

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 31, GUDU - ABUJA**  
**DELIVERED ON WEDNESDAY THE 3<sup>RD</sup> DAY OF JULY, 2019**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R. OSHO-ADEBIYI**  
**SUIT NO.CV/2882/18**

**BETWEEN**

**MRS. SARAH TAWALI JOEL ----- CLAIMANT**

**AND**

- 1. MR. SAMUEL BENJAMIN ----- DEFENDANTS**  
**2. MR. ISHAKA SIMON**  
**3. MR. NUHU BABA**

**JUDGMENT**

By an Originating Summons brought pursuant to Order 2 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 the Plaintiff filed this suit against the Defendants seeking the following:-

- 1. A DECLARATION** by this Honourable Court that by virtue of the Letters of Administration dated the 22<sup>nd</sup> March, 2018 and granted to the Claimant as guardian to Master Jofery Joel who is a Minor, the Claimant is the rightful person to administer the estate of Late Joel Benjamin.
- 2. A DECLARATION** by this Honourable Court that the Defendants have no vires to claim and or interfere with the administration of the estate of Late Joel Benjamin by the Claimant.

3. **A DECLARATION** by this Honourable Court that the conduct of the Defendants requiring the Claimant to vacate her matrimonial home and hand over the estate of her late Husband to them is unlawful and constitutes a breach of the Letters of Administration and the Claimant's rights therein.

4. **AN ORDER OF INJUNCTION** restraining the Defendants by themselves or through any person acting on their behalf from interfering with the management of the estate of Late Joel Benjamin by her widow, the claimant.

In support of the originating summons is an affidavit of 28 paragraphs deposed to be the Plaintiff. From the facts deposed therein, it is the case of the Plaintiff that she was married to her late husband on the 8<sup>th</sup> day of March, 2014 and the marriage was blessed with a son named Jofery Joel who is 4 years old. That her late husband passed on 5/9/2017 and until his death, he was a staff of NNPC in Abuja.

That the 1<sup>st</sup> Defendant being the brother and 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' cousins of her late husband tried to get the death benefits and entitlements from the deceased place of work but were unable to as the NNPC would not deal with them directly, as they were not the next of kin of the deceased.

That Claimant's late husbands' record at his place of work, listed Master Jofery Joel, their son, as the next of kin. That Claimant applied for Letters

of Administration, which was issued and granted to her as guardian to Jofery Joel.

That Claimant is the lawful person to administer the estate of her late husband. That Defendants after failing to get the death benefits of her late husband from his place work, commenced series of campaign of calumny against her. That Defendants prevented her from administering the estate of her late husband in peace as they consistently demanded that Claimant hands over the properties of her late husband to them including their matrimonial home where she currently lives with her son, claiming that she is a stranger and that the properties left behind by their brother belong to them.

That before the one-year anniversary of the death, the Defendants came to the house and threatened she leaves the house one week after the anniversary else they would kick her and her son out. As a result, she wrote a letter of complaint against the Defendant to the Inspector General of Police.

That on the 22<sup>nd</sup> of September, 2018 while at home, the Defendants stormed the house and again, requested that the properties be handed to them which she rebuffed and they threatened to come back to kick them out.

That as a spouse of her late husband, married under the Act, she is a beneficiary of the estate of her late husband and so is their son and she posses the letter of administration in their favour. That the Defendants

do not have any Letters of Administration or any other document for that matter to support their claim to the properties.

In proof of her case, Claimant annexed four exhibits as follows:

1. A copy of the Applicant's Marriage Certificate marked as Exhibit ALC 1.
2. A Letter from the NNPC addressed to the Probate Registrar confirming Master Jofery Joel as the next of kin as Exhibit ALC 2.
3. The Letters of Administration in favour of the Applicant as Exhibit ALC 3.
4. Letter of complaint against the Defendants addressed to the Inspector General of Police dated the 5<sup>th</sup> September, 2018 and received on the 7<sup>th</sup> September, 2018 as Exhibit ALC 4.

