

RE
6/11/62

20, 1962

IN THE PRIVY COUNCIL

No.13 of 1960

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:-

- 1. YISA DAWODU
- 2. NURUDEEN DAWODU
- 3. SARATA ONITIRI
- 4. GANIYU DAWODU
- 5. LAYIWOLA DAWODU
- 6. MUTIATU DAWODU
- 7. OBEDATU DAWODU
- 8. SAMIATU DAWODU
- 9. GBADABIYU OLOKO
- 10. RAFIYU MABINUORI
- 11. SUKURAT DAWODU
- 12. SATARI DAWODU

UNIVERSITY OF LONDON
 INSTITUTE OF ADVANCED
 LEGAL STUDIES
 30 MAR 1963
 25 RUSSELL SQUARE
 LONDON, W.C.1.

68201

(Defendants) Appellants

- and -

- 1. SUWEBATU DANMOLE
- 2. SAFURATU WILLIAMS
- 3. TAIWO DAWODU
- 4. KEHINDE DAWODU
- 5. TAUFIKI DAWODU

By their legal
 guardian and
 next friend
 Safaratu Williams
 (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
 53, Victoria Street,
 London, S.W.1.

Solicitors & Agents for the Appellants.

T.L. WILSON & CO.,
 6, Westminster Palace Gardens,
 London, S.W.1.

Solicitors & Agents for the Respondents.

IN THE PRIVY COUNCILNo.13 of 1960ON APPEALFROM THE FEDERAL SUPREME COURT OF NIGERIA

BETWEEN:-

1. YISA DAWODU
2. NURUDEEN DAWODU
3. SARATA ONITIRI
4. GANIYU DAWODU
5. LAYIWOLA DAWODU
6. MUTIATU DAWODU
7. OBEDATU DAWODU
8. SAMIATU DAWODU
9. GBADABIYU OLOKO
10. RAFIYU MABINUORI
11. SUKURAT DAWODU
12. SATARI DAWODU

(Defendants) Appellants

- and -

1. SUWEBATU DANMOLE
2. SAFURATU WILLIAMS
3. TAIWO DAWODU
4. KEHINDE DAWODU
5. TAUFIKI DAWODU

) By their legal
guardian and
next friend
) Safaratu Williams
(Plaintiffs) Respondents

RECORD OF PROCEEDINGSINDEX OF REFERENCE

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1.

No. 1.

In the
Supreme Court

PARTICULARS OF CLAIM

No. 1.

IN THE SUPREME COURT OF NIGERIA

Particulars
of Claim.

IN THE SUPREME COURT OF THE LAGOS JUDICIAL
DIVISION

Suit No.99/1954.

February, 1954.

BETWEEN:

	1. Suwebatu Danmole		
	2. Safuratu Williams		
	3. Taiwo Dawodu	} By their legal guardian and next friend Safuratu Williams }	} <u>Plaintiffs</u>
10	4. Kehinde Dawodu		
	5. Tanfiki Dawodu		

- and -

	1. Yisa Dawodu	} Defendants
	2. Nurudeen Dawodu	
	3. Sarata Onitiri	
	4. Ganiyu Dawodu	
	5. Layiwola Dawodu	
20	6. Mutiatu Dawodu	
	7. Obedatu Dawodu	
	8. Samiatu Dawodu	
	9. Gbadabiyu Oloko	
	10. Rafiyu Mabinuori	
	11. Sukurat Dawodu	
	12. Satari Dawodu	

The Plaintiffs seek partition of the property situate, lying and being at No.4, Balogun Square, in the Colony of Nigeria. The annual rental value of the said property is about £500.

30 DATED at Lagos this day of February, 1954.

(Sgd.) George Nicol
SOLICITOR FOR THE PLAINTIFFS.

Summons	£12.10. 0	
Service etc.	<u>1. 1. 6</u>	Paid on CR No.171195/514 of 27/2/54.
	<u>£13.11. 6</u>	

(Sgd.) Fregene.

In the
Supreme Court

Plaintiffs' Address: c/o Their Solicitor, 19,
Tinubu Street, Lagos.

No. 1.	1st Defendant's Address:	4, Balogun Square, Lagos.	3/8	
Particulars of Claim.	2nd "	" " 4, Balogun Square, Lagos.	1/6	
February, 1954 - continued.	3rd "	" " 15, Bishop Street, Lagos.	1/6	
	4th "	" " 4, Balogun Street, Lagos.	1/6	10
	5th "	" " 4, Balogun Street, Lagos.	1/6	
	6th "	" " 77, Alagba Street, Lagos.	3/8	
	7th "	" " 76, Oju Agbara Alley, Lagos.	4/4	
	8th "	" " 4, Balogun Square, Lagos.	1/6	
	9th "	" " 15, Bishop Street, Lagos.	1/6	20
	10th "	" " 178, Broad Street, Lagos.	1/6	
	11th "	" " 4, Balogun Square, Lagos.	1/6	
	12th "	" " 4, Balogun Square, Lagos.	1/6	

No. 2.
Civil Summons.
8th March,
1954.

No. 2.

CIVIL SUMMONS

IN THE SUPREME COURT OF NIGERIA

BOOK No.U 85 CIVIL SUMMONS U. 8484 30

Suit No. 99 of 1954

Between S.Danmole, S.Williams,
T.Dawodu, K.Dawodu,
T.Dawodu

Plaintiffs

- and -

Yisa Dawodu, Nurudeen Dawodu
and Others

Defendants

To, Yisa Dawodu, Nurudeen Dawodu and Others of 1st
Defendant, 4, Balogun Square Lagos, 2nd Defendant
4, Balogun Square, Lagos.

You are hereby commanded in Her Majesty's name to attend this Court at Tinubu Square, Lagos on Monday the 3rd day of May, 1954 at 9 o'clock in the forenoon to answer a suit by S. Danmole, S. Williams, T. Dawodu, K. Dawodu, T. Dawodu of c/o Their Solicitor, 19, Tinubu Street, Lagos against you.

In the
Supreme Court

No. 2.

Civil Summons.

8th March, 1954
- continued.

10 The Plaintiffs seek partition of the property situate, lying and being at No.4, Balogun Square, in the Colony of Nigeria. The annual rental value of the said property is about £500.

Issued at Lagos the 8th day of March, 1954.

Summons ...	£12.10. 0	
Service ...	1. 1. 6	(Sgd.) F.W. Johnston
Mileage ...	<u>-. -. -</u>	PUISNE JUDGE.
	<u>£13.11. 6</u>	

TAKE NOTICE That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

20

DEFENDANTS

PLAINTIFFS

- | | |
|-------------------------|-----------------------------------------------------------------|
| 1. Yisa Dawodu | 1. Suwebatu Danmole |
| 2. Nurudeen Dawodu | 2. Safuratu Williams |
| 3. Sarata Onitiri | 3. Taiwo Dawodu |
| 4. Ganiyu Dawodu | 4. Kehinde Dawodu |
| 5. Layiwola Dawodu | 5. Taufiki Dawodu |
| 6. Mutiatu Dawodu | } By their
} legal
} guardian
} Safuratu
} Williams |
| 7. Obedatu Dawodu | |
| 8. Samiatu Dawodu | |
| 9. Gbadabiyu Oloko | |
| 30 10. Rafiyu Mabinuori | |
| 11. Sukurat Dawodu | |
| 12. Satari Dawodu. | |

In the
Supreme Court

No. 3.

EX-PARTE MOTION WITH AFFIDAVIT TO AMEND
DESIGNATION OF PARTIES.

No. 3.

Ex-parte Motion
with Affidavit
to amend
Designation of
Parties.

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

Suit No.99/1954.

24th March,
1954.

BETWEEN:-

- | | | | |
|----------------------|------------------|------------|---------------------|
| 1. Suwebatu Danmole | | | |
| 2. Safuratu Williams | | | 10 |
| 3. Taiwo Dawodu | } By their legal | } guardian | } <u>Plaintiffs</u> |
| 4. Kehinde Dawodu | | | |
| 5. Taufiki Dawodu | | | |

- and -

- | | | |
|----------------------|--------------|------|
| 1. Yisa Dawodu | } Defendants | } 20 |
| 2. Nurudeen Dawodu | | |
| 3. Sarata Onitiri | | |
| 4. Ganiyu Dawodu | | |
| 5. Layiwola Dawodu | | |
| 6. Mutiatu Dawodu | | |
| 7. Obedatu Dawodu | | |
| 8. Samiatu Dawodu | | |
| 9. Gbadabiyu Oloko | | |
| 10. Rafiyu Mabinuori | | |
| 11. Sukurat Dawodu | | |
| 12. Satari Dawodu | | |

MOTION EX-PARTE

TAKE NOTICE that this Honourable Court will be moved on Monday the 5th day of April 1954, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiffs for an order to amend the designation of the parties by adding "and next friend" after "legal guardian" before the name of Safuratu Williams and also for the said Safuratu Williams to sue as the next friend of Taiwo Dawodu, Kehinde Dawodu and Taufiki Dawodu who are minors and for such further order or orders as this Honourable Court may deem fit under the circumstances.

DATED at Lagos this 24th day of March, 1954. 40

(Sgd.) H.U. Kaine

H.U. Kaine Plaintiffs' Solicitor.

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

In the
Supreme Court

No. 3.

Suit No.99/1954.

BETWEEN:-

Ex-parte Motion
 with Affidavit
 to amend
 Designation of
 Parties.

24th March,
 1954

- continued.

10 1. Suwebatu Danmole
 2. Safuratu Williams
 3. Taiwo Dawodu } By their legal
 4. Kehinde Dawodu } guardian
 5. Taufiki Dawodu } Safuratu Williams) Plaintiffs

- and -

20 1. Yisa Dawodu
 2. Nurudeen Dawodu
 3. Sarata Onitiri
 4. Ganiyu Dawodu
 5. Layiwola Dawodu
 6. Mutiatu Dawodu
 7. Obedatu Dawodu
 8. Samiatu Dawodu
 9. Gbadabiyu Oloko
 10. Rafiyu Mabinuori
 11. Sukurat Dawodu
 12. Satari Dawodu) Defendants

A F F I D A V I T

I, Hyacienth Ugboma Kaine, Solicitor and Advocate of No.28, Hawley Street, Lagos a British Protected person make oath and say as follows :-

1. THAT I am now one of the Solicitors for the Plaintiffs.
- 30 2. THAT on the 28th day of February the Plaintiffs filed the above named action which was signed by learned friend Mr. Nicol.
3. THAT to the best of my knowledge and belief the summons has not been yet served on the Defendants.
4. THAT when the Particulars of Claim was referred to me I noticed that Safuratu Williams instead of suing as the next friend of the Plaintiffs who are minors is suing only as their legal guardian.
- 40 5. THAT the said Safuratu Williams is the full aunt of the minors and has also been appointed their legal guardian by this Honourable Court.

No. 5.

STATEMENT OF CLAIM

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

(Title same as No. 3)STATEMENT OF CLAIM

1. The first Plaintiff is a daughter of Suberu Dawodu deceased by his wife Morinatu.
- 10 2. The second Plaintiff is a daughter of Suberu Dawodu deceased by his wife Raliatu who is deceased.
3. The third, fourth and fifth Plaintiffs who are minors are the children of Bashiru Dawodu the son of Suberu Dawodu deceased also by his wife Raliatu.
4. Bashiru Dawodu is now dead but after the death of Suberu Dawodu.
- 20 5. The first Defendant is a son of Suberu Dawodu deceased by his wife Moriamo deceased.
6. The fourth, fifth, sixth, seventh and eighth Defendants are the children of Atiku deceased a son of Suberu Dawodu also by his wife Moriamo.
7. Atiku died before the death of his father, Suberu Dawodu.
8. The eleventh and twelfth Defendants are the children of Amusa the son of Suberu Dawodu also by his wife Moriamo.
9. Amusa died after the death of Suberu Dawodu.
- 30 10. The 2nd and 3rd Defendants are the children of Suberu Dawodu by his wife Osenatu.
11. 9th and 10th Defendants are the children of Sariyu the daughter of Suberu Dawodu by his wife Osenotu.
12. Sariyu died before the death of Suberu Dawodu.
13. The Plaintiffs and the Defendants are therefore children and grand-children of Suberu Dawodu who died in September, 1940.
14. After the death of Suberu Dawodu the children

In the
Supreme Court

No. 5.

