

**SUPREME COURT OF NIGERIA**  
FRIDAY 11TH APRIL, 2014. SC. 224/2004  
**CORAM:- W. S. N. ONNOGHEN, B. RHODES- VIVOUR,**  
**C. B. OGUNBIYI, K. B. AKA'AH, J. I. OKORO, JJSC**

1. MRS. LOIS CHITURU UKEJE  
2. ENYINAYA LAZARUS UKEJE ..... APPELLANTS  
AND  
MRS. GLADYS ADA UKEJE ..... RESPONDENT

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SUPREME COURT - Issues - Formulation - SC and CA have the power to adopt or formulate issues - That in their view would determine the real complaints in appeal (H1)

DOCUMENTS - Proof - Birth certificate - Regularity of - Once properly executed by authorized government official - It is conclusive proof that person named therein was born on the date stated - And that the parents are those spelt out (H2)

ACTIONS - Crime - Allegation of - Proof - When fraud is alleged in a suit - It must be pleaded and established by proof beyond reasonable doubt (H3)

DOCUMENTS - Forgery - Proof - Defendants are not bound to plead forgery at trial - But to cross examine plaintiff and lead evidence to show beyond reasonable doubt - That exhibits M & M1 are forgeries (H4)

EVIDENCE - Document - Weight - Where documentary evidence supports oral evidence - Such oral evidence becomes more credible - Since document serves as hanger from which to asses oral testimony (H5)

EVIDENCE - Evaluation - Weight - Review of testimony of DW8 shows that his testimony was not discredited in HC - Rather not much weight was attached to it - As the evidence was found to be speculative - And the witness not properly qualified (H6)

COURTS - Evidence - Evaluation - It is duty of trial court which saw and heard witnesses - To evaluate the evidence and pronounce on their credibility - And ascribes probative value thereto (H7)

COURTS - Evidence - Findings - Procedure - Trial court is to receive all relevant evidence - Thereafter weigh same in context of surrounding circumstances of the case (H8)

APPEALS - Concurrent findings - Presumption of validity - Where such findings arose - Supreme Court would presume that trial court's conclusion - Affirmed by Court of Appeal is correct (H9)

ADMINISTRATION OF ESTATES - Inheritance - Right of women - Female child is entitled to inherit from her late father's estate - Hence Igbo customary law which disentitles such a child - Is in breach of 1999 Constitution s. 42(1)(2) (H10)

### **FACTS**

This action was commenced by plaintiff/respondent against defendants/appellants before the High Court of Lagos State, claiming among others for a declaration that as a daughter of one L. O. Ukeje (deceased) who died intestate, she is the person entitled to the estates or one of the persons entitled to share in the estates of the deceased. The fact in dispute is that the deceased who spent most of his life in Lagos State died intestate. 1<sup>st</sup> appellant was the wife of the deceased. 2<sup>nd</sup> appellant and respondent are among the children of the deceased. Upon the death of the deceased, 1<sup>st</sup> and 2<sup>nd</sup> appellants promptly obtained letters of administration in respect of the estates of the deceased. On being aware of the development, respondent initiated this action wherein she contends that as a daughter of the deceased, she has a right to partake in the sharing of her late father's estates.

To prove that she is a daughter of the deceased, respondent tendered Exhibit H (her birth certificate). Respondent's mother testified in support of her (respondent's) case. Several witnesses testified for appellants and several exhibits were also admitted in evidence. Appellants objected to respondent's birth certificate. After hearing in the matter, the court held that appellants' objection to the birth cer-

tificate was baseless. The court held that the birth certificate is genuine and therefore found that respondent is a daughter of the deceased and entitled to share in his estates. Reliefs 2, 3 and 4 of respondent's claims were thus granted. With respect to relief 5, the court made an order that appellants should hand over the administration of the estate to the State Administrator General pending when a fresh application for letters of administration by the five children (inclusive of respondent) would be made. Dissatisfied, appellants lodged appeal in the Court of Appeal Lagos Division. The court agreed with the trial court and dismissed the appeal. Not yet satisfied, appellants appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the respondent as plaintiff proved that she is a biological daughter of L. O. Ukeje (deceased).
2. Was the evidence of DW8 discredited in the High Court?
3. Did the trial court arrive at its decision after following the proper guidelines for decision making laid down by the Supreme Court?

**HELD** (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

*SUPREME COURT - Issues - Formulation*

**1. This Court and indeed an Appeal Court has the power to adopt or formulate issues that in its view would determine the real complaints in an appeal.** (p. 1636 G)

*DOCUMENTS - Proof - Birth certificate - Regularity of*

**2. The section referred to by the Court of Appeal is section 114(1) of the Evidence Act which states that:**

***"The Court shall presume every document purporting to be a certificate, certified copy or other document, which it by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized thereto to be genuine, provided that such document is substantially in the Form and purports to be executed in the manner directed by law in that behalf."***

**Under this subsection the court will presume a document to be authentic if the contents on the face of the said document were properly done and the document is properly executed by the authorized Government Official. I must say that a birth certificate is conclusive proof that the person**  
 B **named therein was born on the date stated, and the parents are those spelt out in the document. Once the authorized Government official appends his signature and stamp on the document and such authentication is not contested by the ad-**  
 C **verse party the presumption of regularity will be ascribed to it.**

**It has not been disputed that the respondent was born in Lagos on the 5th of July, 1952 and her birth was registered in Lagos in August 1952. Her parents are L. O. Ukeje (deceased)**  
 D **and PW2. Since the appellants did not rebut the presumption of regularity the finding of fact by the trial court remains unas-**  
**sailable. L. O. Ukeje (deceased) is the biological father of the respondent.**