The Claimant's Counsel filed a written address in support of the Originating Summons and raised a sole issue for determination to answer to the questions raised in the Originating Summons as follows :-

**Whether from the facts and circumstances of this case, the claimant is entitled to the reliefs sought?**

Counsel in arguing the sole issue submitted that from the facts and circumstances of this case, the Claimant is entitlement to the reliefs sought. Submitted that the Applicant's late husband died intestate and the law of Administration (Real Estate) Act Cap 472 Laws of FCT, which governs succession of the estate of the deceased, has given the Claimant the benefit of administering the estate of the Late Joel Benjamin.

Submitted that upon the grant of Letters of Administration, the person so granted has the powers to administer the estate of the deceased, thus, he or she become the administrator of the estate of the deceased who died intestate; accordingly, it is upon the grant of the Letters of Administration that the deceased's estate vests in the Administrator. Relied on the case of MRS AYORINDE VS MR. AYORINDE & ORS. (2003) FWLR 9Pt.169) 1169 @ 1180 – 1 CA.

Submitted that the Claimant being married under the act, the effect of such marriage is contained in the Administration of Estate law of the intestate's domicile and that in order of priority, the first group of person most entitled to Letters of Administration are the children and spouses. Relied on the case of UBA V. OBILANWU (1999) 12 NWLR (PT 629 ) 78 CA. Contended that where, as in this case, the deceased leaves a widow and children behind, the widow has superiority over the children if her marriage to the deceased was a statutory marriage.

Submitted that it is clear that Exhibit ALC 3 which is the letters of Administration was obtained after following due process and the claimant in this case has fulfilled all the requirements stipulated in Order 62 of the High Court of the FCT (Civil Procedure) Rules, 2018, consequent upon which the grant was made to her as guardian to Jofery Joel.

Submitted that it is trite that the parents of a child are the guardians of the child and in the event of death of one of the parents; the surviving

parent becomes the guardian of the child. Relied on Section 83 (1) of the Child Rights Act; therefore it is no surprise that the Letters of Administration was granted to the claimant as guardian to Jofery Joel.

Submitted that under the Letters of Administration, the administrator has the responsibility of managing the estate of the deceased for and on behalf of the beneficiaries. Relied on UGWU & ORS VS EZEANOVVAI & ORS (2017) LPELR - 42754 (CA); therefore, it is the Letters of Administration that recourse should be made to in order to ascertain who the administrator of an estate of a deceased is. Submitted that in this instant case, Exhibit ALC 3 attached to the Affidavit supporting the Originating Summons is transparently clear as to who the Administrator of the estate of Late Joel Benjamin is and it is the Claimant, Mrs. Sarah Tawali Joel who is guardian to Master Jofery Joel.

Submitted that by the combined effect of the Marriage Act and the Administration of Estates Law, the claimant and her son, Master Jofery Joel, are the beneficiaries of the estate of the deceased and by Section 87 of the Child's Right Act, the guardian is vested with the powers to manage the estate of a child; therefore, the claimant herein in addition to being armed with Letters of Administration, is also legally clothed with powers to manage the estate of the child to whom she is guardian.

Submitted that the Defendants are oblivious of the fact that the issue at hand is not one of Custom and Tradition; rather, it is one of Law as

Defendants are basing their power on custom, as according to them, the claimant is a stranger and cannot administer the estate of the deceased.

Submitted that assuming (without conceding) that the customary laws of the Defendants' place are the applicable law to this case, (which is not so), the rights of a widow in her husband's property in customary law have since been settled. Relied on Per Nnamani, J.S.C. in the case of NZEKWU & ORS. V. NZEKWU & ORS. (1989) LPELR-2139 (P. 29, PARAS. c-F) (SC); ANEKWE & ANOR V. NWEKE (2014) LPELR-22697 (P. 42, PARAS. A-F) (SC), and Per Ngwuta, J.S.C. citing with approval, the cases of LEWIS V. BANKOLE (1908) 1 NLR 81; ESHUGBAYI ELEKO V. SECRETARY GOVERNMENT OF SOUTHERN NIGERIA (1931) AC 662; DAWODU V. DIMMOLE (1962) 2 SCNLR 215 held that: "...My noble Lords, the custom pleaded herein, and is a similar custom in some communities wherein a widow is reduced to chattel and part of the husband's estate, constitutes, in my humble view, the height of man's inhumanity to woman, his own mother, the mother of nations, the hand that rocks the cradle. The respondent is not responsible for having only female children. The craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world. Children, male or female, are gifts from the Creator for which the parents should be grateful. The custom of Awka people of Anambra State pleaded and relied on by the appellant is barbaric and takes the Awka Community to the era of cave man. It is

repugnant to natural justice, equity and good conscience and ought to be abolished. ”