Statement of
Claim.

6th May, 1954.

In the
Supreme Court

No. 5.
Statement of
Claim.
6th May, 1954
- continued.

- were informed by Oddie the Solicitor of the deceased that the deceased made a Will before his death.
15. A few days after this information, the Solicitor again said that the Will was missing.
 16. The children then decided to find out who were present when the Will was made and it was discovered that one Albert Williams now deceased and one Alhaji Danmole were present.
 17. The children contacted the two men who were witnesses to the Will and from them learnt that the Will stated that the property of the said Suberu Dawodu deceased both real and personal were to be divided among his children by the number of his wives of the deceased, the children of one mother having one share. 10
 18. The children then decided that the property should be divided accordingly since there was a great suspicion that Amusa the father of the 11th and the 12th Defendants knew something about the missing of the Will. 20
 19. The 1st and the 2nd Plaintiffs together with the 2nd Defendant and Amusa the father of the 11th and 12th Defendants applied for Letters of Administration and Letters of Administration were granted to them in 1942.
 20. The personal effects of the deceased Suberu Dawodu were divided into four parts according to the number of wives of the deceased and all the children of each wife took one share. 30
 21. Since then all the rents collected from the property of the deceased Suberu Dawodu at No.4, Balogun Square, Lagos which is now the common property of both the Plaintiffs and the Defendants were also divided into four parts and each part going to the children of one mother.
 22. This agreed scheme of distribution went on for about ten years when the Defendants refused to divide the rents as usual because they are more numerous in one stock than the Plaintiffs. 40
 23. The Plaintiffs then brought an action to compel the Defendants to continue with the scheme of distribution but the action was struck out because of the absence of the Plaintiffs' Counsel from the Court and the Plaintiffs could not do their case in the absence of their Counsel.

- 24. Later on the Plaintiffs brought up another suit asking for the partition or sale of the property at No.4, Balogun Square, Lagos.
- 25. The Defendants and the Plaintiffs agreed that the matter be settled out of Court on condition that the former scheme of distribution should continue. The Plaintiffs withdrew the action on this understanding.
- 10 26. The Defendants received a rent of £700 for the shop at No.4, Balogun Square, Lagos and refused to divide the money into four parts as agreed upon. The Plaintiffs refused to have any share unless the amount is divided into four parts and the amount is still in the possession of the Defendants. The rent is for 1951-1954.
- 27. The Defendants are also in possession of 16 rooms out of 18 rooms at No.4, Balogun Square, Lagos leaving only 2 rooms to the Plaintiffs.
- 20 The Plaintiffs therefore claim that the property be partitioned or in the alternative that the former agreed scheme of distribution into four parts should continue.

DATED at Lagos this 6th day of May, 1954.

(Sgd.) H.U. Kaine
Plaintiffs' Solicitor.

Plaintiffs' Address:- c/o Their Solicitor,
28, Hawley Street, Lagos.

30 Defendants' Address:- c/o Their Solicitors,
Lawson & Adewale,
Broad Street, Lagos.

No. 6.

DEFENCE

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

Suit No.99/1954.

BETWEEN:- SUWEBATU DANWOLE & OTHERS

Plaintiffs

- and -

YISA DAWODU & OTHERS

Defendants

In the
Supreme Court

No. 5.

Statement of
Claim.

6th May, 1954

- continued.

No. 6.

Defence.

5th May, 1954.

In the
Supreme Court

No. 6.
Defence.

5th May, 1954
- continued.

D E F E N C E

1. Save and except as may hereinafter be expressly admitted the Defendants deny each and every allegation of fact contained in the Statement of Claim as if each were set out seriatim and specifically traversed.
2. The Defendants admit paragraphs 1,2,3,4,5,6,7, 8,9,10,11,12,13 and 24 of the Statement of Claim.
3. The Defendants deny paragraphs 14,15,16,17,18, 19,21,22,23,25,26 and 27 of the Statement of Claim and put the Plaintiffs to a strict proof thereof. 10
4. With regard to paragraph 17 of the Statement of Claim the Defendants aver that the deceased Suberu Dawodu died intestate and will contend that the alleged provision of an alleged Will that was neither ever in existence or proved and admitted to probate is inoperative.
5. The Defendants will further contend that paragraphs 14,15,16,17 and 18 are irrelevant and embarrassing and should be struck out. 20
6. With regard to paragraph 19 the Defendants aver that the grant was made on the 9th June, 1943 and not in 1942 as stated in the Statement of Claim.
7. With regard to paragraphs 21 and 22 of the Statement of Claim the Defendants aver that the 1st and 2nd Plaintiffs together with the other administrators made the mistake of distributing rents as claimed by the Plaintiffs and that this was stopped when other beneficiaries protested and it was ascertained that the practice was wrong. 30
8. The Defendants will further contend that on the death of Suberu Dawodu (Deceased) his estate became vested in all his children in equal shares according to Native Law and custom.
9. With regard to paragraph 25 of the Statement of Claim the Defendants will contend that the Plaintiffs' Counsel agreed to a Settlement out of Court on the condition that he got the action struck out without any order as to costs because he believed that the Plaintiff's claim could not succeed. 40

10. The Defendants will aver with regard to paragraph 26 that the Plaintiffs share was paid to them through their Solicitor Mr.M.A.O.Williams.

In the
Supreme Court

11. With regard to paragraph 27 the Defendants aver that there are only 14 rooms in the house, that the 1st and 2nd Plaintiffs are in possession of 2 rooms. The 3rd, 4th and 5th Plaintiffs are minors and according to Native Laws and Customs rooms can only be allotted to them upon their attaining majority or getting married whichever may be the earlier. There is furthermore, a room reserved for the use of visiting relations.

No. 6.
Defence.
5th May, 1954
- continued.

12. The Defendants will further contend that there has been no interference with the rights of the Plaintiffs under Native Law and Custom and that this action is vexatious.

DATED at Lagos, this 5th day of May, 1954.

(Sgd.) Lawson
Defendants' Solicitors.

No. 7.

COURT NOTES

THURSDAY THE 1st DAY OF JULY, 1954

Suit No.99/54.

SUWEBATU DANMOLE and 4 OTHERS

vs.

YISA DAWODU and OTHERS

No. 7.
Court Notes.
1st July, 1954.

KAINE for Plaintiff

KOTUN and LAWSON for Defendant

I ask Kaine to satisfy me that paras. 14 - 18 of Statement of Claim comply with rules of pleading

KAINE Magnus Williams has found the missing Will. But he has not come here this morning.

LAWSON Williams told me this also.

KAINE In circumstances I ask adjournment. If Will does exist, I shall ask to withdraw the action.

Adjourned 12 noon to day for Williams to come.

(Sgd.) M.J. Abbott.

In the
Supreme Court

No. 7.

Court Notes.
1st July, 1954
- continued.

Resumed 12.40 p.m.

KAINE for Plaintiff
KOTUN and LAWSON for Defendant

Williams not yet located. For subpoena to issue to be served by Kaine who will make Affidavit of service.

Adjourned 2.7.54 for mention.

(Sgd.) M.J. Abbott.

2nd July, 1954.

FRIDAY THE 2nd DAY OF JULY, 1954

Suit No.99/54. 10

SUWEBATU DANMOLE and OTHERS

vs.

YISA DAWODU and OTHERS

KAINE for Plaintiff
LAWSON and KOTUN for Defendant

Magnus Williams appears on subpoena. Chief Oluwa who is said to have a copy of the Will, will not co-operate in producing it. The original was destroyed by one Amusa (who is now dead) after the death of deceased.

KAINE Williams told me the Will had been sent to him and he would bring it to me last Friday. He also told Plaintiff on Saturday that he (Williams) had the Will in his possession, Williams story now is contrary to what he told me before. He promised to let me see it. 20

LAWSON says Williams told him last Friday that he had found the Will and would be withdrawing the action.

WILLIAMS I deny I said I had the Will in my possession. 30

KAINE Order 48 Rule 5. I ask Court so to order. I decide to hear Williams oral evidence in support of application.

PLAINTIFFS' EVIDENCE

No. 8.

M.A.O.WILLIAMSMAGNUS ARCHIBOLD OLAWUNMI WILLIAMS Sworn -In the
Supreme CourtPlaintiffs'
Evidence.

No. 8.

M.A.O.Williams.
2nd July, 1954.

Examination.

10

Legal Practitioner of Supreme Court of Nigeria. 21, Olushi Street, Lagos. Some time in 1953 I went to see one Chief Oluwa of Isale-Eko about an alleged Will of Suberu Dawodu. My clerk Ajose went with me. I made enquiries from Oluwa and he told me to look through his papers which were in two boxes. I searched them through but found no Will. About 3 weeks ago I went to see Oluwa again because Plaintiff told me the Will was with him. I passed this information on to Oluwa and he said he was illiterate and had so many documents in the house. Oluwa did not deny having the Will and said if I gave him time he could possibly find it. Yesterday I went again and then Oluwa denied that he had the Will. He seemed to me unco-operative.

20

I deny I had told Kaine I had the Will in my possession. I admit telling him I would let him see it.

I told Lawson we had found the Will. That was not true.

Cross-examined by Kaine

30

I spoke about the Will to Kaine at Magistrate's Court No.2 last Friday. I told him my uncle was one of the attesting witness. In fact that was information I got from elsewhere. I deny saying that the Will said deceased's property should be divided into 4 parts.

I promised to take Will to Kaine but I don't remember saying I would do so before 7 p.m. that day.

I remember calling Plaintiff to my chambers a day or two after. I deny showing a paper to Plaintiff and telling her that was the Will. I deny asking Plaintiff to refund £10 which I had paid to Oluwa. On the contrary the Plaintiff suggested that if the Will could be produced, they would pay £10.

40

I know Mr. Idosu. I deny sending for him to come to me last Wednesday evening to show him the Will. All I said was that we would discuss it. Lawson does not wish to ask questions.

In the
Supreme Court

No. 9.

ORDERS AND COURT NOTES

No. 9.
Orders and
Court Notes.
2nd July, 1954.

ORDER: Order made. Order 48 Rule 5 to issue commanding Oluwa to bring the Will to Court to-day. It may be served by Kaine.

(Sgd.) M.J. Abbott.

Counsel as before.

Oluwas has been served with order and told Kaine the Will was not with him. He had never seen it and only heard it existed. His son has come to appear before me; and says Oluwa can't come to Court.

10

KAINE. I want Oluwa's evidence taken on commission.
WILLIAMS I understand the Will or one of the copies was handed to my uncle. I will enquire from his executor.

Adjourned 5.7.54 for these enquiries to be made. I shall then consider and decide the application for evidence to be taken on commission.

(Sgd.) M.J. Abbott.

20

5th July, 1954.

MONDAY THE 5th DAY OF JULY, 1954

Suit No.99/54.

SUWEBATU DANMOLE and OTHERS

vs.

YISA DAWODU and OTHERS

KAINE for Plaintiffs absent by permission.

