

~~17/1/54~~

*Muguna*

*J. ment*  
**24**, 1954

IN THE PRIVY COUNCIL

No. 19 of 1953

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

IN THE MATTER OF THE ESTATE OF  
JOHN ST. MATTHEW DANIEL Deceased

BETWEEN

MATTHEW OLAJIDE BAMGBOSE Appellant

- and -

JOHN BANKOLE DANIEL and  
11 Others

- and -

THE ADMINISTRATOR GENERAL Respondents

RECORD OF PROCEEDINGS

REXWORTHY, BONSER & WADKIN,  
83, Cowcross Street, E.C.1.  
Solicitors for the Appellant.

HATCHETT JONES & CO.,  
110, Fenchurch Street, E.C.3.  
Solicitors for the 2nd to 12th  
Respondents.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

IN THE MATTER OF THE ESTATE OF  
JOHN ST. MATTHEW DANIEL, Deceased

BETWEEN

MATTHEW OLAJIDE BAMGBOSE ... Appellant

- and -

1. JOHN BANKOLE DANIEL
2. MRS. FEYISHITAN BAMBOYE
3. MRS. ABIMBOLA OLADUMIYE
4. CRISPINAH DANIEL
5. OLABODE DANIEL ) By their guardian and next friend
6. MOBOLAJI DANIEL ) Muniratu Ayinke Ajibola.
7. ABIODUN DANIEL By his guardian and next friend  
Janet Clay.
8. OLAYINKA DANIEL ) By their guardian and next friend
9. ADEYANJU DANIEL ) Sabiyitu Adamo.
10. ADEYEMI DANIEL By his guardian and next friend  
Rebecca Layinka.
11. KOLAPO DANIEL By his guardian and next friend  
S.A.Lewis.
12. OLAYIWOLA DANIEL By his guardian and next friend  
Nusiratu Oshodi.

**37665**

- and -

THE ADMINISTRATOR GENERAL ... Respondents

UNIVERSITY OF LONDON  
W.C.1.

23 FEB 1955

INSTITUTE OF ADVANCED  
LEGAL STUDIES

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF NIGERIA</u>		
1	Motion and Affidavit in Support for an Order to distribute estate of J. St. Matthew Daniel deceased	19th January 1950	1
2	Hearing of Motion	24th January 1950	4
3	Affidavit of Administrator-General	27th January 1950	5

No.	Description of Document	Date	Page
4	Counter Affidavit of M.Olajide Bamgbose	30th January 1950	7
5	Hearing of Motion resumed	31st January 1950	9
6	Motion and Affidavit in Support to vary the terms of the Order dated 31.1.50.	4th February 1950	11
7	Hearing of Motion resumed	7th February 1950	12
8	Decision on Motion for Order for Distribution	14th February 1950	13
9	Court Notes	14th February 1950	21
10	Motion and Affidavit in Support for Conditional Leave to Appeal	17th February 1950	22
11	Hearing of Motion	21st and 28th February 1950	23
12	Decision on Motion	28th February 1950	25
13	Motion and Affidavit in Support for Conditional Leave to Appeal from Decision dated 28.2.50.	28th February 1950	26
14	Hearing of Motion	7th and 10th March, 1950	27
<u>IN THE WEST AFRICAN COURT OF APPEAL</u>			
15	Grounds of Appeal	20th March 1950	29
<u>IN THE SUPREME COURT OF NIGERIA</u>			
16	Hearing of Motion	27th December 1950 & 9th January 1951	29
17	Motion and Affidavit in Support for distribution of real estate	25th April 1951	32
18	Motion and Affidavit in Support for distribution of personal estate	25th April 1951	36
19	Motion and Affidavit in Support to suspend distribution	30th April 1951	39

No.	Description of Document	Date	Page
20	Hearing of Motions	8th May 1951	41
21	Motion and Affidavit in support to cancel Order made ex parte	16th May 1951	42
22	Hearing of Motions and Rulings	17th May 1951	44
23	Order for distribution	17th May 1951	49
<u>IN THE WEST AFRICAN COURT OF APPEAL</u>			
24	Notice and Grounds of Appeal	28th May 1951	50
<u>IN THE SUPREME COURT OF NIGERIA</u>			
25	Motion and Affidavit in Support to stay execution of Order for Distribution	28th May 1951	53
26	Motion and Affidavit in Support for Leave to Appeal against Order dated 19.4.51.	28th May 1951	55
27	Hearing of Motions	1st June 1951	57
28	Order for stay of execution	1st June 1951	63
29	Hearing of application for further stay	14th January 1952	64
<u>IN THE WEST AFRICAN COURT OF APPEAL</u>			
30	Motion and Affidavit in Support for stay of execution of Order for Distribution	8th February 1952	65
31	Hearing of Motion	19th February 1952	68
32	Counter Affidavit of Abimbola Olodunjoye	15th April 1952	68
33	Further Hearing of Motion	15th April 1952	70
34	Hearing of Appeal against Order for Distribution	20th May 1952	72
35	Hearing of Appeal against decision dated 28.2.50	20th May 1952	77

No.	Description of Document	Date	Page
36	Resumed Hearing of Appeal against Order for Distribution	21st May 1952	77
37	Judgment	2nd June 1952	80
38	Order on Judgment	2nd June 1952	87
39	Order granting Final Leave to Appeal to Privy Council	6th October 1952	88

E X H I B I T S.

Description of Document	Page
Exhibit "A" referred to in the Affidavit of J.B. Daniel dated 20th January 1950	90
Exhibit "A" referred to in the Affidavit of M.O. Bangbose dated 1st May 1951	92

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT PRINTED

Description of Document	Date
<u>IN THE SUPREME COURT OF NIGERIA</u>	
Order granting Conditional Leave to Appeal	10th March 1950
Motion and Affidavit in Support for Final Leave to Appeal	March 1950
Notice of Appeal	15th March 1950
Hearing of Motion for Final Leave to Appeal	20th March 1950
Order granting Final Leave to Appeal	20th March 1950
Notice of Conditions of Appeal	9th June 1951
Affidavits of Means of Sureties	7th July 1951

Description of Document	Date
Bond for Costs on Appeal	7th July 1951
Settling Record of Appeal	3rd August 1951
Registrar's Certificate of fulfilment of Conditions imposed	7th September 1951
Registrar's Certificates as to Service of Notices of Appeal	5th May 1951
<u>IN THE WEST AFRICAN COURT OF APPEAL</u>	
Judgment Read; Appeal allowed with Directions	2nd June 1952
Notice of Motion and Affidavit in Support for Conditional Leave to Appeal to the Privy Council	6th June 1952
Hearing of Motion	1st July 1952
Further Affidavit in Support	4th July 1952
Resumed Hearing of Motion	10th & 11th July 1952
Ruling on Motion	14th July 1952
Order granting Conditional Leave to Appeal to Privy Council	14th July 1952
Motion and Affidavit in Support for an Order to reverse Order of Mr. Justice de Comarmond sitting as a single Judge of the Court	31st July 1952
Affidavit of Means of Sureties	5th August 1952
Bond for costs on appeal	5th August 1952
Notice of fulfilment of conditions	5th September 1952
Motion and Affidavit in Support for Final Leave to Appeal	6th September 1952
Hearing of Motions	6th October 1952
Order dismissing Motion to reverse Order of Mr. Justice de Comarmond.	6th October 1952



In the Supreme Court of Nigeria.

No. 1.

Motion and Affidavit in Support for an Order to distribute estate of J.St.Matthew Daniel, deceased  
19th January, 1950 -  
continued.

the Administrator-General do proceed to distribute the estate of the above-named deceased to the applicants and for such further or other orders as this Honourable Court may deem fit to make

Dated at Lagos this 19th day of January, 1950.

(Sgd.) THOMAS WILLIAMS & KAYODE.

Applicants' Solicitors.

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.  
(PROBATE)

10

(Title as in No. 1)

A F F I D A V I T

I, JOHN BANKOLE DANIEL, British Subject and Clerk of 32, Ikoyi Road, Lagos, do make oath and say as follows :-

(1) That I am one of the applicants in the above matter and the eldest child of the late John St. Matthew Daniel.

(2) That all the other applicants are also children of the late John St. Matthew Daniel.

20

(3) That Mrs. Feyishitan Bangboye, Mrs. Abimbola Oladumiye, Crispinah Daniel and myself are all sui juris whilst the remaining applicants are minors.

(4) That we are all issues of the late John St. Matthew Daniel through his wives whom he married under native law and custom.

(5) That the value of the estate left by the deceased is to the best of my knowledge, information and belief worth about £100,000

30

(6) That the Respondent has been appointed by this Honourable Court as the Administrator of the said estate.

(7) That the said Respondent has since his said



appointment paid the sum of £1,000 to each of the first four Applicants, that is to say, Mrs. Feyishitan Bamgboye, Mrs. Abimbola Gladumiye. Crispinah Daniel and myself.

In the Supreme Court of Nigeria.

No. 1.

(8a) That on the 25th day of January, 1949, this Honourable Court made an order in the following terms: -

Motion and Affidavit in Support for an Order to distribute estate of J. St. Matthew Daniel, deceased

10

"IT IS ORDERED that the Administrator-General be and is hereby authorised to pay out of the estate of JOHN SAINT MATHEW DANIEL, deceased, all bills and other expenses incurred in connection with the education of EMANUEL OLABODE DANIEL, JULIUS MOBOLAJI DANIEL, PAULINUS ABIODUN DANIEL, FRANCISCA ADEYANJU DANIEL, CYPRIAN ADEYEMI DANIEL, FRANCIS KOLAPO DANIEL and OLAYIWOLA DANIEL, the seven minor children of the said deceased who are still attending school."

19th January, 1950 -

continued.

(8b) That the said order is being complied with up to date by the Respondent.

20

(9) That the said Crispinah Daniel has been sent to England for further training out of the funds of the estate and she is being maintained there by the Respondent.

(10) That on or about the 6th day of July, 1949 one Matthew Olajide Bamgbose brought a petition in this Honourable Court purporting to be made under the Legitimacy Ordinance and made in the name of one Pedro St. Matthew Daniel, deceased

30

(11) That the Respondent because of the said petition refused to proceed further with the distribution of the estate except in so far as compliance with the order set out in paragraph 8a is concerned.

(12) That the said petition has now been struck out by an order made by this Court on 16th January, 1950 and in spite of this the Respondent still refuses to proceed with the distribution of the said property.

40

(13) That a certified copy of the order of Court referred to in paragraph 12 above is attached

In the Supreme Court of Nigeria.

herewith and marked Exhibit "A".

(Sgd.) J. B. DANIEL.

Deponent.

No. 1.

Motion and Affidavit in Support for an Order to distribute estate of J. St. Matthew Daniel, deceased 19th January, 1950 - continued.

SWORN to at the Supreme Court Registry, Lagos this 20th day of January, 1950.

Before me,

(Sgd.) D. SAGIEDE ODIGIE

Commissioner for Oaths

No. 2.

Hearing of Motion.

24th January, 1950.

No. 2.

HEARING OF MOTION

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 24th DAY OF JANUARY, 1950,  
BEFORE HIS HONOUR,  
VAHE ROBERT BAIRAMIAN, ESQ..  
PUISNE JUDGE

SUIT NO. AG.29.

IN THE MATTER OF THE ESTATE  
OF JOHN ST. MATTHEW DANIEL (DECD.)

IN RE BOLAJI DANIEL.

MR.F.R.A.WILLIAMS with Mr. Kayode for motion for order on Administrator-General to distribute assets.

ADMINISTRATOR-GENERAL. An interim distribution can be made with funds in hand if Court is satisfied these are the people to pay. I refused with the possibility of an illegitimacy petition in the offing, but otherwise I have no objection. The applicants are the next of kin on Statutory declaration of 24/8/48. and the other claim is

10

20

30

Bangbose, who, unless legitimated, would appear not to have a claim otherwise. I gather he is starting again about legitimation, the previous one having been struck out. Maintenance is being paid.

MR. WILLIAMS: I will serve Bangbose with notice of the motion.

Adjourned to 31st January.

(Sgd.) V.R. BAIRAMIAN, J.

10 As for the other motion of 24 November it is adjourned to 31st January.

(Intld.) V.R.B.

In the Supreme Court of Nigeria.

No. 2.

Hearing of Motion.

24th January, 1950 - continued.

No. 3.

AFFIDAVIT OF ADMINISTRATOR-GENERAL

AG.29.

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.

IN THE MATTER OF THE ESTATE OF  
JOHN ST. MATTHEW DANIEL, Deceased.

No. 3.

Affidavit of Administrator-General.

27th January 1950.

20 I, HEDLEY HERBERT MARSHALL, Acting Administrator-General of Nigeria make oath and say as follows :-

1. That John St. Matthew Daniel late of No. 12, Bangbose Street, Lagos, died at Lagos on the 25th day of April, 1948, Intestate.

2. That by an Order of this Honourable Court made on the 1st day of February, 1949, I was appointed Administrator of the estate of the said John St. Matthew Daniel, deceased.

30 3. That the said John St. Matthew Daniel was the issue of a marriage under the Marriage Ordinance celebrated between Matthew Joaquim Daniel and Maria Theresa Daniel, both deceased, at the

In the Supreme Court of Nigeria.

Wesleyan Methodist Church Tinubu Lagos on the 28th day of September, 1890.

No. 3.

Affidavit of Administrator-General.

27th January, 1950 -

continued.

4. That the said John St. Matthew Daniel was not married under the Marriage Ordinance but had nine wives by native law and custom and is survived by twelve children by eight of the said wives, viz: (1) John Bankole (2) Felicia Feyisitan (3) Theodora Abimbola (4) Crispinah Omodebayo (5) Olayinka (6) Julius Mobolaji (7) Paulinus Abiodun (8) Olabode (9) Francisca Adeyanju (10) Cyprian Adeyemi (11) Francis Kolapo and (12) Olayiwola.

10

5. That the first four children are of full age, that the fifth is a female and married and the remaining seven children are minors.

6. That the estate of the said deceased is still under administration.

7. That natural children of the deceased claim to be entitled to the whole of the estate in accordance with Native Law and Custom.

8. That I require the directions of this Honourable Court as to the distribution of the balance remaining in the estate after completion of administration.

20

(Sgd.) H.H.MARSHALL,  
Ag: Administrator-General.

SWORN at the Probate Registry,  
Lagos this 27th day of January,  
1950.

Before me,  
(Sgd.) F. SOGUNRO,  
Commissioner for Oaths.

30

No. 4.

COUNTER AFFIDAVIT OF M. OLAJIDE BAMGBOSE.

In the Supreme Court of Nigeria.

IN THE SUPREME COURT OF NIGERIA  
IN THE SUPREME COURT OF THE  
LAGOS JUDICIAL DIVISION-PROBATE

No. 4.

SUIT NO. P. 6964

Counter Affidavit of M. Olajide Bamgbose.

(Title as in No. 1)

30th January, 1950.

COUNTER AFFIDAVIT

10 I, MATTHEW OLAJIDE BAMGBOSE (formerly Daniel) Yoruba, Clerk, of No. 64, Tokunboh Street, Lagos, in Nigeria make oath and say as follows :-

1. That I have been served with a copy of the notice of motion in this cause and I am the person referred to in paragraph 10 of the affidavit of the first applicant herein sworn on the 20th day of January, 1950.

20 2. That the late John St. Matthew Daniel was the issue of a marriage under the Marriage Ordinance in that his parents Theresa Maria and Matthew Joaquim Daniel were lawfully married to one another on the 28th day of September, 1890 in the Wesleyan Methodist Church, Tinubu Square, Lagos, and he was born in this marriage on the 30th day of March, 1891.

3. That I have been informed by my Solicitors and I verily believe same to be true that the estate of the deceased is subject to Section 36 of the Marriage Ordinance, Cap.128 (re-enacting sec. 41 of the Marriage Ordinance 1884).

30 4. That I am a nephew of the deceased intestate John St. Matthew Daniel, my father Pedro St. Matthew Daniel being the elder brother of the deceased intestate born by the same parents on the 20th day of October, 1884 and dying on the 29th day of June, 1936.

5. That my father was legitimated by the Legitimacy Ordinance, Cap.III (i.e. Legitimacy Ordinance

In the Supreme Court of Nigeria.

No. 4.  
Counter Affidavit of M. Olajide Bamgbose.  
30th January, 1950 -  
continued.

1929) and I thereby became the legitimated nephew of the deceased intestate and therefore his heir and next-of-kin.

6. That I intend presently to present a new petition to this Honourable Court asking for a declaration in accordance with Sec.4 of the Legitimacy Ordinance.

7. That I have been informed by my Solicitors and I verily believe same to be true that pending the determination of my petition by this Court the estate of the deceased intestate is subject to the provisions of sec.41 of the Administrator-General's Ordinance.

8. That to the best of my information knowledge and belief the Administrator-General has not yet completed the administration of the estate of the intestate nor has he published in the gazette any notice relating to the completion of the administration of the said estate, as required by law.

(Sgd.) M. OLAJIDE BAMGBOSE.  
Deponent.

10

20

SWORN TO AT THE SUPREME COURT  
REGISTRY LAGOS, THIS 30th DAY  
OF JANUARY, 1950.

Before me,  
(Sgd.) D. SAGIEDE ODIGIE,  
Commissioner for Oaths.

---

No. 5.

HEARING OF MOTION RESUMED.

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 31st DAY OF JANUARY, 1950.  
BEFORE HIS HONOUR  
VANE ROBERT BAIRAMIAN, Esq.,  
PUISNE JUDGE.

IN THE MATTER OF THE ESTATE OF  
JOHN ST. MATTHEW DANIEL (Deceased)

AG.29.

In the Supreme  
Court of  
Nigeria.

No. 5.

Hearing of  
Motion resumed.

31st January  
1950.

10

MR.F.R.A.WILLIAMS moving for interim distribution  
date 19.1.50 of motion.

