsel submitted that the court below found that Exhibit C which stated the address of the deceased as in Lagos was evidence neither challenged nor controverted. That the court of trial was aware that the prayers being sought before it was not a limited grant but a grant over the entirety of the estate of the deceased and exercised the discretion in line with the provisions of Section 22 of the Administration of Estates Law of Lagos State. That the Court of Appeal agreed with what the court of trial did.

In tackling these questions raised, a recourse to the judgment of the court below, highlighting the *raison d'être* thereof would not only be helpful but instructive. At pages 249 - 253 of the Record would be found crucial parts of the judgment as anchored by Dattijo Muhammad, JCA (as he then was) and they are thus:

"The major complaint against the decision of the lower court is that in the exercise of its discretionary powers the court had failed to give due consideration to the right of the appellant who was also" a person interested in the estate of the deceased person or the proceeds of sale thereof.

It is trite that a discretion that had not been exercised in bad faith, frivolously or vexatiously but rather judicially and judiciously would persist unperturbed on appeal. However, a discretion the exercise of which had proceeded on the basis of irrelevant consideration or insufficient materials, being perverse, would have to be interfered with on appeal. See *University of Lagos & Anor v. M. I. Aigoro* (1985) 1 NWLR (Pt.1) 143, *Williams v. Williams* (1987) 2 NWLR (Pt. 54) 66 at 82, *Beredugo v. College of Science and Ekwunife v. Wayne (W.A.) Ltd* (1989) 5 NWLR (Pt. 122) 422.

In applying the above principles in determining whether or not the lower court's exercise of judicial discretion was wrongly undertaken, resort must be had to the materials placed before the court. The grant of the Letters of Administration of the estate of the deceased person to the appellant who was in no position to and legally never married the deceased was unmistakably untenable. The lower court's conclusion to this end is clearly the same. The court at page 52 of the Record of Appeal found that appellant's interest in the estate of the deceased could only be defined by the legality of her purported marriage to the deceased both under the Onitsha Customary Law which appellant claimed to have contracted with the deceased on 7th July 1995 and the Marriage Act as she sought to establish by Exhibit A.

From the state of pleadings and evidence before the lower court it appears settled that the decree nisi issued in respect of the marriage between the 1st respondent and the deceased was yet to become absolute. The decree nisi was issued on 30th September 1996. Mr. Nzegwu died on 31st October 1996. Yet by Section 58 of the Matrimonial Causes Act, a decree nisi becomes absolute at the expiration of three months after its issuance. Appellant's marriage to the deceased under the Ibo Customary law on 7th July 1995 when the latter was still validly married to the 1st respondent under the Marriage Act, as rightly held by the lower court, could not have been lawful given the combined effect of Sections 33, 35, 39(1) and Section 58 of the Matrimonial Cause Act. In effect, with the lawful marriage between 1st respondent and the deceased subsisting right to the time of the latter's death, appellant cannot legally claim entitlement to administration of the estate on the basis of her being deceased's surviving lawful wife. The truth is that appellant never was legally married to the deceased.

Where an entitlement is tied to the existence of a particular fact which has been manifested to be incapable of coming into being by the operation of the law, such an entitlement cannot in fact and in law enure to the claimant. In the instant case where the appellant had tied her claim to entitlement of grant of letters of administration of deceased's estate by virtue of her being the lawful surviving wife of the deceased, her failure to prove that she was such a wife at the time of death of the deceased was fatal. The lower court's inference that

because appellant was not the lawful surviving wife of the deceased she was disentitled to the grant of administration of the estate is unsatisfactory. Appellant's 2nd issue for determination of the appeal necessarily has to and is hereby resolved against her.

B There remain two ancillary complaints appellant raised by the appellant on the basis of which her counsel has urged us to set aside the lower court's decision. I shall in very brief terms treat these complaints.

C Under appellant's 1st issue for determination, the case of lack of jurisdiction on the part of the lower court to grant the 1st respondent the relief sought has been attempted. The effort has been made to show that Engr. Theophilus I. O. Nzegwu had lived and died in Onitsha Anambra State thereby making the lower court incapable of exercising the jurisdiction it did in the instant case.