Counsel submitted finally that the law is that where, as in this case, a man who marries under the statute dies intestate, his estate is only inheritable by the wife legally married under the Marriage Ordinance or Marriage Act. Relied on ESTHER A. OSHO V. GABRIEL (SUPRA); COLE V. AICINYELE (1960) FSC 84; and in RE WILLIAM WACA 156. See also, Per Abold, J.C.A. MOTOH V. MOTOH (2010) LPELR8643 (PP. 68-69, PARAS. B-C) (CA).

Counsel urged the court to hold that from the Affidavit in support of the Originating Summons and the submissions made, it is without a doubt that the claimant has demonstrated that she merits the reliefs sought and resolve all the questions raised in her favour.

I have read the submissions of the Learned Counsel to the Claimant and the issue for determination is:- “Whether from the facts and circumstances of this case, the Claimant is entitled to the reliefs sought?”

The Claimant in this suit is the administrator of the estate of late Mr. Joel Benjamin who is survived by a child and the Claimant having been granted a letter of administration to administer all personal and real properties of the deceased hence, Claimant filed this suit via an Originating Summons for this Court to interpret the Letter of Administration. The Defendants are brothers and Cousins of the deceased who after the death of Claimant’s husband, tried to get the



death benefits and entitlements from the deceased place of work being Nigerian National Petroleum Corporation (NNPC) but were informed by NNPC that Jofery Joel who is the Claimant's 4year old son is the next-of-kin. Defendants have thereafter taken to threatening the Claimant to handover the deceased properties; Claimant had no option than to rush to Court for interpretation of the Letters of Administration.

It is trite that the purpose of Letters of Administration is for the management and settlement of the estate of an intestate descendant, or a testator who has no executor, by a person legally appointed and supervised by the Court; it involves realizing the movable assets and paying out of them any debts and other claims against the estate.

In this instant case, the Letter of Administration was granted to Jofery Joel who is the lawful Next of Kin of the deceased.

Although Defendants were present in Court all through the proceedings they however chose not to challenge nor controvert the Claimant but in the words of Learned Counsel to Defendants, "chose to submit themselves to the Court's Judgment".

A Defendant who fails to file counter affidavit in response to the averments in support of the Originating Summons would be presumed to have demurred and admitted the facts deposed to in the affidavit filed in support of Originating Summons. See OYEYIPO V OYINLOYE (1987) 1 NWLR (PART 50) 350; IGBOKWE V UDUBI (1992) 3 NWLR (PART 228)

214, INAKOJU V ADELEKE 2005 2 M.J.S.C 1, OMO V J.S.C DELTA STATE (2000) 12 NWLR (PART 628) 444.

The Court in ORISAKWE & SONS LTD. & ANOR V. AFRIBANK PLC.(2012) LPELR-20094(CA) Per OREDOLA, J.C.A. (P. 49-50, paras. D-G) held

*"It is trite and elementary principle of law that a party who fails to file a counter affidavit, reply or further and better affidavit in order to challenge or controvert the depositions in the adverse party's affidavit is deemed to have accepted the facts deposed in the affidavit in question. It is thus established that unchallenged facts in an affidavit are treated as established before the court."*

Also, in L. O. YEMOS (NIG) LTD & ANOR v. UNITY BANK (2016) LPELR-41211(CA) Per ONYEMENAM, J.C.A. (Pp. 29-31, Paras. F-A) held

*"..... This principle has eroded the absolute nature of the principle that once there is failure to file a counter affidavit, the Court is bound to accept the affidavit evidence since equity cannot stand injustice or unfair play. Affidavit evidence is therefore not sacrosanct. The facts deposed to therein is subject to evaluation by the Court to ascertain its veracity, cogency and authenticity."*

The law is also well settled that evidence or averments not denied or challenged are deemed admitted and the court ought ordinarily to act on them; however, going by the principle in the case of L. O. YEMOS (NIG) LTD & ANOR v. UNITY BANK (supra), this Court is bound to evaluate the facts in this case to determine the veracity of the Claimant's case.