MR. MARSHALL Ag: Administrator-General.

MR. H. O. DAVIES with G.B.A. COKER on notice.

MR. F.R.A.WILLIAMS: See M.O.Bamgbose's affidavit  
of 30.1.50.

Even if he succeeds in having his father Pedro  
declared legitimated, he cannot take any share  
from St. Matthew Daniel's Estate. See R.36(1)  
para.2 above proviso cap.128.

20

It is not disputed in counter-affidavit that  
mothers of applicants were married to deceased  
St. Matthew under native law and custom. John  
and Pedro are brothers. Their father Joachim  
made a Xtian marriage. Pedro was born out of  
wedlock, John in wedlock. John -

s.36(1) may mean (a) the law in England on  
distribution of personal estates of intestate,  
or (b) such law including rules of Priv. Inter-  
national law.

30

On (a) Law in England recognises a marriage  
under native law and custom for purposes of  
distribution. In re Wodman's Trusts, 17 Ch.D.  
p.266 Cotton, L.J. at p.292.

1st. Edition Halsbury Volume II, p.19, sec-  
tion 37, r.4.

In the Supreme  
Court of  
Nigeria.

On (b) Cheshire Priv. International Law  
p.513 (2nd. edition).

No. 5.

Hearing of  
Motion resumed.

31st January,  
1950 -  
continued.

MR. H. O. DAVIES: Section 36: 7 W.A.C.A. 156 Estate of Fred. Akinola Shanu. They are not entitled if Pedro is legitimate. s. 41 Administrator-General's Ordinance. A legitimation petition is being filed - tomorrow perhaps.

MR. MARSHALL: s.41 applies where we don't know next-of-kin. Mr. Munis and Mr. Augusto had lodged caveat: they claim as collaterals under Marriage Ordinance. On s.36 of Marriage Ordinance accepted rule as in 7 W.A.C.A.156. Notice should be given to Mr. Munis's and Mr. Augusto's clients. 10

MR. WILLIAMS: Mr. Munis's and Mr. Augusto's clients - I see no reason why they should be given notice. These people are children according to English Law - I am not claiming under native law and custom. State a case. As regards distribution apply English law. Native law as regards marriage. 20

COURT: 1. Messrs. Augusto and Munis may apply to be joined as respondents, they may be so informed by Administrator-General.

2. M.O. Bamgboshe is given seven days within which to file and serve his petition for Pedro to be declared legitimated.

3. A decision on meaning of s. 36 (1) para. 2 desired.

Adjourned to Tuesday 14th. 30

(Sgd.) V.R. BAIRAMIAN J.

Other motion to pay £2,000 on education deferred to 14th February.

(Intld.) V.R.B. J.



11.

No. 6.

MOTION AND AFFIDAVIT IN SUPPORT TO VARY  
THE TERMS OF THE ORDER DATED 31.1.50.

In the Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.  
PROBATE

No. 6.

SUIT NO.P.6964

Motion and  
Affidavit in  
Support to  
vary the terms  
of the Order  
dated 31.1.50.

IN RE JOHN BANKOLE DANIEL & 11 OTHERS

Applicants

- and -

4th February,  
1950.

10

THE ADMINISTRATOR GENERAL

Respondent

MATTHEW OLAJIDE BANGBOSE

2nd Respondent

NOTICE ON MOTION

TAKE NOTICE that this Honourable Court will be moved on TUESDAY, the 7th day of February, 1950 at the hour of 9 o'clock in the forenoon, or so soon thereafter as Counsel on behalf of the above named 2nd Respondent can be heard for an order varying the terms of an order of this Court made on the 31st day of January, 1950 relating to the filing of his Legitimacy petition and/or otherwise giving him further directions with regards to the filing thereof and for such further order or orders as the Court may deem fit to make in the circumstances.

20

Dated at Lagos this 4th day of February, 1950.

(Sgd.) G.B.A.COKER.

Solicitor to 2nd Respondent.

On notice to the 1. The applicants.

2. The Administrator-General.

30

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.  
(PROBATE)

(Title as in No. 6)

AFFIDAVIT IN SUPPORT OF MOTION.

I, MATTHEW OLAJIDE BANGBOSE, Yoruba, Clerk, of No. 64, Bamgbose Street, Lagos, in Nigeria, make oath and say as follows :-

In the Supreme Court of Nigeria.

No. 6.

Motion and Affidavit in Support to vary the terms of the Order dated 31.1.50. 4th February, 1950 - continued.

(1) That I am a Respondent to the motion filed in the above-named cause.

(2) That on the 31st day of January, 1950 this Honourable Court made an Order to the effect that I should file my petition for declaration of legitimacy within seven days from the date of the making of the said order.

(3) That this petition is ready now and I have deposited a copy of same in the Supreme Court Registry and also a copy to the Attorney-General.

(4) That I have been informed by my Solicitors and I verily believe same that owing to the provisions of Order 47 Rule 9 of the Rules of the Supreme Court, I cannot file this petition until I shall have deposited same with the Attorney-General for at least two months.

(5) That in view of this provision it would be impossible for me to comply strictly with the terms of the order made by this Honourable Court.

(Sgd.) M.OLAJIDE BAMGBOSE, Deponent.

10

20

SWORN TO AT THE SUPREME COURT REGISTRY, LAGOS, this 6th day of FEBRUARY, 1950.

Before me, (Sgd.) D.SAGIEDE ODIGIE, Commissioner for Oaths.

No. 7.

Hearing of Motion resumed. 7th February, 1950.

No. 7.

HEARING OF MOTION RESUMED.

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 7th DAY OF FEBRUARY, 1950.  
BEFORE HIS HONOUR, VAHE ROBERT BAIRAMIAN, Esq.  
PUISNE JUDGE.

AG.29.

IN RE ESTATE OF JOHN ST. MATTHEW DANIEL, (Decd.)

MR. G.B.A. COKER moving for Bamgboshe.

MR. KAYODE on notice appearing also for Mr. F.R.A.

WILLIAMS (for the children by the native marriage) and MR.A.O.THOMAS - various groups.

In the Supreme Court of Nigeria.

MR.G.B.A.COKER: Mr. Marshall, Ag. Administrator-General, has asked me to say he is not opposing. 31.1.50. Court made an order para. 2 on p. 10 ante - that Bamgboshe should file his legitimacy Petition within 7 days. Under Supreme Court Rules Order 47, r.9(1) we must first lodge petition with A.G. 2 months before we can file in Court.

No. 7.  
Hearing of Motion resumed. 7th February, 1950 - continued.

10

MR.KAYODE. The Court cannot extend the time; but I'll get fresh instructions.

Adjourned to 14th February, 1950.

(Sgd.) V.R.BAIRAMIAN. J.

No. 8.

No. 8.

DECISION ON MOTION FOR ORDER FOR DISTRIBUTION.

Decision on Motion for Order for distribution.

IN THE SUPREME COURT OF NIGERIA  
LAGOS JUDICIAL DIVISION  
TUESDAY THE 14TH DAY OF FEBRUARY, 1950,  
BEFORE HIS HONOUR  
VAHE ROBERT BAIRAMIAN, ESQUIRE,  
PUISNE JUDGE

14th February 1950.

20

(Title as in No. 6)

DECISION

This is an application dated 19th January, 1950, that an order be made directing the Administrator-General to proceed with the distribution of the estate of the deceased. It is said to be worth £100,000, so it was bound to give birth to a good deal of trouble.

30

The trouble at the moment arises in this way. The deceased was a child of Theresa Maria and Matthew Jauquim Daniel, who married in Church on 28 September, 1890; the deceased was born to them on 30 March, 1891, and died intestate on 25 April, 1948.

In the Supreme  
Court of  
Nigeria.

-----  
No. 8.

Decision on  
Motion for  
Order for  
distribution.

14th February  
1950 - .

continued.

The applicants claim to be the children of the deceased John, begotten by him of wives whom, they claim he married under native law and custom. The respondent is one Matthew Olajide Bamgbose, who claims to be the son of Pedro, a child of Theresa Maria and Matthew Joaquim Daniel: Pedro, he says, was born on 20 October 1884, and died on 29 June, 1936: in other words Pedro was an illegitimate elder brother of John the deceased. whose estate falls to be distributed. Bamgbose claims that his father Pedro became legitimate by the Legitimacy Ordinance, 1929, Cap.III; he is in the course of presenting a petition to have him declared legitimated. He also claims that the distribution of the deceased John's estate is governed by section 36 of the Marriage Ordinance Cap.128.

10

It is to be noted that in his counter-affidavit of 30 January, 1950, the respondent (Bamgbose) does not deny the statement made in paragraph 4 of the affidavit made by one of the applicants that the deceased John married his numerous wives under native law and custom. The respondent's Counsel opposed the application on the footing that the applicants were children of the deceased John by wives whom he so married.

20

It is also to be noted that applicants' Counsel stated in his argument that Pedro was a brother of John's but was born out of wedlock, and that their father Joaquim made a Christian Marriage, of which John was born. He argued on the basis that even if the respondent succeeded in having Pedro declared legitimate, he, the respondent, could not take any share from John's estate.

30

Both sides argued on the basis that the distribution of John's estate was governed by section 36 of the Marriage Ordinance. This Ordinance provides for a monogamous union which may be entered into by a man and a woman neither of whom is married to another person, be it by native law and custom: See proviso (d) to Section 11(1). By native custom a man may marry more than one wife. The Marriage Ordinance does not affect the validity of a polygamous form of marriage: See section 35; all it does is to provide a monogamous form of marriage for those who wish to have it; but those who marry monogamously have to give up the custom of polygamy, at any rate so long as the monogamous union

40

endures. Often enough a man and a woman who have been married by native custom marry under the Marriage Ordinance, which they are allowed to do. It gives the wife greater security as divorce thereafter is governed by English law; and rivals are excluded besides.

In the Supreme Court of Nigeria.

-----  
No. 8.

Decision on Motion for Order for distribution.

14th February 1950 -

continued.

10 The validity of a marriage by native custom, which may be referred to as a polygamous union, imports that children born of that union are legitimate, being children born in wedlock. It is to be observed that the Legitimacy Ordinance, 1929, Cap. III, legitimates children born out of wedlock. It does not seem to apply to children born of a polygamous union, presumably because they are legitimate already. It is possible to have a case like this: a man may begin living with a woman without marrying her in any form and have a child with her - an illegitimate child; he may then marry her by native custom - a polygamous union - and have another child with her; he may later marry her under the Marriage Ordinance - a monogamous union - and have a third child with her. The monogamous union legitimises the first illegitimate born child. When the man dies, the illegitimate-born, now legitimate, is entitled to share in his estate with his children, according to section 5 of the Legitimacy Ordinance, which may be taken to mean both the child of the polygamous union and the one born of the monogamous union, in the Protectorate at any rate, where the succession is governed by native law and custom. In the Colony, where the succession is, according to section 36 of the Marriage Ordinance, governed by the English law, it would seem that the first child would share with the last child, and the question is whether the second child would also share. If I am right in thinking that the Legitimacy Ordinance does not purport to affect the second child, then on the argument for the respondent the second child would be excluded from the succession. This would be a very odd result indeed: the illegitimate-born would share, the lawful-born would not.

20

30

40

Section 36 of the Marriage Ordinance provides that, save where its provisions would result in an escheat to the Crown, what may be called the disposable property of a person dying intestate shall be distributed in accordance with the English law of distribution in two cases -

In the Supreme  
Court of  
Nigeria.

No. 8.

Decision on  
Motion for  
Order for  
distribution.

14th February  
1950 -

continued.

children. This is an attractive interpretation which avoids all difficulties. He bases it on the decision in In re Goodman's Trusts (1881), 17 Ch.D. Goodman's Trusts reminds me of a Cyprus case decided on appeal in the Privy Council - Parapano V. Happas, 1894, A.C. In that case there was a child born out of wedlock, and the parents married later. According to the canon law of the community to which they belonged the child ranked as legitimate per subsequens matrimonium. The Cyprus statute law provided for devolution on the legitimate children of the deceased. The Privy Council decided that that did not mean legitimate in the eyes of English law as born in lawful wedlock, but legitimate in the eyes of the community to which the deceased belonged, and gave judgment in favour of the child as being legitimate. I should here observe that the Cyprus case was affected by consideration peculiar to the Ottoman Empire and the treatment promised to its Christian subjects. That case does not automatically mean that the children of a polygamous union should be regarded as legitimate; but it goes far towards encouraging one to believe that in a colony the test of legitimacy is not the English test, but those children are to be regarded as legitimate who are so regarded in the colony itself, and that if one has, under the rule applicable to the case, to distribute property amongst the children of a deceased persons, then one should include as members of that class all those persons who rank as his legitimate children - which in Nigeria would entitle children born of a polygamous union to share with children born of a monogamous one and the illegitimate ones thereby legitimated.

10

20

30

There is an instructive discussion on the question whether the children of a polygamous union are to be recognised as legitimate in England, at pp.380-383 of Cheshire's Private International Law, 2nd ed. The indications are that whilst the wife's position as a wife might not be recognised, the legitimacy of the children might be - rather should I say, would be, if they ranked as legitimate at their birth having regard to the domicile of origin. The learned author mentions a consent order In the Estate of Belshah - a case of polygamy. It was referred to in 48 L.Q. Review for July, 1932, with an observation that had the Court thought the children's status could not be recognised,

40

the Treasury Solicitor might have stepped in to claim the estate as bona vacantia. The learned author winds up his discussion of the subject as follows :-

"All that can be said is that at present it is impossible to answer the question whether the children of a polygamous union can be considered as born in lawful wedlock where the English test of legitimacy is applicable."

In the Supreme Court of Nigeria.

No. 8.

Decision on Motion for Order for distribution.

14th February 1950 -

continued.

10 The difficulty there seems to lie in the possible view that the question of legitimacy is linked with the question of the legality of the marriage. That difficulty which might be felt in England would not be felt here where a polygamous union is recognised as a valid marriage.

20 Section 36(1) provides that the English law of distribution shall be adopted, "any native law or custom to the contrary notwithstanding". These words presumably mean "in spite of the fact that native law or custom may require that the property be distributed in another way yielding other results". For example, if the child whose property is to be distributed should be, say, a Moslem and if there should be a rule that a fraction shall go to his mother, or a rule that the male issue shall take twice as much as the female, or if under native law the first-born male should have everything, these native rules shall be disregarded. The English rule that the children should share shall  
30 be the rule to be adopted. And the question would revert, on Mr. Williams's argument, back to where it started: who are the persons that rank as children of the deceased?

40 Per contra. Mr. Davies has pointed out that the very point under discussion arose in In the matter of the Estate of Frederick Akindele Somefun, In re Adeline Subulade Williams, (1941) 7 W.A.C.A. 156. The Court of Appeal unanimously agreed with the Acting Chief Justice to exclude the issue of a polygamous union and give the estate to the other issue of the former marriage under the Marriage Ordinance of which was born the deceased whose estate was to be distributed. The trouble here is that Bangbose, the son of Pedro, the brother of John, claims that Pedro, by the subsequent marriage of their parents, became legitimised by the

In the Supreme Court of Nigeria.

No. 8.

Decision on Motion for Order for distribution.

14th February 1950 -

continued.

Legitimacy Ordinance and that Bamgbose is entitled to succeed to his uncle John's estate to the exclusion of John's children by his numerous wives.

A petition was presented some time ago to have Pedro declared legitimated but it had to be struck out because it was presented by mistake in the name of Pedro himself, a dead man, as the Petitioner. The petition is being renewed; but before it can be filed in Court it has to lie in the office of the Attorney-General for a certain time. I do not know what the fate of the petition will be in Court; nor can I make a ruling on the assumption that it will succeed. If it fails, it may be that the applicants may take the estate under the first proviso to section 36(1). If it succeeds, the question will arise of deciding between them and Bamgbose, but that question must wait for decision until after the petition succeeds. For the time being it seems to me that it would be wrong to authorise the distribution of the estate for this reason; it is not the Court that legitimises an illegitimate child but the Legitimacy Ordinance; the Court merely declares that the child was legitimised. Now if Pedro was legitimised by that Ordinance and became a legitimate child of Joaquim, it may be that Pedro's legitimation would be effective from the date when that Ordinance came into force, that is to say in 1929, long before his brother John's death in 1948. Therefore Bamgbose's rights, if any, should be safeguarded; he is entitled to ask the Court to wait until he has a reasonable time to carry on with his petition. In the circumstances the application for an order to distribute the estate will be merely refused; it may be renewed later in the light of developments on condition that notice is given to Bamgbose.

10

20

30

No order is made as to costs.

(Sgd.) V. R. BAIRAMIAN,

PUISNE JUDGE.



No. 9.  
COURT NOTES

In the Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 14th DAY OF FEBRUARY, 1950,  
BEFORE HIS HONOUR,  
VAHE ROBERT BAIRAMIAN, ESQ..  
PUISNE JUDGE.

No. 9.  
Court Notes.

14th February  
1950.

AG.29.

IN RE JOHN ST. MATTHEW DANIEL, (DECEASED)

For Applicants: Mr. A.O. THOMAS  
and MR. ADEDOYIN for one group.

10

For Bamgbose - respondent - MR. G.B.A. COKER

Judgment on application of 19.1.50 read  
Application to order distribution is merely re-  
fused; it may be renewed later in the light of  
developments on condition that notice is given  
to Bamgbose.

No order is made as to costs.

MR. COKER: I mention the request I made on 7th  
February that instead of the seven days allowed  
to file the legitimacy petition, I should be  
allowed three months. I have already lodged  
the petition with the Administrator-General, but  
it has to be there for two months before it can  
be filed in Court. See Supreme Court Rules  
O.47, r.9(1).

20

It is the practice to settle with Adminis-  
trator-General to settle the list of respon-  
dents.

MR. A.O. THOMAS: I have no strong views on this re-  
quest.

30

MR. ADEDOYIN: I think two months should suffice.  
I'll accept service for my client.