ADEBIYI for LAWSON for Defendant.

MR.WILLIAMS also appears. He says no trace of missing Will.

ORDER: Evidence of Chief Oluwa to be taken on commission by Mr. Egbuna Registrar of this Court, not later than 31.8.54. Mr. Egbuna will notify Counsel of date and time of sitting at Chief Oluwa's residence for the purpose. I shall decide remuneration of commission and any interpreter when evidence has been taken.

30

Adjourned for mention to 20.9.54.

(Sgd.) M.J. Abbott.

No.9A.

FORMAL ORDER TO TAKE EVIDENCE.

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

(Title as No.3)

In the
Supreme Court

No.9A.

Formal Order to
take Evidence.

5th July, 1954.

10 UPON this suit coming up for hearing on Monday the 5th day of July 1954 at the Supreme Court, sitting at the Glover Memorial Hall, Marina, Lagos, and after hearing Mr. S.D. Adebisi, holding Mr.K.A. Kotun's brief, Counsel for the Defendants and Mr. H.U. Kaine, Counsel for the Plaintiffs being excused to be absent, and Mr.M.A.O.Williams intimating that there is no trace of the missing Will:

IT IS ORDERED as follows:-

Evidence of Chief Oluwa to be taken on commission by Mr.Sylvester Egbuna, Registrar of this Court not later than the 31st day of August 1954.

20 Mr.Egbuna will notify Counsel of date and time of sitting at Chief Oluwa's residence for the purpose.

The Court shall decide remuneration of commissioner and interpreter when evidence has been taken.

The suit is adjourned for mention to the 20th day of September 1954.

DATED at Lagos this 5th day of July, 1954.

(Sgd.) M.J. Abbott,
PUISNE JUDGE.

In the
Supreme Court

PLAINTIFFS' EVIDENCE

No.10.

Plaintiffs'
Evidence.

ALHAJI A. TIJANI

No.10.
Alhaji A.Tijani.
13th August,
1954.

IN THE SUPREME COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION.
HOLDEN AT CHIEF OLUWA'S RESIDENCE,
BEFORE SYLVESTER ONUORA AFAMEFUNA EGBUNA
FRIDAY THE 13th DAY OF AUGUST, 1954

Civil Suit No.99/1954

Examination.

BETWEEN: SUWEBATU DANMOLE AND OTHERS Plaintiffs 10

- and -

YISA DAWODU AND OTHERS Defendants

MR. H.U. KAINÉ for Plaintiffs

MR. K.A. KOTUN for Defendants

MR. A. JASTON ATIBA acts as an Interpreter.

The object of the visit to the Chief's house
is explained to Chief Oluwa.

ALHAJI AMODU TIJANI: CHIEF OLUWA:- Sworn on Koran
States in Yoruba. I am a White Cap Chief and re-
side at 2 Oluwa Court. I knew one Suberu Dawodu. 20
He was my relation. Suberu Dawodu died long ago -
about 14 years. He married four wives, but before
the death of Suberu Dawodu, he lived with three
wives, one having predeceased him. The wives had
children for him. When it was time to distribute
the effects of the deceased Suberu Dawodu, the
children approached me. The children discussed
with me about their late father's effects. During
the discussion I asked the children if they knew
that their late father was indebted to me. They 30
said they knew and that the debt was still unpaid.
There was no dispute after the distribution of the
personal effects. I did not know how much each
child received as his or her share. I was told by
the deceased Suberu Dawodu that he made a Will. He
told me in person the contents of the Will.

At this stage, when Mr. Kaine asked for the
contents of the Will, Mr. Kotun objected to wit-
ness saying what the deceased told him as it would
not be admissible evidence. 40

BY COMMISSIONER: RULING:- I shall take the evidence on this point and leave the question of admissibility or not to His Lordship, Abbott, J. either to accept or reject.

WITNESS CONTINUES:-

10 The deceased told me that whatever I did he would agree to and further stated that as he has four wives; his properties should be divided into four equal parts notwithstanding the number of children each wife may have. I think that the above statements were the contents of the Will. I have told you all what he said to me about the Will - That his properties be divided into four equal parts notwithstanding the number of children each wife may have.

20 I cannot say how long after this talk he died - it was over either 20 days or a month. The deceased made it known to the children that he had made a Will. The deceased said he kept the Will with one Herbert Williams. The deceased was having, at the time of discussion, a paper, which he said was his Will. He did not leave the paper he was having with me. I did not know whether the children found the Will after the death of Suberu Dawodu or not. There was a talk about town by the children that the Will was not seen. I heard of this talk for some time. I do not know one Lawyer by name Magnus Williams. I cannot identify him nor can I know the three Lawyers that visited my
30 house a month ago.

No Lawyer at any time visited me in search of the Will of late Suberu Dawodu. I never instructed anybody to look among my records whether the Will of late Suberu Dawodu was there. Nobody searched my records. My records are kept in the safe and no one can reach it without my knowledge. I keep the keys. Lawyer Magnus Williams never approached me at any time to search my records.

CROSS EXAMINATION:- Reserved.

40 Upon consent of both Counsel further hearing is adjourned till Friday the 20th day of August, 1954 at 5 p.m. prompt.

(Sgd.) S.O.A. Egbuna
Commissioner.

In the
Supreme Court

Plaintiffs'
Evidence.

No.10.

Alhaji A.Tijani.

13th August,
1954.

Examination
- continued.

In the
Supreme Court

RESUMED THIS 20th DAY OF AUGUST, 1954.

Opened at 5.15 p.m.

Plaintiffs'
Evidence.

MR. H.U. KAINÉ for Plaintiffs

MR. I.A.S. ADEWALE for Defendants

No.10.

CROSS EXAMINATION BY MR. ADEWALE:-

Alhaji A.Tijani.

Witness reminded of his oath.

20th August,
1954.

I am related to the deceased by my mother. The deceased was not a brother of my mother. He was my relation. The father of the deceased and my mother are related. I did not inquire about the degree of their relationship, but I knew that they were related. I deny that they were not related. Some of the names of the children who approached me and discussed the distributions of the effects of the deceased were Isa and Amusa. I couldn't remember the names of the others. I was not present at the distribution. None of the deceased furniture are in my possession. The deceased said it openly that he made it known to the children that he made a Will. Late Herbert Williams, the wives and myself were there when he said he made the Will known to the children.

10

20

Cross-
Examination.

When the deceased Suberu Dawodu came and discussed the contents of his Will with me he didn't tell me he had included the payment of my debt in the Will. The paper I saw with the deceased was rolled up in his hand. I cannot say that whether the paper was rolled in an envelope. I never at any time inquired from Mr. Williams whether the deceased Suberu Dawodu kept his Will with him.

30

I deny that the deceased did not show his Will to me and did not tell me the contents of his Will.

RE-EXAMINATION:- BY MR. KAINÉ. None.

(Sgd.) S.O.A. Egbuna
Commissioner.

No. 11.

In the
Supreme Court

S.DANMOLE

SUWEBATU DANMOLE, female, Yoruba, sworn on Koran, states in Yoruba language as follows:-

Plaintiffs'
Evidence.

I live at 24, Washington Street, Lagos. I am a trader. I am the first Plaintiff. I know the other Plaintiffs and also the Defendants. We are all descendants of Suberu Dawodu, deceased.

No.11.
S.Danmole.

10 My mother is Morinatu. I am the only child of my mother.

17th November,
1954.

My father had four wives. The other wives of my father are Moriamo, Osenatu and Rabiatsu.

Examination.

Rabiatsu was the mother of the 2nd Plaintiff and grandmother of the other Plaintiffs.

The Defendants are children and grandchildren of Moriamo and Osenatu.

20 My father died 14 years ago. Lawyer Oddie told us our father had made a Will but he did not produce it. We held a family meeting. My brother Amusa Dawodu told us the Will would be read forty days after our father's death. It was not read at the time.

It was then that Amusa said he did not think there was a Will as none had been produced. Amusa refused to go with me to lawyer Oddie.

When the Will was not found, one Williams told us certain things about the Will and we all agreed that the properties of our father be shared into four parts.

30 Amusa, I, Safuratu and Nuru were appointed Administrators and Administratrices of the estate representing the four branches of the family. We obtained Letters of Administration three months after our father's death. The estate was shared among us in four equal parts.

Each part was given to the children according to their mothers. We shared the properties in this way for 11 years.

40 About 3 years ago, the 1st, 2nd, 3rd Defendants, Amusa, now deceased, said that the properties should be divided into 9 parts; the other Defendants supported them.

Our father died leaving 7 children.

In the
Supreme Court
Plaintiffs'
Evidence.

No.11.
S.Danmole.
17th November,
1954.

Examination
- continued.

My mother had only one child when my father died. Rabiatu had two, Moriamo had two and Osenatu two. Our father had two children who died before him. They were Atiku Dawodu and Sariyu.

Atiku Dawodu was a son of Moriamo and Sariyu was a daughter of Osenatu.

Atiku and Sariyu died leaving children who are some of the Defendants.

10

Three years ago we received £700 rent of a shop in our house at 4, Balogun Square, Lagos, paid by Ajao. The house has 15 rooms and three parlours besides the shop. I occupy only one of the rooms. The 2nd Plaintiff occupied only one room.

The three other Plaintiffs are still children who do not occupy any room in the house. The remaining rooms and parlours are being used by Yisa and Nuru and the other Defendants.

We made no mistake in dividing the properties into four parts. That was done according to our agreement between us. I have not taken my share of the £700 up till now.

20

Mr.Magnus Williams once represented me.

I did not instruct him to get my share of the £700. He has not paid me any money representing my share of the £700 up till now.

I ask the Court to partition the house and shop into 4 parts.

CROSS-EXAMINED BY KOTUN

30

Cross-
Examination.

The personal effects of our father were distributed by Amusa. It is not correct that we got equal shares. They were divided into four parts. I took one share, 2nd Plaintiff took another and the remaining two were given to the other children.

Bashiru was then alive. He and 2nd Plaintiff shared the portion given to them.

I was present when Chief Oluwa gave evidence in this matter.

We all agreed to divide our father's properties into four parts according to the number of his wives.

40

The 3rd Defendant was not then an infant; he was married and had a child then. He was not present at the meeting. The 5th Defendant was present. I don't know his age but he was then working.

The 6th Defendant was not present. I don't know her age; she was under 21 years.

10 The 7th Defendant was present. She is older than the 6th Defendant. The 8th Defendant was present. She was under 21. The 3rd Defendant was present; she was not then a minor.

The rents of the shop was £750 per annum.

There was no dispute for 11 years.

Shares were paid to all the four branches.

Only Amusa told me that the estate would no longer be shared into four parts. He did not then explain to me why he wanted it shared otherwise. He told me about the sharing at a family meeting. We were not told to go and consult our lawyers.

20 I did not consult Magnus Williams. I retained him to conduct my case.

I told him we were sharing the properties into four and that Amusa wanted it divided into 9. I asked him to demand my share.

I did not hear him say he got my share of the £700 from Lawson. He was to collect my share from Amusa. Amusa asked that he should be sued for it.

Magnus Williams did not tell me he had collected my share and passed it to account for professional services rendered to me.

30 Adjourned to 25th instant.

(Sgd.) O. Jibowu
ACTING SENIOR PUISNE JUDGE
17/11/54.

THURSDAY THE 25th DAY OF NOVEMBER, 1954.

Suit No.99/54.

In the
Supreme Court
Plaintiffs'
Evidence.

No.11.

S.Danmole.

17th November,
1954.

Cross-
Examination
- continued.

25th November,
1954.

SUWEBATU DANMOLE AND 3 OTHERS

vs.

