

21, 1955

IN THE PRIVY COUNCILNo. 4 of 1953ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL(NIGERIAN SESSION)IN THE ESTATE OF ALFRED LATUNDE JOHNSON  
deceasedUNIVERSITY OF LONDON  
W.C.1.

-4 JUL 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

43569

B E T W E E N : HARIET JOHNSON  
(Defendant) ... Appellant

- and -

BAFUNKE JOHNSON and OLUSEGUN  
JOHNSON (by his next friend  
AGNES JOKOTADE)  
(Interveners on Appeal) Respondents

- and -

AKINOLA MAJA, OLUMIDE OMIBAWA  
JOHNSON and THE MANAGER,  
NATIONAL BANK OF NIGERIA LTD.  
Executors under the alleged  
Will dated 27th November 1943  
and Codicil dated the 27th  
July 1945 of the deceased  
(Plaintiffs) ... Pro-Forma  
Respondents

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
London, S.W.1.  
Appellant's SolicitorsHATCHETT JONES & CO.,  
Dominion House,  
110, Fenchurch Street,  
E.C.3.  
Respondents' Solicitors.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL(NIGERIAN SESSION)IN THE ESTATE of ALFRED LATUNDE JOHNSON deceasedB E T W E E N :HARIET JOHNSON (Defendant) Appellant

- and -

BAFUNKE JOHNSON and OLUSEGUN  
JOHNSON (by his next friend  
AGNES JOKOTADE)  
(Interveners on Appeal) Respondents

- and -

AKINOLA MAJA, OLUMIDE OMIBAWE  
JOHNSON and THE MANAGER,  
NATIONAL BANK OF NIGERIA LTD.  
Executors under the alleged  
Will dated 27th November 1943  
and Codicil dated the 27th  
July 1945 of the deceased  
(Plaintiffs) ... Pro-Forma  
RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	IN THE SUPREME COURT OF NIGERIA		
1.	Administration Summons	16th October 1950	1
2.	Statement of Claim	20th December 1950	3
3.	Statement of Defence filed ...	18th January 1951	4
	<u>PLAINTIFFS' EVIDENCE</u>		
4.	Ladipo Kayode	14th February 1951	6
5.	Michael Bright-Wilson	14th February 1951	7
6.	Martin Jegede	14th February 1951	8
7.	Akinola Maja 1st Plaintiff	14th February 1951	8

No.	Description of Document	Date	Page
<u>DEFENDANT'S EVIDENCE</u>			
8.	Harriet Johnson - Defendant	14th February 1951	10
9.	Joseph Daramola	14th February 1951	11
10.	Court Notes	14th February 1951	12
<u>DEFENDANT'S EVIDENCE (continued)</u>			
11.	Owolabi Anifoshe Omololu	15th February 1951	12
12.	Harriet Johnson (recalled)	15th February 1951	13
13.	Titilola Banjo	15th February 1951	14
<u>PLAINTIFFS' EVIDENCE</u> <u>(Continued)</u>			
14.	Akinola Maja (recalled by Court)	15th February 1951	15
15.	Counsels' addresses	15th February 1951	15
16.	Judgment	23rd February 1951	17
IN THE WEST AFRICAN COURT OF APPEAL			
17.	Judgment granting leave to appeal to Bafunke Johnson and Olusegun Johnson	27th April 1951	24
18.	Order granting leave to appeal to Bafunke Johnson and Olusegun Johnson	27th April 1951	26
19.	Notice and Grounds of Appeal	30th April 1951	27
20.	Notice of Motion to Amend Notice of Appeal	25th June 1951	30
21.	Court Notes allowing amendment of Notice of Appeal	31st October 1951	31
22.	Court Notes of Hearing of Appeal	7/8th November 1951	32
23.	Judgment	23rd November 1951	37
24.	Order	23rd November 1951	48
25.	Notice of Motion for Final Leave to Appeal	10th March 1952	49
26.	Order granting Final Leave to Appeal to Her Majesty in Council	15th April 1952	50

LIST OF EXHIBITS

Exhibit Mark	Description	Date	Page
"A"	Will	27th November 1943	55
"A1"	Codicil	27th July 1945	62
"B"	Caveat	18th July 1950	65
"C"	Affidavit of Interest	7th September 1950	65
"D"	Will	24th June 1939	51
"E1"	Cheque Books No. 148501 and No. 148550	(not transmitted)	
"E2"	Pass Book of A.L. Johnson for Bank of British West Africa	Ditto	
"E3"	Pass Book of A.L. Johnson for National Bank of Nigeria	Ditto	
"E4"	Medical Report	undated	63
"F"	Death Certificate	14th February 1951 (Death 6th April 1950)	64

DOCUMENTS NOT PRINTED

Description of Documents	Date
History of Appeal	undated
IN THE SUPREME COURT OF NIGERIA	
Application for Summons      filed      ...	6th October 1950
Court Notes	24th October 1950
Court Notes	30th October 1950
Court Notes	20th November 1950
Court Notes	5th February 1951
IN THE WEST AFRICAN COURT OF APPEAL	
Settling of Record of Appeal	26th May 1951
Certificate of compliance with Conditions of Appeal	July 1951
Court Notes	23rd July 1951
Certificate of service of Notice of Appeal	11th September 1951
Certificate of compliance with Conditions of Appeal	11th September 1951
Court Notes	8th November 1951
Court Notes	23rd November 1951
Notice of Motion for conditional leave to Appeal to His Majesty in Council	undated
Affidavit of Appellant in Support	8th December 1951
Court Notes of Hearing	20th December 1951
Order granting Conditional Leave	20th December 1951
Affidavits of Sureties (2)	22nd February 1952
Appeal Bond	22nd February 1952
Notice of Appeal	10th March 1952
Affidavit of Appellant of compliance with Conditions	14th March 1952
Court Notes of Grant of Final Leave	15th April 1952
Notice to Settle Record of Appeal	16th July 1952
Note of Settling Record of Appeal	24th July 1952

IN THE PRIVY COUNCIL

No. 4 of 1953

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

(NIGERIAN SESSION)

IN THE ESTATE of ALFRED LATUNDE JOHNSON deceased

B E T W E E N :

HARIET JOHNSON (Defendant) Appellant

- and -

BAFUNKE JOHNSON and OLUSEGUN  
JOHNSON (by his next friend  
AGNES JOKOTADE)

10

(Interveners on Appeal) Respondents

- and -

AKINOLA MAJA, OLUMIDE OMIBAWE  
JOHNSON and THE MANAGER, NATIONAL  
BANK OF NIGERIA LTD. Executors under  
the alleged Will dated 27th November  
1943 and Codicil dated the 27th  
July 1945 of the deceased

(Plaintiffs) Pro-Forma  
Respondents

20

RECORD OF PROCEEDINGS

No. 1.

ADMINISTRATION SUMMONS

In the  
Supreme Court

IN THE SUPREME COURT OF NIGERIA

No.1623

ADMINISTRATION SUMMONS

AD.20/50

IN THE MATTER OF THE PROPERTY OF ALFRED  
LATUNDE JOHNSON LATE OF LAGOS (Deceased)

No. 1  
Administration  
Summons  
16th October  
1950.

BETWEEN:

- 1. AKINOLA MAJA,
- 2. O.O. JOHNSON,
- 3. MANAGER, NATIONAL BANK OF NIGERIA LTD.

30

Plaintiffs

- and -

HARIET JOHNSON ... Defendant

To - HARIET JOHNSON of 4, Onikepo Street, Lagos, the  
above-named Defendant wife of the above-named Alfred  
Latunde Johnson (deceased).

In the  
Supreme Court

          
No. 1

Administration  
Summons  
16th October  
1950 -  
continued.

On the application of Akinola Maja and 2 others of 27, Kakawa Street, Lagos, the above-named Plaintiffs who claim to be Executors of the said Alfred Latunde Johnson (deceased).

You are hereby commanded in His Majesty's name to attend this Court at Tinubu Square on Tuesday the 24th day of October, 1950, at 9 o'clock in the forenoon, and show cause why an order for the administration of the property of the said Alfred Latunde Johnson under the direction of this Court should not be granted.

10

Dated at Lagos this 16th day of October, 1950

(sgd.) M. DE COMARMOND,  
SENIOR PUISNE JUDGE.

Court Fees:

Summons	-	£5. 0. 0.
Service	-	3. 0
Mileage		-
		<u>£5. 3. 0</u>

NOTE:-

If you do not attend at the time and place above-mentioned, or at any continuation or adjournment of the cause, such order will be made and such proceedings taken as the Court may think just and expedient.

20

No. 2.  
STATEMENT OF CLAIM

In the  
Supreme Court

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

No. 2  
Statement of  
Claim  
20th December  
1950

IN THE MATTER OF THE ESTATE OF  
ALFRED LATUNDE JOHNSON (Deceased).

Suit No.AD.20/50

BETWEEN:

- 10           1. Akinola Maja  
            2. Olumide Onibuwe Johnson  
            3. The Manager, National Bank of Nigeria  
               Limited                             ...             Plaintiffs  
   - and -  
            Harriet Johnson                 ...             Defendant
- 

STATEMENT OF CLAIM

20           1. The plaintiffs are the executors appointed under the Will of Alfred Latunde Johnson, late of Lagos, Colony of Nigeria, Barrister-at-Law and Solicitor, who died on the 7th day of April, 1950, the Will bearing date the 27th day of November, 1943, and a Codicil to the last Will dated 27th July, 1945.

            2. The defendant was the wife and is now the widow of the said Alfred Latunde Johnson deceased.

            3. The plaintiffs have applied for a grant of Probate of the said Will to them.

30           4. The defendant on or about the 18th day of July, 1950, caused a Caveat to be lodged against the grant.

The plaintiffs therefore claim:-

- (1) That they are the executors of the said Will.



In the  
Supreme Court

(2) That the Court shall decree Probate of  
the said Will in solemn Form of Law  
and Codicil. \*

No. 2.

Statement of  
Claim, 20th  
December 1950  
- continued.

Dated at Lagos this 20th day of December, 1950.

(sgd.) ALAKIJA AND ALAKIJA  
Solicitors for the Plaintiffs.

No. 3.

Statement of  
Defence, 18th  
January 1951.

No. 3.

STATEMENT OF DEFENCE

IN THE SUPREME COURT OF NIGERIA  
IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION 10  
PROBATE DIVORCE AND ADMIRALTY DIVISION

P R O B A T E

Suit No.AD.20 of 1950

IN THE MATTER OF THE ESTATE OF  
ALFRED LATUNDE JOHNSON, Deceased.

BETWEEN:

AKINOLA MAJA AND OTHERS ... PLAINTIFFS  
- and -  
HARIET JOHNSON ... DEFENDANT

STATEMENT OF DEFENCE

20

Save and except as herein expressly admitted  
the defendant denies each and every allegation of  
fact contained in the Plaintiffs' Statement of  
Claim as if the same were set out seriatim and  
specifically traversed.

\* "and Codicil" added by amendment on 14th  
February 1951. See page 7 line 12

1. The Defendant admits paragraph 1 of the Statement of Claim save in so far as she is not in a position to admit or deny the date of the alleged codicil and puts the plaintiffs to the proof thereof.

2. The defendant also admits paragraphs 2, 3 and 4 of the Statement of Claim.

10 3. The defendant avers that said Will of the said Alfred Latunde Johnson (now deceased) was not duly executed in accordance with the provisions of the Wills Act, 1837, in so far as the signature of the testator in the presence of two witnesses jointly present is concerned.

20 4. The defendant further avers that at the time the said Testator made the said Will and Codicil the execution thereof was obtained by the undue influence of one Agnes Jokotade, a kept mistress of the said testator and a beneficiary under the said Will (and others acting in concert with her whose names are at present unknown to the defendant) in that she took advantage of the extreme illness of the testator and of his weak and excitable state and knowing that his memory was greatly impaired induced him to make the said Will. The influence of the said Agnes Jokotade over the testator was so complete that he was not a free agent and the said alleged Will was not the offspring of his own volition but was obtained by the importunity of the said Agnes Jokotade.

30 5. The defendant further avers that at the time of the execution of the said Will and Codicil the testator was not of sound mind, memory and understanding in that at the time in question, he was in such a condition of mind and memory as to be unable to understand the nature of the act and its effects, the extent and nature of the property he was disposing or to comprehend and appreciate the claims to which he ought to give effect.

40 6. The defendant further avers that all along in this proceedings she has acted for herself and also her children born to the said testator and will contend that all necessary parties are not before the Court.

7. The defendant will contend that the statement of claim does not disclose any cause of

In the  
Supreme Court

—  
No. 3.

Statement of  
Defence, 18th  
January 1951  
- continued.

In the  
Supreme Court

action, that the claim is entirely misconceived in fact and in law, and that the plaintiffs are not entitled to the relief sought by them.

No. 3.

Statement of  
Defence, 18th  
January 1951  
- continued.

8. The defendant will lastly contend that the defendant is the lawful wife (now widow) of the said testator and only person entitled with her children to the estate of the said testator on intestacy and the Court should pronounce against the said alleged Will and dismiss the claim of the plaintiffs.

10

Dated at Lagos this            day of January, 1951.

(sgd.) G.B.A. COKER,  
Solicitor to the Defendant.

---

PLAINTIFFS' EVIDENCE

Plaintiffs'  
Evidence

No. 4.

LADIPO KAYODE

No. 4.

Ladipo Kayode  
14th February  
1951.

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
WEDNESDAY THE 14th DAY OF FEBRUARY, 1951  
BEFORE HIS HONOUR,  
STEPHEN BANKOLE RHODES, C.B.E.,  
PUISNE JUDGE.

20

Suit No.AD.20/50.

In the Matter of the Estate of  
Alfred Latunde Johnson, Deceased.

1. Akinola Maja,
2. Olumide O. Johnson,
3. The Manager, National Bank

Versus

Hariet Johnson

Sir Adeyemo Alakija for Plaintiffs.  
Rotimi Williams with him.

30

J. David for Defendant; H.O. Davies and G. Coker  
with him and O. Moore.

LADIPO KAYODE ON BIBLE SWORN STATES:-

In the  
Supreme Court

Plaintiffs'  
Evidence.

No. 4.

Ladipo Kayode  
14th February  
1951

Examination.

Cross-  
Examination

Amendment of  
Statement of  
Claim.

Clerk in the Administrator-General's Office.  
I produce the original Will and Codicil made by  
the late Alfred Latunde Johnson. Admitted marked  
"A" "A" and "A1". This is the Caveat entered by Mrs.  
"B" Harriet Johnson and Children, admitted marked "B"  
This is the Affidavit sworn to by Mrs. Harriet  
"C" Johnson. Admitted marked "C".