Claimant in a nutshell is seeking for an order from this Court declaring claimant as the rightful person to administer the estate of her deceased husband and a further declaration that it is unlawful for Defendants to require Claimant's to vacate her matrimonial home and hand over the estate of her late husband to them as same constitutes a breach of the Letter of Administration.

Claimant is further seeking an order of injunction, restraining the Defendants from interfering with the management of the estate of the deceased.

Attached is a copy of the Letter of Administration marked Exhibit ALC3, same having been issued on the 22<sup>nd</sup> day of March 2018. I have carefully scrutinized the said letter of administration issued by the probate division of this Court with Ref No: FCT/HC/PM/815/2018 duly signed by the Probate Registrar and the Hon. Chief Judge of the High Court of the FCT and I find that the Letter of Administration was granted to the Claimant "TAWALI SARAH JOEL as guardian to JOFERY JOEL, who are both the lawful widow and son of the deceased. The said Letter of Administration is to administer the following:-

- (a) Money in the Bank with Access Bank PLC with Account number: 0727010355 and Account No: 0038306826; With First Bank of Nigeria PLC-Account No: 3090743200.
- (b) The death benefit/entitlement of the deceased with NNPC Towers, Herbert Macaulay Way, Garki, Abuja.

It is worthy to note that **nowhere in the Letter of Administration does it give Applicant the powers to administer the real estate of the deceased**, hence, a Letter of Administration to administer the personal property of the deceased as in this case, money in the bank and death benefit/entitlement due to the deceased in his former place of work at NNPC cannot be construed and interpreted to cover the real estate of the deceased to wit; matrimonial house and other landed properties of the deceased. See *AYA VS. NKANU & ANOR (2015) LPELR-40286(CA) PP.17-18*; Paras B-E, where OTISI J.C.A held

*“it is noteworthy that the letters of administration granted in this case did not cover the administration of the real estate of the deceased”*

See *UGU VS. TABI (1997) LPELR-3324 (SC)*. The main issue in this case was whether the Respondent therein, who was granted Letters of Administration limited only to personal property of the deceased could administer the real property of the deceased as well. The Supreme Court held Per BELGORE J.S.C (as he then was) that

*“a grant of letters of administration in respect of personal estate does not cover the administration of the real property of the intestate”.*

In his concurring opinion, OGWUEGBU JSC said

*“An application for a grant of letters of administration may be in respect only of the real estate or of the personal estate of the deceased person. It is therefore unlawful where the grant is limited to personal estate for the administrator, such as the Plaintiff herein to intermeddle with the real estate of Patrick Bissong Tanyi.....”*

The Claimant is obviously of the mistaken belief that the Letter of Administration entrusts the powers to administer both the real and personal estate of her deceased husband contrary to the inventory schedule in the Letter of Administration, which gives Claimant the right to administer the personal estate of her husband to wit; money in the bank and the entitlement of her deceased husband at NNPC as spelt out in the Letter of Administration.

The question that arises at this stage is whether Claimant having married to the deceased under the Marriage Act is entitled to administer the real estate and personal estate of her deceased husband.

To qualify under the English Law, the nature of marriage celebrated by the deceased determine to a large extent the way and manner his

property/estate will be shared. Claimant in this suit contracted her marriage to the deceased under the Marriage Act as exhibited by the Marriage Certificate attached as Exhibit ACL1, hence, the English Common Law would govern the distribution of his estate and the law governing marriage under the Act is clear as beneficiaries are strictly the children and wives/husband of the deceased.