MR. OTUTULORO: I'll accept service for my client.

COURT: For the filing of the petition to declare  
Pedro legitimate Bamgbose is allowed two months  
and two weeks.

(Sgd.) V.R. BAIRAMIAN, J.

In the Supreme  
Court of  
Nigeria.

No. 10.

MOTION AND AFFIDAVIT IN SUPPORT FOR  
CONDITIONAL LEAVE TO APPEAL

No.10.

Motion and  
Affidavit in  
Support for  
Conditional  
Leave to  
Appeal.

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.  
(PROBATE)

P.6964.

(Title as in No.1)

17th February  
1950.

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will  
be moved on Tuesday the 21st day of February, 1950  
at the hour of Nine o'clock in the forenoon or so  
soon thereafter as Counsel can be heard on behalf  
of the above-named Applicants for an Order granting  
Conditional Leave to Appeal to the West African  
Court of Appeal from the Decision of this Honour-  
able Court delivered on Tuesday the 14th day of  
February, 1950, in the above matter, for such fur-  
ther or other Orders as this Honourable Court may  
deem fit.

10

DATED at Lagos this 17th day of February, 1950.

20

(Sgd.) THOMAS, WILLIAMS & KAYODE.

Solicitors for the Applicants.

On Notice to the Respondent.  
20, Campbell Street, Lagos.

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.  
(PROBATE)

P.6964.

(Title as in No.1)

AFFIDAVIT.

30

I, VICTOR AIYEDUN of No. 24, Inabere Street,  
Lagos, Yoruba, British Protected Person, do hereby  
make oath and say as follows :-

1. That I am a clerk engaged in the Chambers of Messrs. Thomas, Williams & Kayode, Solicitors for the Plaintiff in the above-mentioned matter.

In the Supreme Court of Nigeria.

2. That I am familiar with the facts of the above-mentioned matter.

No.10.

3. That on Tuesday the 14th day of February 1950 a decision was given in the above matter

Motion and Affidavit in Support for Conditional Leave to Appeal.

10

4. That the Applicants are dissatisfied with the said Decision and desire to appeal to the West African Court of Appeal.

17th February 1950 -

(Sgd.) V.AIYEDUN.

continued.

SWORN to at the Supreme Court Registry, Lagos, this 16th day of February, 1950.

Before me,

(Sgd.) D.SAGIEDE ODIGIE,  
Commissioner for Oaths.

No. 11.

No.11.

HEARING OF MOTION

Hearing of Motion.

20

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 21st DAY OF FEBRUARY, 1950.  
BEFORE HIS HONOUR  
COURTENAY WALTON REECE, ESQ.,  
PUISNE JUDGE.

21st and 28th  
February 1950.

(Title as in No. 1)

AG.29.

KAYODE to move.

MARSHALL Administrator-General on Notice.

H.O. DAVIES on notice.

30

KAYODE: Application for conditional leave to appeal against decision of Bairamian J, delivered on 14th February 1950. Affidavit in support.

In the Supreme  
Court of  
Nigeria.

-----  
No.11.

Hearing of  
Motion.

21st and 28th  
February 1950  
continued.

H.O.DAVIS: Appeal from an interlocutory decision. The whole proceedings deal with the estate of an intestate, J.St.Matthew Daniel. Motion which was dismissed was for the immediate distribution of the assets. Judge held that as there are others whose interests are considered. Matthew Olajide Gbambose claims to be entitled to the whole estate and judge considered that the application should await the decision on this question of the legitimacy of K.O.Bamgbose. This is a case where the Court should exercise its discretion and refuse conditional leave to appeal.

10

MR.MARSHALL associates himself with Davis' remarks and adds that he being a stakeholder only wants to be told who is properly entitled and this he thinks cannot be done till the question of Bamgbose's legitimacy is determined.

KAYODE: The motion before Bairamian J. was for immediate distribution of the assets of the estate and this was refused. It is said that this was an interlocutory decision but I refer to the Annual Practice caption Final Orders. Halsbury 2nd Edition Vol.19 p.206 section 508. Benson v. Altingham V.D.C. (1903) 1 K.B.D.547.

20

Application is for leave to appeal as of right. If the Court holds that it is interlocutory then it will have a discretion to refuse the application.

Adjourned till 28th February for decision.

30

(Sgd.) C.W.REECE.

TUESDAY THE 28th DAY OF FEBRUARY 1950.

AG.29.

Decision read.

(Sgd.) C.W.REECE.

-----

No. 12.

DECISION ON MOTION.

---

In the Supreme  
Court of  
Nigeria.

No.12.  
Decision on  
Motion.

28th February  
1950.

IN THE SUPREME COURT OF NIGERIA.  
TUESDAY THE 28th DAY OF FEBRUARY, 1950.  
BEFORE HIS HONOUR  
COURTENAY WALTON REECE, ESQ.,  
PUISNE JUDGE.

---

SUIT NO. AG.29.

IN THE MATTER OF THE ESTATE OF JOHN  
ST. MATTHEW DANIEL (DECD.)

---

10

DECISION ON MOTION

This is a motion for conditional leave to appeal to the West African Court of Appeal against the decision of Bairamian J. on a motion for an order that the Administrator-General do proceed to distribute the estate of the above-named John St. Matthew Daniel (decd.).

20

I am unable to understand why the application was not made to Bairamian J. who heard the motion and would certainly be fully apprised of the facts.

30

Mr. Kayode, while serving notice of the motion to the parties concerned, has argued at no inconsiderable length and cited authorities to show that the decision of Bairamian J. is a final order. Of the authorities cited it will be sufficient for me to refer to the case of Boyson Vs. Altrincham Urban District Council (1903) in which Lord Alverstone C.J. at pp.548/549 said as follows:- "It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order.

Applying this test to the decision or order made by Bairamian J. the answer clearly is that the decision is not a final order. And indeed Bairamian J. concluded his decision by saying:- "In the

In the Supreme Court of Nigeria.

No.12.

Decision on Motion.

28th February 1950 - continued.

circumstances the application for an order to distribute the estate will be merely refused, it may be renewed later in the light of developments on condition that notice is given to Bamgbose." In these words there is in my view, nothing final. The application may be renewed later on a given condition being fulfilled.

I am accordingly of the opinion that leave to appeal does not lie as of right and I refuse the application.

(Sgd.) C.W.REECE.

10

No.13.

Motion and Affidavit in Support for Conditional Leave to Appeal from Decision dated 28.2.50.

28th February 1950.

No. 13.

MOTION AND AFFIDAVIT IN SUPPORT FOR CONDITIONAL LEAVE TO APPEAL FROM DECISION DATED 28.2.50.

IN THE SUPREME COURT OF NIGERIA  
IN THE SUPREME COURT OF THE LAGOS  
JUDICIAL DIVISION.

P.No.6964.

AG:29.

(Title as in No.1)

20

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on Monday the 7th day of March, 1950 or so soon thereafter as Counsel can be heard on behalf of the above-named Applicants for an order granting Conditional Leave to Appeal to the West African Court of Appeal from the Decision of This Honourable Court delivered on Tuesday, the 28th day of February, 1950 in the above matter and for such further or other orders as this Honourable Court may deem fit.

30

DATED at Lagos this 28th day of February 1950.

(Sgd.) THOMAS, WILLIAMS & KAYODE,  
Solicitors for the Applicants.

On Notice to Respondent,  
At 20, Campbell Street,  
Lagos.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.  
(PROBATE)

In the Supreme  
Court of  
Nigeria.

P.6964.

(Title as in No.1)

No.13.

AFFIDAVIT

Motion and  
Affidavit in  
Support for  
Conditional  
Leave to  
Appeal from  
Decision dated  
28.2.50.  
28th February  
1950 -  
continued.

I, VICTOR AIYEDUN of No. 24, Inabere Street,  
Lagos Yoruba British Protected Person, do hereby  
make oath and say as follows :-

10

1. That I am a clerk engaged in the Chamber of  
Messrs. Thomas, Williams & Kayode. Solicitors for  
the Plaintiff in the above mentioned matter.

2. That I am familiar with the facts of the  
above-mentioned matter.

3. That on Tuesday the 28th day of February, 1950,  
a decision was given in the above matter.

4. That the Applicants are dissatisfied with the  
said Decision and desire to appeal to the West Af-  
rican Court of Appeal.

20

(Sgd.) V. AIYEDUN.

SWORN to at the Supreme Court  
Registry, Lagos, this 1st day  
of March, 1950.

Before me,

(Sgd.) D. SAGIBDE ODIGIE.  
Commissioner for Oaths.

No. 14.

HEARING OF MOTION

No. 14.

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 7th DAY OF MARCH, 1950.  
BEFORE HIS HONOUR,  
COURTENAY WALTON REECE, ESQ.,  
PUISNE JUDGE.

30

Hearing of  
Motion.

7th and 10th  
March, 1950.

(Title as in No. 1)

AG.29.

F.R.A. WILLIAMS to move:

MARSHALL - Administrator-General on Notice.

WILLIAMS: Application for conditional leave to

In the Supreme Court of Nigeria.

No.14.

Hearing of Motion.  
7th and 10th March, 1950 - continued.

appeal. Cost of record would be about £5. I suggest ten guineas be deposited in Court against costs.

H.O.DAVIS interrupts to say that this is an application for leave to appeal against a decision delivered on a motion on which I appeared and argued against the grant of the prayer. He states he has not been served. In the case itself he is associated with Messrs.Irving & Bonnar & Coker. He requests that he be put on Notice. 10

MARSHALL: Appeal does not lie as of right and leave must be obtained to appeal. Ref: West African Court of Appeal Rules 0.3 r.11(4). Further ref: to 0.58 r.1 Rules of Supreme Court U.K. (Note on Discretion - Appeals in particular cases)

Donald Campbell v. Pollak - (1927) AC.732.

WILLIAMS says that the Notice may have been made Exparte Teasdale. 20

ORDER: Matthew Olajide Bamgbose to be put on Notice. Matter to come on Friday 10th instant.

(Sgd.) C.W.FEECE.

IN THE SUPREME COURT OF NIGERIA.  
FRIDAY THE 10th DAY OF MARCH, 1950.  
BEFORE HIS HONOUR,  
COURTENAY WALTON FEECE, ESQ.,  
PUISNE JUDGE.

AG.29.

F.R.A.WILLIAMS AND MAYODE for the movers. 30

G.B.COKER for Gbamgbose with Teasdale does not oppose.

MR.WILLIAMS suggests £5 for record. Deposit of £15 for security for costs.

DECISION: Conditional leave to appeal granted. £5 to be deposited for record. Deposit of £15 to secure costs. Other side to be notified and all others the requirements of rule 12 of the West African Court of Appeal Rules to be complied with. 40

No costs awarded.

(Sgd.) C.W.FEECE.



No. 15.

GROUND'S OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL.

P.686A.

AG: 88.

(Title as in No. 1)

In the West African Court of Appeal.

No. 15.

Grounds of Appeal.

20th March 1950.

10

The Appellant, being dissatisfied with the decision of the Supreme Court Lagos delivered on the 14th February, 1950, and having obtained final leave to appeal therefrom dated the 20th day of March, 1950, hereby applies to the West African Court of Appeal on the grounds hereinafter set forth:-

GROUND'S OF APPEAL

The Court erred in law in refusing to grant the appellants conditional leave to appeal from the decision of Mr. Justice Bairamian and in holding that the said decision is interlocutory.

DATED at Lagos this 20th day of March, 1950.

20

(Sgd.) THOMAS, WILLIAMS & KAYODE,  
Appellants' Solicitors.

No. 16.

HEARING OF MOTION

IN THE SUPREME COURT OF NIGERIA  
WEDNESDAY THE 27th DAY OF DECEMBER, 1950,  
BEFORE HIS HONOUR,  
GEORGE GILMOUR ROBINSON, ESQ.,  
PUISNE JUDGE.

In the Supreme Court of Nigeria.

No.16.

Hearing of Motion.

27th December 1950 and 9th January 1951.

AG.29.

IN RE ESTATE OF J. ST. MATTHEW DANIEL:

IN RE J. BOLAJI DANIEL - Applicant.

KAYODE for Applicant.

In the Supreme Court of Nigeria.

SAGOE for Administrator-General.

F.O.DAVIES representing Matthew Bangboshe, who is claiming the whole estate.

No.16.  
Hearing of Motion.  
27th December 1950 and  
9th January, 1951 -  
continued.

Asks to be joined in the Motion.

S.O. to 9.1.51.

(Intld.) G.R.

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 9th DAY OF JANUARY, 1951.  
BEFORE HIS HONOUR,  
GEORGE GILMOUF ROBINSON, ESQ.,  
PUISNE JUDGE.

10

AG.29.

ROPHI WILLIAMS for Mover.

G.B.A.COKER )  
H.O. DAVIES ) on Notice - opposing.

WILLIAMS submit presence of Administrator-General quite necessary.

Letter from Administrator-General to say he is before another Court.

COURE: I will hear this and if necessary later I can adjourn to hear Administrator-General. 20

WILLIAMS: Motion dated 24.11.49  
Affidavit in support - read.

Application affects estate of late John St. Matthew Daniel. John left 12 children - applicant one of them 21 years. Applicant's father John St. Matthew is the legitimate son of Theresa Maria and Matthew Joachim Daniel.

H.O.DAVIES Client is the son of Pedro St. Matthew Daniel. Pedro has same parents as John but he was born prior to the Marriage of his Parents. 30

There is a legitimacy Petition about this - Pedro is hoping to claim the whole estate. The action was started and dismissed. They are now

appealing. Bairamian, J. ordered that there should be no distribution till the case was disposed of. The notice was for General Distribution. Bairamian, J. made his order before the Legitimacy Petition had been finally dismissed at first instance.

In the Supreme Court of Nigeria.

\_\_\_\_\_  
No.16.

Suit No.131/50. The Legitimacy Petition.

Hearing of Motion.

27th December 1950 and 9th January, 1951 -

continued.

10

Ademola, J. The Judge refused to declare the parents of Pedro legitimated - said had no jurisdiction.

23.10.50.

Going to appeal but still has not got final leave. Could go to Privy Council thereafter.

One young man will be too old by then for education - not fair.

Most of the brothers and sisters of applicant are already being paid out of the estate.

20

Quite prepared to give 2 sureties for £2,000 jointly and severally to pay back the money should the Petitioner finally succeed.

H.O.DAVIES: Matter of Principle. Illegitimacy is ripe in Nigeria. Court must enforce the law.

Petition of Legitimacy has lost in Supreme Court but he has the right to go to Appeal.

Opposing this paying out.

But now that 2 Sureties are suggested, prepared to withdraw opposition.

ORDER: I grant this Petition :-

30

I do not think it necessary to hear the Administrator-General on the matter. I agree the estate should be safeguarded in view of the Legitimacy Petition going to appeal and I agree, with respect, that there should be no general distribution until the matter is finally settled. But these safeguards are sufficiently provided for by the applicant offering to produce 2 sureties for £2,000 with joint and several liabilities - So long as that is done I see no reason why these children should not be educated at the expense of the estate. An Order can go to the Administrator-General to pay

40

In the Supreme Court of Nigeria.

No.16.

Hearing of Motion.

27th December 1950 and 9th January, 1951 - continued.

out money not exceeding £2,000 on the Education of this Applicant and the Sureties must be to the satisfaction of the Senior Registrar of Supreme Court. The bonds to be entered into before any money is paid out. The bond should be worded in such a way as to fully protect the estate if subsequently it should be held that this applicant is not one of the beneficiaries.

(Sgd.) G.G.ROBINSON.

H.O.DAVIES asks for costs.

WILLIAMS opposes

I grant 2 guineas costs to Respondent. Costs of Motion to be paid to applicant out of the Estate - 4 guineas.

(Intld.) G.R.

10

No.17.

Motion and Affidavit in Support for Distribution of real estate

25th April, 1951.

No. 17.

MOTION AND AFFIDAVIT IN SUPPORT FOR DISTRIBUTION OF REAL ESTATE

IN THE SUPREME COURT OF NIGERIA IN THE LAGOS JUDICIAL DIVISION. (PROBATE)

P.6964. AG.29.

IN RE JOHN ST. MATTHEW DANIEL (DECEASED)

IN RE:

1. Mrs.Feyishitan Bamgboye
2. Mrs.Theodosia Abimbola Oladumiye
3. Crispina Daniel
4. Olayinka Daniel
5. Mobalaji Daniel
6. Abiodun Daniel - By his next friend - Janet Clay
7. Olabode Daniel - By his next friend - Ayinke Ajibola
8. Adeyanju Daniel - By his next friend - Sabitiyu Adamo
9. Adeyemi Daniel - By his next friend - Rebecca Layinka.
10. Kolapo Daniel - By his next friend S.A.Lewis.
11. Olayiwola Daniel - By his next friend Nusiratu Oshodi

APPLICANTS

20

30

40



In the Supreme Court of Nigeria.

No.17.

Motion and Affidavit in Support for Distribution of real estate

25th April, 1951 -

continued.

3. That the deceased left the real properties shown on the list attached herewith in Lagos and district within the jurisdiction of this Court.

4. That it is desirable that the said properties be partitioned in order to prevent disputes in the family.

(Sgd.) FELICIA F. BAMGBOYE

(Sgd.) T. A. OLADUNJOYE.

SWORN to at the Supreme Court Registry. Lagos this 26th day of April, 1951.

10

Before me,

(Sgd.) E.A. BABANIJI

Commissioner for Oaths.