**When the issue is whether the respondent is the Daughter of**  
 E **L. O. Ukeje (deceased) family photographs may help to resolve the issue, but the birth certificate of the respondent is decisive in settling such an issue. It answers the questions when, where the respondent was born and who her parents are.**  
 F **Documents such as guarantors Forms further shows L. O. Ukeje (deceased) is the respondent's father. Exhibit H, M, M1-3 and J lend more credence to the claim and evidence of the respondent, that she is a daughter of L. O. Ukeje (deceased). I accept it as the truth, and both courts below were correct in**  
 G **their judgments that L. O. Ukeje (deceased) is the father of the respondent. (pp. 1638 E/1641 H)**

*ACTIONS - Crime - Allegation of - Proof*

**3. The long settled position of the law is that when fraud is**  
 H **being alleged in a suit it must be pleaded, particulars given and established in evidence by proof beyond reasonable doubt.**  
 (p. 1640 D)

*DOCUMENTS - Forgery - Proof*

**4. At trial, if the defendants seek to disprove the plaintiff's documentary evidence (i.e. exhibits M, M1) which was used to support her claim to being the daughter of the deceased, the defendants are not bound to plead that the plaintiff's documentary evidence is false, fraudulent or forged. The defendants are to cross-examine her and lead evidence to show beyond reasonable doubt that exhibits M, M1 are forgeries. This the defendants/appellants were unable to do. (p. 1641 B)**

*Document - Weight*

**5. The Guarantors Form is exhibit 5 and it supports her testimony. Furthermore the respondent was married to a German National. Somewhere along the line her marriage collapsed. In the divorce suit she is referred to as Nee Ukeje. I must observe that the divorce proceedings and guarantors Form were in existence well before the death of L. O. Ukeje in 1981. The position of the law is that once documentary evidence supports oral evidence, such oral evidence becomes more credible. The reasoning is premised on the fact and the law that documentary evidence serves as a hanger from which to assess oral testimony. (p. 1641 E)**

*EVIDENCE - Evaluation - Weight*

**6. To my mind after reviewing the testimony of DW8, his cross-examination and the observations of the learned trial judge and the Court of Appeal, I would hold that the evidence of DW8 was not discredited in the High Court, rather, not much weight was attached to it by the learned trial judge as she found the evidence speculative and the witness not properly qualified. (p. 1642 H)**

*Evidence - Evaluation*

**7. It is well settled that it is the duty of the trial court which saw and heard witnesses to evaluate the evidence and pronounce on their credibility and ascribe probative value. A trial judge is expected to watch the demeanour of the witness, to see how readily he answers questions. Whether he**

**gesticulates. His reaction when confronted with evidence, be it documentary which suggest that his testimony is untrue. It is only after the above that the judge can attach weight to the evidence of a witness. (p. 1643 G)**

**B Evidence - Findings - Procedure**

**8. After so finding, the learned trial judge proceeded to accept plaintiff's evidence and that of her mother that Ukeje is plaintiff's father. If I may add, the duty of the trial court is to receive all relevant evidence. That is perception. Thereafter the judge is to weigh the evidence in the context of the surrounding circumstances of the case. That is evaluation. A finding of fact involves both perception and evaluation.**

**D My lords, it is so obvious that the learned trial judge received all evidence put forward by both sides in proof and disproof of the case. The judge proceeded to weigh the evidence on an imaginary scale and found the testimony of plaintiffs, supported by documents to wit: Exhibits H, M M1, J and 3 to be good proof that the 1st plaintiff/respondent was L. O. Ukeje's (deceased) daughter. On the other hand the evidence of the appellants' was found conflicting, and seriously damaged on demeanour, a finding an appeal court cannot make a finding as it never saw or heard the witnesses when they gave evidence. In the circumstances I agree that the learned trial judge followed the guidelines outlined in Sanusi v. Ameyogun Supra. On the issue of paternity the evidence of the respondent far outweighs the evidence of the appellant. Both courts below were correct that the respondent's father is L. O. Ukeje (deceased). (p. 1644 E)**

**APPEALS - Concurrent findings - Presumption of validity**

**H 9. Before this court are concurrent findings by two lower courts that the respondent is a daughter of L. O. Ukeje (deceased). When there is an appeal where there is a finding of fact affirmed by the Court of Appeal, this court would presume that the trial judge's conclusions are correct. This is so since the trial judge was the only judge who saw and heard the witnesses. When the Court of Appeal affirms the conclu-**

**sions of the trial court the presumption becomes much stronger. The presumption can only be displaced by the appellant who seeks, to upset the judgment on facts.** (p. 1645 B)

*ADMINISTRATION OF ESTATES - Inheritance - Right of women*

**10. This appeal is on the paternity of the respondent. Whether the respondent is a daughter of L. O. Ukeje (deceased). L. O. Ukeje deceased is subject to the Igbo Customary Law. Agreeing with the High Court the Court of Appeal correctly found that the Igbo native law and custom which disentitles a female from inheriting, in her late father's estate is void as it conflicts with sections 39(1)(a) and (2) of the 1979 Constitution (as amended). This finding was affirmed by the Court of Appeal. There is no appeal on it. The finding remains inviolate. No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently the Igbo customary law which disentitles a female child from partaking, in the sharing of her deceased lather's estate is in breach of section 42 (1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.** (pp. 1645 F/1646 C)