In the case of WILLIAMS VS. OGUNDIPE (2006) 11 NWLR Pt.990 pg.157, the deceased who died intestate was married under the Marriage Act, the Court held that the surviving spouse and children should take priority having exclusive rights to the estate of the deceased not minding that the deceased brothers and mother had commenced an application for a grant of Letter of Administration, the Court held that they were not entitled to any interest in the estate of the deceased.

From the above, I am of the view and so hold that under the Marriage Act, the Claimant has exclusive rights to the deceased movable and immovable property.

From the above, I therefore hold as follows:-

On Prayer 1 in the Originating Summons, which is a declaration that by virtue of the Letter of Administration dated 22/3/2018, granted to the Claimant as guardian to Master Jofery Joel, the Claimant is the rightful person to administer the estate of Late Joel Benjamin. This prayer succeeds to the extent of the Letter of Administration, which only

entitles Claimant to administer the monies in the bank and the death benefit/entitlement from NNPC.

On Prayer 2, which is a declaration by the Court that the Defendants have no vires to claim and interfere with the administration of the estate of late Joel Benjamin by the Claimant. This prayer succeeds and it is hereby declared that the Defendants have no vires to Claim or interfere with the administration of the estate of late Joel Benjamin by the Claimant in view of the law governing the Marriage Act under which Claimant and deceased husband got married.

On Prayer 3, which is a declaration by this Court that the conduct of the Defendants requiring the Claimant to vacate her Matrimonial Home and hand over the estate of her late husband to them is unlawful and constitutes a breach of the letters of administration. This prayer succeeds to the extent that the conduct of the Defendants, requiring the Claimant to vacate her Matrimonial Home and handover the estate of her deceased husband is unlawful, as the Claimant and Master Jofery Joel are the direct beneficiaries of the estate of late Joel Benjamin under the English Common Law by virtue of the Claimant's marriage under the Marriage Act, however, it contradicts the Letter of Administration as the Letter of Administration does not include the real estate of the Claimant's late husband.

On Prayer 4, which is an order of injunction restraining the Defendants from interfering with the management of the estate of the deceased. This

prayer fails for the following reasons:- Claimant by prayer 4 is seeking a mandatory injunction. The essence of an injunction is to protect existing legal rights of a person from unlawful invasion by another, but it is the law that an Applicant coming for a mandatory injunction such as this, must come with clean hands, as a mandatory injunction is an equitable remedy and Claimant in this case is asking for an injunction wielding a two faced sword; one of the sword is that the letter of administration empowers her to handle her late husband's estate in general which includes both real and personal estate and the other side of the sword is that she is entitled to administer her husband's real estate under the Marriage Act. Grounds for seeking an injunction before a Court of law should not be hazy and sketchy. An order for injunction can only succeed based on contradictory and clear evidence with the highest standard of proof but claimant's counsel in his argument has failed to so prove. See NDIC VS. SAVANNAH BANK OF NIGERIA PLC (2003) 1 NWLR (PT.801) Pg. 311; OHAKIM VS. AGBASO (2010) 6-7 Pg. 85 @ 131.

On the whole I hereby order as follows:

1.

I hereby declare that by virtue of the Letter of Administration dated 22/3/2018, granted to the Claimant as guardian to Master Jofery Joel, the Claimant is the rightful person to administer the estate of Late Joel Benjamin to administer the monies in the bank and the death benefit/entitlement from NNPC.



2.

I hereby declare that the Defendants have no vires to Claim or interfere with the Administration of the Estate of late Joel Benjamin by the Claimant in view of the law governing the Marriage Act under which Claimant and her deceased husband got married.

3. I hereby declare that the conduct of the Defendants requiring the Claimant to vacate her matrimonial home and hand over the estate of her late Husband to them is unlawful under the English Common Law, which governs the marriage of the Claimant.

Parties: Parties present.

Appearances: A. A. Akaah, Esq., for the Claimant. E. A. Davat (Mrs.) for the Defendants.

**HON. JUSTICE M. R. OSHO-ADEBIYI**

**JUDGE**

**3<sup>rd</sup> JULY, 2019**