LIST OF REAL PROPERTIES IN LAGOS AND DISTRICT  
WITHIN THE JURISDICTION OF THIS COURT

- |     |                                     |    |
|-----|-------------------------------------|----|
| 1.  | 110, Odunfa Street, Lagos.          |    |
| 2.  | 10, Bamgboshe Street, Lagos.        |    |
| 3.  | 12, Bamgboshe Street, Lagos.        | 20 |
| 4.  | 13, Ajasa Street, Lagos.            |    |
| 5.  | 40, Macarthy Street, Lagos.         |    |
| 6.  | 11, Okepopo Street, Lagos.          |    |
| 7.  | 3, Okepopo Street, Lagos.           |    |
| 8.  | 4, Okepopo Street, Lagos.           |    |
| 9.  | 78, Moloney Bridge Street, Lagos.   |    |
| 10. | 13, Moloney Bridge Street, Lagos.   |    |
| 11. | 42, Jebba Street, Ebute-Metta.      |    |
| 12. | 44, Jebba Street, Ebute-Metta.      |    |
| 13. | 14, Strachan Street, Lagos.         | 30 |
| 14. | 10, Strachan Street, Lagos.         |    |
| 15. | 12, Strachan Street, Lagos.         |    |
| 16. | 87-91, Foresythe Street, Lagos.     |    |
| 17. | 58, Foresythe Street, Lagos.        |    |
| 18. | 60, Foresythe Street, Lagos.        |    |
| 19. | 83, Foresythe Street, Lagos.        |    |
| 20. | 32, Ikoyi Road, Lagos.              |    |
| 21. | 9A, Willoughby Street, Ebute-Metta. |    |
| 22. | 21, Obalende Street, Lagos.         |    |
| 23. | 6, Thomas Street, Lagos.            | 40 |
| 24. | 5, Bridge Street, Lagos.            |    |
| 25. | 6, Bamgboshe Street, Lagos.         |    |

26. 5, Moloney Bridge Street, Lagos.  
 27. 8, Bamgboshe Street, Lagos.  
 28. 110, Alakoro Street, Lagos.  
 29. 19, Obalende Street, Lagos.  
 30. 6, Beckley Street, Lagos.  
 31. 13, Luther Street, Lagos.  
 32. 12A, Strachan Street, Lagos.  
 33. 6, Strachan Street, Lagos.  
 34. Land at Griffith Street, Ebute-Metta.  
 Land at Suru-Lere Opposite Cooper.  
 Land at Suru-Lere near Mr. Animashawun.  
 The above are the alleged No. of houses  
 on which rents were being collected since  
 1/5-14/12/48.

In the Supreme  
 Court of  
 Nigeria.

No.17.

Motion and  
 Affidavit in  
 Support for  
 Distribution  
 of real estate

25th April,  
 1951 -

continued.

FARM LANDS

1. Sogunro Village With premises thereon  
 2. Mushin do do do  
 3. Sogunle do do do  
 4. Oshodi do do do  
 20 5. Apapa via Ajegunle do do do  
 6. Oshioko Village do do do  
 7. Suru Lere near the Railway Line  
 8. Ikoyi Plains (near the new Public Cemetery.)  
 The above does not include vacant lands within  
 the township.

FARM LANDS

1. Kiri-kiri Farm 5. Iwaya Farm  
 2. Awodi Ora Farm 6. Debari Farm  
 3. Pedro Farm 7. Shasanya Farm  
 30 4. Eleye Farm 8. Shieke Farm  
 9. Imesho Farm.

This is the list referred to in paragraph 3  
 of the affidavit sworn to by Mrs. Felicia Feyishi-  
 tan Bamgboye and Mrs. Theodosia Abimbola Oladumiye  
 before me this 26th day of April 1951.

(Sgd.) E.A.BABANJI

Commissioner for Oaths.

In the Supreme  
Court of  
Nigeria.

No. 18.

MOTION AND AFFIDAVIT IN SUPPORT  
FOR DISTRIBUTION OF PERSONAL ESTATE

No.18.

Motion and  
Affidavit in  
support for  
distribution  
of personal  
estate.

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.  
(PROBATE)

P.6964.      AG.29.

(Title as in No.17)

25th April,  
1951.

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will  
be moved on Tuesday the 1st day of May, 1951 or so  
soon thereafter as Counsel can be heard on behalf  
of the above-named Applicants for an order that  
the Administrator-General do pay forthwith all  
debts and other lawful liabilities and charges due  
upon the above estate (if he has not already done  
so) and that after such payments that he do pro-  
ceed to distribute the surplus of the personal es-  
tate of the above intestate among the children of  
the said intestate and for such further or other  
Orders as this Honourable Court may deem fit to  
make.

10

20

DATED at Lagos this 25th day of April, 1951.

(Sgd.) THOMAS, WILLIAMS & KAYODE,  
Solicitors to the Applicants.

ON NOTICE  
TO THE ADMINISTRATOR GENERAL  
LAGOS.



IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

P.6964.      AG.29.

(Title as in No.17)

A F F I D A V I T

10 WE, Felicia Feyishitan Bamgboye, British Subject of No.24, Market Street, Ebute-Metta and Theodesia Abimbola Oladuniye, British Subject, of No. 8, Bamgbose Street, Lagos do hereby make oath and say as follows :-

1. That we are the 1st and 2nd Applicants above-named.

2. That all the other applicants are also children of the late John St. Matthew Daniel.

3. That Crispina Daniel, Mobolaji Daniel, Olayinka Daniel and ourselves are over 21 years old and the other Applicants are minors.

20 4. That we are all issues of the late John St. Matthew Daniel through his wives whom he married under native law and custom.

5. That the value of the estate left by the deceased is to the best of our knowledge, information and belief worth about £100,000.

6. That the Respondent has been appointed by this Honourable Court as the Administrator of the said estate.

30 7. That the said Respondent has since his said appointment paid the sum of £1,000 to each of the first 3 Applicants, that is to say, Mrs. Feyishitan Bamgboye, Mrs. Abimbola Oladuniye and Crispinah Daniel.

8A. That on the 25th day of January, 1949, this Honourable Court made an order in the following terms :-

"IT IS ORDERED that the Administrator - General  
"be and is hereby authorised to pay out of the  
"estate of JOHN SAINT MATTHEW DANIEL, DECEASED,

In the Supreme  
Court of  
Nigeria.

No.18.

Motion and  
Affidavit in  
support for  
distribution  
of personal  
estate.

25th April,  
1951 -

continued.

In the Supreme Court of Nigeria.

No.18.

Motion and Affidavit in support for distribution of personal estate.

25th April, 1951 - continued.

"all bills and other expenses incurred in connection with the education of EMANUEL OLABODE DANIEL, JULIUS MOBOLAJI DANIEL, PAULINUS ABI-ODUN DANIEL, FRANCISCA ADEYANJU DANIEL, CYPRIAN ADEYEMI DANIEL, FRANCIS KOLAPO DANIEL and OLAYIWOLA DANIEL, the seven minor children of the said deceased who are still attending school."

8B. That the said order is being complied with up to date by the Respondent.

10

9. That the said Crispinah Daniel has been sent to England for further training out of the funds of the estate and she is being maintained there by the Respondent.

9B. That Mobolaji Daniel has also gone to the United Kingdom for further Studies and is being maintained from a sum of £2,000 paid to two Sureties who have entered into bond for the said amount.

10. That the distribution has been held up temporarily because there is a petition for legitimacy filed by one Matthew Olajide Bamgbose under the Legitimacy Ordinance.

20

11. That proceedings in the said petition has now terminated and no order was made thereon.

(Sgd.) FELICIA F. BAMGBOYE

(Sgd.) T. A. OLADUNJOYE.

SWORN to at the Supreme Court Registry, Lagos, this 26th day of April, 1951.

30

Before me,

(Sgd.) E. A. BABANIJI,

Commissioner for Oaths.

No. 19.

MOTION AND AFFIDAVIT IN SUPPORT  
TO SUSPEND DISTRIBUTION.

In the Supreme  
Court of  
Nigeria.

No. 19.

IN THE SUPREME COURT OF NIGERIA  
IN THE SUPREME COURT OF THE LAGOS  
JUDICIAL DIVISION

Motion and  
Affidavit in  
Support to  
suspend  
distribution.

SUIT NO. AG. 29.

In re the Matter of the Estate of  
John St. Matthew Daniel (Deceased)

30th April,  
1951.

10

In re Matthew Olajide Bamgbose  
(formerly Daniel) ... Applicant

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will  
be moved on 8th day of May, 1951 at the hour of  
9 o'clock in the forenoon or so soon thereafter as  
Counsel on behalf of the above-named Applicant can  
be heard for an order that the Estate of John St.  
Matthew Daniel be not distributed until the final  
determination of the Appeal lodged by the applicant  
in this cause or for such further or other orders  
as this Honourable Court may deem fit to make under  
the circumstances.

20

DATED at Lagos this 30th day of April, 1951.

(Sgd.) G.B.A. COKER,  
Solicitor to Applicant.

Filed at 8.00 on 1.5.51. (Intld.) A.R.K.

AFFIDAVIT IN SUPPORT OF MOTION

I, Matthew Olajide Bamgbose, Yoruba, Clerk of  
No. 64, Tokunboh Street, Lagos in Nigeria make oath  
and say as follows :-

In the Supreme Court of Nigeria.

No.19.

Motion and Affidavit in Support to suspend distribution.

30th April, 1951 -

continued.

1. That I am the Petitioner in Suit No. 131/50 pending in this Court.

2. That after my Petition was dismissed by this Court, I obtained leave to appeal to the West African Court of Appeal.

3. That an application for distribution of the properties of the above-named deceased was made last year by the natural children of the said deceased in Suit AG.29 but this Court (Mr. Justice Bairamian) ordered that no general distribution should take place until after the final determination of my petition. This decision was given on the 14th day of January, 1950.

10

4. That although my appeal proceedings in the above named Petition was struck out on the 19th April, 1951, I have since filed an application to the West African Court of Appeal to appeal against the order striking out my appeal.

5. That the matter of my petition is therefore still pending.

20

6. That if the assets of the estate are now distributed, I shall have been greatly prejudiced should my appeal succeed.

7. That I attach hereto a copy of my application for appeal in the matter of my petition marked Exhibit "A".

(Sgd.) M.OLAJIDE BANGBOSE,

Deponent.

SWORN to at The Supreme Court Registry, this 1st day of May, 1951.

30

Before me,

(Sgd.) E.A.BABANIJI,

Commissioner for Oaths.

No. 20.  
HEARING OF MOTIONS.

In the Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA  
TUESDAY THE 8th DAY OF MAY, 1951.  
BEFORE HIS HONOUR,  
GEORGE GILMOUR ROBINSON,  
PUISNE JUDGE.

No.20.

Hearing of  
Motions.

8th May 1951.

SUIT NO. AG.29.

IN RE JOHN ST. MATTHEW DANIEL - Deceased.

10 3 Motions. F.R.A.WILLIAMS moving in all 3 motions.

G.B.A.COKER for M.O.BAMGBOSE.

SAGOE for Administrator-General.

COKER: Only served with Motion yesterday. Interested in the Motion relating to distribution of the real and personal estate.

Appeal coming on in W.A.C.A. on 16.5.51.

All the motions stand adjourned to 17.5.51.

(Intld.) G.R.

EXCEPT

20 1 Exparte Motion asking to appoint the Mothers as guardians. The exparte Motion is granted as prayed.

(Sgd.) G.G.ROBINSON.

Later: Sir A.Alakija (unrobed) comes into Court 10.30 a.m.

and talks to Reg: I gather that Sir A. & F.R.A. Williams and Fitt - Ad: Gen. all had a meeting and it was agreed that the exparte motion appointing the Mothers guardian should also stand over with the other Motions.

30 Note to Reg: Do not draw up the Order on the exparte motion till after 17.5.51 - The Court can hear about it then.

(Intld.) G.R.

In the Supreme Court of Nigeria.

No. 21.

MOTION AND AFFIDAVIT IN SUPPORT TO CANCEL ORDER MADE EX PARTE.

No.21.

Motion and Affidavit in Support to cancel Order made exparte.

IN THE SUPREME COURT OF NIGERIA IN THE LAGOS JUDICIAL DIVISION. (PROBATE)

P.6964. AG.29.

16th May 1951.

IN RE JOHN ST. MATTHEW DANIEL (DECEASED)

In re:-

ABIODUN DANIEL ... APPLICANT

10

NOTICE ON MOTION

TAKE NOTICE that this Honourable Court will be moved on Thursday the 17th day of May, 1951, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Applicant for an Order cancelling the order made Exparte by this Honourable Court on Tuesday the 8th day of May, 1951 in the above matter in so far as it relates to the above-named Applicant.

20

DATED at Lagos this 16th day of May, 1951.

(Sgd.) ALAKIJA & ALAKIJA. Solicitors to the Applicant.

Filed at 11.45 on 16/5/51. (Intld.) A.R.K.

IN THE SUPREME COURT OF NIGERIA IN THE LAGOS JUDICIAL DIVISION (PROBATE)

IN RE JOHN ST. MATTHEW DANIEL (DECEASED) IN RE:- ABIODUN DANIEL APPLICANT

A F F I D A V I T

30

I, Abiodun Daniel of 12, Bamgbose Street, Lagos, make oath and say as follows :-

1. That I am one of the 12 minor children of the above-named intestate.

2. That I am 16 years of age and I am also a mother of my own infant child whom I have got to maintain.

3. That the said intestate left considerable amount of personal properties amounting to about £100,000 and about 36 to 40 real properties in Lagos and districts.

In the Supreme Court of Nigeria.

\_\_\_\_\_  
No.21.

Motion and Affidavit in Support to cancel Order made exparte.

16th May 1951

- continued.

10 4. That I am informed that my mother made an application ex-parte to this Honourable Court to be my Guardian and to be the "Guardian of my estate" which application was granted along with others.

5. That I do not ask my mother to be the "guardian of my estate" whatever these words may mean.

6. That there is a Public Trustee who should be custodian of the estate of all infants and I ask that the Court should give my estate real and personal to the Public Trustee.

20 7. That the Public Trustee will account to me whenever I am ready to receive my estate.

8. That my mother should not be entrusted with such a considerable estate as she is a young woman with no experience of managing money and she may have another husband who would help her to squander my money.

9. That I will have no remedy against my mother after all the money shall have been squandered.

30 10. That I am prepared to give my mother through the Public Trustee a reasonable allowance for her maintenance.

11. That my mother persuaded me to sign a document which I did not read but I do not owe her any money.

12. That I am seeking the protection of the Court and that of the Public Trustee.

(Sgd.) A.DANIEL.

SWORN to at the Supreme Court Registry, Lagos this 16th day of May, 1951.

40 Before me,  
(Sgd.) E.A.BABANJI  
Commissioner for Oaths.

In the Supreme  
Court of  
Nigeria.

No. 22.

HEARING OF MOTIONS AND RULINGS

No.22.

Hearing of  
Motions and  
Rulings.

IN THE SUPREME COURT OF NIGERIA.  
THURSDAY THE 17th DAY OF MAY, 1951,  
BEFORE HIS HONOUR,  
GEORGE GILMOUR ROBINSON, ESQ.,  
PUISNE JUDGE.

17th May 1951.

SUIT NO.AG:29.

MOTIONS.

IN THE MATTER OF THE ESTATE  
OF JOHN ST. MATTHEW DANIEL, DECEASED

10

G.B.A.COKER: Court adjourned these motions to 17th  
i.e. today because W.A.C.A. was due to decide  
the appeal on the motion of this Court refusing  
permission to appeal on the 16th. The W.A.C.A.  
is not now hearing it till Monday 21st. So to-  
day we are not prepared because W.A.C.A. not de-  
cided. Agrees that today is the 17th the date  
to which the motions were adjourned. Asks for  
these motions to so. It is Mr. Williams who  
suggested the motion should be adjourned till  
W.A.C.A. decided. I am not prepared to argue  
these motions this morning.

20

SIR ADEYEMO ALAKLIJA: Mr. Davies opposed the hear-  
ing last time and asked for adjournment. Mr.  
Williams opposed adjournment. It is true about  
W.A.C.A. that the date was fixed for today.

F.R.A.WILLIAMS: Mr. Coker knew the motions were  
for today.

COURT: The position is that the motions were ad-  
journed to today. It is true that was done  
because the W.A.C.A. were due to hear an appli-  
cation for leave to appeal on the 16th which  
they did not do but I think that is no excuse  
for Mr. Coker not being ready to go on today. I  
will hear the motions.

30

(Intld.) G.R.



G.B.A.COKER: Suit No.161/51 is between Bamgbose plaintiff and Administrator-General asking for a declaration that action is pending and vitally affects the estate. We say that the deceased estate cannot be distributed until No.161/51 is decided.

In the Supreme Court of Nigeria.

No.22.

Hearing of Motions and Rulings.

17th May 1951

- continued.

10 COURT: These Motions are one thing: this new device (No.161/51) to avoid an order for distribution is another: I refuse to recognise Suit No.161/51 as automatic stop to dealing with the motions. Let the Motions go on.

(Intld.) G.R.

EXPARTE MOTION

F.R.A.WILLIAMS.

SIR ADEYEMO ALAKIJA.

The Motion was granted (See p. 41) but the order was not drawn up because of the intention of Sir Adeyemo Alakija.

20 Agreed that Court should consult together and come to some arrangement. In the meantime the final order not to be drawn up and action not drawn up until the Court is approached again.

(Sgd.) G.G.ROBINSON.

SIR ADEYEMO ALAKIJA )

F. R. A. WILLIAMS ) Moving for distribution.

G. B. A. COKER - Opposing

2 Motions One in respect of distributing Real property.  
One in respect of distributing personal property.

30 1 Motion by Mr.Coker praying that no distribution takes place until final determination of the W.A.C.A. appeal.

F.R.A.WILLIAMS: Affidavit in support.

Why does Mr. Coker oppose ?

G.B.A.COKER: Deceased died intestate on 25 April 1948.

Order for administration granted 5th Feb. 1949.

Merits of the case not been fully gone into.

In the Supreme  
Court of  
Nigeria.

No.22.

Hearing of  
Motions and  
Rulings.

17th May 1951

- continued.

S4 Legitimacy Ordinance. Cap. III. Court decided it could only legitimize the child of the parents but go back to remoter ancestor. Clearly section badly drawn.