## **REPRESENTATION**

A. A. Ibikunle Awopetu Esq., for the Appellants

N. Oragwu Esq. with N. Okonta Esq., for the Respondent

## **CASES REFERRED TO**

Ogunbiyi v. Ishola (1996) 6 NWLR (pt. 452) 15

Chinwendu v. Mbamali (1980) 3-4 SC 31

Bamgboye v. Olarenwaju (1991) 22 NSCC (pt. 1) 501

Famuroti v. Agbeke (1991) 5 NWLR (pt. 189) 1

Igbiosa v. Aiyobangbiegbe (1969) 1 ANLR 99

Imana v. Robinson (1979) 3 - 4 SC 1

Omoregbe v. Lawani (1980) 5-4 SC 117

Sanusi v. Ameyogun (1992) 4 NWLR (pt. 237) 527

ACN v. Lamido (2012) SC (pt. ii) 163

Chinwedu v. Mbamali (1980) 3-4 SC 31

Ogbu v. Wokoma (2005) 14 NWLR (pt. 944) 118

George v. Dominion Flour Mills (1989) 1 All NLR 71

Onamade v. A.C.B. Ltd (1997) 1 NWLR (pt. 480) 123

Okelola v. Adeleke (2004) 13 NWLR (pt. 890) 307

<sup>B</sup> Cardozo v. Daniels (1986) 2 NWLR (pt. 20) 1

### **STATUTES REFERRED TO**

Evidence Act Cap E14 LFN 2004, ss. 114(1), 138(1)

<sup>C</sup> Evidence Act LFN 2011, s. 146

<sup>C</sup> Constitution of the Federal Republic of Nigeria, s. 42(1)(2)

### **LEAD JUDGMENT BY RHODES-VIVOUR JSC**

On the 27th day of December 1961 Lazarus Ogbonnaya Ukeje  
<sup>D</sup> a native of Umuahia in Imo State died intestate. He had real prop-  
 erty in Lagos State and for most of his life was resident in Lagos State.  
 The 1st appellant got married to the deceased on the 13th of De-  
 cember 1956. There are four children of the marriage. The respon-  
 dent is one of four. After Lazarus Ogbonnaya Ukeje died, the 1st and  
<sup>E</sup> 2nd appellants' (mother and son) obtained letters of Administration  
 for and over the deceased's Estate. On being aware of this develop-  
 ment the plaintiff/respondent filed an action in court wherein she  
 claimed to be a daughter of the deceased and by virtue of that fact  
<sup>F</sup> had a right to partake in the sharing of her late father's estates. Her  
 claims before a Lagos High Court were for:

1. A declaration that the plaintiff, as a daughter of one L. O.  
 Ukeje (deceased), is the person entitled to the estate or one of the  
 persons entitled to share in the estate of the said L. O Ukeje (de-  
<sup>G</sup> ceased).

2. An order that the grant of Letters of Administration dated  
 15th June, 1982 made to the 1st and 2nd defendants in respect of  
 the estate of the said L. O. Ukeje (deceased) be revoked and declar-  
 ing the same to be null and void to all intents and purposes in law.

<sup>H</sup> 3. An order of injunction restraining the 1st and 2nd defen-  
 dants from administering the estate of the said L. O. Ukeje (deceased)  
 and relying on the said Letters of Administration dated 15/6/82 granted  
 to them and/or holding themselves out as administrators of the said  
 estate to members of the public and/or transacting any business with

any person in respect of the said estate of the said L. O. Ukeje (deceased).

4. An order that the 1st and 2nd defendants prepare an inventory of all and singular the estate and/or render account of all monies, transactions and/or properties which have come into their possession since the grant of the said Letters of Administration of the estate of Mr. L. O. Ukeje (deceased). B

5. An order that the grant of Letters of Administration of the said L. O. Ukeje (deceased) be made to the plaintiff and the second defendant. C

Pleadings were filed and exchanged. The statement of claim was filed on 22/2/83, and the statement of defence on 27/4/83. The statement of defence was subsequently, amended five times and finally on 18/6/90. A reply to statement of defence was filed on 9/11/84, amended on 15/4/86 and 24/11/86. The first witness the plaintiff, gave evidence on 31/5/84. The plaintiff's case was closed after her mother concluded her evidence on 8/11/85 as PW2. D

Thirteen witnesses gave evidence for the defence. Thirty-four documents were admitted as exhibits. Closing speeches were concluded on 11/11/91. In a judgment delivered on 10/1/92 the learned trial judge, Fafiade J found that the plaintiff is a daughter of L. O. Ukeje (deceased) and proceeded to grant reliefs 2, 3, and 4. As regards relief 5 the learned trial judge ordered the 1st and 2nd defendants/appellants to hand over the administration of the estate to the Administrator General pending when the five children (the plaintiff/respondent inclusive) would choose 3 or 4 of them to apply for fresh letters of Administration. The defendants/appellants' lodged an appeal. The Court of Appeal Lagos (Division) agreed with the learned trial judge. That court dismissed the appeal for lacking merit. E

This appeal is against that judgment. Briefs of argument were duly filed in accordance with rules of this court. The appellants brief was filed on the 14th of September 2000 while the respondents brief was filed on the 17th of December 2006. F

Learned counsel for the appellants' formulated four issues for H determination. They read:

#### ISSUE 1

*"Where the plaintiff in an action produces a document in evidence in support of an averment of fact in his pleadings which the*

*defendant has denied, is the defendant, if he seeks to adduce oral or documentary evidence in disproof of the plaintiffs documentary evidence, bound first to plead that the plaintiffs documentary evidence is false, fraudulent or forged?*

ISSUE 2

B “Was the evidence of DW8 discredited in the High Court?”

ISSUE 3

*“Did the trial court arrive at its decision after following the proper guidelines for decision making laid down by the Supreme Court?”*

ISSUE 4

C “Did the Court of Appeal draw the right conclusions in respect of the Birth Certificate Exhibit H?”

On his part learned counsel for the respondent presented three issues for determination. They are:

D ISSUE 1

Whether there were any violations by the two lower courts to make such findings perverse.

ISSUE 2

E Whether the standard of proof required of the appellant in proving fraud and forgery is proof beyond reasonable doubt.

ISSUE 3

Whether the Court of Appeal was correct to have affirmed the judgment of the lower court when it held that the learned trial judge followed the procedures laid down by the Supreme Court.