10 XXD. BY COKER:- I am also a witness for the de-  
fence on Subpoena. I produce another Will of the  
"D" deceased dated 24th/6/39. Admitted marked "D".

Sir Adeyemo:- I apply to amend my Statement of  
Claim by adding the words "and Codicil" at the end  
of the last paragraph.

Granted.

No. 5.

MICHAEL BRIGHT-WILSON

No. 5.

Michael Bright-  
Wilson  
14th February  
1951

Examination

MICHAEL BRIGHT WILSON ON BIBLE SWORN STATES :-

20 Solicitor practising in this Court. Knew deceased.  
He was personal friend of mine. Exhibit "A" was  
prepared by deceased and brought to me to witness  
its execution. Deceased brought it to my house.  
Mr. A.S.O. Coker was also present. He was a tenant  
of mine occupying a shop. I shouted for him and  
he came. The Will was also executed in his pres-  
ence. We were the only three present at the time.  
Deceased signed in our presence. We both signed  
in the presence of each other. Deceased was normal  
at the time. He was in active practice as a Prac-  
30 titioner of the Court; he was a Barrister and  
Solicitor.

XXD. BY COKER:- I do not know when the Will was  
prepared. I knew deceased had had a stroke but he  
was well when he came to me. I do not know who  
prepared the Will and do not care to know. It is

Cross-  
examination

In the Supreme Court  
Plaintiffs' Evidence.

not true that deceased and I signed in the absence of Coker. I know nothing about the Codicil. I do not know why he went to England in 1943.

No. 5.  
Michael Bright-  
Wilson  
14th February  
1951

RE XXD:- I am not certain whether it was 1943 deceased went to England but I knew he travelled same boat as the late Lawyer Taylor.

Cross-  
examination -  
continued.  
Re-examination

No. 6.  
Martin Jegede  
14th February  
1951

No. 6.  
MARTIN JEGEDE

Examination

MARTIN JEGEDE ON BIBLE SWORN STATES:- Law Clerk to Mr. Omoliyi Coker. In 1945 I was going to Court when the late Mr. Latunde Johnson called me to witness a document. I went to his office and did so. When I arrived at the office of deceased. There was a man there with him by name Johnson who also signed. The document was covered up with a blotting paper. Deceased told Johnson and I that it is a Codicil to his Will. Deceased then sign Johnson signed next and I followed. Three of us at the same time in the presence of each other.

10

NO XXD:

20

No. 7.  
Akinola Maja  
14th February  
1951

No. 7.  
AKINOLA MAJA - 1st Plaintiff

Examination

AKINOLA MAJA ON BIBLE SWORN STATES:- Registered Medical Practitioner. Knew the late Latunde Johnson. I was his Doctor and personal friend. Before 1943 deceased had a stroke but recovered. By stroke I mean a haemorrhage in the brain. Deceased's mental condition in 1943 was normal. In 1945, deceased's mental condition was also normal.

XXD. Stroke usually affects the brain. There are two kinds of stroke, one is Cerebral Haemorrhage and the other Cerebral Inpact. Between 1928 and 1929 deceased suffered from Cerebral Inpact. He might have had one in 1926. I attended deceased when he first had this Cerebral Inpact. Dr.Omololu attended deceased off and on. A man who has had an attack of stroke gets worse with hard working. Deceased was a very hard worker. I will be surprised to know that another Doctor has diagnosed Cerebral Haemorrhage when I said it was Inpact. I agree that Cerebral Haemorrhage does effect a man's brain and general deportment. A person who has had an attack of Cerebral Haemorrhage will be of weak mind afterwards it will be possible for him to be influenced by others. As a personal friend of the deceased, I know much of his domestic life. I know a woman by name Agnes Jokotade. I know Mrs. Harriet Johnson, who is now the widow of deceased. I know Jokotade was deceased's kept mistress. Deceased had been a Clerk in the Audit, before he proceeded to England to study Law. Deceased and his wife were happy together for many years. I know there was a regular triangular trouble between deceased, Mrs. Johnson and Jokotade. Deceased was more on the side of Jokotade. As a friend I know deceased was unhappy in his home therefore he had to be on the side of Jokotade. Deceased had several kept mistresses. Several of these kept mistresses had children for deceased as well as Jokotade. Deceased clung to Jokotade more during the latter part of his life. I have always advised Mrs. Johnson to be exercising patience. I did not attempt to ask deceased to cease relationship with Jokotade because I know I will not succeed. Deceased and his wife were unhappy together until his death. I know that Mrs. Johnson was devoted to deceased and did all that was expected of a wife.

RE XD: I visited deceased at least once a week. Deceased was bed ridden before he died. Prior to his illness he was attending meetings of Board of Directors of which I am also a Director. Deceased clung to Jokotade during the latter part of his existence in this world.

BY COURT:- I have been in active practice as a Doctor for 31 years.

In the  
Supreme Court

Plaintiffs'  
Evidence.

No. 7.

Akinola Maja  
14th February  
1951

Cross-  
examination.

Re-examination

By Court

In the  
Supreme Court

No. 8.

HARIET JOHNSON - Defendant

Defendant's  
Evidence.

No. 8.

Harriet Johnson  
14th February  
1951

Examination.

HARIET JOHNSON ON BIBLE SWORN STATES:- Live at 5, Onikepo Street, Lagos. I was wife and now widow to deceased. I was legally married to deceased in 1911. We were not divorced until his death. I have seven children now living for deceased; two died making nine. The youngest of my children for deceased is now 19 years of age. In September, 1943, deceased had another attack of Stroke. I sent for Doctors Omololu and Maja to see deceased, as the three of them are friends. After the Doctors had left, deceased told me he was advised to go to Ibadan for a rest. I said I was prepared to go, he then changed his mind and says he is going to his farm at Ikeja. I visited deceased at this farm frequently. As he said I was not to come with him but must look after the house. The day after deceased left for the farm I visited him there and as I was about leaving, Madam Jokotade came with a car to deceased and went straight to my room in the farm with a bundle. I told her not to go into my room again. I locked the door of the room and kept the key. Deceased was annoyed and told me not to come to his farm again. I did not go there again. I kept the key of the safe, after the death of the deceased I opened his safe. There I found a Will. It was in a sealed envelope. This National Bank Cheque Book and Bank of British West Africa Pass Book were in the safe together with this National Bank Pass Book and this letter dated 3/9/45 from Dr. Taylor of Manchester. All admitted marked "E1 - 4". Deceased was six weeks in the farm before he returned home. When deceased returned home his attitude towards me became aggressive and would not eat the food I prepare for him. Jokotade sends his food for him. During this period, he behaved funningly by quarrelling with all the servants; would not speak to me nor respond to my morning salutations. Deceased believed much in native medicine and used them frequently. Deceased gave me no money for food during all this period. Deceased and I lived happily for many years. I left for England and on return the relationship became estranged. I was in England for two years and six months. Jokotade came frequently to my house and quarrelled with me. After the Stroke in 1943 deceased would sometimes act as

10

20

30

40

a normal person and at other times as an abnormal person. The influence of Jokotade and the Stroke are responsible for his strange attitude towards me.

In the  
Supreme Court  
Defendant's  
Evidence.  
No. 8.

10 XXD:- The dispute at the farm between deceased and I when Jokotade came was not settled until deceased return home. By abnormal, I mean that deceased would sometimes be alone and refusing to talk to anyone, not even to me. Deceased educated three of our children in England. When I filed the Caveat, I had authority from all my children to do so with the exception of Olumide Onibuwe Johnson who is an Executor. I am acting for myself and children in this proceeding. Jokotade has two children for deceased. I have read the Will, Exhibit "A". Jokotade is not personally benefitted under the Will. Deceased made provisions for all his children those born in wedlock and those not.

Harriet Johnson  
14th February  
1951  
Examination -  
continued.  
Cross-  
examination.

20 RE-XD: Deceased upkeep his children in England until his death. My daughter, Simisola, went to England in 1947 and Bola in 1948 both were sent by deceased. Jokotade was given a property for her lifetime under the Will. Deceased had his first Stroke in 1930. Six months after he ceased sexual relations.

Re-examination

No. 9.

JOSEPH DARAMOLA

No. 9.

Joseph Daramola  
14th February  
1951

30 JOSEPH DARAMOLA ON BIBLE SWORN STATES:- I live at Agege. I was farm labourer for the deceased at Ikeja area. There is a house in the farm but Government has now acquired it. I worked for deceased for about twenty years before his death. Deceased usually comes to the farm every Saturdays and return on Mondays. Deceased usually comes with his servants and cook. The woman Jokotade does come to the farm on occasions to visit deceased.

Examination

NO XXD.



In the  
Supreme Court

No. 10.

COURT NOTES

No.10.

Court Notes  
14th February  
1951

SIR ADEYEMO:- I now ask that my Writ be amended to read Harriet Johnson for herself and her children.

DAVIES:- I oppose because children are now Sui Juris and should have been made parties when Writ of Summons was applied for.

I am not prepared to grant this amendment as Statement of Defence was in the hands of the Plaintiffs since January, 1951. There was ample time for the application to have been made before the middle of this case.

10

Counsel for defence also say he is taken by surprise.

Adjourned to 15.2.51 for the evidence of Dr. Omololu.

(sgd.) S.B. Rhodes  
PUISNE JUDGE

Defendant's  
Evidence  
(continued)

No. 11.

OWOLABI ANIFOSHE OMOLOLU

No. 11.

Owolabi  
Anifoshe Omololu  
15th February  
1951  
Examination

OWOLABI ANIFOSHE OMOLOLU:- Affirms: Medical Practitioner of 29 Palm Church Street. I signed Exhibit "D" together with Dr. Maja. It is the Will of Alfred Latunde Johnson. Latunde Johnson sent to call Maja and I. We went and met him in his house. Maja read it then Johnson signed. Maja signed after and I signed last. Off and on I treated Johnson since 1925. He was my personal friend. In 1943 he suffered from Physical and mental exhaustion. Maja and I treated him. I was his Doctor until he died. Before Johnson died he had Cerebral Haemorrhage but he had had a Stroke before 1943 and right up to his death he was suffering from Cerebral Haemorrhage but he was not unconscious. I know Agnes Jokotade, she was a kept mistress of the late Johnson

20

30

and has two children for him by name Bafunke and Olushegun. I know there has been a rift between deceased and his wife, the defendant: Deceased was more inclined towards Jokotade. When Mrs. Johnson objects to Jokotade coming to her husband's house, deceased made a row and I had to interfere and pacify them. Dr. Maja and Mr. Bayo Doherty also used to interfere. For the last 12 years deceased definitely was all devoted to Jokotade. In 1932 I returned to Lagos from Port-Harcourt and diagnosed deceased's illness as an attack of Cerebral Haemorrhage. A person suffering from the result of this attack may have impaired judgment and will not always be rational. Deceased died of Cerebral Haemorrhage. This is a copy of the Certificate of Death by Dr. Maja. Admitted, marked "F".

10

XXD. BY R. WILLIAMS:- In 1943 he continued his practice and said he was prepared to die in harness. His mental condition was normal. In 1945 his mental condition was normal. The initials in Exhibit "A" are those of the deceased. A man suffering from Cerebral Impact can develop Cerebral Haemorrhage.

20

NO RE-XD:

BY COURT:- There is no difference between Cerebral Haemorrhage and Cerebral Impact. The only thing is one starts from the heart and travels to the brain. Whereas the other attacks the brain straight. Haemorrhage if prolonged coupled with hard mental work will be fatal and affects the brain but Impact will take a longer time. A person who has had this attack can be easily influenced by another.

30

No. 12

HARIET JOHNSON (recalled)

HARIET JOHNSON RECALLED BY THE COURT AND RE-SWORN:

After the attack deceased had no child by any woman again.

In the  
Supreme Court

Defendant's  
Evidence  
(continued)

No. 11

Owolabi  
Anifoshe Omololu  
15th February  
1951

Examination -  
continued.

Cross-  
examination

By Court

No. 12.

Hariet Johnson  
15th February  
1951

By the Court

In the  
Supreme Court

Defendant's  
Evidence  
(continued)

No. 13.

Titilola Banjo  
15th February  
1951

Examination

No. 13.

TITILOLA BANJO

TITILOLA BANJO ON BIBLE SWORN STATES:- Live at 1, Abeokuta Street, Ebute-Metta. I am a daughter of the deceased. Defendant is my mother. In September 1943, I was with my husband at Abeokuta Street, when I was sent for by my mother. I went and met my father (deceased) with another attack of Stroke. He was removed to his farm on Doctor's advice. The following day, I paid him a visit at the farm. I met a lady there with him by name Jokotade, She has two children for my father (deceased). They are Bafunke and Olushegun. Doctors had informed deceased that he should abstain from any sexual excitement. Jokotade and I had a quarrel when I asked her why she came to visit deceased. Deceased drove me away. I left but Jokotade remained with him. During the quarrel at the farm, Jokotade said to me: "You will see after the death of your father that everything will come to me". During the funeral obsequies, Jokotade said "Some of you children will weep when you hear your father's Will read". I went to see my father at the farm again in 1949, but he could not speak.

10

20

Cross-  
examination

XXD:- I told my lawyer all this after the sitting of the Court yesterday. I am the eldest of the children and I have been going to the Lawyer with Defendant in connection with this case. I authorised my mother to represent me and so the rest of us.

30

Re-examination

RE-XD:- I did not quite understand the question as I have never been to your Chambers before last night. I told my mother all that Jokotade said to me.

No. 14.

AKINOLA MAJA  
(Recalled by the Court)

DR. AKINOLA MAJA RECALLED BY THE COURT AND RE-SWORN:-

I see Exhibit "F". It is a true copy of the Death Certificate issued in connection with deceased's death. Deceased at the early stage suffered from Cerebral Impact but it developed to Haemorrhage.

In the  
Supreme Court

Plaintiffs'  
Evidence  
(continued)

No. 14  
Akinola Maja  
15th February  
1951.

By Court

10

No. 15

COUNSELS' ADDRESSES

COKER ADDRESS THE COURT:-

Codicil not dated. No evidence as to date of execution. Date on Will "A" not initialled. See Order 48 Rule 25 Supreme Court. No Affidavit as to interrenovations on the Will as required by Law. See Tristram and Coote 19th Edition, page 36.

Undue Influence Question of Fact.

20

Exhibit "D" property at Onikepo Street was devised to Defendant for life. Nos. 34 and 36 properties were devised to Defendant for her life.