(WILLIAMS: There are direct English authorities). That is the point we want to take on appeal. Before the Petition was heard in Statement of Claim on 23 October 1950 there was an application for general distribution filed by all the children. At present one child is left out.

10

(SIR ADEYEMO: This is not so, I represent him).

On that application for distribution S. 36 of Cap. 128 (Marriage) was invoked.

Our contention then as now is that the deceased was born in Wedlock under the Ordinance.

We contend too that none of the various mothers or wives were properly married even by native law and custom.

That was going to be evidence given in the Petition and no evidence was heard in the Petition.

20

At the hearing of petition, the question of conflict of Laws was raised. What law would England Law applied - Law of England or Law of Nigeria (i.e. native Law and custom).

Judge was persuaded by Mr. Williams to say that Law of Nigeria would prevail.

But even if that is so, were these wives ever married by Native Law and Custom? If not, can these children now inherit?

30

Paragraph 12a of Petition for legitimacy.

COURT: But does that make any difference?

Native Law recognises all children?

Bairamian. J. heard the application for distribution.

Ademola. J. decided the Petition and dismissed it.



14.2.50 Bairamian J. dealing with S.36(1) of Cap.128.

(reads out)

In the Supreme Court of Nigeria.

No.22.

Hearing of Motions and Rulings

17th May 1951

- continued.

10 Deceased is John. He had a brother Pedro applicant is son of Pedro. John born after marriage under Ordinance so legitimate Pedro before. But the Ordinance made Pedro legitimate when the parents married - but he could not be declared so until Pedro had applied to Court which he did not do before he died. S.3 Cap.111. Applicant wanted to be recognized so he had to get Court to declare his father Pedro legitimate. This he failed to do under S.4.

W.A.C.A. is now being asked to construe S.4. again. But first W.A.C.A. is being asked to say that this Court's order saying right of appeal has been lost is wrong. If it does that, then the distribution appeal will go on.

In re Somefu 7 W.A.C.A. 156.

20 F.R.A.WILLIAMS: Court has gone into the case and merits Court made its decision. None of the Mothers married? But see affidavit in support of motions. Sworn that they were and no counter-affidavit.

Savage V. Macfore 1 Renner Gold Coast and Nigeria cases. 545 at p.548.

No difference between children born in or out of native wedlock.

S.36 of Marriage Ordinance Cap. 128.

30 We admit Marriage Ordinance applies. John deceased was married under Ordinance. Suit No. 161/50. We admit this. 'Law of England' must be the law when Ordinance passed 1917. At all costs not 1951 law i.e. since alteration of law in England recently. "in accordance with the provisions of the law of England."

40 What law would an English Court apply if seized of this case? What is the law of England on the point? Estate must go to Wife and Children.

"Wife and Children" is question of status - not distribution. English law does not apply to the status. Law of the Domicile applies to that. i.e. Nigeria.

Petition has failed and all obstacles have been removed and for the distribution of the estate. I therefore order as prayed in the motions asking that the real and personal estate be partitioned or distributed and I dismiss Bamgbose's motion asking for a stay. But I add this - No action to be taken on these orders until 31.5.51. (the motion to W.A.C.A. is expected to be dealt with on 21st.) and liberty to Mr.Coker to apply if his W.A.C.A. appeal succeeds.

10

(Sgd.) G.G.ROBINSON.

The petition of the Real Estate and Personal Property to be settled between Sir Adeyemo Alakija - Administrator-General and F.R.A.Williams Liberty to apply.

(Intld.) G.R.

Costs out of the Estate.

This was by consent and should be incorporated in the Order.

20

(Intld.) G.R.

No. 23.

ORDER FOR DISTRIBUTION

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.

A.G.29.

(Title as in No.17)

UPON READING the affidavit of Felicia Feyishitan Bamgboye of No.24 Market Street, Ebute Metta, and Theodosia Abimbola Oladumiye of No.8 Bamgbose Street, Lagos, sworn to and filed on the 26th day of April, 1951, and after hearing Counsel in the matter:

30

IT IS ORDERED that all the real properties of the above-named intestate be partitioned among his children.

In the Supreme Court of Nigeria.

No.22.

Hearing of Motions and Rulings.

17th May 1951

- continued.

No.23.

Order for Distribution

17th May 1951.

In the Supreme  
Court of  
Nigeria.

No.23.

Order for  
Distribution

17th May 1951  
- continued.

IT IS FURTHER ORDERED that the Administrator-General do pay forthwith all debts and other lawful liabilities and charges due upon the above estate (if he has not already done so) and that after such payments that he do proceed to distribute the surplus of the personal estate of the above intestate among the children of the said intestate.

AND IT IS STILL FURTHER ORDERED that the partition of the Real Estate and Personal Properties be settled between Sir Adeyemo Alakija, Mr.F.R.A. Williams and the Administrator-General.

10

Liberty to apply.

DATED at Lagos this 17th day of May, 1951.

(Sgd.) G.G.ROBINSON,  
PUISNE JUDGE.

In the West  
African Court  
of Appeal.

No. 24.

NOTICE AND GROUNDS OF APPEAL.

No.24.

IN THE WEST AFRICAN COURT OF APPEAL.

Notice and  
Grounds of  
Appeal.

NOTICE OF APPEAL

(Rule 12).

20

Suit No. AG.29.

28th May 1951.

(Title as in No.19)

TAKE NOTICE that the respondent being dissatisfied with the decision made by the Supreme Court contained in the order of Justice G.G.Robinson dated the 17th day of May, 1951, doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 4.

1. And the appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

30

2. Part of the decision of the Lower Court

complained of:- whole decision, namely "that all the personal properties of the above named intestate be partitioned among his children"

In the West African Court of Appeal.

3. Grounds of Appeal:-

---

No.24.

Notice and Grounds of Appeal.

28th May 1951

- continued.

10

1. That the learned trial judge failed to direct himself properly to the fact that the intestate was an issue of marriage under the Marriage Ordinance and that his estate is thereby subject to section 36 of that ordinance Cap.128, and of the section 41 of the Administrator-General's Ordinance Cap.4.

2. That the learned trial judge was wrong in not taking evidence to find out whether the intestate was ever married and if so, on what law or custom and which if any of those claiming as his children were issue of such marriage.

20

4. Relief sought from the West African Court of Appeal :-

(a) To set aside the order of the Supreme Court and to direct that the provisions of Section 36 of the Marriage Ordinance and Section 41 of the Administrator-General's Ordinance shall be applied in the distribution of the real estate of the intestate.

5. Persons directly affected by the Appeal:-

See List attached.

DATED this 28th day of May, 1951.

(Sgd.) H.O.DAVIES,  
Appellant's Solicitor.

---

In the West  
African Court  
of Appeal.

LIST OF RESPONDENTS.

No.24.  
Notice and  
Grounds of  
Appeal.  
28th May 1951  
- continued.

1. The Administrator-General, Lagos.
2. John Bankole Daniel, 32, Ikoyi Road. Lagos.
3. Mrs. Feyishitan Bamgboye, 24, Market Street, Ebute Metta.
4. Mrs. Abimbola Oladunmiye, 12, Vincent Street, Lagos.
5. Olabode Daniel, minor, c/o Muniratu A. Ajibola 12, Bamgbose Street. Lagos.
6. Crispina Daniel, 12, Bamgbose Street, Lagos. 10  
(now in U.K.)
7. Mobolaji Daniel, minor, c/o Janet Clay, 12, Bamgbose Street, Lagos.
8. Abiodun Daniel, minor - do -
9. Olayinka Daniel, minor, c/o Sabitiyu Adamo 27, Great Bridge Street, Lagos.
10. Adeyanju Daniel, minor - do -
11. Adeyemi Daniel, minor, c/o Rebecca Layinka 15, Ajasa Street, Lagos.
12. Kolapo Daniel, c/o Satitu Lewis, 98, Moloney Bridge Street, Lagos. 20
13. Olayiwola Daniel, minor, c/o Nusiratu Oshodi 32, Ikoyi Road, Lagos.
14. Mrs. Ibiwonke Santos (nee Ferreira) 78, Moloney Bridge Street, Lagos.
15. Jero Labinjoh (natural child) 78, Moloney Bridge Street, Lagos.
16. Taiwo A.A. Bamgbose 19, Igbosere Road, Lagos.





In the Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION.

AG.29.

(Title as in No.19)

No.25.

AFFIDAVIT IN SUPPORT OF MOTION.

Motion and  
Affidavit in  
Support to  
stay execution  
of Order for  
Distribution.

28th May 1951  
- continued.

I, Matthew Olajide Bamgbose, Yoruba, Clerk of No.64, Tokunboh Street, Lagos in Nigeria make oath and say as follows :-

- (1) That I am the applicant in above suit.
- (2) That I am also the Plaintiff in Suit No.161/51 against the Administrator-General. 10
- (3) That I am the Appellant in Suit No.131/50.
- (4) That this Honourable Court made two orders on the 17th day of May, 1951 to distribute the real and personal assets of the deceased intestate among his children.
- (5) That I am a nephew of the deceased, who was full brother to my late father, Pedro St. Matthew Daniel. (deceased)
- (6) That after the death of my grandfather, the deceased, claiming to be the only legitimate son of my grandfather took all his properties to the exclusion of my father. 20
- (7) That in 1941, also the deceased took action against me and my mother and ejected us from No.8, Bamgbose Street, Lagos, which had been built by my father, on the grounds that the land on which it had been built belonged to my grandfather and that he alone, being the legitimate son at the time of his death was entitled. 30
- (8) Both myself, my mother, sisters and nephew are now very poor and have nothing, the intestate having taken all my father's property in his life time.
- (9) That I am seeking to claim from the estate of the deceased what I believe is due to me by virtue of the Marriage Ordinance and the Legitimacy Ordinance.

(10) That the orders to distribute the real and personal estates of the intestate among his children, if not stayed until my claim is determined, will seriously prejudice me, my mother, sisters and nephew for ever.

In the Supreme Court of Nigeria.

(11) That my uncle the intestate, never contracted any marriage in his life time, whether under the Marriage Ordinance or any other law or Custom.

No.25.

Motion and Affidavit in Support to stay execution of Order for Distribution.

10

(12) That it may please this Court in equity to stay the execution of the orders pending the determination of the two cases mentioned in paras. 2 & 3 and also the appeal against the said orders.

28th May 1951

- continued.

DATED at Lagos 28th day of May, 1951.

(Sgd.) M.OLAJIDE BAMGBOSE,  
Deponent.

SWORN to at the Supreme Court Registry, Lagos, this 28th day of May, 1951.

20

Before me,  
(Sgd.) S.O.MAFE,  
Commissioner of Oaths.

No. 26.

No.26.

MOTION AND AFFIDAVIT IN SUPPORT FOR LEAVE TO APPEAL AGAINST ORDER DATED 19.4.51

Motion and Affidavit in Support for Leave to Appeal against Order dated 19.4.51.

IN THE SUPREME COURT OF NIGERIA  
IN THE SUPREME COURT OF THE  
LAGOS JUDICIAL DIVISION

30

SUIT NO.AG.29.

(Title as in No.19)

28th May 1951.

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on the 1st day of June, 1951, at the hour of 9 o'clock in the forenoon, or so soon thereafter as Counsel on behalf of the above-named Applicant can be heard for an order granting him leave to

In the Supreme Court of Nigeria.

No.26.

Motion and Affidavit in Support for Leave to Appeal against Order dated 19.4.51.

28th May 1951  
- continued.

appeal against the order made on this cause on the 19th day of April, 1951 and also an extension of time within which to appeal against the said order, and for such further orders as the Court may deem fit to make in the circumstances.

DATED at Lagos this 28th day of May, 1951.

(Sgd.) G.B.A.COKER,

Solicitor for Applicant.

IN THE SUPREME COURT OF NIGERIA.  
IN THE SUPREME COURT OF THE  
LAGOS JUDICIAL DIVISION

10

Suit No.AG.29.

IN THE MATTER OF THE ESTATE  
OF JOHN ST. MATTHEW DANIEL (DECEASED)

AFFIDAVIT IN SUPPORT OF MOTION

I, Matthew Olajide Bangbose, Yoruba, Clerk of No.54, Tokunboh Street, Lagos in Nigeria make oath and say as follows :-

1. That I am a Respondent in this cause.
2. That on the 19th day of April, 1951 the Court made an order granting the Applicant's motion to strike out my Appeal proceedings and also dismissing my own motion for extension of time within which to further perfect the conditions of appeal. 20
3. That owing to a misapprehension on the part of my Solicitors, I filed an application before the West African Court of Appeal against this interlocutory decision.
4. That the application was therefore struck out by the West African Court of Appeal. 30
5. That if I am granted an extension of time within which to appeal against the said interlocutory decision and also leave to Appeal

therefrom, I will proceed prosecuting the said Appeal.

In the Supreme Court of Nigeria.

6. That the Estate in respect of which this matter is before the Court is worth about £100,000 and all the reason of the applicants to strike out my appeal proceedings is that the Grounds of Appeal had been served not on them but on the Solicitor for them.

No.26.

Motion and Affidavit in Support for Leave to Appeal against Order dated 19.4.51.

28th May 1951  
- continued

10

7. That I did perfect and comply with the other conditions of appeal and have duly paid all cost so far awarded in this cause.

(Sgd.) M.OLAJIDE BAMGBOSE  
Deponent.

SWORN to at the Supreme Court Registry, Lagos, this 28th day of May, 1951.

Before me,  
(Sgd.) S.O.MAFE,  
Commissioner for Oaths.

20

No. 27.

HEARING OF MOTIONS

IN THE SUPREME COURT OF NIGERIA  
FRIDAY THE 1st DAY OF JUNE, 1951,  
BEFORE HIS HONOUR  
GEORGE GILMOUR ROBINSON, ESQ.,  
PUISNE JUDGE.

No.27.

Hearing of Motions.

1st June 1951.

AG.29.

MOTIONS.

30

IN THE MATTER OF THE ESTATE OF JOHN ST. MATTHEW DANIEL (DECEASED).

H. O. DAVIS - moving )  
ROTIMI WILLIAMS )  
SIR ADEYEMO ALAKIJA ) OPPOSING.  
SAGOE for Ad.-Gen. )

1st Motion: To ask for leave to appeal against my order.

In the Supreme Court of Nigeria.

No.27.

Hearing of Motions.

1st June 1951  
- continued.

2nd Motion: Stay of execution pending determination of appeal.

1st Motion:This Court struck out the appeal against judgment of Ademola J.

H.O.DAVIES: Because grounds was not served on all the parties.

Then we went to W.A.C.A. for special leave - W.A.C.A. held that this Court's order on interlocutory order and therefore had to have leave of this Court to appeal, and also extension of time.

10

So now we come to ask for leave and for extension of time.

Grounds: Mr.Williams admitted at least one Respondent was served. And 2 others were served.

Petitioner was applying for a decree of legitimacy. The other respondents are not really totally interested, only formally so.

New Rules of W.A.C.A.do not require service at all.

Rules: Notice of Appeal - personal service on persons directly affected.

20

Grounds of Appeal - were served on the Solicitors - and accepted.

r.12(1)C Notice of Appeal.

r.14 - Grounds of Appeal 'cause a copy thereof to be served on Respondent.

r.25 - After the appeal shall have been filed - W.A.C.A. is seized.

Form 2 of the Rules:

Having obtained final leave, newly appeal to W.A.C.A.

30

This Court was moving under the New Rules - so it was Interlocutory - Under the old Rules, W.A.C.A. was seized.

Holms V. Robbin - City County - leave to appeal - Can apply to judge for extension of time to appeal.

On the merits: Claimant is asking to be legitimized -

He thinks the Court is wrong in his case.  
Wants it tested by W.A.C.A. quite apart from his  
interest in this estate.

It would be now Res Judicata, binding all his fu-  
ture rights.

ROTIMI WILLIAMS: New Rules.

Rule 71 - abolished the old  
Rules as from 31.12.50. Old  
Rules apply until 5.3.51 in  
certain cases.

If steps are taken before 5.3.51  
the Old Rules continue.

Judgment given 31.12.51 3 months to get condition-  
al leave to appeal. Move Court on 28.2.51 under  
Old Rules still within 3 months - Final leave would  
come up beginning of April and would be heard un-  
der Old Rules. Since step taken prior to 5 March  
then Old Rules will govern the appeal.

Either Old Rules apply or the New Rules -

20 When Davis went to W.A.C.A. President said if it is  
interlocutory, must get leave of Judge. If final -  
no leave necessary, file the appeal.

Asking from this Court - leave to appeal and ex-  
tension of time.

New Rules 14(4) - Must support by affidavit and  
attaching grounds of appeal. This Court dismissed  
the interlocutory appeal this year. So the New  
Rules apply.

30 No sufficient affidavit here - No grounds shown or  
copy of grounds attached.

Must show grounds why leave should be granted.  
Must show a sub ground to be argued in W.A.C.A.

Rule 15 proviso - Old Rules.

Appeal struck out under it -

Application made to the Court below properly.

There are 2 appeals 1 - against legitimacy.  
2 - against Distribution.

RULING.

This deals with the Motion for leave to appeal

In the Supreme  
Court of  
Nigeria.

No.27.

Hearing of  
Motions.

1st June 1951

- continued.

In the Supreme Court of Nigeria.

No.27.

Hearing of Motions.

1st June 1951

- continued.

against the order of this Court deciding that the right of appeal had been lost and also for extension of time in which to do it. When the appeal was made to W.A.C.A. W.A.C.A. said that that Court under the circumstances of this case had to apply the new rules and inasmuch as it was an interlocutory judgment, the application would have to be made to the Court below. Hence this Motion.

Nothing new has been said and I still think I am right in interpreting the Old Rules and the New Rules as I did before.

10

I therefore refuse the motion for leave to appeal and also for extension of time.

(Sgd.) G.G.ROBINSON.

Rotimi Williams asks for costs. 10 guineas.