YISA DAWODU AND 11 OTHERS

(CROSS-EXAMINATION BY KOTUN CONTINUED)

40 Same Counsel appear.

In the
Supreme Court

Plaintiffs'
Evidence.

No.11.
S.Danmole.
25th November,
1954.

Cross-
Examination
- continued.

SUWEBATU DANMOLE, warned that she is still on her oath, states as follows :-

I told the Court at the last hearing that I occupy only one room in the house. I have been in occupation since our father died.

The 2nd Plaintiff also occupies a room as from the time our father died.

There are three parlours and 12 rooms in the house. The property should have been divided into four. The room I occupy is not a fourth of the rooms in the house.

10

Amusa Dawodu was the eldest child of our father. I come next. Four of us, and not two, managed the estate and the properties.

Yes, Amusa and I were the people looking after the family and the properties.

Amusa told me he received a letter; it was about six years ago. In consequence of the contents of the letter a family meeting was called. Madam Molade was not present. She is a relation of our father. I know Abudu Karimu Idris; he is my father's nephew.

20

Madam Molade and Idris are older than any of us. They both attended our family meeting when the dispute arose. We told them we had been distributing the properties left by our father into four parts. The children of Atiku did not say that the properties should have been divided into 9 parts as our father left 9 children.

Amusa said so. I refused to change our usual practice. It is not correct that Madam Molade and Idris advised us to divide the properties into 9 parts. They said we should continue to divide the properties into four parts as before.

30

If a person dies leaving three children and three properties, I don't know how his three properties will be divided among his children.

Wives under native law and custom don't interest their husband's properties.

Nobody has disturbed me in my room on the premises. I am the Head of the Family now.

40

I remember going to Chief Oluwa about this matter. We did not tell the Chief that two of our father's children died before him and that their children have no share in the properties left

by our father. We went to see the Chief when this action on my behalf. He took the 3rd action last year. He did not tell the Court he had advised me to accept division of the properties into 9 parts. I don't know if anybody had received his or her 9th share. I did not say I instructed Mr. Magnus Williams to demand my own rent. I asked him to write and demand my fourth share. He did not get it for me. I went myself to take my papers from Mr. Magnus Williams. I did not instruct any lawyer to do that for me.

I know Samusi Dawodu; he is a grandchild of our father; he is not a party to this action.

No Re-Examination.

In the
Supreme Court

Plaintiffs'
Evidence.

No.11.

S.Danmole.

25th November,
1954.

Cross-
Examination
- continued.

No. 12.

SAFURATU WILLIAMS

EXAMINED BY KAINE:

20 2ND P.W. SAFURATU WILLIAMS, female, Yoruba, sworn on the Koran, states in Yoruba Language as follows:-

I live at 13, Bankole Street, Lagos. I am a trader. I am one of the Administratrices of our father's estate.

Certain rents are collected from our father's properties. We used to divide the rents into four parts for purpose of distribution. We were then complying with the Will of our father.

30 Lawyer Oddie told us our father made a Will. He did not produce it Amusa said that it would be brought forty days after our father's death. It was not brought and Amusa told us it was lost.

We, all children of our father, went to see his friend Mr. Williams. We told him we could not find the Will and he told us the Will provided that all the properties were to be divided into four parts. He said the Will was prepared in his house by lawyer Johnson. Williams is now dead.

40 We then held a family meeting and selected 4 people from different stocks and we obtained Letters of Administration. We agreed to divide our father's

No.12.

S.Williams.

25th November,
1954.

Examination.

In the
Supreme Court

Plaintiffs'
Evidence.

No.12.

S.Williams.

25th November,
1954.

Examination
- continued.

Cross-
Examination.

properties into four parts for purpose of distribution. We have since been dividing rents collected into four parts. It was not by mistake.

I asked Mr. Magnus Williams to demand my fourth share of the rents collected from Amusa. He did not get the money for me nor has he paid me any. This was before we took action.

CROSS-EXAMINED BY LAWSON:

About 5 years ago Amusa Dawodu said that the rents should no longer be divided into four parts but into 9 parts. He called and told us this.

10

He said he had received a written protest against the method of distribution.

A family meeting was held. Madam Molade of Ebute-Ero, a relation of ours, was present at the meeting. The meeting did not decide that we should adopt the 9 parts division. We objected to dividing into 9 parts. Madam Molade said we should continue to divide into four parts. All children of our father agreed to this. Nurudeen as representative of those whose mothers had died objected.

20

1st Plaintiff and I have two rooms in the house.

We have let the rooms out and we collect rents thereon. A room is reserved for visiting relations. The other rooms are occupied by the 12 Defendants. I am dissatisfied with the suggestion that the rents collected from the shops be divided into 9 parts.

30

None of us has seen a Will made by our father.

Re-Examination.

RE-EXAMINED BY KAINÉ

The three other Plaintiffs live with me; they are young children of about 12, 13 and 14 years respectively.

They too entitled to live in the house in question. Amusa, Yisa and Ganiyu are using the three parlours in the house.



DEFENDANTS' EVIDENCE

No. 13.

YISA DAWODUEXAMINED BY LAWSON:

YISA DAWODU, male, Yoruba, sworn on Koran, states in English Language as follows :-

10 I live at 4, Balogun Square, Lagos. The late Suberu Dawodu was my father. He died in 1940 September. He left 7 children surviving him. Two had predeceased him. The two who predeceased him left issue. 1st and 2nd Plaintiffs are daughters of the deceased. The 3rd, 4th and 5th Plaintiffs are children of Bashiru Dawodu, a son of Suberu Dawodu. Bashiru Dawodu is dead; he died after our father, I am the 1st Defendant.

The 4th, 5th, 6th, 7th and 8th Defendants are children of Atiku Dawodu who predeceased our father.

20 The 11th and 12th Defendants are children of Amusa Dawodu. Amusa died in 1953, August. The 2nd and 3rd Defendants are children of our father. The 9th and 10th Defendants are children of Sariyu a daughter of our father. Sariyu predeceased our father.

Our father left no Will. Letters of Administration were taken out by Amusa, Suwebatu, Safuratu and Nurudeen.

30 The property 4, Balogun Square, Lagos, belonged to our father. The property devolved on all his children on his death. It should be divided into 9 equal shares. Our father was a Yoruba man; he was a native of Ado Odo, near Ilaro. He died in Lagos.

The shops and store in the premises are let out and we collect rents on them.

We were, at first, sharing the rents into four parts, according to the number of the wives of our father. Each wife had children. The children shared the rents per stirpes.

40 In 1949 my late brother Amusa received the letter which I now tender, marked Exhibit "A" from one of the Defendants.

A meeting of the children of Suberu Dawodu was then called, excluding the grandchildren. Six of us were present. We discussed Exhibit "A" after Amusa read it to us. We decided to take legal advice. I did.

In the
Supreme Court

Defendants'
Evidence.

No.13.

Y.Dawodu.

25th November,
1954.

Examination.

In the
Supreme Court

Defendants'
Evidence.

No.13.

Y.Dawodu.

25th November,
1954.

Examination
- continued.

Another meeting was called; grandchildren and other relations were invited.

Moriamo Molade was present. We discussed Exhibit "A". We decided to divide subsequent rents into 9 parts. We had just then received some rents which were to be divided as before. We all agreed to dividing future rents into 9 parts.

The Administrator and Administratrices decided that rents should be divided into four according to the number of our mothers. 10

We did not then discuss anything about an alleged Will made by our father.

Amusa received a letter from Mr. Magnus Williams. He and I instructed our Solicitor about the rents. We asked Mr. Lawson to pay Plaintiffs' 3 9th shares to Plaintiffs' Solicitor.

Mr. Magnus Williams brought an action which was withdrawn. We did not agree to divide the rents into four before the action was withdrawn.

Cross-
Examination.

CROSS-EXAMINED BY KAINE 20

I am now 55 years old. The late Amusa and I were born by the same mother.

Atiku is also my uterine brother.

When the rents were being divided into four parts, Amusa, Atiku and I were sharing a fourth part. The 1st Plaintiff was then getting a fourth share for herself alone.

The 2nd Defendant is of the same mother as the 3rd Defendant and the mother of the 9th and 10th Defendants. They were getting a fourth share of the rents. The 2nd Plaintiff is of the same mother as the father of the 3rd, 4th and 5th Plaintiffs. They also were getting a fourth share for their branch. 30

Our father died in 1940 and we shared rents into four parts for 10 years.

We did not try to find out if our father made a Will. I was born and bred in Lagos. I know Chief Oluwa. He was friendly with our father who brought him up. 40

There was a family meeting before the Administrators were appointed, a few months after our father died. Four Administrators were appointed from the four branches.

I knew 1st Plaintiff is the only child of her mother. She was married when our father died. We agreed to share according to the number of the wives of our father and mothers of the children. We wanted to avoid ill feelings. We don't want any ill feeling now. Chief Oluwa is older than I am. I was not present when Chief Oluwa gave evidence but my Counsel was present.

10 I cannot say whether he lied or not when he stated that our father made a Will and that he wanted his properties divided into four according to the number of his wives. Amusa was older than I. He also went to school like me. Nurudeen also went to school.

Nurudeen; he is about 39 - 40 years old. I did not know anything about the Will nor do I know that Amusa suppressed it. We did not decide to divide the properties according to the number of the wives of the deceased as he wanted it.

20 The 10th Defendant protested against the method of distribution in 1949; he is a grandchild. We divided according to the number of wives not knowing we were doing wrong. I don't know that was in accordance with the Native Law and Custom of the Yorubas. There are 13 of us now in my branch. I have 10 children.

RE-EXAMINED BY LAWSON -

30 Atiku predeceased our father. At the time his children were not all of age; three were under age, namely Mutiatu, Obedatu and Samiatu. Sariyu also died before our father. Her son Rafiu was under age when our father died, when we agreed to share into four.

Rafiu is the 10th Defendant, who wrote Exhibit "A".

No. 14.

MORIAMO MOLADE

EXAMINED BY KOTUN

40 2ND D.W. MORIAMO MOLADE, female, Yoruba, sworn on Koran, states in Yoruba Language as follows:-

I live at 6, Oko Awo Street, Lagos.

In the
Supreme Court

Defendants'
Evidence.

No.13.

Y.Dawodu.

25th November,
1954.

Cross-
Examination
- continued.

Re-Examination.

No.14.

M.Molade.

25th November,
1954.

Examination.

In the
Supreme Court

Defendants'
Evidence.

No.14.

M.Molade.

25th November,
1954.

Examination
- continued.

Cross-
Examination.

I know the late Suberu Dawodu; he was my elder brother of full blood. He died about 14 years ago. He had 9 children.

There was a dispute among the children about 6 years ago. The female children said the rents must be divided into four parts; the other children, younger than they, wanted rents divided into 9 parts. At the meeting I and two relations of mine, Karimu and Abebi, decided that the rents should be divided into 9 parts.

In the olden days property was shared per stipes - according to the stock - that rule no longer holds good. Now each child takes a share; the children share equally. I am about 20 years old? (She is about 80).

CROSS-EXAMINED BY KATINE:

We discussed this matter about 4 years ago. Every one is now civilised.

Civilisation abrogated our native law and custom. I don't know when the old practice was swept away.

The rents then first received were divided into four parts but the Defendants said that would be the last time that would take place. The 1st and 2nd Plaintiffs agreed; not the same day they disagreed.

They did not tell me why they originally divided the rents into four parts.

No Re-examination.

DEFENDANTS' CASE.

10

20

30

No.15.

Addresses by
Counsel.

25th November,
1954.

For Defendants.

No. 15.

ADDRESSES BY COUNSEL

KOTUN addresses the Court.

Claim is for partition of the property in dispute.