F After a careful examination of the issues formulated by both sides I am satisfied with the issues formulated by learned counsel for the appellant, but with some amendments or formulation of my own.

G Issues 1 and 4 questions the authenticity of some of the documents relied on by the respondent to prove that the deceased is her biological father. Both issues can be taken as one.

***This Court and indeed an Appeal Court has the power to adopt or formulate issues that in its view would determine the real complaints in an appeal.*** See *Ogunbiyi v. Ishola* 1996 6 H NWLR (pt. 452) p. 15.

The issues for consideration would now read:

ISSUE 1

Whether the respondent as plaintiff proved that she is a biological daughter of L. O. Ukeje (deceased).

ISSUE 2

Was the evidence of DW8 discredited in the High Court?

ISSUE 3

Did the trial court arrive at its decision after following the proper guidelines for decision making laid down by the Supreme Court?

At the hearing of the appeal on 20/1/14 counsel said nothing, B  
to amplify further their briefs.

Learned counsel for the appellant adopted his brief filed on  
the 14th of September 2006 and urged the court to allow the ap-  
peal. Learned counsel for the respondent adopted his brief filed on C  
the 17th of December 2006 and urged the court to dismiss the ap-  
peal.

ISSUE 1

Whether the respondent as plaintiff proved that she is the bio-  
logical daughter of L. O. Ukeje (deceased). D

Apart from her testimony on oath and that of her mother,  
PW2 to prove that she is the daughter of L. O. Ukeje (deceased) the  
respondent tendered the following:

1. Her birth certificate - Exhibit H.
2. Form of undertaking, and Guarantee - Exhibit 3 E
3. Judgment in her Divorce Proceeding - Exhibit J
4. Photographs - Exhibits M, M1, P.

Exhibit H is the Birth Certificate of the respondent tendered to  
prove acknowledgment of the paternity of the plaintiff by the de- F  
ceased.

Learned counsel for the appellant observed that the column in  
Exhibit H which recorded the name of the person who supplied the  
information recorded therein to the Registrar showed the name of  
the plaintiffs mother, further observing that the column for a record G  
of the address of the mother of the child showed No.51 Moleye Street,  
Yaba, Lagos contending that she had claimed in her evidence that  
she lived with the deceased at No.11 Onikan Street, Ikoyi, Lagos,  
concluding, he submitted that since there are two inconsistent state-  
ments about where PW2 lived it was wrong for the judge to say that H  
he believed that PW2 lived at one or the other address, submitting  
that the only conclusion open to the Court of Appeal was that the  
plaintiffs story that the deceased accepted her paternity was untrue.

Learned counsel for the respondent observed that this court

ought not to disturb concurrent findings of fact made by the trial court and the Court of Appeal that Exhibit H is genuine. Reliance was placed on *Chinwendu v. Mbanali* 1980 3-4 SC p.31

The submissions of learned counsel for the appellant were on information given on Exhibit H about address.

B The learned trial judge had this to say:

*“As rightly pointed out by plaintiff’s counsel the issue of address was never put to plaintiff’s mother to enable her explain the seeming conflict. It has however not been disputed that plaintiff was born in Lagos on 5/7/52 and that birth was registered in August 1952.”*

C And with that observation the learned trial judge held that Exhibit H, the plaintiff/respondent birth certificate was genuine. She was a daughter of L. O. Ukeje (Deceased).

The Court of Appeal made identical findings when it said:

D *“Here, by virtue of this section there is presumption of law that the Birth Certificate of the respondent is genuine. The Onus is on the appellants to rebut this presumption by adducing sufficient and probable evidence.*

E *Since the appellants have not discharged the onus placed on them to disprove the genuineness of exhibit H, the learned trial judge is obliged in law to assume that exhibit H is genuine.”*

**The section referred to by the Court of Appeal is section 114(1) of the Evidence Act which states that:**

F ***“The Court shall presume every document purporting to be a certificate, certified copy or other document, which it by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized thereto to be genuine, provided***  
 G ***that such document is substantially in the Form and purports to be executed in the manner directed by law in that behalf.”***

H **Under this subsection the court will presume a document to be authentic if the contents on the face of the said document were properly done and the document is properly executed by the authorized Government Official. I must say that a birth certificate is conclusive proof that the person named therein was born on the date stated, and the parents are those spelt out in the document. Once the authorized Government official appends his signature and stamp on the**

**document and such authentication is not contested by the adverse party the presumption of regularity will be ascribed to it.**

**It has not been disputed that the respondent was born in Lagos on the 5th of July, 1952 and her birth was registered in Lagos in August 1952. Her parents are L. O. Ukeje (deceased) and PW2. Since the appellants did not rebut the presumption of regularity the finding of fact by the trial court remains unsailable. L. O. Ukeje (deceased) is the biological father of the respondent.**

Exhibit H is authentic, it is genuine. The Court of Appeal drew the right conclusion in respect of Exhibit H, Exhibit M, M1.

Learned counsel for the appellants observed that there was a disparity between the negative - Exhibit M and what is supposed to be the picture - Exhibit M1 contending that this fact was admitted by the plaintiff/respondent in cross-examination. Relying on Bamgboye v. Olarenwaju (1991) 22 NSCC (Pt. 1) p. 501 he contended that there was no need to plead forgery before the courts declare them to be forgeries. He submitted, that both courts below were wrong to hold that forgery must be pleaded before there can be a finding that they are forgeries. He urged this court to set aside the findings of the courts below on exhibits M and M1 and hold that both exhibits cannot be relied on by the respondent to prove that the deceased is her father.

Learned counsel for the respondent submitted that it is not for DW8 and the appellants' to decide whether exhibits M and M1 were forgeries or/and photo tricks, contending that it is for the court to make its own conclusion from the evidence before it. He submitted that the Court of Appeal was correct to affirm the decision of the trial court.