COURT: No order for costs.

2nd Motion:

H.O.DAVIES - moving

ROTIMI WILLIAMS - Opposing

20

SIR ADEYEMO ALAKIJA -

DAVIES: Another appeal is filed before W.A.C.A., appealing against my order to distribute. The appeal has been filed.

7 W.A.C.A. 156.

S.41 of Administrator-General's Ordinance: Applicant can still make a claim on legal equitable or moral grounds. This Court has said that the estate should be distributed among the children of the polygamous marriage - 7 W.A.C.A.156 says no - only legitimate children of the legal Marriage.

30

WILLIAMS: 7 W.A.C.A.156.

Ratio decendi -

(a) Claim was under Native law and custom. We claim now as children under English law. Which has to be decided by the local law.



We have come to claim under English law.

In re Goodman's Trusts

If W.A.C.A. had been before an English judge in England, he would have said "Are there any children of deceased?. In deciding 'children' - he would ask are they legitimate by the law of the Country of this domicile? Privy Council has held in a Cyprus Case that children must be decided by local law. Basis of Goodman's Trust is 'are they legitimate children?'

In the Supreme Court of Nigeria.

\_\_\_\_\_  
No.27.

Hearing of Motions.

1st June 1951  
- continued.

"Any Native Law or Custom notwithstanding" means special inheritance.

Who is competing with us now? Only this claimant who cannot succeed now in being legitimized.

If this Court is wrong and it goes to W.A.C.A. can claimant benefit? No.

(b) S.41 Ad. General Ordinance:

If Motion for distribution was not granted, then it would be in Administrator General's hands. But the Court has said that it can be distributed against known children. This Court has held that we are the heirs and next-of-kin. So the section does not apply.

(In any event W.A.C.A. is being reviewed by W.A.C.A. in another case in October - so says Mr. Williams.) This application was made by motion.

Pheysey v. Pheysey 12 Ch.D.305 at p.306  
Interlocutory Order.

(c) Here is an estate in hands of Administrator General. We claim it as children of deceased. The scheme must be drawn up and put before the Court 'Liberty to apply' - not a final order.

If interlocutory - this Court's leave must be obtained. Not have done - so no appeal pending.

(d) Claimant is not a party to proceedings. He was only put on notice to be heard. He is not a party. A person put on notice cannot appeal.

If he had wanted to appeal he could have applied

10

20

30

In the Supreme  
Court of  
Nigeria.

\_\_\_\_\_  
No.27.

Hearing of  
Motions.

1st June 1951  
- continued.

to be made a Respondent in the Distribution application. Did not do so. Only Court said he should be put on Notice.

White Book 1950 Vol.1 p.1244.

'What persons may appeal'.

Persons not being parties can apply for leave ex parte to Court of Appeal.

r.42 New W.A.C.A.Rules - procedure adopted under White Book, when not conflicting.

Sums up

10

Applicant asking for stay of order for distribution pending determination of appeal.

(a) If he succeeds in appeal to hold up distribution he will not benefit - so no injustice done in refusing stay.

(b) S.41 Administrator General Ordinance does not apply.

Court has decided there are heirs and next-of-kin.

(c) Interlocutory decision - decision to distribute - so no appeal without leave which has not been asked for yet.

20

(d) Claimant not a party so cannot appeal.

H.O.DAVIES: 7 W.A.C.A.156. We rely on it. With respect, this Court was wrong.

If W.A.C.A. agreed this Court was wrong, then S.41 Administrator-General's Ordinance would apply and all the children in same footing. Court made order to distribute - finally. It is not an interlocutory order. It was final order. Chief Registrar has accepted our notice of Appeal. Claimant put in a caveat. Been in it though this Court decided having heard his arguments. He is a party.

30

Ruling:

Mr. Williams has put up formidable arguments why this Court should not grant a stay as prayed in

the Motion - Nevertheless, I think my previous order was final and therefore applicable as of right. I also think that it is right to grant a stay of execution until after the next sitting of W.A.C.A. I grant a stay until 15.11.51. Liberty to apply. No costs.

(Sgd.) G.G.ROBINSON.

(If Counsel can come to some agreed solution and scheme, questioning the possible rights of the claimant, I will listen).

In the Supreme Court of Nigeria.

No.27.

Hearing of Motions.

1st June 1951

- continued.

10

No. 28.

ORDER FOR STAY OF EXECUTION

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION

AG.29.

(Title as in No.17)

UPON READING the affidavit of Matthew Olajide Bangbose of 64, Tokunboh Street, Lagos, sworn to and filed on the 28th day of May, 1951, and after hearing Counsel in the matter:

20

IT IS ORDERED that the execution of the two Orders previously made in this matter on the 17th day of May, 1951, to distribute the real and personal estates of the Intestate John St. Matthew Daniel among his children be and is hereby stayed until 15th day of November, 1951.

DATED at Lagos this 1st day of June, 1951.

(Sgd.) G.G.ROBINSON.

PUISNE JUDGE.

In the Supreme  
Court of  
Nigeria.

No. 29.

HEARING OF APPLICATION FOR FURTHER STAY.

No.29.

Hearing of  
Application  
for further  
stay.

IN THE SUPREME COURT OF NIGERIA  
MONDAY THE 14th DAY OF JANUARY, 1952.  
BEFORE THE HONOURABLE  
MR. JUSTICE GEORGE GILMOUR ROBINSON,  
PUISNE JUDGE.

AG.29.

14th January,  
1952.

IN THE MATTER OF THE ESTATE OF  
JOHN ST.MATTHEW DANIEL. (Deceased)

10

H.O.DAVIES - Applicant  
F.R.A.WILLIAMS - Opposing on behalf of  
11 Children.

KOTUN -  
OMOLOLU -

DAVIES: This Court stayed the distribution until  
15 November '51 therefore ordering under appeal

W.A.C.A. did not hear the case - asking for a  
further stay.

WILLIAMS: Submits stay to 15 November was there-  
fore of the Herbert Macaulay case, not for  
W.A.C.A.

20

That judgment W.A.C.A. 3552 supports us - Asks  
for no further stay. Also Rule 25 of W.A.C.A.  
rule. This Court functus officio.

COURT: Exercising my judicial discretion and con-  
sidering all the facts I will not extend the  
stay of execution any longer.

(Sgd.) G.G.ROBINSON.

30

CERTIFIED TRUE COPY,

(Sgd.) J.T.AKIN GEORGE,

Senior Registrar.

No. 30.

MOTION AND AFFIDAVIT IN SUPPORT FOR  
STAY OF EXECUTION OF ORDER FOR DISTRIBUTION.

In the West  
African Court  
of Appeal.

No. 30.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.

A.G.29/W.A.C.

IN THE MATTER OF THE ESTATE OF JOHN  
ST. MATTHEW DANIEL (DECEASED)

Motion and  
Affidavit in  
Support for  
stay of  
execution of  
Order for  
Distribution.

10 IN RE MRS. FEYISHITAN BAMGBOYE & 10 OTHERS  
Applicants/Respondents

IN RE MATTHEW OLAJIDE BAMGBOSE (FORMERLY  
DANIEL) Respondent/Appellant

8th February,  
1952.

MOTION ON NOTICE

20 TAKE NOTICE that this Honourable Court will  
be moved on Tuesday the 19th day of February, 1952  
at the hour of 9 o'clock in the forenoon, or so  
soon thereafter as Counsel can be heard on behalf  
of the above-named Respondent/Appellant for an or-  
der staying the execution of the two orders made  
in this matter on the 17th May 1951, to distribute  
the real and personal estate of the intestate John  
St. Matthew Daniel among his children, pending the  
determination of the appeal already pending before  
this Honourable Court from the said Orders and fur-  
ther pending the appeal in Suit No. 131/50 also  
pending before this Honourable Court and for such  
further or other orders as this Honourable Court  
may deem fit.

30 DATED at Lagos this 8th day of February 1952.

(Sgd.) H.O.DAVIES.

Solicitor to the Respondent/Appellant.

ON NOTICE TO:-

The Administrator-General, Lagos.

Applicants'/Respondents' Solicitors,  
Thomas, Williams and Kayode,  
41, Idumagbo Avenue, Lagos.

Sir Adeyemo Alakija,  
89, Bamgbose Street, Lagos.

40 Mr. Ade Mumunney,  
141, Igbosere Road, Lagos.

Mr. A.O. Akintoye,  
3, Ologun Street, Lagos.

In the West  
African Court  
of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS.

A.G.29/W.A.C.

(Title as in No.30)

No. 30.

Motion and  
Affidavit in  
Support for  
stay of  
execution of  
Order for  
Distribution.  
8th February,  
1952 -  
continued.

AFFIDAVIT.

I, Matthew Olajide Bamgbose (formerly Daniel) Clerk, of 64, Tokunboh Street, Lagos, in Nigeria, British Subject, make oath and say as follows :-

1. That I am the Respondent-Appellant in the above appeal now pending before this Court. 10
2. That the appeal is from two orders made by the Honourable Justice G.G.Robinson on the motion of the Applicants-Respondents that the real and personal estates of the deceased intestate, John St. Matthew Daniel be distributed among his children.
3. That the deceased intestate was a Christian who was not married whether under the Marriage Ordinance, or under Native Law and Custom or in any form whatever. 20
4. That I am the nephew of the deceased intestate and appeal against the striking out of my appeal from the Order of the Honourable Justice Ademola who dismissed my application for a Legitimation decree in suit No.131/50 is pending before this Honourable Court.
5. That the deceased intestate, during his lifetime, dispossessed my late father from the real estate of my grandfather, because he was born in wedlock, by the same parents. 30
6. That if the real and personal estates of the deceased intestate are distributed my interests will be permanently prejudiced should I succeed in my appeals.
7. That on the 1st June, 1951, the Supreme Court, the Honourable Justice Robinson presiding, granted a stay of execution of the two Orders, on my motion, until the 15th November, 1951.
8. That when that Order for stay was made the

Honourable Court below believed that the pending appeals referred to in paragraphs 2 and 4 above would have been disposed of by this Honourable Court before the 15th November, 1951.

In the West African Court of Appeal.

\_\_\_\_\_  
No. 30.

Motion and Affidavit in Support for stay of execution of Order for Distribution.

8th February, 1952 -

continued.

- 9. That unfortunately the two appeals were not heard during the last General Sitting of this Honourable Court.
- 10. That on the 24th day of December, 1951, an application to the Supreme Court for extension of the Orders for stay already made till the hearing of the appeals by this Honourable Court was refused by the Honourable Justice Robinson.
- 11. That I have been informed by the Administrator-General, as Administrator of the intestate estate that he proposed to proceed with the distribution of the real and personal properties of the deceased intestate.
- 12. That I make this affidavit in support of my application that this Honourable Court do grant a stay of the two Orders pending the determination of the appeal therefrom and from the judgment in Suit No.131/50.

DATED at Lagos this 9th day of February 1952.

(Sgd.) M.OLAJIDE BAMGBOSE.

SWORN to at the Supreme Court Registry this 9th day of February, 1952.

Before me,

(Sgd.) J.T.AKIN GEORGE,

Commissioner for Oaths

\_\_\_\_\_

In the West African Court of Appeal.

No. 31.

HEARING OF MOTION

No. 31.  
Hearing of Motion.  
19th February 1952.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.  
TUESDAY THE 19th DAY OF FEBRUARY, 1952.  
BEFORE THEIR LORDSHIPS  
SIR JOHN VERITY, CHIEF JUSTICE NIGERIA,  
PRESIDING JUDGE.  
OLUMUYIWA JIBOWU, PUISNE JUDGE, NIGERIA  
JAMES REALI GREGG, PUISNE JUDGE, NIGERIA.

10

W.A.C.A.3622.

IN THE ESTATE OF JOHN ST.MATTHEW DANIEL, Deceased.

MOTION FOR STAY OF EXECUTION

H.O.DAVIES for appellant  
SIR ADEYEMO ALAKIJA for ten beneficiaries.  
F.R.A.WILLIAMS for all children with one for head of family.

WILLIAMS: Similar point was coming up in Estate of H.Macaulay, which was decided in November. No further reason for stay - or for appeal.

20

ALAKIJA: No sufficient notice.  
Adjourned to 15.4.52. Execution stayed till appeal heard.

(Sgd.) JOHN VERITY.

No.32.

No. 32.

Counter Affidavit of Abimbola Oloḁunjoye.

COUNTER AFFIDAVIT OF ABIMBOLA OLOḁUNJOYE.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS.

A.G.29/W.A.C.

15th April 1952.

(Title as in No. 30)

30

COUNTER AFFIDAVIT

I, Mrs. Abimbola Oloḁunjoye, Yoruba, British



Subject, of No. 8 Bamgbose Street, Lagos do hereby make oath and say as follows :-

In the West African Court of Appeal.

1. That I am one of the persons on notice in the above-named matter.
2. That paragraph 3 of the applicants' affidavit is denied and the mothers of the children of the deceased are married to him under native law and custom.
- 10 3. That the marriage of the mothers of the children of the deceased with the deceased under native law and custom was proved by an uncontradicted affidavit in Suit No. A.G.29 of 1950 wherein his Lordship Mr. Baramian gave a judgment on the 14th day of February, 1950 wherein he said, inter alia:

No. 32.

Counter Affidavit of Abimbola Olofunjoye.

15th April, 1952 -

continued.

20 "It is to be noted that in his counter-affidavit of 30 January, 1950. the respondent (Bamgbose) does not deny the statement made in paragraph 4 of the affidavit made by one of the applicants that the deceased John married his numerous wives under native law and custom. The respondent's counsel opposed the application on the footing that the applicants were children of the deceased John by wives whom he so married."

4. That the facts sworn to in paragraph 5 of the affidavit is untrue.
- 30 5. That I am informed by one of our Counsel Mr. F.R.A. Williams and I verily believe that the reason why execution was stayed till the 15th November, 1951 was in order that the appeal of H.S.H. Macaulay deceased which was then pending before the West African Court of Appeal be determined as the points involved in that case are similar to the points involved in our own case. For this reason I deny paragraph 8 of the Affidavit.

(Sgd.) T.A. OLADUNJOYE.

40 SWORN to at the Supreme Court Registry, Lagos, this 15th day of April, 1952.

Before me,  
(Sgd.) J.T. AKIN GEORGE,  
Commissioner for Oaths.

In the West  
African Court  
of Appeal.

No. 33.

FURTHER HEARING OF MOTION

No. 33.  
  
Further  
Hearing  
of Motion.  
  
15th April,  
1952.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.  
TUESDAY THE 15th DAY OF APRIL, 1952  
BEFORE THEIR LORDSHIPS  
SIR STAFFORD WILLIAM POWELL FOSTER-SUTTON  
PRESIDENT  
SIR JAMES HENLEY COUSSEY - JUSTICE OF APPEAL,  
GOLD COAST.  
JOSEPH HENRI MAXIME DE COMARMOND,  
SENIOR PUISNE JUDGE, NIGERIA.

10

W.A.C.A.3622

(Title as in No.30)

Mr.H.O.DAVIES for mover  
with him Mr. Coker.

Mr.F.R.A.WILLIAMS for Respondents.

DAVIES:

States facts. Petition for legitimation was struck out for want of Jurisdiction. Other parties than mover to distribute Estate. An appeal was lodged against striking out of Petition.

20

Appeal against striking out is still pending before this Court.

We also appealed against an order made for distribution of the estate - that appeal is also pending before this Court.

This application is being made in the distribution proceedings.

WILLIAMS:

30

I would concede for the purpose of my submissions that his Petition succeeds.

The position then would be that he is nephew of deceased.

My clients are the children of the deceased.

Refers to paragraph 3 of Affidavit in support of Motion for stay of distribution. Not sufficient merely to allege parents were not married. Refers to passage of Bairamian J. set out in paragraph 3 of Counter affidavit.

In the West African Court of Appeal.

---

No. 33.

Cites: In the matter of the estate of Herbert Samuel Heelas Macaulay. Dated 23rd November, 1951. WACA. 3552.

Further Hearing of Motion.

10 Williams concedes that in the distribution proceedings the issue is whether children who are legitimate under native Law and Custom are entitled to succeed to the estate of an intestate as against a nephew born from a marriage contracted under the Marriage Ordinance.

15th April, 1952 -

continued.

Refers to In re: Williams 7 W.A.C.A. p.156 - over-rules Macaulay Case.

20 Mr. Williams agrees that no further steps will be taken to distribute estate pending decision of the appeal in the distribution proceedings. Mr. Sagoe on behalf of the Administrator-General undertakes that no further steps to distribute estate will be taken by the Administrator-General pending the conclusion of the appeal.

The appeal will be dealt with during present session of this Court.

By agreement Motion adjourned sine die.

(Intld.) S.F.S.  
P.

15.4.52.

---

In the West  
African Court  
of Appeal.

No. 34.

HEARING OF APPEAL AGAINST ORDER FOR DISTRIBUTION.

No. 34.

Hearing of  
Appeal against  
Order for  
Distribution.

20th May 1952.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.  
TUESDAY THE 20th DAY OF MAY, 1952.  
BEFORE THEIR LORDSHIPS  
SIR STAFFORD WILLIAM POWELL FOSTER-SUTTON  
PRESIDENT  
JOSEPH HENRI MAXIME DE COMARMOND,  
ACTING CHIEF JUSTICE, NIGERIA  
SIR JAMES HENLEY COUSSEY, JUSTICE OF APPEAL,  
GOLD COAST.

10

W.A.C.A.3622.

(Title as in No.30)

MR. H.O. DAVIES - with him  
MR.G.A.B.COKER - for appellants.

MR.F.R.A.WILLIAMS for Respondent.

DAVIES:

Intestate in these proceedings was an issue  
of a marriage under the Marriage Ordinance.