The evidence led only goes to the question of distribution of rents collected from the shops. Thomas v Thomas 16, N.L.R. He says further all parties interested are not before the Court.

There is no evidence of Native Law and Custom. He refers to Lewis v Bankole 1, N.L.R. 82, at page 98; also to Sule v Ajisegiri, 13, N.L.R. 146; also to 15/52 Alayaki v Alayaki.

He asks that the action be dismissed.

KAINE replies

10 The parties agreed that the properties be divided into four equal parts. The Plaintiffs alleged that there was a Will when their father died. On that basis, rent had been distributed. Defendants now allege that that was a mistake. They have to prove that mistake. He submits that they have not done that. If the house is to be partitioned, it should be partitioned into 4 parts.

He asks the Court to hold that they all knew of the Will and so divided rents in accordance with the wishes of their father. He says 4, Balogun Square was the only realty left by the deceased.

20 Lewis v Bankole, decided that the property be divided according to stock, (per stirpes) see p.81. See pp. 103 and 104 Vol. 1 N.L.R.

Nigerian Land Laws by Dr. Elias p.216.

The case cited in 13, N.L.R. does not help.

Children there were all of the same mother.

He submits that he could not find any case overriding Lewis vs. Bankole.

He refers to p.84 in Vol. 1 N.L.R.

Partition is a relief.

30 Samusi is a son of Amusa: If the property is partitioned, he will take through his father's branch or through Moriamo's stock.

He asks that the Court should order plan.

Adjourned to 6th December next for mention.

(Sgd.) O. Jibowu

ACTING SENIOR PUISNE JUDGE

25/11/54.

In the
Supreme Court

No.15.

Addresses by
Counsel.

25th November,
1954

For Defendants
- continued.

For Plaintiffs.

In the
Supreme Court

No. 16.

COURT NOTES

No.16.
Court Notes.
6th December,
1954.

MONDAY THE 6TH DAY OF DECEMBER, 1954.

Suit No. 99/54

SUWEBATU DANMOLE AND OTHERS

vs.

YISA DAWODU

The Court orders that a plan of the house be made to show if the house is capable of partition either into four equal parts or 9 equal parts.

Adjourned to 10th January, 1955.

10

10th January,
1955.

MONDAY THE 10TH DAY OF JANUARY, 1955

Plans filed only this morning and they did not comply with the order of Court.

The case is adjourned to 31st January, 1955, for new plans complying with the order of Court to be submitted.

31st January,
1955.

MONDAY THE 31ST DAY OF JANUARY, 1955

SUWEBATU DANMOLE AND OTHERS

vs.

Y.DAWODU AND OTHERS

KAINE for Plaintiffs

20

LAWSON and ADEWALE for Defendants - KOTUN hold their brief. New plans filed.

KOTUN says that the property is incapable of partition. Each party cannot as it is now like his own portion. Case is adjourned to 2nd February, for the parties to consider what they would like the Court to do.

2nd February,
1955.

WEDNESDAY THE 2ND DAY OF FEBRUARY, 1955

SUWEBATU DANMOLE AND OTHERS

vs.

YISA DAWODU AND OTHERS

30

Both Counsel report that the parties have agreed that the property in dispute be leased and the rents divided in whatever proportion the Court may decide.

Judgment is reserved till the 2nd March, 1955.

No. 17.

JUDGMENT.

IN THE SUPREME COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION.
MONDAY THE 28TH DAY OF MARCH, 1955.

BEFORE THE HONOURABLE,
MR. JUSTICE OLUMUYIWA JIBOWU,
ACTING SENIOR PUISNE JUDGE.

Suit No.99/54.

In the
Supreme Court

No.17.

Judgment.
28th March,
1955.

- 10 BETWEEN: 1. Suwebatu Danmole
2. Safuratu Williams
3. Taiwo Dawodu } By their legal
4. Kehinde Dawodu } guardian,
5. Taufiki Dawodu } Safuratu Williams
Plaintiffs
- and -
1. Yisa Dawodu and 11 others Defendants

J U D G M E N T

20 By the writ of summons issued in this action the Plaintiffs claim partition of the property at 4, Balogun Square, Lagos, but in their Statement of Claim they claim alternatively that the former agreed scheme of distribution into four parts should continue.

30 Property No.4, Balogun Square, Lagos, belonged to one Suberu Dawodu who died in September, 1950, leaving seven children, born by four wives, surviving him. Two of his children Atiku and Sariyu predeceased him, but they died leaving children surviving them.

The 1st Plaintiff is the only daughter of her mother, Morinatu; the 2nd Plaintiff and Basiru were born by the same mother, Rabiatsu; the 1st Defendant Amusa and Atiku were born by the same mother, Moriamo, and the 2nd Defendant, the 3rd Defendant and Sariyu were born by the same mother, Osenatu.

40 Amusa died in August, 1953 and Basiru also has died. The 3rd to 5th Plaintiffs are children of Basiru. The 4th to 8th Defendants are children of Atiku; the 9th and 10th Defendants are children of Sariyu; the 11th and 12th Defendants are children of Amusa.

In the
Supreme Court

No.17.

Judgment.

28th March,
1955

- continued.

It was alleged that Suberu Dawodu made a Will but the Will could not be found so his children agreed that Letters of Administration should be applied for by four of them each representing children of the four wives of their father.

The Administrators and Administratrices were Amusa, the eldest son, the 1st Plaintiff, Safuratu, and the 2nd Defendant.

It is agreed by both parties that the personal effects of their father were divided into four parts and each part was taken up by them according to their stock through their mothers.

10

The shops and store on the ground floor of the storey house at 4, Balogun Square, Lagos, were leased out and rents accruing therefrom were divided from time to time into four parts and distributed according to the four branches of their family.

In 1949, the 10th Defendant, a son of Sariyu, wrote letter Exhibit "A" complaining that their branch was not given a room in the family house nor given a share of the rents collected. He also stated that it was wrong to have shared the rents per stirpes instead of per capita, whereby all the children of Suberu Dawodu would receive an equal share and that the rents should have been divided into 9 parts instead of four according to the number of children Suberu Dawodu had.

20

Family meetings were held at which Amusa and the other children of Suberu Dawodu, excepting the 1st and 2nd Plaintiffs, agreed that future rents should be divided into 9 parts instead of four as was done for over ten years.

30

The 1st Defendant suggested that the rents were divided before into four parts by mistake, but that suggestion must be rejected as untrue as he, Amusa and Nurudeen were fairly well educated.

Chief Oluwa's evidence was taken on commission, but I have to rule out his evidence which purported to be what Suberu Dawodu told him as to how his properties should be distributed as a dangerous hearsay. He did not even see the Will alleged to have been made.

40

It has been suggested by the Plaintiffs that Amusa suppressed the Will which, it must be observed, none of them has ever seen. There is no convincing proof that a Will was made and as Letters

of Administration had been applied for and obtained by four of the children of Suberu Dawodu, he must be taken to have died intestate. His properties must therefore be distributed according to rules of inheritance under intestacy. At the death of Suberu Dawodu, seven of his children and children of his two dead children were alive. There must have been some reasons why the children agreed that the personal effects of their father should be divided into four parts and distributed according to the number of their mothers. The 1st Defendant who gave evidence for the defence said he did not know why but there is no doubt in my mind that he was not telling the truth.

In the
Supreme Court

No.17.

Judgment.

28th March,
1955

- continued.

Distribution of the estate according to the number of the mothers of the children followed principles of native law and custom.

Moriamo Molade, who gave evidence for the Defendants, knew about this method of distribution under native law and custom but she considered that the rule is no longer binding as people have become civilised. She, however, could not say when the rule was abrogated.

Section 52 of the Land Tenure in the Yoruba Provinces by H.L. Ward Price shows that this method of distribution under native law and custom existed in the following terms:-

"There is another system of dividing a deceased owner's land which is commonly in vogue. This method is governed by the number of the wives of the deceased by whom there are children living. The children of each mother receive an equal share of the land and trees upon it (except land used for cocoa or kola), which belongs to the planter or his children. The number of the children of each mother does not affect the size of the land granted so that an only child gets as much as several children of another wife. The land is the common property of the children and not of their mothers. The children of each branch divided their portion among themselves in accordance with circumstances. As a general rule sons will take it all, and exclude the daughters; but if a daughter insisted on having a portion, she could get it, and when she married and had offspring, the offspring will inherit it.

In the
Supreme Court

No.17.

Judgment.

28th March,
1955

- continued.

"It sometimes happens that a woman, who has married and left her father's family, claims a portion of land for her sons out of land allotted to her mother's children and if there be some available it would be granted".

Section 17 of the Supreme Court Ordinance makes it possible for native law and custom to be applied to cases between natives if the native law and custom is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any law for the time being in force.

10

The question is whether the above rule of native law is repugnant to natural justice, equity and good conscience. This Court has always treated female and male children of an intestate in the same way and the rule that equality is equity has always been applied so that female child gets an equal share of her father's properties as any male child.

20

The question of division according to the number of the mothers of the children of an intestate has never, so far as I can discover, been considered by this Court.

There have been many cases in which the properties of intestates had been distributed among the children of the intestates, but the basis of distribution had always been the number of the children and their relationship with the intestates. In these days no one ever thinks of the number of the wives of an intestate in order to ascertain into how many parts the properties left are to be distributed. When the number of the children has been ascertained, the properties are distributed equally among them.

30

In Lewis versus Bankole, 1, N.L.R. 82, at page 96, the Chiefs of Lagos invited to give opinion on native law and custom in answer to question by the Court as to whether they would make the shares of the children equal replied in the affirmative, without any reference to the number of their mothers.

40

In Abudu Wahabi Phillip versus Sanni Phillip and Tunder Phillip, 18, N.L.R. 102, the intestate left three children by three different mothers, and the Court ordered distribution between the three children without reference to their mothers.

Mr. Kotun, one of the Counsel for the Defendants, referred the Court to the case of Alayaki vs. Alayaki, No.19 of 1952, in which the properties left by the intestate were ordered to be distributed equally among the children without considering the number of their mothers.

In the
Supreme Court
————

No.17.

Judgment.

28th March,
1955

- continued.

10 It therefore appears that the trend of the decisions in this Court is to apply the equitable rule of equality and each child gets the same share as any other.

The old rule of division according to the number of the wives of the deceased and mothers of the children therefore seems to be out-moded, and there can be no doubt that it was neither fair nor equitable to the children.

20 The idea behind the old rule was that each wife who had a child was given no cause for jealousy as it was understood that the number of wives would determine the distribution of the properties of the intestate. Under the rule an only child of a wife got the same share as many children of another wife, with the result that the children did not get equal shares of their father's estate. This does not agree with the modern idea that the basis of distribution is the number of the children of the intestate, which assures equal shares to all the children.

30 The Plaintiffs' case in this action was, however, not based on any rule of native law and custom, and the suggestion that it was an attempt to give effect to what they understood to be the wishes of their late father, was denied by the 1st Defendant.

40 I accept the evidence of the Plaintiffs on this point and disbelieve the 1st Defendant's evidence on the point. I have already found that there was no convincing proof that their father made a Will and I have ruled out the evidence of Chief Oluwa regarding what he was told by their father as to how his estate was to be distributed. The bottom has, therefore, been knocked out of the basis for the distribution according to the number of the wives. As the other children and grandchildren besides the Plaintiffs have agreed that future rents of properties left by their father and grandfather be divided into 9 parts according to the number of the children, I consider that the modern idea of treating the children equally should

In the
Supreme Court

No.17.

Judgment.

28th March,
1955

- continued.

be applied. It is therefore ordered that future rents accruing from 4, Balogun Square, Lagos, be divided into 9 parts and each child and children of a dead child should have a ninth part share.