D Not surprisingly, learned senior counsel to the respondent has strongly challenged this suggestion. He submitted, and one must uphold the submission, that this court is bound by the lawful evidence the lower court had of necessity to act upon. There is no evidence outside Exhibit C and same was tendered by the appellant, E showing the address of the deceased. Exhibit C shows that the deceased had property in Lagos and lived in Victoria Island.

F It is an elementary principle that a court must rely on such lawful evidence that had neither been challenged nor controverted. See *Odulaja v. Haddad* (1973) 11 SC 35 and *Provost LACOED v. Edun* (2004) 6 NWLR (Pt.870) 476 SC.

G Given the evidence that had been placed before the lower court, it had the jurisdiction to consider and oblige a grant of administration in respect of a deceased whose residence before death was within the territorial limits of Lagos State. The facts of the instant case, therefore, are manifestly distinguishable from those in the case of *Asaboro v Aruwuji* supra. In the instant case, quite unlike in *Asaboro's* case, available evidence as clearly established that although the deceased in respect of whose estate the application for the grant of H administration was being considered had died in Onitsha, Anambra State, because the deceased was resident in and had his estate in Lagos, the trial court had jurisdiction. In the face of facts regarding the residence of the deceased, the singular fact of his death in Onitsha did not disentitle the lower court from assuming jurisdiction.

At the base of the current findings of the two courts below were the provisions of Section 22 of the Lagos State Administration of Estates Law. While the position of the appellant's counsel is that for Section 22 of the law aforesaid to be applied, the respondents as applicants for the Letters of Administration had to specify whether the letters were in respect of personal or real estate of the deceased and the absence of that distinction rendered the application fundamentally defective and not qualified to be entertained. This instant, the learned counsel for the respondent refused to accept and contended that the application of that law with particular reference to Section 22 was wide enough for the application, the absence of the distinction notwithstanding.

I will therefore quote for clarification the said provision of Section 22 which is as follows:

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

The interpretation of Section 22 above stated and as applied by the trial court is that the provision constituted by clear and unambiguous words was wide enough for the use of the trial court as it did in its discretionary powers.

This court as I see it is being called upon to set aside or disturb the concurrent findings of the two courts below and one would need to ask if the circumstances which bring about such a power play by the apex or appellate court to so wield the big stick exists. The facts available from the two layers of court are that in the cause of evidence in the appellant's case at the trial elicited from the testimony of PW1 under cross-examination is that up to two weeks before his death, the deceased lived with the 1st respondent in the house at plot 1303A Akin Adesola Street, Victoria Island, Lagos. Also the Deed of Assignment Exhibit C by which deceased assigned his interests in some properties in Lagos, the address of the deceased residence was the same Plot 1303A Akin Adesola Street, Victoria Island, Lagos. These facts were uncontroverted and unchallenged.

The peg on which the appellant is hanging on to impugn the jurisdiction of the Lagos High Court and the right of the 1st respondent for the grant of the Letters of Administration is that the deceased died in Onitsha, Anambra State. What this scenario seems to evoke is the matter of which comes first, ‘the chicken or the egg’. In this instance, what would determine the territorial jurisdiction of court would, in my view, not be where anyone died since it can never be argued that because a person, perhaps a traveler dies in the course of the journey outside his normal place of residence and where he has property, the probate or letters of administration would be determined by the place of death rather than the usual place of residence or where the property for administration is situated. It is therefore stating the obvious that the appellant has not shown any special circumstances why those concurrent findings of the two earlier courts should be disturbed. The appellant has not shown any arbitrariness exhibited by those courts or that they applied extraneous matters and failed to utilize relevant matters or that there was a miscarriage of justice. That being the case, this court has no option than to go along with the two lower courts in those findings. I rely on the following cases: *Amadi v Orisakwe* (2005) 7 NWLR (Pt.924) 385; *Okeke v Agbodike* (1999) 14 NWLR (pt. 638) 215 at 222; *Akinjiwa v Nwaonuma* (1998) 13 NWLR (pt. 583) 632 at 647; *Ohwovoriole v FRN* (2003) 2 NWLR (pt. 803) 176 at 194.