20

The parents of deceased intestate were also  
the parents of appellants' father. Appellant's  
father was born before marriage of which intestate  
was an issue. Cap.111 - Legitimacy Ordinance - leg-  
itimated. Appellant's father in 1929 - i.e. when  
it came into force. Refers to section 3 (2) and  
section 4. Deceased intestate did not marry un-  
der the Ordinance but he had a number of children  
from different women. "We say not married to them  
under native law and custom". Refers to p.46 of  
record line 16. No evidence or decision has, how-  
ever, ever been given by a Court on the matter in  
this case.

30

Refers to p.14 of record "It is to be noted.."  
says at that time we were concerned merely with  
distribution. Affidavit referred to by Judge is  
at p. 7 and our reply at p.11. Deceased intestate  
died leaving property worth approximately £100,000.

About 12 of intestate's children then brought

a motion asking the Court to direct the Administrator-General to proceed with the distribution of the estate. Distribution was stayed pending determination of the legitimacy proceedings - latter was dismissed - then respondent applied for distribution and obtained an Order on 17th May, 1951, granting distribution, and it is against that order that we are appealing. Pages 48- 49 of record. Formal Order p.49.

In the West African Court of Appeal.

-----  
No. 34.

Hearing of Appeal against Order for Distribution.

20th May 1952.  
continued.

10 Submits trial Judge should not have made the order.

Grounds of appeal p. 50 -

Law which bound trial Judge was as stated in Re: Williams Vol.7 W.A.C.A. p.156. The point I make is that was the law - not concerned to argue whether it is right or not.

20 Submits - that trial Judge should have directed that an enquiry be held into question which of children should take - before he made an Order for distribution. Refers to O.55 R.3 - English Rules - Note at foot of p.1111 - 1951 Edition.

Refers to page 2 of Record. Paragraph 4 of Affidavit "That we are all issues... ." A self serving statement made by one of the children.

30 Section 36 of Marriage Ordinance - all that means is that if it is proved they are children of a marriage contracted in accordance with native Law and Custom - that was the argument of Mr. Williams and case was conducted on footing that all the children were entitled to succeed under section 36 Cap.128. Statute of distributions in England provides not only for children but also for widow.

Legitimacy should also have been part of the enquiry. Annual Practice 1951 Edition - p. 1092 "Evidence".

Submits that a Certificate of Legitimacy is good against whole world.

Refers to W.A.C.A.3552. Macaulay's case was decided contra to in re: Williams.

40 Marriage Ordinance. Cap. 128.

In the West African Court of Appeal.

Draws attention to heading of section 36 and succession is referred to in Proviso: para. (b). Section 36 (1).

No. 34.

Hearing of Appeal against Order for Distribution.

"(1) The same law applies to where a person who marries under the Ordinance dies intestate leaving a widow and issue of such marriage as in case of

(2) a person who is an issue of marriage under the Ordinance who dies intestate."

20th May 1952.  
continued.

Section 36(2). Cap.128. Object is to draw persons attention to legal effect of marriage under Ordinance - It clearly affects succession. Marriage Ordinance merely puts succession to real and personal property under same rule.

10

7. Nig.L.R. p.8: Martins v Fowler. P.C. was clear - only difference made was as to succession in cases of marriages validated by the Ordinance - then law governing succession to personal property applies both as to personality and reality. Old law applies to valid marriages.

20

Cites Cole v Cole 1 N.L.R. p.15, p.22.

Note - See Administrator-General v. Onwo Egbuna. Vol.18 N.L.R. p.1. at p.3.

It has always been held that an issue under native Law and Custom marriage is not entitled as against issue of marriage under the Marriage Ordinance.

Cites 8 W.A.C.A. p.108.

Where a Judgment has been applied for a long time like Re. Williams - Court should be chary about not following it.

30

Young v Bristol Aeroplanes Co. (1944) 2 A.E.R. p.293. On question of W.A.C.A. being bound by previous decisions.

Marriage Ordinance affects succession and to that extent distribution - English Act provides for WIDOW not WIDOWS.

In re: Williams follows and has followed long line

of cases - for example. 3 N.L.R.89; 5.N.L.R.42 & 105; 7 N.L.R.p.8; 8 N.L.R.68; 17 N.L.R. p.55 & 59 - 50 of 1927 & 147 of 1932. Unreported. (1888) 38 Ch. D.220. Re. marriage.

In the West African Court of Appeal.

WILLIAMS:

No. 34.

Proceedings before Mairamian J. were not to stay distribution but to proceed to distribution.

Hearing of Appeal against Order for Distribution.

Refers to p.6 of Record - paragraph 4 and p. 7 paragraph 2. There was evidence of marriage.

20th May 1952  
continued.

10 Factum of marriage was not in issue.

My opening remarks re: marriage under native law and custom were not challenged - p. 9.

Page 16 - line 29 of Judgment. Finding re: marriage.

Legitimacy Ordinance. 111 - Section 3.

Submits only a son can take estate under section 6 of Cap.111 - he can take from his father or grandfather but not from an Uncle.

20 This is the estate of a person born in wedlock not a legitimated person.

N.B.Section 5 (1).

Appellant could come in under section 5(1)(a) of Cap.111.

Marriage Ordinance -

Submits we are bound by Macaulay's case - Alternatively - the decision in Macaulay's case is correct.

30 (1) This is not a case of two conflicting decisions. Where there is an express overruling as in Macaulay's case that is final.

Green M.R. in Young v Bristol Aeroplane Co., (1944) 2 A.E.R. at p.300.

Submits that Macaulay's case has held that In re. Williams was given per incuriam and that is now binding upon C.A.

In the West  
African Court  
of Appeal.

In re: Williams was given per incuriam - reads from p.157 of In re Williams - submits summing up there is correct statement of the law.

No. 34.

Hearing of  
Appeal against  
Order for  
Distribution.

All that In re: Williams desires is if "A" goes to Court and claims interests in an estate on the ground that he is entitled to share in the distribution under native law and custom he cannot succeed if estate falls under section 36 of the Marriage Ordinance.

20th May 1952.  
continued.

In this case my clients are not claiming to be entitled under native Law and Custom - they are claiming in accordance with the provisions of the law of England - Section 36. Cap. 128. 10

Macaulay's case p.2 See quotation from Re: Goodman's Trust (1881) 17 Ch. D. 266. - at p.4 of Macaulay's case. Goodman's Trust was not cited in re: Williams at p.156 - Vol.7, W.A.C.A. R.

Reads p. 9 & 10 - of Judgment in Macaulay's case.

Nothing in cases to support the proposition that Courts in England will not recognise a foreign marriage even if it is polygamous. (1857) Re.Dunns Estate. Same applies to Dews Reports. 197. Children of marriage and if children are regarded as legitimate in foreign country, Courts in England will recognise them as legitimate. 20

WILLIAMS:

Cole v. Cole.

Adjourned to 21.5.52. at 8.30 a.m.

19.5.52. (Intld.) S.F.S. P.



No. 35.

HEARING OF APPEAL AGAINST DECISION DATED 28.2.50

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.  
TUESDAY THE 20th DAY OF MAY, 1952

CIVIL APPEAL IN SUIT A.G.29.  
W.A.C.A.3622.

MR.F.R.A.WILLIAMS for appellant.

MR. DAVIES for Respondents.

10 WILLIAMS: We have now obtained an Order for dis-  
tribution there is no point, therefore,  
in proceeding with the appeal. Withdrawn.

Appeal dismissed with costs. Coun-  
sel's fee fixed at £3.3.0. Other  
costs to be taxed.

20.5.52 (Intld.) S.F.S.  
P.

In the West  
African Court  
of Appeal.

No. 35.

Hearing of  
Appeal against  
Decision dated  
28.2.50.

20th May 1952.

No. 36.

RESUMED HEARING OF APPEAL AGAINST  
ORDER FOR DISTRIBUTION.

20 IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA  
WEDNESDAY THE 21st DAY OF MAY, 1952  
W.A.C.A.3622.

COUNSEL AS BEFORE.

F.R.A.WILLIAMS:

In re: Williams did not decide that a person  
who is proved to be legitimate under native law and  
custom cannot inherit under section 36 of the Mar-  
riage Ordinance.

Refers to Cole v Cole. Subsequent cases have

No. 36.

Resumed  
Hearing of  
Appeal against  
Order for  
Distribution.

21st May 1952.

In the West African Court of Appeal.

followed blindly - Cole v Cole does not mention Marriage Ordinance. Section 36 has been in existence since 1884.

No. 36.

Resumed Hearing of Appeal against Order for Distribution.

Legitimacy Ordinance here follows English Act of 1926. That was first time they recognised legitimacy by subsequent marriage. Marriage Ordinance was re-enacted in 1914 therefore appellant would not be entitled to share as in 1914 when his Status would have been nil. You have to look at Law of England in 1914 i.e. date when present Marriage Ordinance was granted.

10

21st May 1952. continued.

If my learned friend is correct - there would be no one to take under English law and proviso(a) of 36 (1) of Cap.128 would apply and Estate would be distributed in accordance with native law and custom. Appellant can only hope to come in if law of Nigeria is looked to - to determine legitimacy.

If Nigerian law makes him legitimate and applies - then Nigerian law - native law and custom also applies to respondents.

20

I do not go as far as Macaulay's case - English law would not - I submit. Recognise status of the WIDOWS - but it would recognise children of a marriage contracted under native law and custom as legitimate.

Reference to widows in Macaulay's case is obiter. It is the children not the wives who are claiming.

(1946) 1. A.E.R.342. Lord Greene 344 - 345 - see also p.349 of same report.

30

(1948) Ch.D. p. 79. Cassel v. Grant.

Cheshire 3rd Edition - 2nd Edition p.380 - 1. Set out at p.18 of record - Bairamian -

Cites Bourne v. Keane (1919) A.C. 815; 121 L.T.p.426. Lord Birkenhead p.830. p.873-4 - Lord Buckmaster. Decisions on construction of Statutes.

Finally - Submits - must look at law of this Country to determine legitimacy - if not then appellants could not come in because in 1914 they

40

would not have been regarded in England as legitimate.

In the West African Court of Appeal.

MR. DAVIES:

Heading of Legitimacy Ordinance. If Williams is right then under English law that they take law of domicile to govern legitimacy - then when we come to Widow we are in a difficulty. Note Yes. but it it submitted Widows are on a different footing.

No. 36.

Resumed Hearing of Appeal against Order for Distribution.

10 Submits Marriage is basis of legitimacy.  
Submits - Macaulay and In re: Williams.

21st May 1952.  
continued.

Continued:

Counsel as before.

Davies:

Huddersfield Police Authority v Watson (1947) 2. A.E.R. p.19.

Court had no right to over-rule In re: Williams - now have two conflicting judgments.

Williams v Glasebrook Bros., Ltd., (1947) 2 A.E.R. p. 884.

20 In re: Williams was not per incuriam.

Costs - When trial took place Court was bound by In re. Williams.

Even if Macaulay binds Court there should have been an enquiry.

Macaulay holds that an enquiry should take place as to who is entitled to share in Estate.

Note: There was a statutory declaration as to next of kin p.4 of record.

C.A.V. 21.5.52. (Intld.) S.F.S.  
P.

In the West  
African Court  
of Appeal.

No. 37.

JUDGMENT

No. 37.  
Judgment.  
2nd June 1952.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS  
MONDAY THE 2nd DAY OF JUNE 1952  
BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON	PRESIDENT	
JOSEPH HENRI MAXIME DE COMARMOND	Acting CHIEF JUSTICE, NIGERIA	
SIR JAMES HENLEY COUSSEY	JUSTICE OF APPEAL	10
	W.A.C.A.3622.	

IN THE MATTER OF THE ESTATE OF  
JOHN ST. MATTHEW DANIEL - deceased

- and -

IN RE JOHN BANKOLE DANIEL & 11 OTHERS  
Applicants/Respondents

- and -

THE ADMINISTRATOR-GENERAL Respondent

- and -

IN RE MATTHEW OLAJIDE BANGBOSE Appellant 20

JUDGMENT

(Delivered by Sir Stafford Foster Sutton. P)

This is an appeal from a decision of Robinson J. on three motions, two filed by the respondents by which they asked (i) for an order that the real estate of one John St. Matthew Daniel, deceased, who died intestate, be partitioned among them; and (ii) for an order requiring the Administrator-General to proceed to distribute the surplus of the personal estate of the intestate among them; and one filed by the appellant in which he asked for an order staying the distribution of the estate of the intestate pending the final determination of an appeal in connection with legitimacy proceedings which was then pending before this Court.

30

The learned trial Judge ordered that all the real properties of the intestate be partitioned among the respondents, and directed the Administrator-General to pay forthwith all debts and other

lawful liabilities and charges due upon the intestate's estate and thereafter to distribute the surplus of the personal estate among the respondents.

In the West  
African Court  
of Appeal.

10 The intestate was a child of Theresa Maria and Matthew Joaquim Daniel who were married in the Wesleyan Methodist Church Tinubu Square, Lagos, on the 28th September, 1890. The intestate was born to them on the 30th March, 1891, and died on the 25th April, 1948, leaving real and personal property which is said to amount in value to approximately £100,000.

\_\_\_\_\_  
No. 37.

Judgment.  
2nd June 1952  
continued.

20 The respondents claim to be the children of the intestate, begotten by him of wives whom they claim he married under native law and custom. The appellant claims to be the legitimate son of Pedro and Comfort Matthew Daniel who were married at the Wesleyan Methodist Church, Olowogbowo, Lagos, on the 19th October, 1909, and he further claims that his father Pedro was the son of Theresa Maria and Matthew Joaquim Daniel and that although his father was born on the 20th October, 1884, that is to say, before Theresa and Matthew married, he was alive on the 17th October, 1929, the date upon which the Legitimacy Ordinance (Cap.111) became law, and therefore, became legitimate by virtue of Section 3 of the Ordinance.

30 Both sides agree that the succession to the intestate's property is governed by the provisions of sub-section (1) of section 36 of the Marriage Ordinance (Cap.128), which reads:-

40 "Where any person who is subject to native law or custom contracts a marriage in accordance with the provisions of this Ordinance, and such person dies intestate, subsequently to the commencement of this Ordinance, leaving a widow or husband, or any issue of such marriage; and also where any person who is the issue of any such marriage as aforesaid dies intestate subsequently to the commencement of this Ordinance -

The personal property of such intestate and also any real property of which the said intestate might have disposed by will, shall be distributed in accordance with the provisions of the law of England relating to the distribution of the personal estates of intestates, any native

In the West  
African Court  
of Appeal.

\_\_\_\_\_  
No. 37.

Judgment.

2nd June 1952

continued.

law or custom to the contrary notwithstanding:

Provided that -

- (a) where by the law of England any portion of the estate of such intestate would become a portion of the casual hereditary revenues of the Crown, such portion shall be distributed in accordance with the provisions of native law and custom, and shall not become a portion of the said casual hereditary revenues; and
- (b) real property, the succession to which cannot by native law or custom be affected by testamentary disposition, shall descend in accordance with the provisions of such native law or custom anything herein to the contrary notwithstanding."

10

On behalf of the appellant it was argued, firstly, that the decision of this Court in the case of *In re Adeline Subulade Williams* 7 W.A.C.A. Reports p.156, decisively determines the right of the appellant, as the lawful nephew of the intestate, to succeed as against the respondents, to the intestate's estate, and that the learned trial Judge was, therefore, wrong in ordering partition and distribution of the estate to the respondents; and, secondly, that the learned trial Judge was wrong in not taking evidence in order to ascertain whether the intestate was married in accordance with native law and custom to any of the women in question, and which if any of the respondents were the issue of any of such marriages.

20

30

In the case of *In re Williams A* who was the issue of a marriage contracted in accordance with the Marriage Ordinance died intestate and was survived by other issue of that marriage and also by a widow and issue of a customary marriage contracted by himself. The trial Judge stated a case for the opinion of this Court raising the point whether the intestate's real and personal property of which he might have disposed by will descended to the other issue of his parents marriage, contracted in accordance with the Marriage Ordinance, or to the widow and issue of the customary marriage of the intestate.

40

The Court held that a person whose right depends on native law and custom and not on English

law is excluded from the succession of the death intestate of a person who is the issue of marriage under the Marriage Ordinance.

In the West African Court of Appeal.

10 It was admitted by appellant's Counsel that in the recent case of *In re Sarah I. Adadevoh* and 10 others (cyclostyled reports dated 23rd November, 1951) this Court declined to follow the decision in *re Williams* holding that the Court in that case acted per incuriam. In the case of *In re Sarah*  
 20 *Adadevoh* the Court held that where the succession to an intestate's property is governed by Section 36 of the Marriage Ordinance the question to be determined in a case such as the one now before us is whether in accordance with the law of England relating to distribution they are the children of the intestate, that is to say his legitimate children. The Court also held that their status as such is to be determined, according to the law of  
 30 England, by reference to the law of the domicile of their parents at the time of their birth. In other words that the law to be applied in ascertaining whether the respondents are to be regarded under the law of England as legitimate children of the intestate is not the law of England, but the native law and custom applicable to each of them.

\_\_\_\_\_  
 No. 37.

Judgment.  
 2nd June 1952  
 continued.

30 Assuming the facts regarding their status alleged by the appellant and the respondents to have been proved, under the law of England applicable, if the decision in *In re Williams* is to prevail the appellant would be preferred to the respondents, whereas if the decision in the more recent case to which I have referred is followed, the respondents would succeed to the intestate's property.

It was submitted that *In re Williams* was rightly decided and that it followed, and has been followed, by a "long line of cases", and we were invited to adhere to that decision in preference to the more recent one.

40 During the course of his judgment in the case of *In re Sarah I. Adadevoh*, when referring to *In re Williams*, Verity, C.J., Nigeria, said:-

"I am, nevertheless, gravely concerned by the fact that in this matter there does appear to be an authority in Nigeria contrary to the view put forward on behalf of the appellants in this case:

In the West  
African Court  
of Appeal.

\_\_\_\_\_  
No. 37.

Judgment.