As both parties had agreed to lease out the whole property, it is hoped that this will be done without delay and the rents distributed as decided above.

Kaine asks that the Court should give the parties time limit within which the house is to be leased out. Lawson says that 3 months is reasonable.

10

ORDER: That the house be leased within 3 months; if for any reason no tenants are available by the end of June, 1955, those living on the premises are to pay rents to be agreed upon by the parties.

(Sgd.) O. Jibowu
ACTING SENIOR PUISNE JUDGE.

In the West
African Court
of Appeal.

No.18.

Notice and
Grounds of
Appeal.

25th June, 1955.

No. 18.

NOTICE AND GROUNDS OF APPEAL
IN THE WEST AFRICAN COURT OF APPEAL
HOLDEN AT LAGOS

20

Suit No.99/1954.
W.A.C.A. No.

BETWEEN:-

- | | | |
|----------------------|------------------------------------------------|------------------------------|
| 1. Suwebatu Danmole |) By their legal guardian
Safuratu Williams |) Plaintiffs/
Appellants. |
| 2. Safuratu Williams | | |
| 3. Taiwo Dawodu | | |
| 4. Kehinde Dawodu | | |
| 5. Taufiki Dawodu | | |

30

- and -

- | | |
|--------------------|---|
| 1. Yisa Dawodu |) |
| 2. Nurudeen Dawodu | |
| 3. Sarata Onitiri | |
| 4. Ganiyu Dawodu | |
| 5. Layiwola Dawodu | |
| 6. Mutiatu Dawodu | |
| 7. Obedatu Dawodu | |
| 8. Samiatu Dawodu | |

9. Gbadabiyu Oloko)
 10. Rafiyu Mabinuori)
 11. Sukurat Dawodu)
 12. Satari Dawodu) Defendants/Respondents

In the West African Court of Appeal.

No.18.

Notice and Grounds of Appeal.

25th June, 1955
 - continued.

NOTICE OF APPEAL

10 TAKE NOTICE that the Plaintiffs being dissatisfied that part of the decision more particularly stated in paragraph 2 of the Supreme Court contained in the judgment of the Court dated the 28th day of March 1955 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 Appellants further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. Part of the decision of the lower Court complained of:

20 That the distribution of the estate will be into nine parts and not four parts.

3. Grounds of Appeal:

1. The judgment is against the weight of evidence.
2. That the learned trial Judge was wrong in law in holding that the native law and custom which establishes that distribution shall be by stirpes and not per capita is inequitable.
- 30 3. That the learned trial Judge was wrong in law in regarding the evidence of Chief Oluwa as hearsay.
4. The learned trial Judge was wrong in law in failing to direct his mind to the fact that the parties had for nearly eleven years carried on the distribution into four parts without any dispute.

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

40 That the order for distribution into nine parts be set aside and an order made for distribution into four parts.

5. Persons directly affected by the Appeal :-

In the West African Court of Appeal.

No.18.
Notice and Grounds of Appeal.
25th June, 1955
- continued.

<u>Names</u>	<u>Addresses</u>	
1. Suwebatu Danmole	} c/o Their Solicitor, H.U. Kaine, 28, Hawley Street, Lagos.	
2. Safuratu Williams		
3. Taiwo Dawodu		
4. Kehinde Dawodu		
5. Taufiki Dawodu		
		} By their legal guardian Safuratu Williams.)
1. Yisa Dawodu	} c/o Their Solicitor, A.O. Lawson, 37, Broad Street, Lagos.	
2. Nurudeen Dawodu		
3. Saratu Onitiri		
4. Ganiyu Dawodu		
5. Layiwola Dawodu		
6. Mutiatu Dawodu		
7. Obedatu Dawodu		
8. Semiatsu Dawodu		
9. Gbadabiyu Oloko		
10. Rafiyu Mabinuori		
11. Sukurat Dawodu		
12. Satari Dawodu		

DATED at Lagos this 25th day of June, 1955. 20
(Sgd.) H.U. Kaine,
Appellants' Solicitor.

In the Federal Supreme Court.

No.19.
Court Notes.
5th November, 1957.

No. 19.
COURT NOTES

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

TUESDAY THE 5TH DAY OF NOVEMBER 1957

BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON,	FEDERAL CHIEF JUSTICE	
M.C.E.C. NAGEON DE LESTANG,	FEDERAL JUSTICE	30
NYLES JOHN ABBOTT,	FEDERAL JUSTICE.	

F.S.C. 137/1956.

BETWEEN:-

1. Suwebatu Danmole)	
2. Safuratu Williams)	
3. Taiwo Dawodu)	By their
4. Kehinde Dawodu)	legal guardian
5. Taufiki Dawodu)	and next friend
)	Safuratu
)	Williams
)	(Amended by Order of Court
)	dated 6/4/54)

In the Federal Supreme Court.

No.19.

Court Notes.

5th November, 1957

- continued.

10

vs.

1. Yisa Dawodu	7. Obedatu Dawodu
2. Nurudeen Dawodu	8. Samiatu Dawodu
3. Sarata Onitiri	9. Gbadabiyu Oloko
4. Ganiyu Dawodu	10. Rafiyu Mabinuori
5. Layiwola Dawodu	11. Sukurat Dawodu
6. Mutiatu Dawodu	12. Satari Dawodu

Respondents

Mr. H.U. Kaine for the Appellants.

20 Mr. K.A. Kotun for the Respondents.

Kaine:

Native law and custom is - children divide property according to families or branches that is to say each wife's family - if she has any - not if she has not - takes an equal share.

Number of children does not affect position.

Not per capita. - per stirpes -

Trial Judge agrees that is old custom, but held it was against equity and good conscience.

30 Pp. 35/36 of record - p.28 - Line 11.

"No one knows when modern rule comes into vogue" - No evidence of it.

Cites D.W. Lewis v. Bankole I N.L.R. 103 - (Commences at p.81). Eleko v. D.A.G. of Nigeria (1931) A.C. 662. See p.672.

Kotun:

At time of death of father there were some minor grandchildren.

Lopez v. Lorz 5. N.L.R.50.

40 descent of land in the Yoruba country.

In the Federal
Supreme Court.

No.19.

Court Notes.
5th November,
1957
- continued.

After consideration we decide to adjourn for the purpose of giving Counsel time to bring further evidence - Rule 30. On the question: What is the Yoruba custom.

Adjourned sine die.

(Intld.) S.F.S.
F.C.J.
4.11.57.

Plaintiffs'
Evidence.

PLAINTIFFS' EVIDENCE

No.20.

No. 20.

10

DAVID AJASA OGUNLANA

D.A.Ogunlana.
12th December,
1957.
Examination.

A.W.1. EXAMINED BY KAINÉ.

DAVID AJASA OGUNLANA, male, Yoruba, 38, Abun Eko Street, Lagos, aged 72 years, sworn on Bible, states in English.

I am Chief OBANIKORO of Lagos and have been for the past 9 years. I know the Native Law and Custom (N.L. and C.) In the case of a Yoruba man who has many wives and children dying intestate, his property is divided, e.g. if three wives, property will be divided into three equal shares. It makes no difference how many children each wife has. A barren wife gets nothing or a woman who has had children but which have died before the intestate. A share can only go to a wife who is living and has children living at the date of the death of intestate. The children of a wife who predeceases intestate takes her share. A wife living at the death of intestate with living children holds the share in trust for her children. She cannot use it for herself. She manages the property until the children are able to manage it themselves. They will take it over and are responsible for looking after the mother.

20

30

A senior brother takes over the wife of a deceased junior brother.

The method of distribution I have described is known as Idi Igi. That is still in force today. So far as I know there has never been any other method of distribution.

CROSS-EXAMINATION KOTUN:

I succeeded Adamo Akeju as Chief Obanikoro. He died leaving wives and children. He was older than I am now when he died. On his death, his children took over all his property, but I do not know what share each took. I was not invited to assist. There are three kinds of Yoruba, Christians, Moslems and Pagans. The Idi Igi applies to all Yorubas, irrespective of religion. I do not know if there is a form of distribution among the children of a wife of a deceased Moslem Yoruba whereby a male child takes twice as much as a female child. I am a Christian Yoruba.

10

I deny that distribution of property of an intestate Christian Yoruba is done according to the number of children.

When Christianity first came to Nigeria, Christian Yorubas took only one wife, but that is not so now.

20

Christianity first came about 100 years ago, and its arrival changed many native customs.

When Christianity first came the children of the wife of a Christian marriage were the only ones who took - children of other wives were regarded as illegitimate and took nothing. The children of the married woman took advantage of English law which was contrary to the customary law.

I deny that the customs changed in 1923.

30

The Native African Churches established as a result of a break-away in 1923, of whatever denomination, then sanctioned polygamy.

Pagan Yorubas can have as many wives as they like.

I belong to the English Methodist Church. Members of that community are allowed one wife only. I deny that my estate would, if I died intestate, go to all my children. It would go to my one wife in trust for our children by my marriage to her. Other children which I might have by other women would get nothing.

40

I say that on the death intestate of a pagan Yoruba all the property is distributed - not only his personalty. I deny that eldest son takes over land and houses. That is the position now and has been for many years.

In the Federal
Supreme Court.

Plaintiffs'
Evidence.

No.20.

D.A.Ogunlana.
12th December,
1957.
- continued.

Cross-
Examination.

In the Federal
Supreme Court.

Plaintiffs'
Evidence.

No.20.

D.A.Ogunlana.
12th December,
1957.

Cross-
Examination
- continued.

I have assisted many times at the distribution of the estate of an intestate Yoruba in my own religious community. I have also assisted where there have been several wives, e.g. estate of Raji Otu. He was otherwise known as Oyanmo. Otu has only two male children, one from each of two wives, and three female children from those two wives. His estate was divided into two parts. He had only one house - at Idoluwo Street. It belonged to Raji Otu and his sister Abisawo. Now the sister's name was Morara. Abisawo was the father's name. He had three children. One died without issue, predeceasing Abisawo. I did not assist in distributing Abisawo's estate. Abisawo had only one house. I do not know how many wives he had.

10

Abisawo was a pagan Yoruba, Raji was a Christian and Morara a Moslem. Raji's estate was distributed more than two years ago.

I have not assisted at the distribution of an estate where there were several wives and several children of each. I have not heard of the estate of an intestate being distributed according to the number of children.

20

Re-examination.

RE-EXAMINED KAINÉ:

The English law governing Christian marriage is not N.L. and C. Idi Igi is still in existence today. Those who have contracted marriage under the Marriage Ordinance regard English Law in the distribution of intestate's estate, e.g. the Marriage Ordinance.

30

No.21.

A.Gbajumo.
12th December,
1957.

Examination.

No. 21.

ABUBAKARE GBAJUMO

A.W.2. ABUBAKARE GBAJUMO, male, Yoruba, 40 Eletu-Iwashe Street, Lagos, sworn on the Koran, examined by Kaine.

I am Chief Eletu-Iwashe of Lagos. I am 70 years old. I know Yoruba N.L. and C. If a Yoruba dies intestate having three wives and many children, custom of distribution is according to the native town of the intestate. Custom of Lagos is different from that of places outside Lagos. I do not know custom of Abeokuta, but I know that of Epe. I do not know custom of Egbado.

40

CROSS-EXAMINED by KOTUN:

In old days property of an intestate would be divided among the children, i.e. three wives and a total of 10 children, property divided into three. This custom is still observed now. Only when a matter goes to Court does confusion arise. This custom is called Idi Igi. There is another custom called Oriojori under which, in example above, an estate would be divided into ten parts.