On the allegation by the appellants that exhibits M and M1 are forgeries, the learned trial judge said:

*"I have no cause to doubt plaintiff and her mother that L.O. Ukeje deceased is the father of plaintiff..."*

Referring to exhibit M and M1 the learned trial judge said:

*"...Furthermore, it is well settled in law that when fraud is being alleged in any suit, it must be pleaded with utmost particularity... it is quite clear from the records that no allegation of fraud or tricks*

*was put to plaintiff and her mother. What is more the amended statement of defence was filed well after plaintiff and her mother had given evidence. Plaintiff is required to prove her case by preponderance of probability...*

B Agreeing with the learned trial judge that exhibits M and M1 were not forgeries the Court of Appeal said:

C *"If the appellants had intended to place reliance on forgery or fraud which they alleged was visible at the trial they would have raised it in their final pleading, the third Amended Statement of Defence filed on 19/6/1990. They should not have alleged the forgery and fraud in their final address as they did. This therefore goes to no issue as they were not pleaded and therefore ought to be discountenanced..."*

D Learned counsel for the appellants' relied on Bamgboye v. Olarenwaju (1991) 22 NSCC (Pt.1) P501 to show that the reasoning of both courts below are wrong in that fraud ought to have been pleaded before exhibits M and M1 can be considered as forgeries.

E ***The long settled position of the law is that when fraud is being alleged in a suit it must be pleaded, particulars given and established in evidence by proof beyond reasonable doubt.*** See section 138(1) of the Evidence Act, Famuroti v. Agbeke (1991) 5 NWLR pt. 189 p. 1, Igbinosa v. Aiyobangbiegbe (1969) 1 ANLR p. 99.

F In the reply to further amended statement of defence the respondent as plaintiff averred as follows:

*"The plaintiff will at the trial tender family photographs of herself and her deceased father taken between 1978 and 1990 as well as photographs of her mother and deceased father in 1950s."*

G The above pleading simply puts the appellant/defendants on notice that the respondent would be relying on family photographs to prove that she is the daughter of L. O. Ukeje (deceased).

Now, on the question asked in Issue 1

H *"Where the plaintiff in an action produces a document in evidence in support of an averment of fact in his pleadings which the defendant has denied, is the defendant, if he seeks to adduce oral or documentary evidence in disproof of the plaintiffs documentary evidence, bound first to plead that the plaintiffs documentary evidence is false, fraudulent or forged?"*

The respondent, as plaintiff produced exhibits M, M1 photograph and negative to support averment in her pleadings that she is the daughter of L. O. Ukeje (deceased). The defendant/appellant denied the averment in the plaintiff's pleadings. At that stage pleadings are settled.

***At trial, if the defendants seek to disprove the plaintiff's documentary evidence (i.e. exhibits M, M1) which was used to support her claim to being the daughter of the deceased, the defendants are not bound to plead that the plaintiff's documentary evidence is false, fraudulent or forged. The defendants are to cross-examine her and lead evidence to show beyond reasonable doubt that exhibits M, M1 are forgeries. This the defendants/appellants were unable to do.***

Learned counsel for the appellants only contested exhibit H, M and M1 to show that the respondent is not the daughter of the deceased. The respondent also relied on exhibit 3 - Guarantors Form, and exhibit J - judgment in her divorce case.

The respondent testified as plaintiff on 8/1/90 that when she wanted to obtain a new Passport the deceased, L. O. Ukeje filled the Guarantors Form for her and acknowledged that he was the father of the plaintiff.

***The Guarantors Form is exhibit 5 and it supports her testimony. Furthermore the respondent was married to a German National. Somewhere along the line her marriage collapsed. In the divorce suit she is referred to as Nee Ukeje. I must observe that the divorce proceedings and guarantors Form were in existence well before the death of L. O. Ukeje in 1981. The position of the law is that once documentary evidence supports oral evidence, such oral evidence becomes more credible. The reasoning is premised on the fact and the law that documentary evidence serves as a hanger from which to assess oral testimony.*** See Kimdey & Ors v. Military Governor of Gongola State & Ors 1988 Vol.19 (Pt.1) NSCC p. 827, Omoregbe v. Lawani 1980 5-4 SC p. 117.

***When the issue is whether the respondent is the Daughter of L. O. Ukeje (deceased) family photographs may help to resolve the issue, but the birth certificate of the respondent is decisive in settling such an issue. It answers the questions when,***

**where the respondent was born and who her parents are. Documents such as guarantors Forms further shows L. O. Ukeje (deceased) is the respondent's father. Exhibit H, M, M1-3 and J lend more credence to the claim and evidence of the respondent, that she is a daughter of L. O. Ukeje (deceased).**

**B I accept it as the truth, and both courts below were correct in their judgments that L. O. Ukeje (deceased) is the father of the respondent.**

#### ISSUE 2

**C** Was the evidence of DW8 discredited in the High Court? Learned counsel for the appellants' after examining pronouncements by the Court of Appeal submitted that the Court of Appeal was in error in proceeding to hold that the evidence of DW6 was discredited because the trial court never made such finding and the plaintiff never **D** called in evidence to explain why exhibit M1 was different from exhibit M.

Learned counsel for the respondent submitted that the evidence of DW8 was discredited under cross-examination and urged this court to so hold. To find out if the evidence of DW8 was discredited in the High Court the findings of the High Court and Court of Appeal would be relevant.