Exhibit "A" paragraph 14 now devised property at Onkepo Street to Trustees for the children of Jokotade. In 1939 Will was witnessed by his two Doctors who are his friends. Deceased's conduct at the time of the 1943 Will was not that of a man who had his free volition. The undue influence by Jokotade was in particular reference to the Will Exhibit "A". For undue influence see Williams on Executor 12 Edition page 34 Vol. 1. See Marsh v. Tyrrell 2. Haggard page 84. Sound mind memory or understanding. Evidence of the two Doctors. Death Certificate by Maja shows Cerebral Haemorrhage

30

No. 15

Counsel's  
Addresses  
15th February  
1951

Defendant's  
Counsel.

In the  
Supreme Court

No. 15

Counsel's  
Addresses  
15th February  
1951

for several years. See Dew v. Clarke. 3 Addison page 79. Hals. Vol. 34 Hailsham Edition page 37. See in the estate of Bohrmann Caesar and Bohrmann - 1938 1 A.E.R. page 271. Battan Singh v. Amirchand 1948, A.E.R. page 152. Smith v. Smith on Sanity of Testator 1879. Probate page 74 from page 91.

Defendant's  
Counsel -  
continued.

R. WILLIAMS REPLIED:-

Plaintiffs'  
Counsel

Authorities cited not disputed. No evidence to establish undue influence or any of the allegations. See Wingrove v. Wingrove Vol. XI Probate Division Page 81. No evidence of any Coersion to justify undue influence. Hals: Hailsham Edition page 230, page 392. Williams on Executors 12th Edition page 33. No evidence of unsound mind. Codicil was dated by Testator under his signature. No proof that Mrs. Johnson's children are not satisfied with the Will.

10

Judgment reserved.

(Sgd.) S.B. RHODES,  
PUISNE JUDGE.

20

No. 16.  
JUDGMENT

In the  
Supreme Court

IN THE SUPREME COURT OF NIGERIA  
 IN THE LAGOS JUDICIAL DIVISION  
 FRIDAY THE 23rd DAY OF FEBRUARY, 1951,  
 BEFORE HIS HONOUR  
 STEPHEN BANKOLE RHODES, C.B.E.  
PUISNE JUDGE.

No. 16.

Judgment  
 23rd February  
 1951.

Suit No.AD.20 of 1950

IN THE MATTER OF THE ESTATE  
OF ALFRED LATUNDE JOHNSON, Deceased.

10 BETWEEN:

1. Akinola Maja,
2. Olumide Onibuwe Johnson,
3. The Manager, National Bank of Nigeria Ltd.  
 Plaintiffs-Executors

- and -

Hariet Johnson - Defendant-Caveatrix

J U D G M E N T

20 Alfred Latunde Johnson died on the 6th of  
 April, 1950, at the age of 65 leaving his lawful  
 wife and several children him surviving, as also  
 a Will dated 27th November, 1943, and a Codicil  
 dated 27th July, 1945, Exhibits "A" and "A1".

Upon the application of the Executors for  
 this Will and Codicil to be admitted to Probate,  
 the lawful wife together with her children entered  
 a Caveat on the following grounds:-

- 30 i. That the Will was not executed in accord-  
 ance with the Will's Act in so far as the  
 signature of the Testator in the presence  
 of two witnesses jointly present is con-  
 cerned.
- ii. Testator made the Will and Codicil under  
 the undue influence of one Agnes Jokotade,  
 a kept Mistress of the Testator and bene-  
 ficiary under the Will.
- iii. Testator was not a free agent at the time  
 of the execution of the Will.

In the  
Supreme Court

No.16

Judgment  
23rd February  
1951 -  
continued.

- iv. Testator was not of sound memory and understanding to appreciate the claims to which he has to give effect.

Mrs. Harriet Johnson, the Caveatrix, produced another Will which she said she found in the Safe of the Testator after his demise, dated 24th June 1939, and which had been properly executed, Exhibit "D"; there is no evidence before me as to custody of the Will and Codicil Exhibits "A" and "A1", before production at the Probate Registry.

10

The Statement of Claim filed by the Executors disclosed that the Testator died on the 7th of April, 1950 but, the Register of Deaths tendered in evidence by the Caveatrix, Exhibit "F", disclosed that Testator died on the 6th of April 1950; it could easily be said that both parties were not referring to the same person; however, it is agreed by both parties that Alfred Latunde Johnson, the Testator, is the person who executed the Wills and Codicil now before the Court.

20

Evidence was adduced by both parties, for the Executor Dr. Akinola Maja, a Medical Practitioner of 31 years standing, and personal friend of the Testator and one of his Medical Advisers, gave evidence to the effect that Testator was a man of very loose morals, that he at one time suffered from Cerebral Impact which developed to Cerebral Haemorrhage and according to the Register of Deaths signed by this witness, Testator must have been suffering from this illness for several years; this impartial witness further told the Court that a patient who has had an attack of Cerebral Haemorrhage could easily be influenced by another person, this piece of evidence was also corroborated by Dr. Omololu, another of the Testator's friend and Medical Adviser, called by the Caveatrix Dr. Maja also informed the Court that there was a change in the attitude of the Testator towards his wife, that he had on several occasions had to interfere in their domestic quarrels, that Testator was always inclining to his kept Mistress Jokotade whenever there is a quarrel between Mrs. Johnson, the Caveatrix and Jokotade, that he had on occasions to ask Mrs. Johnson to exercise patience.

30

40

I must at once say that on a cursory glance of the Will, Exhibit "A", it creates the impression of a properly executed Will but, upon close scrutiny,

In the  
Supreme Court

—  
No.16

Judgment  
23rd February  
1951 -  
continued.

10

I cannot contribute to the fact that both witnesses to the Testator's signature signed at one and the same time; it does not require much effort to observe that both Testator and Mr. Bright-Wilson used the same ink whereas the second witness used quite a different ink, which creates an impression that he did not sign at one and the same time as the Testator and Bright-Wilson; he should have been called to explain how this came about. As there is no evidence that he is dead, it may be he used a fountain pen with a different ink but, by saying so I am only guessing which I am not allowed to do in proving the execution of such a solemn document as a Will and this Will was being proved in Solemn Form.

20

The case for the Caveatrix is the Testator had had Agnes Jokotade as his kept mistress for several years and she has two children for him, that Testator was a devoted father to his children, that Testator's attitude as husband changed towards her within recent years, that Testator has had repeated attacks of Cerebral Haemorrhage which she refers to as "Stroke", that in September 1943, Testator was advised by his Medical Advisers immediately after one of these attacks to go for a rest, and Testator decided to go to his farm and left, that the following morning she paid Testator a visit at the farm and while there, Agnes Jokotade came with a bundle, that a quarrel ensued between the two of them, that Testator was inclined towards Jokotade and asked her (Caveatrix) to go away. She left leaving Jokotade behind with Testator in the farm, that Jokotade exercised undue influence over Testator, that Jokotade would prepare Testator's meals and send to their marital home, and Testator would eat of it but would not partake of what she prepares, that Testator remained in the farm for six weeks and returned home.

30

40

The incidents about the preparation of food and Testator refusing to partake of it, and Jokotade sending food for the Testator all happened after the Testator's return from the farm.

Her daughter, Titilola Banjo, who I am told by Counsel for the Executors, had been in Court the previous day, gave evidence to the effect that when she visited Testator in the farm during his illness, she met Jokotade there with the Testator and a quarrel ensued between herself and Jokotade



In the  
Supreme Court

—  
No.16

Judgment  
23rd February  
1951 -  
continued.

as Testator had been medically advised not to get himself excited sexually, she wanted to know what Jokotade was doing there. Testator sent her away. She left leaving Jokotade behind with Testator, that Jokotade made certain remarks about Testator's Will that they, the Testator's children will weep when his Will is read out to them.

Another important point in Dr.Maja's evidence is that he has never attempted to persuade Testator to be more attentive to his wife as he knew he will never succeed.

10

Now it will be observed that the Will of 1939 was executed by Testator, and witnessed by his two friends and Medical Advisers, Drs.Maja and Omololu. Testator executed it after it had been read over by Dr. Maja, but that the Will of 1943 which was executed not long after Testator's return from the farm and in a condition which according to the Medical witness he could be influenced by anyone, for reasons best known to the Testator, was not witnessed by any of the former two witnesses.

20

There was a change in the attitude of the Testator towards his wife between 1939 and 1943 for in the 1939 Will Testator created a life interest in his properties at 5, Onikepo Street, 34 and 36 Oloto Street and 3 Onikepo Street in favour of his wife Harriet Johnson (Caveatrix) but in 1943 Will with the exception of a life interest in the 34 and 36 Oloto Street property, the properties at 3 and 5 Onikepo Street have been left in trust for the education of Olusegun, Jokotade's son and remainder to him.

30

Now this is no offence under the Law of Wills, as a Testator has every right to change his mind at any time before his death, provided it is conclusively proved to the satisfaction of the Court that at the time of his executing the Will he was a free agent and under no influence and that the Will was properly executed.

It will be necessary to examine the Testator's mental capacity for executing a Will at the time of the 1943 Will, from a close examination of Bank of British West Africa Limited Pass Book found in Testator's Safe after his demise and produced in Court, Exhibit "E2", I have formed the impression that the Testator was, during a certain period of

40

his life, a very careful man and transacted most of his business by Bank Cheques as to be seen from the following entries:-

In the  
Supreme Court

No. 16  
Judgment  
23rd February  
1951 -  
continued.

	July 11, 1939	-	A. Jokotade	...	£5. 0. 0d
	" 16, 1939	-	" "	...	2.10. 0d
	August 21, 1939	-	" "	..	220. 0. 0d
	September 9, 1939	-	" "	...	10. 0. 0d
	March 29, 1940	-	" "	...	5. 0. 0d
	May 27, 1940	-	" "	...	20. 0. 0d
10	November 20, 1940	-	" "	...	2. 0. 0d
	December 13, 1940	-	" "	...	4. 0. 0d
	" 30, 1940	-	" "	...	4. 4. 0d
	April 29, 1940	-	" "	...	1.12. 0d
	May, 14, 1940	-	" "	...	5. 0. 0d
	March 11, 1942	-	" "	...	3. 0. 0d
	May 15, 1942	-	" "	...	2. 2. 6d
	October 27, 1942	-	" "	...	22. 2.10d
	" 30, 1942	-	" "	...	14. 4. 0d
	January 4, 1943	-	" "	...	2. 2. 0d
20	" 19, 1943	-	" "	...	10. 0. 0d
	February 12, 1943	-	" "	..	300. 0. 0d
	September 4, 1943	-	" "	..	400. 0. 0d
	November 9, 1943	-	" "	...	40. 0. 0d
	February 7, 1944	-	" "	..	300. 0. 0d

From the National Bank Pass Book found in the Safe after Testator's demise and admitted in evidence as Exhibit "E3" are these entries:-

	September 9, 1944	-	Agnes Jokotade	-	£10. 0. 0d
	July 13, 1945	-	" "	-	100. 0. 0d
30	May 31, 1947	-	" "	-	11.10. 0d

It will be observed that there was a sudden jump after a long spell from £220 in 1939 to £300, £400 and £300 to this woman in 1943 and 1944. I have however not allowed myself to be influenced by these alarming figures given by Testator to his kept mistress, what has been operating in my mind in this connection, is the period within which this departure from two figures to three figures were made and the period within which the 1943 Will was executed.

In Boyse vs: Rossborough 6 House of Lords Cases 2 47-49 Lord Cranworth observed :-

" x x x x x

"In order, therefore, to have something to guide us in our inquiries on this very difficult subject, I am prepared to say that

In the  
Supreme Court

No. 16

Judgment  
23rd February  
1951 -  
continued.

"influence, in order to be undue within the  
"meaning of any rule of law which would make  
"it sufficient to vitiate a Will, must be an  
"influence exercised either by coercion or by  
"fraud. In the interpretation, indeed of  
"these words some latitude must be allowed. In  
"order to come to the conclusion that a Will  
"has been obtained by coercion, it is not  
"necessary to establish that actual violence  
"has been used or even threatened. The con- 10  
"duct of a person in vigorous health towards  
"one feeble in body, even though not unsound  
"in mind, may be such as to excite terror and  
"make him execute as his Will an instrument  
"which, if he had been free from such in-  
"fluence, he would not have executed. Imagin-  
"ary terrors may have been created sufficient  
"to deprive him of the free agency. A Will  
"thus made may possibly be described as ob-  
"tain by coercion." 20

And in Wingrove vs: Wingrove and Others (1885) 11  
Probate Division page 81, Sir James Hannen (Presi-  
dent) laid down a suitable definition for the words  
"undue influence" when he said :-

" x x x x x

"It is only when the Will of the person who  
"becomes a Testator is coerced into doing that  
"which he or she does not desire to do, that  
"it is undue influence.

"The Coercion may of course be of different 30  
"kinds, it may be in the grossest form, such  
"as actual confinement or violence, or a per-  
"son in the last days or hours of life may  
"have become so weak and feeble, that a very  
"little pressure will be sufficient to bring  
"about the desired result, and it may even be,  
"that the mere talking to him at that stage  
"of illness and pressing something upon him  
"may so fatigue the brain, that the sick per- 40  
"son may be induced, for quietness' sake, to  
"do anything. This would equally be coercion,  
"though not actual violence".

The case of Battan Singh and Others vs:  
Amirchand and Others, 1948 1 All England Reports,  
page 152 cited by Counsel for Defendant-Caveatrix  
does not apply, as in that case it was a question  
of the Testator having given instructions to his

In the  
Supreme Court

—  
No. 16.

Judgment  
23rd February  
1951 -  
continued.

10 Solicitor about his Will at a time when he was of  
sound mind; whereas in the case now before me,  
there is no evidence that the Will in question was  
drawn up by anyone other than the Testator himself.  
By the reason of the fact that both Doctors agree  
that a man who has had an attack of Cerebral  
Haemorrhage may be easily influenced by another,  
and that Testator had had more than one attack, I  
must come to the conclusion that Testator's mental  
condition was at the time of his executing this  
1943 Will of such a state that he could easily have  
been coerced and that the actions of Agnes Jokotade  
who has two children for Testator who are sub-  
stantially benefited under this Will, such benefits  
having shifted from the 1939 Will in favour of Mrs.  
Johnson to these two bastards and the fact that  
Jokotade remained all alone with Testator at the  
farm and on his return home continued to prepare  
his meals and send to his house despite the pres-  
ence of Mrs. Johnson in the house, Testator refus-  
ing to eat meals prepared by his wife, the Caveatrix  
20 has led me to come to the conclusion that the  
Testator was coerced by this woman at the time he  
executed this Will, as it was during that same  
period that all this took place; that is Septem-  
ber, to November 1943.