From the foregoing, it is easy to answer the questions raised in issues 1 and 2 against the appellant and in favour of respondents.

ISSUE 3

This issue raises the question whether the learned justices of the Court of Appeal were right when they held that the order or directive of the trial court that the appellant be “arrested”, charged”, “tried” and “convicted” for bigamy was a passing remark and therefore not appealable.

For the appellant it was argued that whether or not those orders or directives of the learned trial judge were based on the pleading, they constitute a grave danger to the appellant’s liberty as they unmistakably exposed her to arrest, prosecution, conviction and incarceration. Learned counsel cited section 241(1) (f) (i) of the Constitution of the Federal Republic of Nigeria, 1999. That the passages from the judgment of the trial judge read together were not a mere

passing remark as the implication is that it was a judgment of conviction of the appellant in a civil matter. That for the imputation of criminal act on the part of the appellant, the proof should be beyond reasonable doubt which the evidence on ground did not produce. Mr. Onuoha, learned counsel for the respondents urged the court to uphold the decision of the Court of Appeal as the arrest and prosecution of the appellant was not part of the case of either of the parties at the trial court and was not made an issue. That the remark of the judge to that effect did not arise from the evidence or pleadings of the parties and the issue III should be struck out. He cited *Boothia Maritime Inc. v Forest Mercantile Co. Ltd* (2001) 9 NWLR (Pt. 719) 572. B
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In respect of this matter whether or not the remarks or purported directives of the trial court for the appellant to be arrested, charged, tried and convicted were appealable. The learned justices of the Court of Appeal dismissed those remarks as not appealable, scathing as they were. From the pleadings and evidence proffered before the trial court, the area the learned trial judge delved into when she delivered those directives were clearly outside the case put forward and defended by the parties. Therefore, though the practice is discouraged and a judge well advised to keep his emotions at all times material in check in order not to deviate from the matter before court, what the issue translates to is a passing, irrelevant, unnecessary remark which fortunately did not erode the quality of the judgment on the issues of contest before the court. It is nothing other than an empty wind though uncalled for. It did not bring about a miscarriage of justice and being not part of the case for adjudication is not appealable as it's outcome assuming, it were to be determined on appeal would not change anything. It is neither here nor there. I place reliance on the case of *Boothia Maritime Inc. v Forest Mercantile Co Ltd* (2001)9 NWLR (pt. 719) 572. This issue is resolved against the appellant. D
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From the above stated and the fuller reasoning in the lead judgment of my learned brother, Kudirat Kekere-Ekun, JSC, I also dismiss the appeal for lacking in merit. I abide by the consequential orders in the said read judgment. H

ARIWOOLA JSC

In this appeal against the judgment of the Court of Appeal, Enugu Division delivered on 15th December, 2004, the appellant had raised, inter alia, the following issue for determination of the appeal -

B Whether the learned Justices of the Court of Appeal were right when they held that the 1st Respondent, as against the Appellant was entitled to Letters of Administration over the estate of Engineer Theophilus I. O. Nzegwu (Deceased) and in affirming the exercise of discretion of the learned trial Judge, to grant Letters of Administration to the 1st Respondent.

C The 1st respondent had been married under the Act to the deceased - Engineer Theophilus Nzegwu in London on 28th June, 1958. The 2nd and 3rd respondents were the surviving issues of the marriage. The said marriage was however said to have broken down irretrievably which led to the deceased and the 1st respondent to file their petition and cross-petition respectively for the dissolution of the marriage. On 30th September, 1996, the High Court of Anambra State sitting at Onitsha with the consent of the parties granted a decree nisi dissolving the marriage.