The leaned trial judge said:

**F** *"The 8th defendant witness cannot claim to be an expert in photocopying with only 6 months training..."*

The Court of Appeal said:

**G** *"In spite of the evidence of DW8 that the deceased's photograph was superimposed on respondent or vice versa. DW8's evidence demonstrated that it is possible to superimpose pictures. This evidence is speculative. DW8 expressed this opinion as an expert witness as a photo analyst. But where expert evidence is discredited, then the court will have to cautiously accept or rely on such expert evidence... It would appear the evidence of DW8 was shaken or discredited under cross-examination."*

**H** **To my mind after reviewing the testimony of DW8, his cross-examination and the observations of the learned trial judge and the Court of Appeal, I would hold that the evidence of DW8 was not discredited in the High Court, rather, not much weight was attached to it by the learned trial judge as she**

***found the evidence speculative and the witness not properly qualified.***

### ISSUE 3

Did the trial court arrive at its decision after following the proper guidelines for decision making laid down by the Supreme Court.

The decision making process of the learned trial judge is questioned in this issue. After the Court of Appeal made a comprehensive review of the steps taken by the learned trial judge before arriving at the judgment, that court said, per Galadima JCA (as he then was):

*“I am of the firm conviction that by a careful examination of the judgment of the learned trial judge, she duly considered and followed the procedure out lined in the case of Sanusi v. Ameyogun (1992) 4 NWLR Pt.237 P.527.”*

Learned counsel for the appellants’ observed that the Court of Appeal was wrong in holding that the trial court followed the guideline laid down in Sanusi v. Ameyogun (supra). He observed that rather than evaluate evidence of each of the contesting parties the learned trial judge picked out the oral and documentary evidence adduced by the plaintiff/respondent and her witnesses then proceeded to declare that she found it unbelievable that the plaintiff and her witnesses would have been able to have knowledge of a number of listed facts, unless they had personal contact with the deceased. He contended that the learned trial judge did not review or evaluate the evidence of the relatives of the deceased.

Learned counsel for the respondent observed that the learned trial judge properly evaluated the evidence before concluding that the respondent is a daughter of L. O. Ukeje (deceased). He submitted that the guidelines laid down in Sanusi v. Ayemogun were followed by the learned trial judge, contending that the Court of Appeal was right to affirm the decision of the trial court.

***It is well settled that it is the duty of the trial court which saw and heard witnesses to evaluate the evidence and pronounce on their credibility and ascribe probative value.*** See Kim v. State (1992) 4 NWLR Pt 233 p.17 Sanusi v. Ayemogun (1992) 4 NWLR Pt.237 P.527.

According, to the Court of Appeal the learned trial judge followed the proper decision making, process as out lined by this court in Sanusi v. Ameyogun. I must at this stage examine the judgment of

the learned trial judge to see if the finding of the Court of Appeal is correct. First of all I consider the testimony of the appellants' witnesses.

**A trial judge is expected to watch the demeanour of the witness, to see how readily he answers questions. Whether he gesticulates. His reaction when confronted with evidence, be it documentary which suggest that his testimony is untrue. It is only after the above that the judge can attach weight to the evidence of a witness.**

On the demeanour of appellants' witnesses the learned trial judge said:

*"Defence witnesses who appeared to have come to court determined to say nothing else but that plaintiff is not Ukeje's daughter even seemed confused as to their relationship with L. O. Ukeje. 1st defendant felt very uncommitted when she told this court L. O. Ukeje had no relations, where as a witness claimed to be his father, another said he was his brother, even 2nd defendant said he had uncles and in their last amended statement of defence paragraph referred to relatives. Both defendants in spite of their desperation failed to call an immediate member of Ukeje's family to support their stand."*

**After so finding, the learned trial judge proceeded to accept plaintiff's evidence and that of her mother that Ukeje is plaintiff's father. If I may add, the duty of the trial court is to receive all relevant evidence. That is perception. Thereafter the judge is to weigh the evidence in the context of the surrounding circumstances of the case. That is evaluation. A finding of fact involves both perception and evaluation.**

**My lords, it is so obvious that the learned trial judge received all evidence put forward by both sides in proof and disproof of the case. The judge proceeded to weigh the evidence on an imaginary scale and found the testimony of plaintiffs, supported by documents to wit: Exhibits H, M M1, J and 3 to be good proof that the 1st plaintiff/respondent was L. O. Ukeje's (deceased) daughter. On the other hand the evidence of the appellants' was found conflicting, and seriously damaged on demeanour, a finding an appeal court cannot make a finding as it never saw or heard the witnesses when they gave evidence. In the circumstances I agree that the learned trial**

***judge followed the guidelines outlined in Sanusi v. Ameyogun Supra. On the issue of paternity the evidence of the respondent far outweighs the evidence of the appellant. Both courts below were correct that the respondent's father is L. O. Ukeje (deceased).***

***Before this court are concurrent findings by two lower courts that the respondent is a daughter of L. O. Ukeje (deceased). When there is an appeal where there is a finding of fact affirmed by the Court of Appeal, this court would presume that the trial judge's conclusions are correct. This is so since the trial judge was the only judge who saw and heard the witnesses. When the Court of Appeal affirms the conclusions of the trial court the presumption becomes much stronger. The presumption can only be displaced by the appellant who seeks, to upset the judgment on facts.***

This court would be quick to reverse concurrent findings of fact if there was miscarriage of justice or a violation of some principle of law or procedure or the finding is found to be perverse. See R. V. Benkay Nig Ltd. V. Cadbury Nig PLC (2012) 3 SC (pt. iii) p. 169 ACN v. Lamido & 4 Ors. (2012) SC (pt. ii) p. 163.

The finding of fact that the respondent is a daughter of L.O. Ukeje (deceased) was arrived at by the learned trial judge after the plaintiff/respondent supported her claim with flawless documentary evidence, especially her birth certificate. There is no way such a finding can be said to be perverse, or to have violated some principle of law. Concurrent findings of fact that the respondent is a daughter of L. O. Ukeje (deceased) are correct.