2nd June 1952  
continued.

the decision in re Williams. We have been at pains therefore to refer to the record of the hearing of the appeal in that case. The decision of the Court in so far as is disclosed by the judgment appears to have turned upon the interpretation placed by the Court upon the words of section 36 of the Marriage Ordinance and it might well be that, as I have indicated earlier, the conclusion arrived at by the learned Judge is in itself not to be disputed in so far as it is a statement of the law up to a certain point.

10

I am in complete agreement that it is to the law of England that the local Ordinance directs that reference should be made, though I consider that it is to distribution and not to succession that accuracy demands the application of that law. The ultimate resort must be, therefore, to the law of England but to the question as to what is that law upon this very difficult matter but little reference is made either in the course of the argument or in the judgment. Reference was indeed made to the English rule as to distribution in the circumstances of an intestate leaving a widow and children and the learned Judge referred in their judgment, somewhat obscurely as I have said, to the question of polygamous marriage, but the vital question as to how the law of England would view the position of the widow or children was never fully considered nor was any such authority as the judgment of the Court of Appeal in Goodman's Trusts or the important opinion of Lord Maugham in the Sinha Peerage Case either cited or considered. In thus stopping short at a consideration of the local statute without fully considering what is the law of England to which recourse is to be had thereunder I am of the opinion that the learned Judges acted per incuriam and that this Court is not now bound to follow that decision if we are of the opinion that it is wrong after due consideration of those aspects of the law to which their Lordships' attention was never directed.

20

30

40

It is my opinion therefore that this Court is now entitled to examine the question as though there were no local authority binding upon it and it is my view that regarding this issue with a desire to give effect to common sense and decency, we should be prepared to hold that the acknowledged principle as laid down in Goodman's Trusts whereby



in relation to the Statute of Distribution the status of persons claiming rights in English law thereunder are determined by the law of the domicile, should be applied in such cases as the present, irrespective of whether the marriage upon which such claims are founded be monogamous or polygamous, and further on in his judgment he again reverted to the undesirability of conflicting decisions being given by this Court when he said:-

10

"I am fully alive to the fact that grave inconvenience may arise from a judgment of this Court in such a matter which reverses a view of the law which has been held for upwards of ten years but when the Court is faced with the alternative of perpetuating what it is satisfied is an erroneous decision which was reached per incuriam and will if it be followed inflict hardship and injustice upon generations in the future or of causing temporary disturbance of rights acquired under such a decision I do not think we should hesitate to declare the law as we find it."

20

We have also referred to the record in the case of *In re Williams* and I have no hesitation in saying that I agree with the view expressed by Verity C.J. that the Court acted per incuriam in that case.

30

I have given the arguments put forward by appellants' Counsel most careful and anxious consideration and having done so, I am satisfied that this Court is bound by the decision in the case of *In re Sarah I. Adadevoh*. Moreover I find myself in entire agreement with that portion of the Chief Justice's judgment which touches the issue with which we are concerned on this appeal.

40

The question whether the intestate was married to any of the mothers of the respondents in accordance with native law and custom, and if so which of the respondents were the issue of any of such marriages was contested by the appellants, both in the Court below and before us, and I am of the opinion that there was insufficient evidence before the learned trial Judge to justify his assumption that the twelve children concerned were the issue of such marriages. It follows, therefore, that in my view, on the evidence before him,

In the West African Court of Appeal.

---

No. 37.

Judgment.

2nd June 1952

continued.

In the West  
African Court  
of Appeal.

\_\_\_\_\_  
No. 37.

Judgment.

2nd June 1952

continued.

the learned trial Judge erred in making the orders for partition and distribution. That being so I would allow this appeal and remit the respondent's two motions to the Court below for hearing de novo, with a direction that the Court below require the respondents to adduce evidence sufficient to satisfy the Court on the following matters :-

- (1) Whether the mothers of the twelve respondents were married to the intestate, John St. Matthew Daniel, in accordance with the native law and custom applicable in each case; 10
- (2) Whether the respondents, or any of them, are the issue of such marriages and if so of which such marriages; and
- (3) whether by the native law and custom applicable in each case the respondents, or any of them, have the status of legitimate children.

There should, I think, be a further direction that, upon application being made by him in that behalf, the appellant be joined as opposer to the two motions. 20

I would observe that, in my opinion, it would not be sufficient that the alleged spouse should herself testify to the bare fact that her marriage was so contracted.

I would also observe that no claim has been put forward in this case by any person as a widow of the intestate, and that the sole issues of fact for the Court below are those I have set out under (1), (2) and (3) above. 30

(Sgd.) S. FOSTER SUTTON,  
President.

"I concur" (Sgd.) M. De COMARMOND,  
Acting Chief Justice, Nigeria

"I concur" (Sgd.) J. HENLEY COUSSEY  
Justice of Appeal.

The appeal is allowed and it is ordered that the cost of the appellant and the respondents, to be taxed, shall be paid out of the intestate's estate. 40

(Intld.) S.F.S.

P.

No. 38.

ORDER ON JUDGMENT

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.

Suit No. AG.29.

W.A.C.A. 3622.

On appeal from the Judgment of the Supreme  
Court in the Lagos Judicial Division.

IN THE MATTER OF THE ESTATE OF  
JOHN ST. MATTHEW DANIEL (Deceased)

- and -

IN RE JOHN BANKOLE DANIEL &amp; 11 OTHERS

Applicants/Respondents

- and -

THE ADMINISTRATOR-GENERAL

Respondent

- and -

IN RE MATTHEW OLAJIDE BANGBOSE  
(formerly Daniel)

Appellant

Monday the 2nd day of June, 1952

UPON READING the record of appeal herein and  
after hearing Mr. H.O. Davies (Mr. G.B.A. Coker with  
him) of counsel for the Appellant and Mr. F.R.A.  
Williams of counsel for the Respondents:

IT IS ORDERED that this appeal be and hereby  
is allowed:

AND it is directed that the Respondents' two mo-  
tions P.6964 A.G.29, dated the 25th day of April,  
1951, be remitted to the Court below for hearing  
de novo:

AND it is further directed that the Court be-  
low shall require the Respondents to adduce evidence  
sufficient to satisfy it on the following matters:-

- (1) Whether the mothers of the twelve respondents  
were married to the intestate John St. Matthew  
Daniel, in accordance with the native law and  
custom applicable in each case;
- (2) Whether the respondents, or any of them, are  
the issue of such marriages; and if so, of which  
such marriages; and
- (3) Whether by the native law and custom applicable  
in each case the respondents, or any of them,  
have the status of legitimate children.

AND it is further directed that, upon applica-  
tion being made by him, the Appellant, Matthew Ola-  
jide Bamgbose, be joined as opposer to the two motions.

AND the Court doth direct that the costs of  
the Appellant and those of the Respondents on this  
Appeal, to be taxed, be paid out of the Intestate's  
Estate.

(Sgd.) W. H. HURLEY

Deputy Registrar.

In the West  
African Court  
of Appeal.

No. 38.

Order on  
Judgment.

2nd June 1952.

10

20

30

40

In the West African Court of Appeal.

No. 39.

ORDER GRANTING FINAL LEAVE TO APPEAL TO PRIVY COUNCIL

No. 39.

Order granting final leave to Appeal to Privy Council.

6th October, 1952.

IN THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS, NIGERIA.

Suit No.A.G.29.  
W.A.C.A. 3622.

APPLICATION FOR FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE MATTER OF THE ESTATE OF JOHN ST.MATTHEW DANIEL, Deceased

10

BETWEEN

(L.S.) JOHN BANKOLE DANIEL & OTHERS

(Sgd.) - and -

S.Foster THE ADMINISTRATOR-GENERAL Respondent  
Sutton - and -

President. MATTHEW OLAJIDE BAMGBOSE Appellant

Monday the 6th day of October, 1952.

UPON READING the application herein and the affidavit filed by the Appellant, sworn to on the 6th day of September, 1952. and after hearing Mr. H.O.Davies of Counsel for the Appellant and Mr.F. R.A.Williams of counsel for the Respondents:

20

IT IS ORDERED that Final Leave to appeal to Her Majesty in Council from the judgment of this Court delivered on the 2nd day of June, 1952, be and is hereby granted to the Appellant:

AND that the costs of this application shall be costs in the cause.

(Sgd.) W.H.HURLEY.  
Deputy Registrar.

30

EXHIBITS

Exhibits

"A"  
Referred to in  
the Affidavit  
of J.B.Daniel  
dated 20th  
January, 1950.

E X H I B I T S

EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF  
J.B.DANIEL DATED 20th JANUARY, 1950.

---

IN THE SUPREME COURT OF NIGERIA,  
LAGOS JUDICIAL DIVISION,  
MONDAY THE 16th DAY OF JANUARY, 1950,  
BEFORE HIS HONOUR,  
VAHE ROBERT BAIRAMIAN, ESQ.,  
PUISNE JUDGE.

---

SUIT NO.203/49. 10

In re Legitimacy Ordinance  
In re Pedro St.Matthew Daniel,  
deceased, etc. Petitioner.

In re Matthew O.Bangboshe Claimant-Applicant

---

No one for Motion; Against it Mr. F. R. A.  
Williams for group (a) and Mr. Akintoye for group  
(b). Mr. Marshall Acting Administrator-General.

Decision on Motion is read out: Motion dis-  
missed. Costs will be considered when Petition  
is called, later this morning.

20

(Sgd.) V.R.BAIRAMIAN, J.

In re Legitimacy Ordinance  
In re Pedro deceased etc. Petitioner.

In re M.O.Bangboshe etc. Claimant-Applicant

---

Mr.G.B.A.Coker for Petitioner; Mr. F. R. A.  
Williams for Respondents group (a) and Mr.Akintoye  
and Mr. Lawson for Respondents group (b).

In view of the decision on the Motion (read:  
see above which means that there is no petition  
before the Court as it was made in the name of a  
dead man as the petitioner, the petition is struck  
out as a nullity.

30

Mr.F.R.A.Williams: Mr. A.O. Thomas put in an answer for John Bankole Daniel: group (a) 1. Mr. Kayode did for group (a) 2 and 3. Mr.Adedoyin . . . . . 4. Mr. F.R.A. Williams . 5 to 12.

Exhibits  
Exhibit "A" referred to in the Affidavit of J.B.Daniel dated 20th January, 1950 - continued.

10 Mr.Akintoye & Mr.Lawson: Filed no answer re group (b).

Costs are allowed to Respondents 5 to 12 at twelve guineas as one set;

to 1, 2 and 3, 4 (2 and 3 as one set) at seven guineas - that is for group (a).

For group (b) as one set at nine guineas.

(Sgd.) V.R.BAIRAMIAN, J.  
16.1.50.

4 folios at 10d. = 3/4d. Pd.  
on C.R. 445072/267/20.1.50.

20 This is the document referred to in the Affidavit of John Bankole Daniel and therein said to be marked Exhibit "A".

BEFORE ME,

(Sgd.) D. SAGIEDE ODIGIE,  
Commissioner for Oaths.

---

Exhibits

Exhibit "A"  
referred to in  
the Affidavit  
of M. O.  
Bamgbose dated  
1st May, 1951.

EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF  
M.O.BAMGBOSE DATED 1st MAY 1951.

---

IN THE WEST AFRICAN COURT OF APPEAL  
LAGOS.

Suit No.

IN THE MATTER OF THE LEGITIMACY ORDINANCE  
- and -

IN THE MATTER OF MATTHEW OLAJIDE BAMGBOSE  
(FORMERLY DANIEL) Petitioner/Applicant

---

MOTION ON NOTICE

10

TAKE NOTICE that the West African Court of Appeal at Lagos will be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 1951 at the hour of nine o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above-named Petitioner/Applicant on the hearing of an application for special leave to appeal against the decision of the Supreme Court, Lagos, given on the 19th day of April, 1951.

AND FURTHER TAKE NOTICE THAT the grounds of this application are :-

20

- (1) The decision is wrong in Law in that the learned Trial Judge erred in Law by striking out the appeal-proceedings when the appeal is properly before this Court at least in respect of some of the Respondents.
- (2) The decision is wrong in Law in that the learned Trial Judge had no jurisdiction in that matter, the appeal having come before this Court.
- (3) The decision is wrong in Law in holding that an extension of time could not legally and properly be granted under the circumstances.
- (4) The judgment or order of the learned Trial Judge is against the weight of the evidence contained in the affidavits before the Court and the file of the whole case.

30



DATED at Lagos this 30th day of April, 1951.

(Sgd.) G.B.A.Coker,  
Solicitor to Petitioner/Applicant.

To,  
The Registrar,  
West African Court of Appeal.  
and  
The Respondents (See list attached.)

Exhibits

Exhibit "A"  
referred to in  
the Affidavit  
of M.O.  
Bamgbose dated  
1st May, 1951 -  
continued.

IN THE WEST AFRICAN COURT OF APPEAL.  
LAGOS.

10

Suit No.131/50.

IN THE MATTER OF THE LEGITIMACY ORDINANCE  
- and -

IN THE MATTER OF MATTHEW OLAJIDE BAMGBOSE  
(FORMERLY DANIEL) Petitioner

AFFIDAVIT IN SUPPORT OF MOTION.

I, MATTHEW OLAJIDE BAMGBOSE, Yoruba, Clerk,  
of No.64, Tokunboh Street, Lagos, in Nigeria, make  
oath and say as follows :-

- 20 1. That I am the petitioner in this cause.
- 2. That conditional leave to appeal in this cause  
was granted me by the Supreme Court, Lagos, on the  
6th day of November, 1950.
- 3. That I perfected and fulfilled all the con-  
ditions of appeal imposed after several applica-  
tions to the Supreme Court for substituted service  
of processes on the Respondents to this petition,  
who are more than twelve.
- 30 4. That the Respondents named in paragraph 12 (a)  
of my said petition later brought a motion to the  
Supreme Court to strike my appeal-proceedings com-  
plaining that the Grounds of Appeal had been served  
on their Solicitor and not on them personally.
- 5. That this is not correct as some of the Respon-  
dents were served duly by me personally and one at  
least of those listed in paragraph 12 (a) of my  
said petition was served personally by me.

Exhibits

Exhibit "A"  
referred to in  
the Affidavit  
of M.O.  
Bamgbose dated  
1st May, 1951 -  
continued.

6. That at the hearing of this motion, I applied to the Supreme Court for extension of time within which to serve the others of these respondents by substituted service, as it is all along established that it is impossible for me to serve these Respondents personally, some of them being out of the country.

7. That both the Respondent's motion and my own motion were consolidated for purposes of hearing and on the 19th day of April, 1951, the Supreme Court allowed the motion of the Respondents listed in paragraph 12 (a) of the petition and dismissed my own asking for extension of time.

10

8. That of the total of seventeen respondents, at least four were duly served personally by me and the appeal so far as these is concerned is properly before this Court.

9. That the amount or value of property ultimately involved in this my petition is about £100,000:-

10. That on the said 19th day of April, the whole of my appeal proceedings was struck out and I am ready and willing to prosecute this appeal further if this Court will grant me leave to do so.

20

DEPONENT.

SWORN TO AT THE SUPREME COURT REGISTRY  
LAGOS, this            day of April, 1951.

Before me,

Commissioner for Oaths.

---

LIST OF RESPONDENTS.Exhibits

1. The Administrator-General, Lagos.
2. The Attorney-General, Lagos.
3. John Bankole Daniel, 32, Ikoyi Road, Lagos.
4. Mrs. Feyishitan Bamgbose, 24, Market Street, Ebute Metta.
5. Mrs. Abimbola Oladumiye, 12, Vincent Street, Lagos.
- 10 6. Olabode Daniel, minor, c/o Muniratu A.Ajobola, 12, Bamgbose Street, Lagos.
7. Crispina Daniel, 12, Bamgbose Street, Lagos (now out of the country).
8. Mobolaji Daniel, minor, c/o Janet Clay, 12, Bamgbose Street, Lagos.
9. Abiodun Daniel, minor, c/o Janet Clay, 12, Bamgbose Street, Lagos.
10. Olayinka Daniel, minor, c/o Sabitiyu Adamo, 27, Moloney Bridge Street, Lagos.
11. Adeyonju Daniel, minor Ditto.
- 20 12. Adeyemi Daniel, minor, c/o Rebecca Layinka, 15 Ajasa Street, Lagos.
13. Kolapo Daniel, minor, c/o Sabitiyu A. Lewis, 98, Moloney Bridge Street, Lagos.
14. Olayiwola Daniel, minor, c/o Musiratu Oshodi, 32, Ikoyi Road, Lagos.
15. Mrs. Ibiwonke Santos (nee Ferreira) 78, Moloney Bridge Street, Lagos.
16. Jero Labinjoh (natural child) 78, Moloney Bridge Street, Lagos.
- 30 17. Taiwo A.A.S.Bamgbose, 19, Igboere Road, Lagos.

Exhibit "A" referred to in the Affidavit of M.O. Bamgbose dated 1st May, 1951 - continued.

This is the exhibit marked "A" referred to in the affidavit of Matthew Olajide Bamgbose, sworn to before me this 1st day of May, 1951.

(Sgd.) E.A.BABANIJI,  
Commissioner for Oaths.

2/- Pd. on C.R. No. A.153475/1/1.5.51.

(Intld.) A.R.K.

IN THE PRIVY COUNCIL

No. 19 of 1953

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

IN THE MATTER OF THE ESTATE OF  
JOHN ST. MATTHEW DANIEL Deceased

BETWEEN

MATTHEW OLAJIDE BAMGBOSE

Appellant

- and -

JOHN BANKOLE DANIEL and  
11 Others

- and -

THE ADMINISTRATOR GENERAL

Respondents

---

RECORD OF PROCEEDINGS

---

REXWORTHY, BONSER & WADKIN,  
83, Cowcross Street, E.C.1.  
Solicitors for the Appellant.

HATCHETT JONES & CO.,  
110, Fenchurch Street, E.C.3.  
Solicitors for the 2nd to 12th  
Respondents.