E During the subsistence of the marriage to the 1st respondent, the deceased husband purportedly contracted another marriage with appellant under Onitsha Customary Law. Later, on 23rd October, 1996 less than thirty (30) days after the grant of decree nisi, the deceased allegedly contracted yet another marriage under Marriage Act with the appellant. Rather unfortunately, the deceased died intestate on 31st October, 1996 at Onitsha, in Anambra State. This, no doubt was before the decree nisi could be made absolute.

F Before he died, the deceased had assigned two of his landed properties in Lagos to the appellant. On 6th December, 1996 the 1st respondent applied to the Probate Registry at the High Court of Anambra State for Letters of Administration in respect of the deceased's estate. The appellant, as expected entered a caveat against the application and the 1st respondent discontinued same.

G Subsequently, in 1998 the respondents herein applied for Letters of Administration to the Probate Registry of the Lagos State High Court. The appellant again entered a caveat on 19th November, 1998. While the caveat was on, the respondents instituted an

action against the appellant at the High court of Lagos State whereby they sought an order of court -

“directing the grant to them of Letters of Administration of the Estate of Engineer Theophilus I. O. Nzegwu.”

Pleadings were filed and exchanged. The appellant filed a counter claim to the respondents’ action. At the conclusion of the trial, the court granted the respondents’ claims and dismissed the counter claim. Dissatisfied, the appellant appealed to the court below which dismissed the appeal and affirmed the decision of the trial court, leading to the instant appeal to this court.

Marriage under the Marriage Act generally means the legal union of a couple as spouses. In otherwords, it is *“the voluntary union for life of one man and one woman to the exclusion of all others.”* See: Hyde vs. Hyde and Woodmansee (1866) LRP & D 130, per Lord Penzance.

There is no doubt, that at the time the appellant purportedly contracted a marriage under Onitsha Customary Law on 7th July, 1995, the only marriage recognised by law with the deceased was that with the 1st respondent, which was contracted far back in the United Kingdom in 1958. Even though sometime on 30th September, 1996 the said marriage was to have been dissolved by a decree nisi order of the Anambra State High Court, such relationship does not become finally determined or terminated until the said decree nisi becomes absolute. Decree nisi is “a Court’s decree that will become absolute unless the adversely affected party shows the court within a specified time, why it should be set aside. *“Whereas, decree absolute is a ripened decree nisi, that is, a court’s decree that has become unconditional because the time specified in the decree nisi has passed.”* See Blacks Law Dictionary, Ninth Edition, pages 471 and 472. In otherwords, according to the appropriate Rules, the court’s decree nisi dissolving the marriage between the 1st respondent and the deceased, will only become absolute at the expiration of three months period, during the life of both parties.

As clearly shown on the records, as at 31st October, 1996 when the 1st respondent’s husband was reported deceased, she became the only widow because the period in the decree nisi of the court when their marriage would have become absolutely terminated, had not lapsed. Therefore, in the eyes of the law, the purported

marriages said to have been contracted by the appellant with the deceased, both on 7th July, 1995 and 23rd October, 1996 were not marriages that can stand or be countenanced by law and equity. The marriage between the 1st respondent and the deceased was subsisting and very much alive when one of the parties died. It is the decree
B absolute after three months of the decree nisi that could have rendered the marriage dead and buried, having been certified to have broken down irretrievably. But the 1st respondent being the affected party in the marriage with the death of her spouse, reserves the right
C to be entitled to apply for the Letters of Administration of the Estate of her deceased husband who died intestate, as between her and the appellant whom the law does not recognize as a spouse or relative to the deceased. The trial court was therefore right in exercising the court's discretion in favour of the 1st respondent and the court be-
D low was correct in law and in fact in affirming the decision of the trial court in granting Letters of Administration to the 1st respondent to administer the Estate of her deceased husband.

For the above reason and the fuller and more detailed reasoning of my learned brother, Kekere-Ekun, JSC which I adopt as
E mine, I also hold that the appeal is unmeritorious and deserves to be dismissed. I dismiss same and abide by the order that parties are to bear their respective costs.

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