10 Head of family decides which method of distribution is adopted if the family members are not in agreement.

RE-EXAMINED KAINÉ:

The real Yoruba custom is Idi Igi. Now we Moslems have a Koranic system of distribution, i.e. a male child takes twice as much as a female child. Idi Igi is the more important and older custom - the prevailing custom.

No. 22.

20

SAUDATU AJIKANLE

A.W.3. EXAMINED KAINÉ:

SAUDATU AJIKANLE, female, Yoruba, sworn on Koran, Ashogbon Street, Lagos. I am 84 years old. When a Yoruba dies intestate leaving 5 wives and many children, property divided into 5 parts.

CROSS-EXAMINED KOTUN:

30

I was born in Lagos. I belong to Ologun-Agara family. I am a grandchild of founder of family. I have never heard of an intestate's property being divided into the numbers of parts corresponding with the number of children, i.e. if an intestate has three wives and 10 children, I have never heard of property being divided into 10 parts. I have heard of Ori-Ojori custom. That is the custom of dividing property equally among the children. It is an old custom.

BY COURT:

Family decides which custom is to be adopted. If they disagree, an elderly person is invited to decide. Head of family may invite somebody to arbitrate.

In the Federal Supreme Court.

Plaintiffs' Evidence.

No.21.

A.Gbajumo.

12th December, 1957.

- continued.

Cross-Examination.

Re-examination.

No.22.

S. Ajikanle.

12th December, 1957.

Examination.

Cross-Examination.

In the Federal
Supreme Court.

Plaintiffs'
Evidence.

No.22.

S. Ajikanle.
12th December,
1957.
Re-examination.

RE-EXAMINED BY KAINÉ:

The more usual custom is according to the
number of wives.

KAINÉ -

I don't want to call any more witnesses.

Defendants'
Evidence.

No.23.

A.Gbadesiri.
12th December,
1957.
Examination.

DEFENDANTS' EVIDENCE

No. 23.

AMUSA GBADESIRI

KOTUN calls:-

R.W.1. EXAMINED BY KOTUN

AMUSA GBADESIRI, Chief Elete-Odibo of Lagos, sworn
on Koran.

I live at 51, Ashogbon Street, Lagos, Yoruba,
Moslem, I am about 61 years old. I have been
Chief Elete-Odibo since 29.1.50. Under N.L. and
C. I cap the Oba of Lagos.

I know about N.L. and C. on distribution of
Yoruba intestate estates.

If a Yoruba dies intestate now leaving sever-
al wives and several children, his property is now
divided according to Ori-Ojori. It used to be done
according to Idi-Igi. Custom changed more than 60
years ago. Ori-Ojori is more often found now.

CROSS-EXAMINED KAINÉ:

Cross-
Examination.

Ori-Ojori grew up later than Idi-Igi. Cause
of change - to maintain cordial relationships be-
tween children. Our elders were responsible for
the change. I do not know where they met to decide
on the change. It was the Moslem elders. I don't
know Koranic method of distribution.

BY COURT:

Idi-Igi is the most prevailing custom these
days.

10

20

30

RE-EXAMINED KOTUN:

Now I say Idi-Igi was prevailing system in old days. Ori-Ojori is the prevailing custom now.

BY COURT:

I don't know if anyone uses Idi-Igi now.

In the Federal
Supreme Court.

Defendants'
Evidence.

No.23.

A.Gbadesiri.

12th December,
1957.

Re-examination.

No. 24.

ASHIFA TIJANIR.W.2. EXAMINED BY KOTUN:

10 ASHIFA TIJANI, sworn on Koran, male, Yoruba. I am Chief Imam, 70 Great Bridge Street, Lagos. I am an important member of Royal House in Lagos, and the head of Oloto Chieftaincy family. I am religious head of Ahmadiyya Moslems. I am 71 years old. I know a little about Lagos Yoruba N.L. and C.

Ori-Ojori has, since I was born, been the system of distribution of intestate estates of Lagos Yorubas.

I understand the custom used to be called Idi-Igi in the old days.

20 Idi-Igi and Ori-Ojori are one and the same thing. Former is an old name for the latter.

Idi-Igi is division according to number of wives - Ori-Ojori according to number of children and equally between them.

CROSS-EXAMINED KAINÉ:

Idi-Igi was at one time custom of Lagos Yorubas. Ori-Ojori is today. Custom changed about 80 years ago.

30 I don't know who brought about the change or why it was brought about.

I know there are Christian, Moslem and Pagan Yorubas.

Ori-Ojori is used by all Yorubas in Lagos.

No.24.

A.Tijani.

12th December,
1957.

Examination.

Cross-
Examination.

In the Federal
Supreme Court

Defendants'
Evidence.

No.24.

A.Tijani.

12th December,
1957.

Cross-
Examination
- continued.

Ori-Ojori introduced at time of arrival in Lagos of Islam and Christianity. Both religions brought Ori-Ojori. Ori-Ojori is different from Koranic system.

When British Government came to Nigeria, they introduced Ori-Ojori. That is their custom.

If Idi-Igi is applied to Christians, they will come to Court.

Pagan Yorubas have now adopted Ori-Ojori - they did so before I was born. 10

Idi-Igi cannot be practised among Lagos Yorubas today, unless the children all agree among themselves.

Ori-Ojori is now used to give equal shares to each child to ease expense of litigation.

RE-EXAMINED KOTUN: None.

No.25.

M.S.Batunla.

12th December,
1957.

Examination.

No. 25.

MOMO SALAMI BATUNLA

R.W.3. EXAMINED BY KOTUN:

MOMO SALAMI BATUNLA, sworn on Koran, Yoruba, male. I live at 37, Itofo Street. I am Chief Modile. I am Secretary to Oba and Chiefs Council. I know N.L. and C. as to distribution of Lagos Yoruba intestate estates. Idi-Igi is found sometimes today. Ori-Ojori is also found and more frequently. More often because under Ori-Ojori each child gets an equal share. Ori-Ojori has been prevailing custom at least since I became of age. 20

Cross-
Examination.

CROSS-EXAMINED KAINA:

If division by Idi-Igi is refused, Ori-Ojori is adopted to avoid litigation. 30

RE-EXAMINED KOTUN: None.

KOTUN:

I have no more witnesses.

No. 26.

COURT NOTES OF ARGUMENT

FRIDAY THE 10TH DAY OF JANUARY, 1958.

F.S.C.137/1956.

SUWEBATU DANMOLE AND 4 OTHERS Appellants

vs.

YISA DAWODU AND 11 OTHERS Respondents

Evidence concluded.

KOTUN:

Both sides agree that is new custom.

10 KAINE:

Evidence really establishes that custom when man dies intestate is to divide estate according to branches - that is real custom - other is adopted to save disputes. Per capita is a form of compromise. Per stirpes however still in operation up to present time.

Last witness collaborates witnesses for Appellants. Trial Judge erred. C.A.V.

Judgment delivered by Abbott, F.J.

20

(Intld.) S.F.S.
F.C.J.

No. 27.

JUDGMENT.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

FRIDAY THE 10TH DAY OF JANUARY, 1958.

BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON CHIEF JUSTICE OF THE
FEDERATION.

30 M.C. NAGEON DE LESTANG FEDERAL JUSTICE
MYLES JOHN ABBOTT FEDERAL JUSTICE

F.S.C.137/1956.

SUWEBATU DANMOLE AND 4 OTHERS Plaintiffs/
Appellants

- and -

YISA DAWODU AND 11 OTHERS Defendants/
Respondents

In the Federal
Supreme Court.

No.26.

Court Notes
of Argument.

10th January,
1958.

No.27.

Judgment.

10th January,
1958.

In the Federal
Supreme Court.

No.27.

Judgment.

10th January,
1958

- continued.

J U D G M E N T

ABBOTT, F.J. This is an appeal by the Plaintiffs from the judgment of Jibowu, Ag. S.P.J. (as he then was) given in the Lagos Judicial Division of the former Supreme Court of Nigeria on 28th March, 1955.

The matter arose in this way. In September, 1940 there died one Suberu Dawodu (hereinafter called "Suberu"). At one time he had four wives, but only three survived him. He had children by each wife. The first Plaintiff is a daughter of Suberu by his wife Morinatu. The second Plaintiff is a daughter of Suberu by his wife Raliatu (now dead). The third, fourth and fifth Plaintiffs who are minors are the children of Bashiru Dawodu (now dead), the son of Suberu also by his wife Raliatu. The first Defendant is a son of Suberu by his wife Moriamo (now dead).

10

The second and third Defendants are the children of Suberu by his wife Osenatu. The fourth, fifth, sixth, seventh and eighth Defendants are the children of Atiku (now dead), a son of Suberu also by his wife Moriamo. Atiku predeceased his father. The ninth and tenth Defendants are the children of Sariyu, the daughter of Suberu by his wife Osenatu. Sariyu predeceased Suberu. The eleventh and twelfth Defendants are the children of Amusa, the son of Suberu also by his wife Moriamo. Amusa died after the death of Suberu. Suberu thus had nine children in all and the Plaintiffs and the Defendants are children and grandchildren of Suberu.

20

30

It must now be accepted that Suberu died intestate. At one time it was thought that he had made a Will and attempts were made both to produce it and to give evidence of its contents, but these attempts were unsuccessful.

Owing to the failure to find Suberu's Will, Letters of Administration to his estate were taken out by four members of the family, one representing each wife and, consequently, representing also the branch consisting of the children by that wife. Suberu's personal estate was then divided into four parts as were the rents of the realty. No account was taken, for the purposes of distribution, of the number of descendants proceeding from each wife, or, of course, of the total number of descendants of Suberu.

40

Some seven or eight years ago this method of

distribution was objected to by the Defendants, who contended that the property should be divided into 9 parts, one part to go to each child of Suberu or, in the case of a deceased child (whether dying before or after Suberu) to be divided between the issue of that deceased child.

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Supreme Court.

No.27.

Judgment.

10th January,
1958

- continued.

10 Litigation (which for various reasons proved abortive) then took place, and it is said that certain terms of settlement were not implemented. The Plaintiffs then began the present proceedings, in which their writ claims partition of the property known as 4, Balogun Square, Lagos, of which Suberu died possessed. By their Statement of Claim the Plaintiffs ask, in the alternative, that the original method of distribution of the property (i.e. into 4 parts) should recommence.

20 The learned trial Judge rejected the evidence of the 1st Defendant (a) that the division into four parts was by mistake, and (b) that he did not know why this method of division was adopted. I consider that the learned trial Judge's reasons for that rejection were fully adequate.

The learned trial Judge goes on "Distribution of the estate according to the number of the mothers of the children followed principles of native law and custom" - a dictum with which I am in complete agreement, especially in view of events which I shall come to in a moment.

30 Later in his judgment, the learned trial Judge says this :-

40 "The question of division according to the number of the mothers of the children of an intestate has never, so far as I can discover, been considered by this Court. There have been many cases in which the properties of intestates had been distributed among the children of the intestates, but the basis of distribution had always been the number of the children and their relationship with the intestates. In these days no one ever thinks of the number of the wives of an intestate in order to ascertain into how many parts the properties left are to be distributed. When the number of the children has been ascertained, the properties are distributed equally among them".

The learned trial Judge next cited certain cases tried in Nigerian Courts and thereupon reaches the following conclusions:-

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Judgment.

10th January,
1958

- continued.

"It therefore appears that the trend of the decisions in this Court is to apply the equitable rule of equality and each child gets the same share as any other. The old rule of division according to the number of the wives of the deceased and mothers of the children therefore seems to be out-moded, and there can be no doubt that it was neither fair nor equitable to the children. The idea behind the old rule was that each wife who had a child was given no cause for jealousy as it was understood that the number of wives would determine the distribution of the properties of the intestate. Under the rule an only child of a wife got the same share as many children of another wife, with the result that the children did not get equal shares of their father's estate. This does not agree with the modern idea that the basis of distribution is the number of the children of the intestate, which assures equal shares to all the children.