30 Reviewing the evidence before me as a whole, I  
find that Testator was not a Free Agent at the time  
he executed the 1943 Will, that his mental condi-  
tion was not in a fit and proper condition to exe-  
cute a lawful Will and, his condition was such that  
he was influenced unduly and coerced by Agnes  
Jokotade for the benefit of her two children.

40 As to the Will as I have already indicated, I  
regret I am not from the indifferent demeanour of  
Mr. Bright-Wilson in the witness box prepared to  
accept his evidence as to the presence of Mr. Coker  
at one and the same time with him when the Will  
was executed, this allegation having been pleaded  
in paragraph 3 of the Statement of Defence, the  
Solicitors for the Executors should have known that  
it will be seriously challenged and Mr. Coker should  
have been brought as a Witness, as the Will was to  
be proved in Solemn Form.

From the foregoing, I find that the Will now  
before the Court, Exhibit "A", was not executed ac-  
cording to Law and declare it null and void. I also  
declare that in so far as this 1943 Will is concerned

In the  
Supreme Court

the Testator died Intestate, with Costs assessed at 80 guineas to each of the parties to be borne by the Estate.

No. 16

Judgment  
23rd February  
1951 -  
continued.

(sgd.) S.B. RHODES,  
Puisne Judge.

In the  
West African  
Court of Appeal

No. 17.

JUDGMENT GRANTING LEAVE TO APPEAL TO  
BAFUNKE JOHNSON AND OLUSEGUN JOHNSON

No. 17

Judgment grant-  
ing leave to  
appeal to  
Bafunke Johnson  
and Olusegun  
Johnson  
27th April 1951

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS  
FRIDAY THE 27th DAY OF APRIL, 1951  
BEFORE THEIR HONOURS  
SIR JOHN VERITY - CHIEF JUSTICE OF NIGERIA  
PRESIDING JUDGE  
ARTHUR LEWEY, K.C. - JUSTICE OF APPEAL  
JOSEPH HENRI MAXIME DE COMARMOND - SENIOR PUISNE  
JUDGE

10

W.A.C.A.3470

AKINOLA MAJA & ORS. v. HARIET JOHNSON

J U D G M E N T

20

VERITY, C.J.

This is an application for leave to appeal by persons who were not parties to the suit in the Court below. The action was one brought by executors named in the alleged Will of a deceased person to establish the Will in solemn form. The learned Judge before whom the action came, found that the document propounded as a Will was not executed according to law and declared it be null and void.

Affidavits exhibited in the present applica-  
tion, which is made exparte, aver that although

30

advised by Counsel that there are good grounds for appealing against the judgment the executors have given no instructions to lodge an appeal and indeed that they have stated that is not their intention to do so.

In the  
West African  
Court of Appeal

—————  
No. 17

10 The applicants are beneficiaries under the alleged Will who would substantially benefit thereunder. Both were absent from Nigeria at the time of the proceedings in the Court below and one is an infant.

Judgment granting leave to appeal to Bafunke Johnson and Olusegun Johnson

27th April 1951  
- continued.

There is nothing in the West African Court of Appeal Ordinance, Cap. 229, to preclude the applicants from bringing an appeal, but there is nothing in the Rules of this Court prescribing the means by which they may do so. Rule 42 of the West African Court of Appeal Rules, 1950, provides, however, that when there is no provision in the Rules, recourse may be had to the practice for the time being in force in England.

20 Authorities referred to in the Annual Practice, 1949, at p.1325 establish that it is in England the practice that where a person might have been a party to the suit he may be granted leave to appeal against a judgment therein affecting his interest. In my opinion, the present applicants are in that position and I think this Court should exercise its discretion in their favour by granting the leave prayed.

(sgd.) JOHN VERITY, C.J.

30 (sgd.) LEWEY, J.A. - I Agree.

(sgd.) DE COMARMOND, S.P.J. - I Agree.

—————

In the  
West African  
Court of Appeal

No. 18

ORDER GRANTING LEAVE TO APPEAL  
TO BAFUNKE JOHNSON AND OLUSEGUN  
JOHNSON.

No.18

Order granting  
leave to Appeal  
to Bafunke  
Johnson and  
Olusegun Johnson  
27th April 1951

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

Suit No.AD.20/1950  
WACA.3470

ON APPEAL FROM THE JUDGMENT OF THE SUPREME COURT  
IN THE LAGOS JUDICIAL DIVISION.

10

BETWEEN:

- 1. Akinola Maja,
- 2. Olumide O. Johnson,
- 3. The Manager, National Bank  
of Nigeria, Ltd. ... Plaintiffs

- and -

(L.S) Hariet Johnson ... Defendant

IN RE: 1. Bafunke Johnson,  
2. Olusegun Johnson by his next  
friend Agnes Jokotade.. Applicants 20

FRIDAY THE 27th DAY OF APRIL 1951

(sgd.) JOHN VERITY,  
PRESIDING JUDGE.

UPON READING the motion and affidavit filed  
ex parte on behalf of the Applicants herein on 11th  
April, 1951, and after hearing Mr. Rotimi Williams  
of Counsel for the Applicants:

IT IS ORDERED that leave be and is hereby  
granted to (1) Bafunke Johnson (2) Olusegun Johnson,  
by his next friend Agnes Jokotade to appeal from  
the judgment of the Supreme Court dated 23rd February,  
1951, in the above matter. 30

(sgd.) J.A. SMITH,  
Deputy Registrar.

No. 19.

NOTICE AND GROUNDS OF APPEAL.

In the  
West African  
Court of Appeal

CIVIL FORM 1.

IN THE WEST AFRICAN COURT OF APPEAL  
(HOLDEN AT LAGOS).

No.19  
Notice and  
Grounds of  
Appeal  
30th April 1951

NOTICE OF APPEAL (Rule 12).

AD.20/50

IN THE MATTER OF THE ESTATE OF ALFRED LATUNDE  
JOHNSON Deceased.

10 BETWEEN:

- 1. Akinola Maja
- 2. Olumide Onibuwe Johnson,
- 3. The Manager, National Bank  
of Nigeria Ltd. Plaintiffs/  
Respondents

- and -

- 1. Harriet Johnson ... Defendant/  
Respondent.

20 IN RE:

- 1. Bafunke Johnson,
- 2. Olusegun Johnson  
by his next friend Agnes Jokotade -  
Applicants/  
Appellants

30 TAKE NOTICE that pursuant to the Leave of the West African Court of Appeal granted on the 27th day of April, 1951, the Applicants being dissatisfied with the judgment of the Supreme Court, Lagos, dated the 23rd day of February, 1951, do hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the names and addresses of the persons directly affected by the appeal are set out in paragraph 5.



In the  
West African  
Court of Appeal

No.19

Notice and  
Grounds of  
Appeal.  
30th April 1951  
- continued.

2. Whole judgment.

3. Grounds of Appeal -

(1) The learned trial judge was wrong in law and on the facts in holding that "I cannot contribute to the fact that both witnesses to the Testator's signature signed at one and the same time" when the evidence of Mr. Bright Wilson as to execution and attestation was uncontradicted and this point was not raised by Counsel for the defence throughout the hearing of the case. 10

(2) The learned trial judge was wrong in law in failing to apply or consider the maxim "omnia praesumuntur rite esse acta" in arriving at his finding on the question of execution and attestation.

(3) The learned trial judge was wrong in law in failing to observe that the alleged defect as to execution and attestation in the 1943 Will (Exhibit "A") has been cured by the 1945 Codicil (Exhibit "A"1). 20

(4) The learned trial judge erred in law in holding that "a testator has every right to change his mind at any time before his death provided it is conclusively proved to the satisfaction of the Court that at the time of his executing the Will he was a free agent and under no influence and that the Will was properly executed" When (a) the burden of proving undue influence does not lie on the person proving the Will and (b) there is ample evidence before the Court as to execution of the Will and Codicil. 30

(5) The learned trial judge erred in law and on the facts in finding that the testator was coerced by Agnes Jokotade at the time he executed the 1943 Will when there is no evidence before the Court to support the finding of coercion or undue influence by the said Agnes Jokotade or anybody else. 40

(6) The learned trial judge was wrong in law and on the facts in holding that the "testator was not a Free Agent at the time

he executed the 1943 Will" and that "his mental condition was not in a fit and proper condition to execute a lawful Will ....." when there is no evidence to support such Findings.

In the  
West African  
Court of Appeal

No. 19

Notice and  
Grounds of  
Appeal  
30th April 1951  
- continued.

(7) The learned trial judge erred in law in failing to observe that the 1945 Codicil (Exhibit "A1") was a constructive republication of the 1943 Will (Exhibit "A").

10 (8) Judgment is against the weight of evidence.

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

That the judgment of the Court below be set aside and that this Court should grant probate in solemn form of the 1943 Will and the 1945 Codicil and for any further or other Orders as the Court may deem fit in the circumstances.

20 5. Persons directly affected by the Appeal:

<u>Names:</u>	<u>Address:</u>
1. Akinola Maja	2, Garber Square, Lagos
2. O.O. Johnson	5, Onikepo Street, Lagos.
3. The Manager National Bank of Nigeria, Ltd.	Marina, Lagos.
4. Harriet Johnson	5, Onikepo Street, Lagos.

30 Dated this 30th day of April, 1951.

(sgd.) THOMAS, WILLIAMS & KAYODE,  
Applicants/Appellants' Solicitors.



In the  
West African  
Court of Appeal

No. 20.

NOTICE FOR AN ORDER TO AMEND RECORD  
OF APPEAL BY SUBSTITUTING A NEW  
PARA.4 OF THE NOTICE OF APPEAL

No. 20

Notice for an  
order to amend  
Record of  
Appeal by sub-  
stituting a new  
para. 4 of the  
Notice of  
Appeal  
25th June 1951

IN THE WEST AFRICAN COURT OF APPEAL  
(HOLDEN AT LAGOS)

Suit No.AD.20/1950  
W.A.C.A.3470.

IN THE MATTER OF THE ESTATE OF ALFRED LATUNDE  
JOHNSON, Deceased.

10

BETWEEN:

- 1. Akinola Maja
  - 2. Olumide Onibuwe Johnson
  - 3. The Manager, National Bank  
of Nigeria Ltd. ... Plaintiffs/  
Respondent
- and -
- Hariet Johnson ... Defendant/  
Respondent

IN RE:

- 1. Bafunke Johnson
  - 2. Olusegun Johnson ... Applicants/  
Appellants
- 20

TAKE NOTICE that this Honourable Court will  
be moved on Wednesday the 31st day of October, 1951,  
or soon thereafter as counsel can be heard on be-  
half of the above-named Applicants/Appellants for  
an order that the record of Appeal in the above  
matter be amended by substituting the following for  
paragraph 4 of the Notice of Appeal:-

30

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

"That the judgment of the Court below be  
"set aside and that the Court pronounce

"for the Will dated 27th day of November, 1943 and the Codicil thereto in solemn form of law, and for such further or other orders as this Honourable Court may deem fit to make."

Dated at Lagos this 25th day of June, 1951.

(sgd.) THOMAS, WILLIAMS & KAYODE,  
Solicitors for the Applicants/Appellants.

In the  
West African  
Court of Appeal

No. 20

Notice for an order to amend Record of Appeal by substituting a new para.4 of the Notice of Appeal 25th June 1951 - continued.

No. 21

10

COURT NOTES ALLOWING AMENDMENT  
OF NOTICE OF APPEAL.

WEDNESDAY THE 31st DAY OF OCTOBER, 1951  
BEFORE THEIR LORDSHIPS  
SIR JOHN VERITY, CHIEF JUSTICE, NIGERIA -  
AG. PRESIDENT  
ARTHUR LEWEY, JUSTICE OF APPEAL  
OLUMUYIWA JIBOWU, ACTING SENIOR PUISNE  
JUDGE, NIGERIA.

No. 21

Court Notes allowing amendment of Notice of Appeal 31st October 1951.

20

In re Estate of Johnson)  
In re Johnson & Johnson) Motion

W.A.C.A.3470

F.R.A. WILLIAMS to move.

DAVID (G.B.A. Coker with him) on notice.

WILLIAMS:- Motion to amend notice of appeal to clarify relief sought.

COKE:- Under what rule of Court is motion brought?  
No affidavit in support  
Rule 35 - No defect or error in the record.  
No reasons given for amendment sought  
in re Crossley (1887) 56 L.J. p.509.

30

Amendment to notice of appeal in effect to file notice out of time. Leave to amend refused.

WILLIAMS:- Order can be made under R. 35  
In re Crossley does not apply - amendment is merely to clarify not alter.  
No fact, to put in affidavit - matter of opinion.

Amendment allowed.

40

(sgd.) JOHN VERITY - ACTING PRESIDENT

In the  
West African  
Court of Appeal

No. 22  
COURT NOTES OF HEARING OF APPEAL

No. 22  
Court Notes of  
hearing of  
Appeal  
7/8th November  
1951

WEDNESDAY THE 7th DAY OF NOVEMBER, 1951  
BEFORE THEIR LORDSHIPS  
SIR JOHN VERITY, CHIEF JUSTICE, NIGERIA -  
AG: PRESIDENT.  
ARTHUR LEWEY, JUSTICE OF APPEAL.  
OLUMUYIWA JIBOWU, AG. SENIOR PUISNE JUDGE  
NIGERIA.

W.A.C.A.3470

10

MAJA v. JOHNSON

Johnson & Johnson: application by leave of Court.  
F.R.A. WILLIAMS (Kayode with him) for appellants.  
G.B.A. COKER for respondent.  
COKER applies for grounds 5 & 6 to be struck out.  
Grounds 5 & 6 - no evidence to support finding  
- simply argument in support of ground against  
weight of evidence.  
Grounds 5 & 6 to stand.

WILLIAMS:

20

Action by executors to establish Will.  
Decision since (1) Will not duly executed.  
(2) Deceased lacking testamentary capacity.  
(3) Will procured by undue influence.  
Probate refused.

Will dated 27.12.43 and Codicil dated 1945.

As to Codicil no finding.

As (1) (Ground 1): P.22 l.7; P.28, l.3. (Record p.28)

30

Evidence p.10 (Record pps.7 and 8) - both witnesses and deceased legal practitioners. No other evidence uncontradicted.

Ground 2. If Will appears in order, presumption that it is duly executed. Onus discharged by evidence and production of Will.

No contrary presumption arises from colour of ink.

Lloyd v. Roberts 14 E.R. p.871 at 873.

40

Williams: (contd.)

In the  
West African  
Court of Appeal

No. 22

Court Notes of  
hearing of  
Appeal  
7/8th November  
1951 -  
continued.