***This appeal is on the paternity of the respondent. Whether the respondent is a daughter of L. O. Ukeje (deceased). L. O. Ukeje deceased is subject to the Igbo Customary Law. Agreeing with the High Court the Court of Appeal correctly found that the Igbo native law and custom which disentitles a female from inheriting, in her late father's estate is void as it conflicts with sections 39(1)(a) and (2) of the 1979 Constitution (as amended). This finding was affirmed by the Court of Appeal. There is no appeal on it. The finding remains inviolate.***

Section 39(1),(a) (2) of the 1979 Constitution is now con-

tained in the 1999 Constitution as section 42(1), (a), (2) and it states that:

*“42(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-*

B *(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups places of origin, sex, religions or political opinions are made subject: or...*

C *(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.”*

**No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father’s estate. Consequently the Igbo customary law which disentitles a female child from partaking, in the sharing of her deceased lather’s estate is in breach of section 42 (1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.**

In the light of all that I have been saying, the appeal is dismissed. In the spirit of reconciliation parties to bear their own costs.

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### ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my leaned brother, RHODES-VIVOUR, JSC just delivered.

G I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

The facts of the case have been stated in detail in the lead judgment and I therefore do not intend to repeat them herein except as may be needed for the points(s) being made.

H This appeal is based on the concurrent findings of fact by the lower courts as the findings of the trial court were affirmed by the lower court upon proper consideration. It is settled law that unless there are special circumstances shown, this court will not disturb the concurrent findings of fact made by the lower courts - see Chinwedu

vs Mbamali (1980) 3 - 4 S.C 31 at 75; Ogbu vs Wokoma (2005) 14 NWLR (pt. 944) 118 at 123.

The circumstance or exceptions to the above general principle include the following:-

(a) If such findings of fact are made on inadmissible evidence; or

(b) If such findings of fact cannot be related to any evidence before the court; or

(c) Where such findings of fact are on matters not pleaded; or

(d) Where, on the whole facts before the trial court and the Court of Appeal, the findings are manifestly perverse - see Ogbu vs Wokoma supra.

I have gone through the briefs of argument filed and relied upon in arguing the appeal and the record of proceedings and have not seen where any of the exceptions listed above have been alleged let alone established by argument before this court.

It is for the above and the more detailed reasons contained in the lead judgment of my learned brother that I too find no merit in this appeal and accordingly dismiss same.

I abide by the consequential orders made in the lead judgment including the order as to costs.

Appeal dismissed.

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### **OGUNBIYI JSC**

I read in draft the lead judgment of my learned brother Rhodes-Vivour, JSC and I agree that the appeal is devoid of any merit and should be dismissed.

The appeal before us is against the concurrent decisions of the two lower courts wherein judgment was confirmed in favour of the Plaintiff/Respondent whose action was instituted before the Lagos High Court wherein she claimed five reliefs before the trial court. The reliefs are clearly spelt out in the lead judgment of my learned brother. With the High Court having given judgment in favour of the plaintiff/respondent, an appeal by the defendant/appellant before the lower court was accordingly dismissed, hence the appeal now before us. The four issues distilled by the appellants and three by the respondent from the appellants' fourteen grounds of appeal have been re-

produced in the lead judgment.

On the communal reading and the totality of the submission by the learned counsel for the appellants, the attack is centered on the entire evidence by the respondent; that is both oral and documentary evidence particularly Exhibits ‘H, L, P, J and 3’ which were based on the alleged conclusion arrived at by ‘DW 8’ that Exhibits ‘M’ and ‘M1’ were forged documents. With reference made to section 138(2) of the Evidence Act, the burden of proving crime is subject to the provision of section 141 of the said Act and the proof is on the person who asserts as to whether the commission of such act is or is not directly in issue. The law is well settled that proof of criminal allegation must be beyond reasonable doubt.

It is also trite law that the appraisal of oral evidence and ascription of probative value of such evidence are the primary responsibility of a trial court. In other words, it is for the trial court to evaluate the evidence of witnesses after having seen their demeanor and heard them. This privilege is not given to the appellate court.

On the authenticity and proof of respondent’s paternity through her birth certificate, the testimony given by the respondent’s mother was in my view a first hand evidence and the best. The trial court, I hold did rightly declare as unconstitutional, the law that dis-inherits children from their deceased father’s estate. It follows therefore that the Igbo native law and custom which deprives children born out of wedlock from sharing the benefit of their father’s estate is conflicting with section 42(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The reproduction of the section states thus:-

*“42(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.”*

It was in evidence and found as a fact by both lower courts that the respondent was born in Lagos on 5th July, 1952 and that her birth was registered in August 1952. Exhibit ‘J’ was a judgment evidencing the respondent’s former name as “nee Ukeje” in her divorce proceedings. There was also a guarantor form exhibit ‘3’ which confirmed that the respondent was acknowledged as the deceased’s daughter. Both the documents Exhibits ‘J’ and ‘3’ were in existence well before the death of the respondent’s father in 1981. Furthermore, Exhibits ‘M’, ‘M1’ and ‘P’ are the photographs which both the

respondent and her mother claimed to have taken with the deceased during his lifetime. This is in spite of the evidence by 'DW 8' that the deceased's photograph was superimposed on that of the respondent or vice versa.

With reference to the evidence of 'DW 8', the photo analyst, under cross examination, for instance at page 121 of the record, he B had this to say:-

*"It is true I said earlier lots of things could have been done... It is also possible..."*

The use of the words therein give an impression that this witness's evidence is speculative; it is not open therefore for the witness, 'DW 8' and the appellant to say that Exhibits 'M' and 'M1' were mere photo tricks and forged. It is rather left for the court to draw its own conclusion from the evidence before it. I hasten to also add as point of caution that the witness 'DW 8' was called by the D appellants to give expert evidence. His evidence in my view should therefore be taken with a pinch of salt.