10

20

The Plaintiffs' case in this action was, however, not based on any rule of native law and custom, and the suggestion that it was an attempt to give effect to what they understood to be the wishes of their late father, was denied by the 1st Defendant.

I accept the evidence of the Plaintiffs on this point and disbelieve the 1st Defendant's evidence on the point. I have already found that there was no convincing proof that their father made a Will and I have ruled out the evidence of Chief Oluwa regarding what he was told by their father as to how his estate was to be distributed. The bottom has, therefore, been knocked out of the basis for the distribution according to the number of the wives. As the other children and grandchildren besides the Plaintiffs have agreed that future rents of properties left by their father and grandfather be divided into 9 parts according to the number of the children, I consider that the modern idea of treating the children equally should be applied. It is therefore ordered that future rents accruing from 4, Balogun Square, Lagos, be divided into 9 parts and each child and children of a dead child should have a ninth part share".

30

40

The appeal first came before this Court on

50

5th November, 1957, when it was pointed out to us, quite correctly, that there was evidence that, at some time in the past, the former custom of dividing an intestate's property according to the number of his wives had been abrogated and that a division equally between the children, without regard to the number of wives, had been substituted therefore. Such evidence as there was is scanty, and there was no evidence of the date of abrogation of the old method of distribution, so this Court decided to hear evidence as to the native law and custom applicable.

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Supreme Court.

No.27.

Judgment.

10th January,
1958

- continued.

10

This evidence was taken on 12th December, 1957, when three witnesses were called by each of the parties. From them we learnt that the earlier method of distribution was known as "Idi-Igi" and the later as "Ori-Ojori", and I shall henceforth in this judgment refer to the two methods by those names.

20

The three witnesses for the Plaintiffs/Appellants were quite definite that Idi-Igi is still observed in these days and has not been abrogated by Ori-Ojori at any time. The second and third witnesses in addition agreed that Ori-Ojori does exist and said that the head of the family, in the case of a dispute among the family members, decides which method of distribution is to be adopted. They added that Idi-Igi is the prevailing method.

30

There was clear evidence before the Court below that there was in this instance a family meeting at which the method of distribution was discussed. No agreement was reached, but apparently the head of the family did not then decide, all these proceedings began.

40

The witnesses for the Defendants/Respondents substantially agreed that Idi-Igi was always observed in former times, but stated that it has now been to some extent superseded by Ori-Ojori, the change having come about to preserve cordial relationships between the children. Those who, under Idi-Igi, received a smaller share than their half-brothers and half-sisters felt aggrieved and this often resulted in the estate of the intestate being depleted by the expense of litigation. To avoid this, therefore, Ori-Ojori was adopted in some instances. The upshot of this evidence is, in my opinion, that Ori-Ojori is a fairly recent innovation introduced to avoid litigation.

50

Having very carefully considered all the evidence now before us, I would hold (i) that Idi-Igi

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Judgment.

10th January,
1958

- continued.

is an integral part of the Yoruba native law and custom relating to the distribution of intestates' estates; (ii) that Idi-Igi is in full force and observance at the present time, and has not been abrogated; (iii) that Idi-Igi is the universal method of distribution except where there is a dispute among the descendants of the intestate as to the proportions into which the estate should be divided; (iv) that where there is such a dispute, the head of the family is empowered to, and should, decide whether Ori-Ojori ought, in that particular case, to be adopted instead of Idi-Igi; (v) that any such decision prevails; (vi) that Ori-Ojori is a relatively modern method of distribution adopted as an expedient to avoid litigation.

10

I would further hold that, although, as the learned trial Judge says, "Equality is equity", Idi-Igi is not repugnant to natural justice, equity and good conscience. In this particular case, to hold otherwise would be, in my view, to take a decision bearing the stamp of that repugnance, because all interested parties originally agreed to Idi-Igi being adopted, and it was thereafter observed for ten years.

20

The learned trial Judge did not have the advantage, as we did, of hearing the evidence of competent witnesses as to the native law and custom applicable. Had he had that, I am inclined to the view that he might have come to the conclusion, as I have, that Idi-Igi, and not Ori-Ojori, is the prevailing custom and should be adopted in this case.

30

In the circumstances, therefore, I would allow this appeal and, subject to leaving undisturbed the order of the learned trial Judge for the leasing of the property, set aside the judgment of the Court below, with the order for costs.

I would order that the rents of No.4, Balogun Square, Lagos, be, as from 8th March, 1954, when the writ in this action was issued, divided into four parts, one part to be paid equally between the descendants of each of the four wives of Suberu. This means that the rents of the property are to be divided as follows :-

40

<u>Party</u>	<u>Share</u>
1st Plaintiff	One-quarter
2nd "	One-eighth
3rd "	One-twenty-fourth

	<u>Party</u>	<u>Share</u>	In the Federal Supreme Court.
	4th Plaintiff	One-twenty-fourth	
	5th "	One-twenty-fourth	
	1st Defendant	One-twelfth	<u> </u> No.27.
	2nd "	One-sixteenth	Judgment.
	3rd "	One-sixteenth	10th January,
	4th "	One-sixtieth	1958
	5th "	One-sixtieth	- continued.
10	6th "	One-sixtieth	
	7th "	One-sixtieth	
	8th "	One-sixtieth	
	9th "	One-sixteenth	
	10th "	One-sixteenth	
	11th "	One-twenty-fourth	
	12th "	One-twenty-fourth	

In their Statement of Claim, the Plaintiffs ask for division, in accordance with Idi-Igi, of rent for the years 1951 to 1954, said to have been retained in full by the Defendants. This averment was denied by paragraph 10 of the defence which goes on to allege that the Plaintiffs' share of the rent of £700 (on the basis of Ori-Ojori) was paid to them through their Solicitor. At the trial, there was a conflict of evidence on the point, but the learned trial Judge came to no conclusion thereon. It is impossible for this Court to say how the conflict should be resolved, and it would appear that unless some compromise can be arrived at, further proceedings will be necessary to resolve the conflict. I trust that this course will not be necessary; it would be a pity to spend more money on litigation. When that question has been compromised or decided, the Defendants must make the necessary financial adjustments to ensure that the £700 is divided in the proportions set out in the preceding paragraph.

The Appellants must have the costs of the trial to be taxed and the costs of this appeal fixed at £65.

(Sgd.) M.J.Abbott
 FEDERAL JUSTICE.

I concur (Sgd.) S.Foster Sutton
 FEDERAL CHIEF JUSTICE.

I concur (Sgd.) M.C.Nageon de
 Lestang.
 FEDERAL JUSTICE.

Mr. H.U. Kaine for the Appellants.

Mr. K.A. Kotun for the Respondents.

In the Federal
Supreme Court.

No. 28.

ORDER

No.28.

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Order.

10th January,
1958.

Suit No.99/1954.
F.S.C. 137/1956.

On Appeal from the Judgment of the High
Court of the Lagos Judicial Division.

BETWEEN: Suwebatu Danmole and 4 Others Plaintiffs/
Appellants 10
- and -
Yisa Dawodu and 11 Others Defendants/
Respondents

(Sgd.) S.Foster Sutton
CHIEF JUSTICE OF THE
FEDERATION

FRIDAY THE 10TH DAY OF JANUARY, 1958.

UPON READING the Record of Appeal herein and
after hearing Mr. H.U. Kaine of Counsel for the
Plaintiffs/Appellants and Mr. K.A. Kotun of Coun-
sel for the Defendants/Respondents: 20

IT IS ORDERED that this Appeal be allowed and
that, subject to leaving undisturbed the order of
the learned trial Judge for the leasing of the
property, the judgment of the Court below be set
aside and judgment entered for the Plaintiffs/Ap-
pellants with costs to be taxed:

IT IS FURTHER ORDERED that the rents received
or receivable in respect of No.4 Balogun Square,
Lagos, shall, with effect from 8th March, 1954, be
divided into four parts, one part to be paid to 30
the child, or, if more than one, equally between
the children, of each of the four wives of Suberu
Dawodu deceased, and, in the case of a deceased
child having left issue, such issue shall take,
and, if more than one, equally between them, the
share of such deceased child:

AND THAT the Defendants/Respondents do pay
to the Plaintiffs/Appellants costs of this Appeal
fixed at £65.0.0d.

(Sgd.) S.A. Samuel
AG: CHIEF REGISTRAR. 40

No. 29.

ORDER GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.99/1954.
F.S.C. 137/1956.

Application for an Order for Final Leave
to Appeal to Her Majesty's Privy Council.

In the Federal
Supreme Court.

No.29.

Order granting
Final Leave to
Appeal to Her
Majesty in
Council.

13th November,
1958.

10 BETWEEN: Yisa Dawodu and 11 Others Applicants

- and -

Suwebatu Danmole and 4 Others Respondents

(Sgd.) A.Ade.Ademola
CHIEF JUSTICE OF
THE FEDERATION.

THURSDAY THE 13TH DAY OF NOVEMBER, 1958.

20 UPON READING the Application herein and the
Affidavits of Kasali Aremu Kotun sworn to on the
4th day of September, 1958 and on the 11th day of
November, 1958, filed on behalf of the Applicants,
and after hearing Mr. K.A. Kotun of Counsel for the
Applicants and Mr. Obafemi, with him Mr. B.N. Ony-
ekwere, of Counsel for the Respondents.

IT IS ORDERED that final leave to appeal to
Her Majesty's Privy Council be granted.

(Sgd.) C.O. Madarikan
CHIEF REGISTRAR.

Exhibit
Defendants'
Exhibit.

E X H I B I T

"A" - LETTER FROM R.OIA MABINUORI TO HIS FATHER

R.Ola. Mabinuori,
Posts & Telegraphs,
Ibadan.

10th May, 1949.

"A"

Letter from
R.Ola Mabinuori
to his father.
10th May, 1949.

Dear Father,

I have pleasure to write these few lines to you. I think it will meet you in a good condition of health.

10

It is really a surprise packet to me that after said and done, our request - demanding a room for Gbadabiu Oloko proved a failure.

As a senior Executor, I shall be very grateful if the administration of the estate is properly given a right observation. It is quite wrong to share the estate money into four parts.

Neither the law of Muslim nor Government law allows such an administration.

For the past nine years, your method of administration had been cheating us in money as well as room accommodation.

20

Equal pay for each of the deceased children. Being the Senior Executor, I advise you summon a general meeting, on behalf of the rest beneficiaries to decide whether the method of sharing the estate is right according to the Administrative system; if possible, senior men in the neighbouring area or a Solicitor, may be consulted to decide the matter. But, if former administration is being continued, the result will be too bad one day.

30

Our request is to have a room, solely responsible for, and not share a room with. It is better not give us a room than coming to live with Shamusi in a room.

I therefore wish you to do everything equally to the numbers of deceased children.

Please remember, that both you and our brother Nuru are only male executors, fully responsible for the administration of the whole estate. Women administering the estate are quite ignorant of a good and right administration.

40

Reason of advising our brother NURU to withdraw as our Executor is simply because the estate is not properly administered. This letter may be read to the hearing of the rest.

Grateful, if action being taken, so as to rectify improper administration as early as possible.

Thanking you Sir, for an early reply.

Sincerely yours,

(Sgd.) ROLA MABINUORI.

Exhibit
Defendants'
Exhibit.

"A"

Letter from
R.Ola Mabinuori
to his father.

10th May, 1949
- continued.