Burgone v. Showler 163 E.R. p.944 at 947.

Didicombe v. Butler 164 E.R. p.1400 at 1401.

Ground 3. Codicil - no finding.

Defect in Will (if any) cured by Codicil.

Allen v. Maddock 14 E.R. p.751 at 757.

Exh. A.1 (Codicil):

Williams on Executors 12th Edition p.56.

10

No suggestion that Codicil not properly executed and no pronouncement against it.

Ground 4. Medical evidence: p.11 et seq. & p.16 (Record pps. 8 and 12)

Mental condition in 1943 normal. (Testator did not die for another 7 years: April 1950).

Certificate from doctor in England Exh. E4, of 44 dated 3.9.45. Defendant's evidence p.10.

Grounds 4 & 5: Onus of proof where allegation of undue influence.

20

Proof of Will in due form. Onus on defendant who alleges undue influence to prove it.

Evidence p.11 & 13

Boyce v. Rossborough 10 E.R. p.1192 at 1211.

Craig v. Lamoureux (1920) A.C. p.349.

Medical evidence that testator could have been easily influenced; no evidence that he was in fact influenced.

Mere persuasion is not undue influence: Boyce v. Rossborough at 1211-2. "coercion or fraud".

No evidence of terror, coercion or fraud.

30

Bandains v. Richardson (1906) A.C. p.169 at 184

Parfitt v. Lawless 27 L.T. p.215.

Hall v. Hall 18 L.T. p.152.

Will set aside - threats.

Wingrove v. Wingrove 11 P.D. p.81 at 82.

Ground 7. Codicil - constructive republication of Will.

Codicil subsequent to Will amounts to such republications at date of Codicil.

Jarman on Wills Vol.I 7th Edition p.184 & 186

In the  
West African  
Court of Appeal

No. 22

Court Notes of  
hearing of  
Appeal  
7/8th November  
1951 -  
continued.

Williams on Executors 12th Edition p.118-9.  
Re Truro 14 L.T. p.893 at 894.

Even if 1943 Will defection by non-execution  
or undue influence the 1945 Codicil republi-  
cates and cures all defects.

Ground 8. Will makes provisions for each and  
every child, in a complicated document -  
all evidence that he was of sound mind, memory  
and understanding.

Adjournment.

10

COKER: Statement of Claim p. 4 words "and Codicil"  
added by amendment. (p. 7).

1. Improperly executed Will.
2. Undue influence.
3. No testamentary capacity.

Grounds 1 & 2: Statement of Defence -alleged lack  
of proper execution - as to attesting witness  
para. 3 (p. 5).

Only one attesting witness called (p. 7 ).

Cross-examination suggests 2nd witness' ab-  
sence difference in ink - "indifferent  
demeanour" of witness.

20

Impressions of witness on Judge is important.

Ground 7 (If Will properly executed Ground 3 does  
not arise).

As to republication.

Williams on Executors 12th Edition p.120 see  
p.118.

Unless previous Will in some manner revoked  
principle of republication does not apply.

30

1943 Will at no time revoked.

In re Baker (1929) 1 Ch. p.668.

Ground 4 Onus of proof: alleged misdirection.

Where circumstances excites suspicion, onus is  
on party propounding the Will.

Barry v. Butlin 12 E.R. p.1090.

Circumstances:

Statement of Defence para. 4.  
 Mrs. Johnson's evidence p.11, lines 2 and 3  
 et seq.  
 Evidence of daughter p. 14  
 Judgment p. 21 - as to payments.  
 All circumstances of suspicion.  
Boyce v. Rossborough at 1211.  
Wingrove v. Wingrove 55 L.T. P. & D. p.7.  
 10 Wilson v. Basil (1903) Pp.239 at 242.  
 Onus on propounder to remove suspicions.  
Brown v. Fisher 63 L.T. p.465.  
 Therefore no misdirection.  
 See Codicil (p. 62).  
 Evidence p.8 , 19.

In the  
 West African  
 Court of Appeal

No. 22

Court Notes of  
 hearing of  
 Appeal  
 7/8th November  
 1951 -  
 continued.

Adjourned to 8.11.51

(Sgd.) JOHN VERITY  
 ACTING PRESIDENT.

THURSDAY THE 8th day of NOVEMBER 1951.

20 COKER: resumes.

As to undue influence: (i) Burden of proof.  
Baker v. Batt. 12 E.R. p.1026.  
Tyrell v. Painton 1894 P. P.151.  
 Circumstances of suspicion: Burden on pro-  
 pounder to remove suspicion. (ii) Quantum:  
Boyce vs. Rossborough p.1212, as to quantum of  
 proof.  
 Facts here excited Judge's suspicion and bur-  
 den therefore on plaintiffs to remove.  
Johnson v. Williams 2 W.A.C.A. 248.



In the  
West African  
Court of Appeal

No. 22

Court Notes of  
hearing of  
Appeal  
7/8th November  
1951 -  
continued.

Ground 6 - testamentary capacity.

Mental capacity - question of fact.

Concedes two doctors agreed testator mentally normal at time he made Will.

Wife's evidence pp. 10 and 11.

Comparison with 1939 Will indicates abnormal condition in 1943.

In Estate of Borman (1938) 1 A.E.R. p. 271 contained acumen but a delusion.

Dew v. Clarke 162 E.R. p.410, at 455.

10

delusion as to daughter's character.

WILLIAMS: as to onus of proof.

Barry v. Butlin 12 E.R. 1089. distinguished.

1. Onus on propounder to satisfy "conscience of Court".

2. Writing of Will by beneficiary is ground for suspicion.

(1) does not require positive evidence to show testator not unduly influenced.

Onus discharged by proof of circumstances of execution which do not arouse suspicion.

20

Cas - cit. p.1091 capacity and execution.

Tyrell v. Painton. 1894 P.

Will prepared by son of beneficiary.

Baker v. Batt 12 E.R. p.1026.

Will prepared by beneficiary.

Cases of suspicion must include beneficiary preparing or procuring preparation of Will.

In present case no suspicious circumstance alleged or proved and onus on defendant to prove undue influence.

30

Nothing to suggest that Will was prepared by anyone but testator himself.

Boyce v. Rossborough P.1212.

Baker v. Batt P.1027.

C.A.V.

(Sgd.) JOHN VERITY,  
ACTING PRESIDENT.

No. 23.  
JUDGMENT

In the  
 West African  
 Court of Appeal

J U D G M E N T

(Delivered by Arthur Lewey J.A.)

No. 23

Judgment  
 23rd November  
 1951.

Lewey J.A.

This appeal is concerned with the Will of the late Alfred Latunde Johnson who died on the 7th April, 1950. The Will is dated the 27th November, 1943, and a Codicil to it was executed on the 27th July, 1945.

10           When the Executors applied for a grant of probate, the testator's widow lodged a caveat against the grant. In the subsequent action, the Executors, as plaintiffs, asked the Court to declare in solemn form for the Will and Codicil, while the widow, as defendant, challenged the Will upon three grounds-

- (a) That it had not been executed as required by law:
- (b) that the testator was not of sound mind, memory and understanding at the time of execution:
- 20           (c) that execution was obtained by the undue influence of a woman named Agnes Jokotade who was the mistress of the testator.

At the trial, the Judge found that each of these allegations had been proved, and he pronounced against the Will and declared that, so far as the Will was concerned, the testator had died intestate.

30           The Executors did not appeal against that judgment; but on the 27th April, 1951, this Court granted leave to appeal to the present appellants who had been absent from Nigeria at the time of the action and had not been parties thereto, but who are persons who would benefit substantially under the terms of the Will. These appellants have filed grounds of appeal in which they complain of the findings of the learned Judge upon each of the three heads on which he declared against the

40 Will.

In the  
West African  
Court of Appeal

No. 23

Judgment  
23rd November  
1951 -  
continued.

On the hearing of this appeal, argument was addressed to this Court by both Counsel upon the question as to where the onus lies in cases of this kind where one party propounds a Will, and the other party challenges not only its execution, but also the mental capacity and free will of the testator. I wish to deal at once with this point since it is of importance in relation to each of the three grounds of challenge in this case to which I have referred, and because it was inevitably given prominence on this appeal, by reason of a passage in the judgment, where the learned Judge observed as follows -

10

"A testator has every right to change his mind at any time before his death provided it is conclusively proved to the satisfaction of the Court that at the time of his executing the Will he was a free agent and under no influence and that the Will was properly executed".

20

These observations as to the burden of proof were the subject of one of the grounds of appeal, and were strongly criticised by Mr. Williams on behalf of the appellants, who are seeking, of course, to have the Will upheld. It was the appellants' contention that the burden of proof lay on those who attacked the Will and its execution, while Mr. Coker for the defendant/respondent, argued that the onus was on those who propounded the Will. There was thus a sharp divergence between Counsel, each of whom cited a number of authorities in support of his contention. It would seem, at first sight, that those authorities are contradictory; but, on a closer examination of them, I doubt whether that can be said to be so. Mr. Coker placed great reliance on the judgment in Barry v. Butlin 12 E.R. 1090, and particularly on an observation in that case by Parke B. to the effect that the onus probandi lies in every case upon the party propounding a Will, who must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator. In placing reliance on that principle, Mr. Coker was I think on sure ground, for it is one that cannot be challenged. But he went on to endeavour - in support of his contention as to the burden of proof - to apply to the present appeal, certain other passages in Barry v Butlin relating to the vigilance and jealousy with which a Court must examine the evidence in support of the instrument, where

30

40

50

In the  
West African  
Court of Appeal

-----  
No. 23

Judgment  
23rd November  
1951 -  
continued.

there are circumstances which ought to excite the suspicion of the Court, and laying down the rule that the Court should not pronounce in favour of the Will unless the suspicion is removed, and unless it is judicially satisfied that the paper propounded does express the true Will of the deceased. Here, however, it seems to me that Mr. Coker was carrying his argument too far for the circumstances in Barry v. Butlin, as in Baker v Batt 12 E.R. p. 1026 which was also referred to were very different from those in the present case, and the extended rule on which Mr. Coker relies, refers, on the question of onus, to cases where the Will has been prepared by, or by the direction of, a person who himself benefits under the Will. That this is so is, I think, made quite clear in other passages in Barry v Butlin and in the case of Craig v Lamoureux (1920) A.C. where the application of the rule is discussed at p.356.

The rule enunciated by Parke B, that in every case the onus lies on the propounders of a Will to satisfy the Court that the instrument is "the last Will of a free and capable testator", must, however, be taken I think, to refer only to the first stage, so to speak, of the onus; for the onus does not necessarily remain fixed; it shifts. Where there is a dispute as to a Will, those who propound it must clearly show by evidence, that prima facie, all is in order; that is to say that there has been due execution, and that the testator had the necessary mental capacity, and was a free agent. Once they have satisfied the Court, prima facie, as to these matters, it seems to me that the burden is then cast upon those who attack the Will, and that they are required to substantiate by evidence the allegations they have made as to lack of capacity, undue influence, and so forth. That, it is clear to me, must be their responsibility and nothing can relieve them of it: it is not only a rule of common sense but a rule of law, as appears from numerous authorities. Upon this point, the Lord Chancellor in Boyce v Rossborough 10 E.R. at p.1211 expressed himself as follows -

"One point, however, is beyond dispute and that is that where once it has been proved that a Will has been executed with due solemnities by a person of competent understanding, and apparently a free agent, the burden of proving that it was executed under undue influence is on the party who alleges it."

In the  
West African  
Court of Appeal

No. 23

Judgment  
23rd November  
1951 -  
continued.

The principle is referred to in almost identical terms by Lord Haldane at p.356 of Craig v Lamoureux, and is to be found in various other cases. It comes to this, therefore, that the general rule applies in these cases, as in other cases, that the decision must ultimately depend upon a consideration (having regard, of course, to what has been said as to the shifting burden of proof) of the value of all the evidence given by both sides.

10

It becomes necessary, therefore, first to examine the evidence adduced by the plaintiffs at the trial, and to consider whether it was such as to establish the prima facie case required of them, having regard to the allegations made by the respondent; namely that the Will was not properly executed, that the testator was lacking in testamentary capacity, and that he had been subjected to the undue influence of his mistress, Agnes Jokotade.

20

What is there to be said as to proof of the execution of the Will? An examination of the Will shows that it appears to bear the signature of the testator, that it has the usual attestation clause in the form required by law, and that it was witnessed by Bright Wilson and A.S.O. Coker. The appellants called Mr. Bright Wilson at the trial, and he described how the testator brought the Will to him to witness its execution, and how he - Mr. Wilson called in Mr. A.S.O. Coker, a tenant of his, as the other witness. Mr. Bright Wilson gave evidence to the effect that the Will was executed by the testator in the presence of Mr. Coker and himself, all three being present at the same time, and this does not seem to have been seriously challenged in cross-examination, except that a question appears to have been addressed to Mr. Wilson suggesting that he and the testator had signed in the absence of Mr. Coker. This Mr. Wilson denied.

30

The next point for consideration is the testamentary capacity of the testator. Mr. Bright Wilson, in his evidence, not only said that it was the testator who brought the Will to him for its execution to be witnessed, but stated that the testator was normal at the time, and that he was in active practice as a barrister and solicitor. Two medical men were called, Dr. Omololu and Dr. Maja, both of whom had regularly attended the testator, and had

40

also been personal friends of his for years. Each described the cerebral affections from which the testator at one time suffered, but each testified that his mental condition was normal in 1943 when he signed his Will, and indeed two years later in 1945, the year when he executed a Codicil to it. There seems to be no dispute that it was the testator himself who prepared this lengthy Will with its numerous and somewhat complex provisions, and that he himself initialled each page of it. The evidence shows, furthermore, that he continued in the active practice of his profession for some years after the date of the Will, and that he lived for over six years afterwards.

In the  
West African  
Court of Appeal

—  
No. 23

Judgment  
23rd November  
1951 -  
continued

The remaining matter for determination is whether the testator was a free agent, in the sense that his Will can be said to have been the free expression of his own wishes. There is little that the plaintiffs could really be expected to produce in the way of prima facie evidence on this aspect of the case other than that to which I have already referred as having been adduced in relation to the first two allegations, though some of that evidence must inevitably have a bearing upon the question whether the testator was a free agent. I refer, of course, to those witnesses of apparently unassailable respectability who were called to speak as to the testator's mental condition at the time when the Will was executed, as to the circumstances in which it was executed, and as to the persons who were then present. It is further to be noted that there appears to have been no suggestion from any quarter that the woman, Jokotade, was present at the execution, or that she even accompanied the testator to Mr. Bright Wilson's house.