As a further point of information, the allegation of forgery/fraud by the appellants, was not pleaded by them but only raised at the final address stage. Reference can be made to the Court of Appeal judgment at page 624 wherein their Lordships said:- E

*"If the appellants had intended to place reliance on forgery or fraud which they alleged was visible at the trial they would have raised it in their final pleading, the third amended statement of defence filed on 19/6/1990. They should not have alleged the forgery and fraud in their final address as they did. This therefore goes to no issue as they were not pleaded and therefore ought to be discountenanced."* F

I cannot agree more with their Lordships of the Court of Appeal. See the case of *George v. Dominion Flour Mills* (1989) 1 All NLR 71 at 102 wherein it was held that an allegation of fraud in any suit must be pleaded with utmost particularity. The same principle was also adopted and emphasized in *Onamade v. A. C. B. Ltd* (1997) 1 NWLR (pt.480) p.123. G

I have earlier stated in the course of this judgment that the appeal before us is against concurrent findings of the two lower courts; it is therefore elementary but well settled that unless there are special circumstances shown by the appellants, it is not open to this court to disturb the said findings of fact made by both the trial and lower H

courts. See the case of Chinwendu v. Mbamali cited by the learned respondent's counsel which reference can be found in the lead judgment of my brother. Also the case of Ogbu v. Wokoma (2005) 14 NWLR (pt 944) p.118 at 123 is where circumstances are listed whereby this court can overturn the concurrent decisions of the two lower courts. The appellants in the appeal before us have not met with the criteria that will warrant that the general rule should be overturned.

On the totality therefore, I am in complete agreement with my learned brother Rhodes-Vivour, JSC on his lead judgment that this appeal is devoid of any merit and I also dismiss same in like terms inclusive of the order made as to costs.

### **AKA'AH'S JSC**

I was privileged to read in draft the lucid and well articulated judgment of my learned brother, Bode Rhodes-Vivour JSC. He dealt exhaustively with all the issues raised in the appeal. I agree with his reasoning and conclusion that the appeal totally lacks merit and is accordingly dismissed. I abide by the order made on costs for the payment of N50,000.00 (Fifty Thousand Naira) by the appellants to the respondent.

### **OKORO JSC**

I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Bode Rhodes-Vivour, JSC. I agree with the reasons for the conclusion reached. My learned brother has comprehensively and quite admirably resolved all the salient issues submitted for the determination of this appeal. I propose, however, to make a few comments in support of the judgment only.

The facts leading to this appeal have been ably set out in the lead judgment and I do not intend to repeat the exercise again. However, suffice it to say that the Respondent, as plaintiff, states that she is the daughter of one late Lazarus Ogbonnaya Ukeje and that her paternity was acknowledged by the said Lazarus Ukeje in his life time. It is her contention that she is entitled to the estate or one of the persons entitled to the estate of late Lazarus Ukeje.

The Appellants however oppose her assertion of being the

daughter of the late Lazarus Ukeje. After a consideration of the evidence before him, including documentary evidence, the learned trial judge entered judgment for the plaintiff (now Respondent). An appeal by the Appellants to the Court of Appeal was dismissed.

The Appellants have now appealed to this court.

One major issue or question to be determined here is whether the Respondent was able to adduce cogent and credible evidence to prove that she is the daughter of late Lazarus Ogbonnaya Ukeje. If she was able to do this creditably, then there is no doubt that the two courts below were right to enter judgment in her favour.

The Respondent, to back up her claim, tendered her birth certificate, Form of undertaking and guarantee, judgment in her divorce proceedings and some photographs. Although the Appellants picked holes with the birth certificate and the photographs, the two lower courts held the exhibits as genuine and held that the birth certificate was proof that the Respondent was a biological daughter of Ukeje (late). For me, the objection to the authenticity of the birth certificate was not cogent enough.

The said birth certificate was obtained in 1952 when there was no anticipation that it would be used for litigation more than five decades thereafter. By Section 145(1) of the Evidence Act, 2011, the court should presume every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. See *Mrs. Olajide Okelola v. Adebisi Adeleke* (2004) 13 NWLR (Pt 890) 307, *Cardozo v. Daniels* (1986) 2 NWLR G (Pt. 20) 1. I need to point out that Section 114 of the Evidence Act Cap E14 Laws of the Federation, 2004 is now Section 146 of the Evidence Act, 2011.

I must emphasize that it does not really matter the person who gave information for the birth certificate to be issued. As was rightly held by the two lower courts, whether it was the father or mother of the Respondent who gave the information, the fact remains that an authorized person issued the birth certificate. The Appellants are not attacking the origin of the certificate. All they are saying is that it was

not the late Ukeje who gave information for the registration of the birth of the Respondent in 1952. But, where is the evidence? It is not enough for a party to make an allegation before a court, he must lead credible evidence to prove same. See *Union Bank Plc v. Astra Builders (WA) Ltd* (2010) 5 NWLR (Pt 1185)1; *Imana V Robinson* B (1979) 3 - 4 SC. 1. Since the Appellants were unable to lead evidence to rebut the presumption that Exhibit H is genuine in view of Section 186 of the Evidence Act 2011, I agree with the court below that the Respondent was able to establish that she is a biological daughter of late Ukeje. It is on this note that I also agree that the Respondent is entitled to share in the estate of late Ukeje her father. C

I also agree that by virtue of Section 42(1) of the 1999 constitution of the Federal Republic of Nigeria (then S.39 (1) of 1979 constitution), any customary law which says or tends to suggest that a female child cannot inherit the property of her father, is not only D unconstitutional but also null and void.

In view of all I have said above and the fuller exposition made in the lead judgment of my learned brother Bode Rhodes-Vivour, JSC, I agree that this appeal lacks merit and is hereby dismissed. I E abide by all the consequential orders made in the lead judgment, that relating to costs, inclusive.

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