Upon all these matters therefore, I have no hesitation in coming to the conclusion that the plaintiffs sufficiently discharged the burden of establishing a prima facie case. As I have said, in my view of the law and the authorities, the onus then shifted, and it was for the defendant/respondent to prove affirmatively, by evidence, the charges detailed in the statement of defence. If that is the correct view, it was for her to satisfy the Judge. Can she be said to have done so?

First as to due execution of the Will: the defendant/respondent's Counsel, as I have already indicated, cross-examined Mr. Bright Wilson only as

In the  
Nest African  
Court of Appeal

No. 23

Judgment  
23rd November  
1951 -  
continued.

to the presence of Mr. Coker when the will was executed. That seems to have been the only serious challenge on the point of due execution. The learned Judge, however, despite the evidence of Mr. Bright Wilson and the rather inadequate challenge directed to it by the respondent, came to the conclusion that the Will had not been executed according to law, and declared the Will void. He may possibly have been influenced, to some extent, by the view he himself formed as to the ink used for the respective signatures of Mr. Wilson and Mr. Coker on the Will. For he said as to this "it does not require much effort to observe that both testator and Mr. Bright Wilson used the same ink whereas the second witness used quite a different ink which creates an impression that he did not sign at one and the same time as the testator and Bright Wilson." The judge added this - "it may be that he used a fountain pen with a different ink but by saying so I am only guessing which I am not allowed to do." If the ink in fact presented a different appearance, that, of course, might be a reasonable explanation. In any event it would be quite unsafe, it seems to me, to place any reliance upon the results of a casual and non-expert examination of this handwriting as to which, indeed, opinions might vary considerably: I myself, for example, have scrutinized these signatures, and I am bound to say that I should have found it difficult to find that they were not all three written with the same ink. The only other reason given by the Judge is that he was not prepared to accept the evidence of Mr. Bright Wilson as to the circumstances of the execution of the Will, because of his - I quote the exact words - "indifferent demeanour in the witness-box". This Court is always slow to question the opinion of a trial judge as to the credibility of a witness whom the Judge has had the advantage of seeing and hearing. But it is usual for such opinions to be founded either on some adequate reason which is referred to in the judgment, or on the manifest untruthfulness of the witness. In the present case the Judge appears to have rejected the witness's testimony solely because of his detached attitude while giving evidence. I must confess that it seems to me that, in the partizan atmosphere of the Law Courts, detachment in a witness is a quality as desirable as it is rare. Be that as it may, the learned judge, erred in my view, in declining, on that ground, to accept the evidence of a witness who was a person

10

20

30

40

50

of standing and a professional man, and in finding, as a result, that the respondent had succeeded in her attack on the execution of the Will because Mr. Bright Wilson alone had been called on this aspect of the matter.

In the  
West African  
Court of Appeal

—  
No. 23.

Judgment  
23rd November  
1951 -  
continued.

10 Now, as to the testamentary capacity of the testator. What was the evidence produced by the respondent upon which the Judge found for her in the face of what had been sworn to by the testator's two medical attendants and personal friends, and by Mr. Bright Wilson, also a friend and a member of his own profession? It is not easy to answer that question, since the evidence adduced by the respondent may really be said to be of value rather upon the question of undue influence than upon the mental capacity of the testator in relation to the making of his Will. The only witnesses were the widow, Mrs. Johnson and her daughter, and they spoke chiefly as to the testator's behaviour in the period following his recovery from ill-health in 1943. I cannot find on an examination of that evidence that it assists, in any material sense, to decide the question of the testator's capacity to make a Will, since it is concerned rather with his behaviour to his wife at this time - behaviour which certainly indicated a breach between husband and wife, and possibly, a transfer of the husband's affections to his mistress, but which does not seem to me to throw any serious doubts on his sanity. Above all, it fails entirely, in my view, to weaken the evidence adduced by the plaintiffs; that evidence showed that the testator clearly was able to make a Will, that he at that time, and for some years after the date of its execution, carried on his profession, and that - whatever his physical weaknesses - his mental condition was normal, not only in 1943 when he made the Will, but two years later when he executed the Codicil in 1945.

40 In is apparent to me, from the judgment, and it is perhaps hardly surprising, that the learned judge found some difficulty in disentangling that part of the evidence which was designed to establish undue influence from that which was directed to the testator's lack of testamentary capacity: for his only references to his reasons for finding that there was no such capacity, are related to portions of the medical evidence which were to the effect that one of the results of the testator's illnesses might be to make him more likely to be

50



In the  
West African  
Court of Appeal

No. 23.

Judgment  
23rd November  
1951 -  
continued.

easily influenced by others. It seems to me that here again, the appellants are entitled to succeed on that part of their grounds of appeal which complains that there was no evidence to support the finding of the trial judge as to the testator's mental condition in 1943, namely, the finding that "he was not in a fit and proper condition to execute a lawful Will".

Finally, there remains for consideration the allegations that the testator made his Will under the undue influence of the woman Jokotade. Those allegations were founded apparently on the testator's attitude and behaviour towards his wife after his illness in 1943, together with those medical opinions, to which I have already referred, which dealt with the possibility that the testator's mind could probably be more easily influenced as a result of his physical condition. It was also sought to establish the fact of Agnes Jokotade's influence over him by tracing the history of events over the period of his convalescence in 1943. For it is not disputed that when the doctors, in the early part of that year, ordered him to rest, the testator retired to a farm in the country where, for some weeks, he was away from his wife and was visited by Agnes Jokotade: that his conduct to his wife, when he returned to his home after this, was that of a man who was estranged from her, that he refused to speak to his wife or to have his food prepared by her, but, instead, had his meals sent in by Jokotade. Some evidence was also given as to the aggressive and over-confident attitude of Jokotade about this time, and the testator's bank pass-book was produced showing a number of payments at various dates to Jokotade, the amounts of which were certainly considerably larger during the period in question. It was, of course, the crux of the respondent's case that the Will was made late in the year 1943 at the close of the period to which all this evidence relates, and that its provisions were in marked contrast - as regards the wife - to those in an earlier Will of 1939.

Such was the evidence upon which the learned judge found that the Will of 1943 had been obtained by the undue influence of Agnes Jokotade. The question for this Court is whether some of that evidence was sufficient to justify such a finding, having regard to the law as to undue influence. For myself, I have no hesitation in saying that it is not sufficient, and that the respondent did not

therefore succeed in establishing the allegations she had made.

In the  
West African  
Court of Appeal

—  
No. 23.

Judgment  
23rd November  
1951 -  
continued.

10 The defendant/respondent has, therefore, failed, in my view, to discharge the onus laid upon her. For it must be remembered that something far stronger than reprehensible, or even unnatural, conduct in a husband or father is required in these cases. The immoral conduct of the testator, his preference for his mistress, his neglect of his wife and his failure to make adequate testamentary provision for her are far from being sufficient to show that the execution of his Will was obtained by Agnes

20 Jokotade's undue influence. There is, indeed, nothing that I can find to connect Jokotade directly with it. As I have already observed, it is not suggested that she was anywhere at hand on the day when the Will was executed, or that she was concerned in its preparation; and while her children benefit to a considerable extent, she herself gets a life estate in a house and nothing more - just in fact, what she was to get under the 1939 Will. The gravamen of the accusation against her is that this Will of 1943 is in marked contrast to the

30 testator's former Will of 1939 especially in that the wife is practically excluded. But that is all quite consonant with the mentality of a man who has had children by a favourite mistress, and who - possibly because of that mistress - has quarrelled with his wife and turned against her. It does not however amount to undue influence, as I understand the law; nor would it necessarily do so - as appellants' counsel has submitted - even if Jokotade had been shown to have persuaded the testator to make a Will on these lines. For in the words of Sir James Harman P. in Wingrove & Wingrove (1885) 11 P.D. 81 "to be undue influence in the eye of the law, there must be - to sum it up in a word - coercion . . . . . because if the testator has only been persuaded or induced by considerations which

40 you may condemn, really and truly to intend to give his property to another, though you may disapprove of the act, yet it is strictly legitimate in the sense of its being legal. It is only when the Will of the person who becomes a testator is coerced into doing that which he or she does not desire to do, that it is undue influence."

50 These observations are in line with those of the Lord Chancellor in the judgment in Boyce v. Rossborough 10 English Reports where the following passage occurs at p.1211 - "I am prepared to say

In the  
West African  
Court of Appeal

No. 23.

Judgment  
23rd November  
1951 -  
continued.

that influence in order to be undue within the meaning of any rule of law which would make it sufficient to vitiate a Will, must be an influence exercised either by coercion or by fraud."

I have been unable to find, in this case, any evidence that Agnes Jokotade even "persuaded" the testator to make his 1943 Will, much less that it was by her fraud or her coercion that it was executed - even taking account of the varied forms which coercion may take. And definite evidence there must be; for in the words again of the judgment in Boyce v Rossborough (at p.1212) "in order to set aside the Will of a person of sound mind, it is not sufficient to show that the circumstances attending its execution are consistent with the hypothesis of its having been obtained by undue influence. It must be shown that they are inconsistent with a contrary hypothesis."

10

I will conclude the matter with a reference to a further passage in Wingrove & Wingrove where the learned President said "there remains another general observation that I must make, and it is this, that it is not sufficient to establish that a person has the power unduly to overbear the Will of the testator. It is necessary also to prove that in the particular case that power was exercised, and that it was by means of the exercise of that power that the Will, such as it is, has been produced."

20

It seems to me, that the application of these tests, clearly shows that the defendant/respondent cannot be said to have substantiated the charge of undue influence, and that the learned judge was wrong in finding against the Will on that ground also.

30

It follows from what I have said that, in my view, the appellants are entitled to succeed in this appeal, and upon all the grounds filed by them. While the plaintiffs to the action discharged the onus cast upon them, the defendant/respondent did not; and the learned judge was wrong, in my opinion, in finding upon the evidence adduced before him by both parties that the Will could not stand.

40

I have so far made no detailed reference to the Codicil of 1945. There was very little evidence about it, and the learned judge at the trial made no express finding in relation to it. Such

evidence as there was pointed to the codicil have been duly executed according to law, and I do not think this was challenged. Mr. Williams was prepared to argue that the codicil was clearly a republication of the Will, and that, in consequence, any defects in the Will could be cured by the execution of the codicil; a proposition in support of which he cited a number of authorities. Mr. Coker, on the other hand, referred to another line of decided cases to support his contention that republication by reason of a Codicil must be preceded by a revocation of the Will. Since, however, it is my view that the Will stands and is effective, no useful purpose can be served by an examination of the law as to republication by a Codicil, and for that reason I do not propose to deal with that aspect of the matter.

In the  
West African  
Court of Appeal

No. 23.

Judgment  
23rd November  
1951 -  
continued.

10

20

I would allow this appeal, and set aside the judgment of the Court below, substituting therefor a judgment pronouncing in solemn form for the testator's Will of the 27th November, 1943, and his Codicil dated the 27th July, 1945. The costs of all parties on this appeal, and in the Court below, to be borne by the Estate.

(sgd.) ARTHUR LEWEY,  
Justice of Appeal.

I CONCUR.

(sgd.) JOHN VERITY,  
Chief Justice, Nigeria.

Verity C.J.  
Nigeria

30 I CONCUR.

(sgd.) OLUMUYIWA JIBOWU,  
Ag. Senior Puisne Judge.

Jibowu  
Acting Senior  
Puisne Judge,  
Nigeria.

In the  
West African  
Court of Appeal

No. 24.

O R D E R

No. 24.

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

Order

23rd November  
1951.

Suit No. AD.20/1950.  
W.A.C.A. 3470.

On Appeal from the Judgment of the Supreme  
Court, Lagos - Judicial Division.

In the Matter of the Estate of  
Alfred Latunde Johnson (Deceased).

10

Between:

- 1. Akinola Maja )
- 2. Olumide Onibuwe Johnson )
- 3. The Manager, National ) Plaintiffs/  
Bank of Nigeria Ltd. ) Respondents.

(L.S)

- and -

(sgd.) John  
Verity

Harriet Johnson ... Defendant/  
Respondent

- and -

Presiding In Re:  
Judge.

- 1. Bafunke Johnson
  - 2. Olusegun Johnson by his next  
friend Agnes Jokotade
- Applicants/  
Appellants

20

Friday the 23rd day of November, 1951

UPON READING the record of appeal herein and  
after hearing Mr. F.R.A. Williams of Counsel for  
the Appellants and Mr. G.B.A. Coker of Counsel for  
the Respondent:

IT IS ORDERED that this appeal be allowed,  
that the judgment of the Court below be set aside  
and that a judgment pronouncing in solemn form for  
the testator's Will of the 27th November, 1943, and  
his Codicil dated the 27th July, 1945, be substi-  
tuted therefor.

30

IT IS FURTHER ORDERED that the costs of all  
parties on this appeal and in the Court below be  
borne by the Estate of the deceased.

AND THAT the Appellants and the Respondent do  
have costs of this appeal assessed at £33.3.6d and  
£18.12.0d respectively.

40

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

No. 25.

NOTICE OF MOTION FOR  
FINAL LEAVE TO APPEAL

In the  
West African  
Court of Appeal

No. 25.

THE WEST AFRICAN COURT OF APPEAL

W.A.C.A. No. 3470

IN THE MATTER OF THE ESTATE OF ALFRED LATUNDE  
JOHNSON (Deceased).

Notice of Motion  
for final leave  
to appeal  
10th March 1952

BETWEEN:

- |    |  |                            |  |
|----|--|----------------------------|--|
| 10 | 1. Akinola Maja  |                            |  |
|    | 2. Olumide Onibuwe Johnson                               |                            |  |
|    | 3. The Manager, National Bank<br>of Nigeria Limited ...  | Plaintiffs/<br>Respondents |  |
|    | - and -  |                            |  |
|    | Hariet Johnson ...                                       | Defendant/<br>Respondent   |  |
|    | - and -  |                            |  |
|    | 1. Bafunke Johnson                                       |                            |  |
| 20 | 2. Olusegun Johnson<br>by his next friend Agnes Jokotade | Applicants/<br>Appellants  |  |

M O T I O N

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 15th day of April, 1952 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be conveniently heard on behalf of the above-named Defendant/Respondent/Appellant for an Order for final leave to appeal to Her Majesty's Privy Council may be granted upon the conditions imposed by the Court Order dated the 20th day of December, 1951, having been complied with, within the time limit specified in the said Order and for such further or other Order which to the Court might deem necessary.

Dated at Lagos this 10th day of March, 1952.

(Sgd.) G.B.A. COKER

Solicitor for Defendant/Respondent/Appellant  
ON NOTICE TO:-

- |    |  |
|----|--|
| 40 | (1) The Applicants/Appellants (Bafunke & Olusegun Johnson)   |
|    | (2) The Plaintiff/Respondent (Akinola Maja)                  |
|    | (3) The Plaintiff/Respondent (Olumide Onibuwe Johnson)       |
|    | (4) The Plaintiff/Respondent (National Bank of Nigeria Ltd.) |

In the  
West African  
Court of Appeal

No. 26

ORDER GRANTING FINAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

No. 26

Order granting  
final leave to  
appeal to Her  
Majesty in  
Council

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

Suit No. AD. 20/1950  
WACA. 3470

15th April 1952

APPLICATION for Final Leave to appeal  
to Her Majesty's Privy Council from the  
Judgment of the West African Court of  
Appeal.

10

Between:

- 1. Akinola Maja )
- 2. Olumide O. Johnson )
- 3. The Manager, National ) Plaintiffs/  
Bank of Nigeria Ltd. ) Respondents

- and -

Hariet Johnson Defendant/Respondent/  
Appellant

- and -

20

In re:

- 1. Bafunke Johnson )
- 2. Olusegun Johnson )
- by his next friend ) Applicants/  
(L.S) Agnes Jokotade ) Appellants/  
Respondents.

(Sgd.) S. FOSTER  
SUTTON  
President

TUESDAY THE 15th day of APRIL, 1952.

30

UPON READING the application herein and the  
affidavit sworn on the 14th day of March, 1952, by  
the Appellant and after hearing Mr. G.B.A.Coker of  
Counsel for the Appellant:

IT IS ORDERED that Final Leave to appeal to  
Her Majesty's Privy Council from the judgment of  
this Court dated the 23rd day of November, 1951, be  
and is hereby granted to the Appellant and that the  
costs of this application fixed at £5. 5. - shall  
abide the event of the appeal.

40

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

E X H I B I T S

## PLAINTIFFS EXHIBIT

"D"

W I L LExhibits

Plaintiffs

Exhibit

"D"

Will

24th June 1939

I, ALFRED LATUNDE JOHNSON of Onibuwe House, Lagos, in the Colony and Protectorate of Nigeria, declare this to be my last Will which I make this 24th day of June, One thousand nine hundred and thirty-nine

10        1. I appoint my sons Nestor Johnson and Olumide Johnson and the National Bank Limited of 61, Broad Street, Lagos, to be the Executors and Trustees of this my Will.

20        2. I declare that all costs and expenses incurred by the said Bank in the execution of the Trusts of this my Will may be retained by it out of the monies forming part of my estate and that the Bank shall be entitled to remuneration out of my estate free from death duties at the rate of Five guineas annually till the whole Trusts were fully executed.

3. I appoint the three named Executors and Trustees jointly with my wife to be the Guardians of my infant children.

30        4. I give to each of my children as are named herein, Akinwande, Nestor, Olu, Agnes Titilola, Bola, Simisola, Bafunke, Modupe, Olusegun, and Motola all my wearing apparel, furniture and personal effects in equal shares and I direct that if there should be any issue born to me after the date of this Will or shall be recognised by me as my child they shall be entitled to share in the distribution of such apparel, furniture and effects with my said children.

40        5. I give to any of my children who have commenced or shall hereafter intend to commence the study of the Legal profession at the date of this Will or thereafter or who have qualified then in one of the branches of the Legal profession or declare to my Trustees in writing within twelve months of the date of my death that it is his or



Exhibits

Plaintiffs'

Exhibit

"D"

Will

24th June 1939

- continued

her intention to study for that profession all my books and office furniture in equal shares.

6. I give the following legacies (all free of duty) namely to Each of the children of my late Brother Theo. B. Johnson the sum of - £25

My wife Harriet Johnson	- £100	
My daughter Bola Johnson	- £25	
Agnes Titilola Johnson	- £25	
Dorcas Omolola Johnson	- £25	10
Modupe Johnson	- £15	
Bafunke Johnson	- £15	
Motola Johnson	- £5	
My son Akinwande	- £25	
Ladipo Odeku, my Clerk	- £15	
My faithful Clerk, A.O. Tela	- £25	

7. I devise all my freehold messuages lands and tenements hereunder specified to such of my children whose names in Column 2 against the respective lands messuages and tenements:-

<u>PROPERTY</u>	<u>DIVISEE</u>	
(a) Empty Plot of Land at	- Akinwande Johnson	
	Badagry	
(b) " " " " Brickfield		
	Road, Ebute-	
	Metta East - Simisola	
(c) " " " " Ibadan St.		
	West, Ebute-	
	Metta - Bafunke Johnson	
(d) My farm with Storey building		30
at Bamgbade Village also		
Rufai's Farm adjacent there-		
to	- Simisola	
(e) Farmlands at Shasha compris-		
ing of Farmstead, Baba Rere's		
portion, Ori Macaulay's		
portion, Wusa Shele's portion		
and Adamo's portion No. 1	- Nestor	
(f) Farmland at Shasha Ikeja		40
known as Farmland near		
Beckley's Farm, Damidami		
Village Kafaru's portion,		
Panoda Village and Adamo		
No. 2	- Olumide Johnson	

	<u>PROPERTY</u>	<u>DIVISEE</u>	<u>Exhibits</u>
	(g) Ajibola's Village and also late Akitona's Farm acquired by me. Panoda previously Coker's portion, Thomas Village	- Simisola Johnson	Plaintiffs' Exhibit "D" Will
	8. I devise to my Trustees the following properties with direction that they shall let or lease them or any of them as they shall think fit to tenants till the last of my children shall attain the age of 21 from the date of my death, viz:-		24th June 1939 -- continued.
10	(a) 47, Campbell Street, Lagos. My Executors and Trustees should accumulate the Rentals for the purpose of paying off debts and legacies maintenance of infant and education of minors and thereafter to the following children as specified herein.		
	No. 47 Campbell Street to Nestor.		
	No. 2 Alli Street to Olumide.		
20	No. 18 Docemo Street, Lagos, to my friend Jokotade, the mother of Bafunke and Olusegun for her natural life and thereafter to her children Funke and Olusegun herein named in equal shares.		
	No. 5 Palm Church Street to be sold to cover any debts that I may owe if any.		
	No. 45 Victoria Road, Lagos, to Olu and Nestor my children in equal shares.		
	No. 1 Balogun Street to be sold as above.		
	No.18 Balogun Street to be sold " "		
30	No.23 Ereko " " " " " "		
	No. 3 Porto Novo Market Street,Lagos, to Simisola.		
	No. 9 Porto Novo Market Street, Lagos, to Nestor.		
	No.34 Bamgboshe Street, Lagos, as to my share and interest to Olusegun Johnson.		
	No. 1 & 3, Abeokuta Street, Ebute-Metta,to Olumide.		
	No. 138 Denton Street, Ebute-Metta to Olumide.		
	Lebanon Street, Gbagi, Ibadan and the House behind it to Nestor and Olumide as tenants in common.		
40	No. 5 Onikepo Street my private residence to my wife Harriet Johnson for life and thereafter to Olumide and Nestor.		

Exhibits <hr/>	No.130 Victoria Street,Lagos to Simisola for life and thereafter to fall into residue.	
Plaintiffs' Exhibit	No. 34 & 36 Oloto Street, Lagos, to Hariet Johnson for her life and thereafter to fall into residue.	
"D"	No. 36 Alli Street to be sold as above.	
Will		
24th June 1939 - continued	9. My shares in all companies subject to trust hereby thereafter to Olu and Nestor.	
	No. 3 Onikepo to be used in common with No. 5 and subject to the same devise for life with residue to Nestor and Olumide.	10
	No. 67 Victoria Street, Lagos, to be sold as above.	
	No. 12 Adagun Street, Lagos, to be sold as afore-said.	
	No.124 Victoria Street, Lagos, the lease of which I now hold is to be sold and proceeds passed to my estate.	
	No. 31 Ereko Street, Lagos, leasehold also to be sold and proceeds treated in the same way.	
	No. 46-48 Ereko Street to be sold as a leasehold and proceeds treated in the same way.	20
	My shop store and house at Naraguta Street, Jos, to be sold and proceeds treated in the same way.	
	My farmland at Iguru and Bebe to Funke and Olusegun	
	My lands at Aton to Titilola.	
	My land at Igbobi near the College to Olusegun.	
	My land at Runmonkun Village to Akinwande.	
	My land at Ojuwoye Village to Akinwande.	
	10. My Trustees shall out of the monies to arise from the sale calling in and conversion of my Real and Personal properties pay my funeral and testamentary expenses (including all duties) and debts and legacies given by this Will and may make provision for the payment of £1 monthly amount to my Aunt, Iya Abeokuta I direct that out of such monies the Trustees shall erect a tombstone of excellent material and finish over my grave and a mural Tablet at the Church of my persuasion i.e. The Methodist Church Trinity, Tinubu Square, Lagos, suitable to my rank and station in life.	30
	11. My Trustees shall at their discretion invest the Residue in the names of the Trustees in	40

or upon any investments authorised by law for the investment of Trust Fund

All my present investments in various Companies to be allowed to remain and dividends utilised for maintenance and education of my children and subject thereto as directed by this Will.

(Sgd.) A. L. JOHNSON.

Exhibits

Plaintiffs' Exhibit

"D"

Will

24th June 1939

- continued

10

I N W I T N E S S whereof the above-named Testator in the joint presence of us who in his presence and that of each other have hereunto subscribed our names as witnesses.

(Sgd.) AKINOLA MAJA,  
Medical Practitioner,  
2, Garber Square, Lagos.

(Sgd.) O.A. OMOLOLU,  
Medical Practitioner,  
29, Palm Church Street,  
Lagos.

---

PLAINTIFFS' EXHIBIT

20

"A"

WILL

---

"A"

Will

27th November  
1943.

I, ALFRED LATUNDE JOHNSON of Onibuwe House, Lagos, in the Colony of Nigeria declare this to be my last Will which I make this 27th day of November, 1943.

30

1. I appoint my friend Doctor Akinola Maja of 2, Garber Square, Lagos, my nephew Doctor Owolabi Onibuwe, now of Dublin University in Ireland, Mr. William Adeyemi Johnson of 5, Onikepo Street, Lagos my brother and the Manager for the time being of the National Bank of Nigeria Limited of 61, Broad Street, Lagos, to be the Executors and Trustees of this my Will.

Exhibits  
 ———  
 Plaintiffs'  
 Exhibit  
 "A"  
 Will  
 27th November  
 1943 -  
 continued.

2. I declare that all costs and expenses incurred by the said Executors and Trustees in the execution of the trusts of this my Will may be retained by them out of the monies forming part of my estate and that the Executors and Trustees shall be entitled to remuneration out of my estate free from death duties at the rate of Five guineas each annually till the whole trusts were fully executed.

3. I appoint the above-named Doctor Maja and Onibuwe to be the guardians of my inpart children legal or natural. 10

4. I give to each of my children as are named herein Olumide, Titilola, Bola, Simisola, Bafunke, Modupe, Olusegun and Ladipo all my wearing apparel, furniture and personal effects in equal shares and I direct that if there should be any issue born to me after the date of this Will or who shall be recognised by me as my child they shall be entitled to share in the distribution of such apparel, furniture and effects with my said children legal or natural. 20

5. I give to any of my children legal or natural who have commenced or shall hereafter intend to commence the study of the Legal Profession at the date of this Will or thereafter or who shall have qualified in one of the branches of the Legal Profession or declare to my Trustees in writing within twelve months of the date of my death that it is his or her intention to study for that profession all my books and office furniture in equal shares. 30

6. I give the following pecuniary legacies (all free of duty) namely to each of the children of my late brothers:-

Theo B. Johnson and Ajayi Onibuwe	the sum		
	of	-	£25.0.0
My daughter, Bola Johnson	...	-	£10.0.0
Agnes Titilola Johnson	...	-	£50.0.0
Dorcas Omolola Johnson	...	-	£50.0.0
Modupe Johnson	...	-	£25.0.0
Bafunke Johnson	...	-	£25.0.0
Ladipo Johnson	...	-	£25.0.0
Olusegun Johnson	...	-	£25.0.0
My Clerk, Oladipo Odeku	...	-	£25.0.0
" " A.O. Tela	...	-	£10.0.0

40

The children of my late sister, Mrs.M.B.		Exhibits
Vincent each -	£5.0.0	<u>          </u>
" " " " " "	Mrs.L.I.Shobo	Plaintiffs'
	each	Exhibit
" " " " " "	Mrs.Kehinde	"A"
	Cole	Will
" " " " " "	Mrs.Taiwo Ottun	27th November
	each	1943 -
" " " " " "	Mrs.Idowu Cole "	continued.
	£5.0.0	

10 I devise all my freehold lands and tenements hereinafter specified to such of my children whose names appear in column 2 against the respective lands messuages and tenements:-

PROPERTYDIVISEE

- (a) Empty plot of land at Badagry- Olusegun Johnson
- (b) " " " " " Brick-  
field,  
Ebute-Metta  
East - Simisola
- 20 (c) " " " " " Ibadan  
Street West,  
Ebute-  
Metta - Bafunke Johnson
- (d) Farmland Panoda Village  
and Adano No. 2 Villages - Olusegun Johnson
- (e) (Farm) Panoda previously  
Belo Coker's portion and  
Thomas Villages - Olusegun Johnson

30 I devise to my Trustees the following properties with direction that they shall let or lease them or any of them as they shall think fit to tenants till the last of my children legal or natural shall attain the age of 21 from the date of my death viz:-

- 40
1. 47, Campbell Street, Lagos.
  2. 2, Alli Street, Lagos.
  3. 18, Balogun Street, Lagos.
  4. 23, Ereko Street, Lagos.
  5. 3, Portonovo Market Street, Lagos.
  6. 9, Portonovo Market Street, Lagos.
  7. 68, Martins Street, Lagos.
  8. 20, Campbell Street, Lagos.

Exhibits

Lebanon Street, Gbagi, Ibadan  
at present let to Syrian Traders.

- Plaintiffs' Exhibit "A"
9. 206/208, Igboere Road, Lagos.
  10. 5, Onikepo Street, Lagos.
  11. 130, Victoria Street, Lagos.

Will

27th November 1943 - continued.

I direct that the following leasehold properties shall be sold and proceeds to be paid into my residuary estate account, namely:-

1. 31, Ereko Street, Lagos, a shop.
2. 46 & 48, Ereko Street, Lagos. 10

I direct that my Executors and Trustees shall accumulate the rentals obtainable for the purpose of paying off my debts the legacies and the maintenance and education of minors and thereafter subject to the following trusts that is to say:-

1. The founding of a Scholarship or Scholarships tenable at the C.M.S. Grammar School, Lagos, for boys without means for a period of four years each. The number of boys to be selected shall depend upon the means available and at the sole discretion of my said Trustees. But it shall be one boy at a time. 20

I make the following devises:-

1. 47 Campbell Street, Lagos, to Olusegun Johnson subject to the trusts hereinbefore provided.
2. 2, Alli Street, Lagos, to Olumide Johnson if he shall qualify as a Lawyer and subject to the trusts hereinbefore provided. 30
3. 18, Docemo Street, Lagos, to my friend Jokotade the mother of Bafunke and Olusegun for her natural life and thereafter to her children the said Bafunke and Olusegun in equal shares.
4. 20, Campbell Street, Lagos, to Olusegun Johnson, in fee simple.

In case the provision for 2, Alli Street, Lagos, failing by reason of the proposed devisee failing to fulfil conditions imposed the devise is to go to my son Olusegun Johnson. 40

No.18 Balogun Street, Lagos, shall be let and rents accumulated to pay legacies thereafter for Scholarship fund.

No. 23 Ereko Street, Lagos, shall be let and rents accumulated to pay legacies thereafter for Scholarship fund.

No.68 Martins Street, Lagos, shall be let and rents accumulated to pay legacies thereafter for Scholarship fund.

No. 3 Portonovo Market Street, Lagos, to be let and proceeds to go towards the founding of a Scholarship as hereinafter provided.

10 No. 9 Portonovo Market Street, Lagos, to Bafunke and Olusegun in equal shares.

No. 34 Bamghose Street, Lagos, as to my share and interest to Olusegun Johnson and Olumide Johnson as they shall fall due.

Nos. 1 & 3 Abeokuta Street, Ebute-Metta, to Olusegun

No. 138 Denton Street, Ebute-Metta, to Olusegun.

20 No. 5 Onikepo Street, Lagos, my private residence to my Trustees in trust for letting and accumulation of rents and thereafter to the children of Olusegun Johnson.

No.130 Victoria Street, Lagos, to Simisola for life and thereafter to the children of the said Simisola as Tenant-in-common.

No. 36 Alli Street, Lagos, to be let and rents accumulated for the founding of a Scholarship as hereinafter provided.

30 My shares in all the Companies in which I have interest shall go towards the education of my infant children and for payments of my debts if any and ultimately towards the Scholarship Fund which is hereinafter created by this Will.

40 My property No.3, Onikepo Street, Lagos, which at present is used in conjunction with No. 5 Onikepo Street, Lagos, my residence is devised in trust together with the said No.5 Onikepo Street, Lagos, to be let for a period of 20 years next after my demise rents of which shall be accumulated for the professional education abroad of my son Olusegun Johnson until his ultimate qualification after he shall have come out to reside therein for the term of his natural life and thereafter to his children in fee simple.

My property No. 206 & 208 Igboere Road, Lagos, is to be let for a period of 20 years which the proceeds shall be applied to the education of Ladipo Johnson, a student now at Ilesha Grammar School

Exhibits

Plaintiffs'  
Exhibit

"A"

Will

27th November  
1943 -  
continued.



Exhibits  
 \_\_\_\_\_  
 Plaintiffs'  
 Exhibit  
 "A"  
 Will  
 27th November  
 1943 -  
 continued.

until he shall have completed his course in that Institution. If he shall show sufficient aptitude he shall be sent to England to train whatever profession he shall chose, preferably Law and Banking or both, and subject thereto to Olusegun Johnson in fee simple.

The following properties are devised as follows:-

No. 67, Victoria Street, Lagos, to the children of my daughter, Molola, as tenants-in-common.

No. 12, Adagun Street, Lagos, to my grand-child, Victoria Olubunmi Johnson, the child of Toddy Johnson. 10

My farmland at Iguru and Abebe to my daughter, Funke, and my son Olusegun.

My lands at Aton to Titilola, my daughter.

My land near the College at Igbobi to my son, Olusegun.

My land at Rumokun Village to Olusegun.

My house at Lebanon Street, Gabi, Ibadan, to my daughters, Titilola and Molola, for their lives and thereafter to their children as tenants-in-common. 20

Nos. 34 and 36 Oloto Street, Ebute-Metta, to Harriet Johnson for her life to Toddy her son thereafter for his life and thereafter to his children in equal shares.

My farmlands at Iguru in Abebe District of Ebute-Metta to Funke and Olusegun in equal shares.

My lands at Aton Village to Titilola. 30

" " " Igbobi near Igbobi College to Olusegun

" " " Rumonkun Village to Titilola.

My lands at Ojuwoye near Mushin, Olu the child of Toddy Johnson.

My lands at Ikeja requisitioned by the Government to Olusegun Johnson in fee simple.

My Trustees shall convert all my residue undisposed of by this my Will into ready money and there-out shall pay all funeral and testamentary expenses and just debts, death duties and legacies bequeathed by this Will and make provision for the payment of 20/- per month to my Aunt, Iya Abeokuta, and erect a suitable tombstone of excellent material 40

and finish over my grave and mural Tablet in the Church of my persuasion i.e. The Methodist Trinity Church, Tinubu Square, Lagos, suitable to my rank and station in life.

Exhibits

Plaintiffs' Exhibit

"A"

Will

27th November 1943 - continued.

10

My Trustees shall finance Scholarships at the C.M.S. Grammar School, Lagos, for bright boys whose parents should be without sufficient means to grant them educational facilities for a period of four years and capable of passing such examinations as will fit them for the battle of life.

My Trustees shall at their absolute discretion invest the residue in the names of the Trustee in or upon any investments authorised by law for the investments of Trust Funds.

All my present investments in various companies shall be allowed to remain and the dividends thereof utilised for the maintenance and education of my children and subject thereto as directed by this my Will.

20

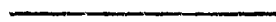
(Sgd.) A.L. JOHNSON

IN WITNESS WHEREOF the above-named Testator in the joint presence of us who in his presence and that of each other have hereunto subscribed our names as witnesses:-

(Sgd.) BRIGHT-WILSON, 47, Balogun Street Lagos.

" A.S.O. COKER, 190, Clifford Street Yaba.

30



Exhibits

PLAINTIFFS' EXHIBIT

"A1" CODICIL

Plaintiffs' Exhibit "A1" Codicil 27th July 1945

THIS IS A CODICIL to the WILL of ALFRED LATUNDE JOHNSON of Lagos, Nigeria, which is dated the 27th day of November, 1943.

1. I appoint Olumide Onibuwe Johnson as my Executor in place of Dr. Owolabi Onibuwe and William Adeyemi Johnson mentioned in the above Will and their names be deleted wherever occurs in the said Will.

10

2. I give my house No.26 Idumagbo Avenue,Lagos, to my Trustees to be given out on rent and proceeds to be utilised for purposes of the Scholarships I have directed to be offered and the education of Ladipo Johnson and other children mentioned in this Will.

3. The following children of mine save and except a bequest of £20 each one of either of them and shall not participate in the enjoyment of any of the property disposed of by this Will namely:-

20

- 1. Vincent Theodore Johnson, 2. Harriet Aduke Akerele, & 3. Bola Johnson.

Because of their undutiful conduct and neglect towards me at all times.

4. I give to Daniel Ladipo Odeku, my Clerk, the sum of One hundred pounds (£100) sterling.

5. To the children of my 2 sisters, Mrs. F.K. Cole, Flora Taiwo and Josephine Idowu Cole the sum of Fifty pounds (£50-0-0) sterling to each group.

30

(Sgd.) A.L. JOHNSON, 27th July, 1945.

SIGNED by the said ALFRED LATUNDE JOHNSON as a Codicil to his Will in the presence of us both present at the same time who in his presence and in the presence of each other have signed as Witnesses:-

(Sgd.) ? Law Clerk, 8, Sawyer Street, Lagos.

(Sgd.) J. Akin Johnson, 4, Olopade St., Lagos.

40

DEFENDANT'S EXHIBIT  
"E4" MEDICAL REPORT

Exhibits

Defendant's  
 Exhibit  
 "E4"  
 Medical Report  
 (undated)

222, Ayres Road,  
 Old Trafford,  
 Manchester, 16.

122, Chester Road,  
 Hulme,  
 Manchester, 15.

Tel: Trafford 1870

Tel: Blackfriars 3167

Dear Sir,

Re MR. A.L. JOHNSON (About 60 years)

10 I have seen this man who has arrived recently  
 from Lagos.

Firstly I refracted him with the following  
 result:-

R plus 1.00 sph/-0.75 cyl ax 90  $\frac{6}{9}$

L plus 0.50 sph.  $\frac{6}{9}$

Reading add plus 3.00 sph.

PMH About 26 years ago he had a cerebral  
 haemorrhage resulting in a L Hemiplgie.

He has been grossly overworking and was under  
 mental strain at the time.

20 The results of this are the subject of his  
 journey to England O.E. Speech is slightly  
 indistinct and there is some weakness in the  
 Leg and Arm.

Reflexes generally are normal but abdominals  
 are absent and L Plantar is extensor.

B.P. = 120/70.

30 I thought there was some appearance of Parkin-  
 sonism about his expression and treated him  
 with a Ti. Hyoseyanus Rx. He says he feels  
 very much improved with this.

Before he goes back to Africa I have asked  
 him to see a Specialist for expert opinion.

Yours faithfully,

(Sgd.) N. TAYLOR, M.Sc., M.B.

## Exhibits

## DEFENDANT'S EXHIBIT

Defendant's  
Exhibit

## "F" DEATH CERTIFICATE

"F"

## COLONY OF NIGERIA

Death  
CertificateG.P. Lagos 1663/750/2,000 FORM K(D): BIRTHS, DEATHS AND BURIALS  
ORDINANCE, 1917.

Native Deaths Register for ... LAGOS Volume XIV Page 223

Death -  
6th April 1950

No.	Date of Death	Place of Death	Full name	Sex	Age	Nationality or Tribe	Place of Birth
725	6th April, 1950	5, Onikepo Street, Lagos	Alfred Latunde Johnson	Male	65	Nigeria - Yoruba	Nigeria - Lagos

10

Rank or occupation	Usual Place of residence	Period of continuous residence in registration area	Last place of residence before arrival in registration area	Cause of Death	Name of certifying medical practitioner (if any)
Barrister-at-law	5, Onikepo Street, Lagos	All his life		Cerebral Haemorrhage Cardiac Failure	A. Maja M.B.

20

Duration of illness	Place of burial	Signature, description and address of informant	Date of registration	Signature of Registrar
For several years	Ikoyi Road Cemetery	Wahabi His X Mark Kosoko, Contractor, 34, Luther Street, Lagos.	9th April, 1950	W.S. Balogun

30

Witness to mark:-

W.S. Balogun

CERTIFIED to be a true copy of an entry in the Native Deaths Register for Lagos.

G I V E N at Lagos this 14th day of February, 1951.

(Sgd.) W.S. BALOGUN  
Registrar.

PLAINTIFFS' EXHIBIT

"B" CAVEAT

Judicial Form C.12 - Notice to Prohibit Grant.

IN THE SUPREME COURT OF NIGERIA.

IN THE MATTER of ALFRED LATUNDE JOHNSON,  
Deceased.

Exhibits

Plaintiffs'  
Exhibit

"B"

Caveat

18th July 1950

10 LET nothing be done in the matter of ALFRED LATUNDE JOHNSON, late of 4, Onikepo Street, Lagos, Nigeria, deceased, who died on the 7th day of April, 1950, at 4, Onikepo Street, Lagos, and had at the time of his death his fixed place of abode at 4, Onikepo Street, Lagos ..... within the jurisdiction of this Court, without warning being given to Mrs. H. Johnson and children of 4, Onikepo Street, Lagos.

Dated this 18th day of July, 1950.

(Sgd.) G.B.A. COKER,  
18/7/50.

PLAINTIFFS' EXHIBIT

"C" AFFIDAVIT OF INTEREST

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

Suit No.

IN THE MATTER of the ESTATE of ALFRED LATUNDE  
JOHNSON, Deceased.

"C"

Affidavit of  
Interest

7th September  
1950.

AFFIDAVIT OF INTEREST

I, HARIET JOHNSON, Widow, Yoruba, of No. 4 Onikepo Street, Lagos. in Nigeria, make oath and say as follows:-

30 (1) That I was the wife of the late Alfred Latunde Johnson who died in Lagos on the day of

Exhibits April, 1950, at No. 4, Onikepo Street, Lagos.

Plaintiffs'  
Exhibit  
"C"

(2) That I was lawfully married to the said deceased under the Marriage Ordinance and was not at the time of his death divorced from him.

Affidavit of  
Interest  
7th September  
1950 -  
continued.

(3) That I have for the said deceased the following children to wit:-

- (1) Vincent T.A. Johnson.
- (2) Titilola Banjo Johnson (Married Woman)
- (3) Nestor B. Johnson
- (4) Olumide O. Johnson
- (5) Aduke Akerele (Mrs.)
- (6) Bola Johnson
- (7) Simisola Johnson

10

(4) That all these our mutual children are living and this caveat has been instituted by me on my behalf and also on their own behalf.

(5) That we would all be entitled to the Estate of the said Latunde Johnson on intestacy as we contend that the alleged Will now being sought to be proved does not conform with the provisions of the Wills Act, 1837.

20

(Sgd.) HARIET JOHNSON  
DEPONENT

SWORN to at the Supreme Court  
Registry, Lagos, this 7th day  
of September, 1950,

Before me,

(Sgd.) D. SAGIEDE ODIGIE,

Commissioner for Oaths.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL

(NIGERIAN SESSION)

B E T W E E N :

HARIET JOHNSON  
(Defendant) ... Appellant

- and -

BAFUNKE JOHNSON and OLUSEGUN  
JOHNSON (by his next friend  
AGNES JOKOTADE)  
(Interveners on Appeal) Respondents

- and -

AKINOLA MAJA, OLUMIDE  
OMIBAWE JOHNSON and THE  
MANAGER, NATIONAL BANK  
OF NIGERIA LTD. Executors  
under the alleged Will dated  
27th November 1943 and  
Codicil dated the 27th July  
1945 of the deceased  
(Plaintiffs) ... Pro-Forma  
Respondents

---

RECORD OF PROCEEDINGS

---

A.L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
London, S.W.1.  
Appellant's Solicitors.

HATCHETT JONES & CO.,  
Dominion House,  
110, Fenchurch Street,  
E.C.3.  
Respondents' Solicitors.