**BEN C. EMODI & ORS**

**V.**

**MRS. PATRICIA C. EMODI & ORS**

**IN THE COURT OF APPEAL OF NIGERIA**

ON THURSDAY, THE 14TH DAY OF MARCH, 2013

CA/E/168/2007

**LEX (2013) - CA/E/168/2007**

**OTHER CITATIONS**

(2013) LPELR-21221(CA)

3PLR/2013/22

**BEFORE THEIR LORDSHIPS**

ABUBAKAR JEGA ABDUL-KADIR, JCA

ISAIAH OLUFEMI AKEJU, JCA

EMMANUEL AKOMAYE AGIM, JCA

**BETWEEN**

1. BEN C. EMODI

2. VICTORIA A. OGBOLU

AND

1. ORAKWUE EMODI

2. AMAECHI EMODI

3. CHIAGO EMODI - A/49/2004 - Appellant(s)

**AND**

1. MRS. PATRICIA C. EMODI

2. ORAKWUE EMODI

3. AMAECHI EMODI

4. CHIAGO EMODI

5. THE ADMINISTRATOR-GENERAL AND PUBLIC TRUSTEE, ANAMBRA STATE OF NIGERIA

6. THE PROBATE REGISTRAR, HIGH COURT, AWKA.

AND

1. HENRY EMODI

2. BENJAMIN EMODI

3. MRS. VICTORIA OGBOLU - A/49/2004 Respondent(s)

**REPRESENTATION**

Professor G.M. Nwagbogu - For Appellant

**AND**

Chief Ikenna Egbuna with Blessing Eze (Mrs) and Ikenna Okechukwu Esq. for 2nd-4th Respondents. - For Respondent

***ORIGINATING STATE***

*Anambra State: High Court*

**ISSUES FROM THE CAUSE(S) OF ACTION**

FAMILY LAW: DIVORCE AND ITS LEGAL IMPLICATIONS – Divorce on ground of impotence of husband – Averment on the judgment record by wife that the marriage did not produce any children – When divorce order is given after birth of children – Subsequent claims by children as to paternity and legitimacy entitling them to succeed to estate of deceased ex-husband of mother based on customary law practices – Relevant considerations

ESTATE ADMINISTRATION:- Persons that are entitled to Letters of Administration over the estate of a deceased person – Children of divorced wife of deceased person and his siblings – Where divorce is based on ground of impotence of deceased husband - Relevance and effect of State law governing estate administration

HEALTHCARE AND LAW: - Impotence – Where asserted and upheld as ground for divorce – Effect on subsequent assertions of paternity and legitimacy of persons claiming as children of the dissolved marriage – Relevant considerations

ETHICS - LEGAL PRACTITIONER: - Counsel - Use of words or phrases that are derogatory, insulting or embarrassing to the opposing party or Counsel

**PRACTICE AND PROCEDURE ISSUES**

COURT: - Whether a court can embark on the scrutiny or interpretation or a re-evaluation of the judgment of another court of co-ordinate jurisdiction

EVIDENCE- Whether an allegation not specifically denied or stated not to be admitted can be taken as admitted

JUDGMENT: - Finding of court which had not been appealed – Whether binding and conclusive - Section 62 of the Evidence Act, 2011

PLEADINGS: - Role of pleadings in civil actions - Effect of failure by the Defendant to file a defence to controvert or deny the averment in the statement of claim - Whether the statement of defence from another action can be read together in order to ascertain whether there has been sufficient traverse of the facts in the statement of claim - An allegation not specifically denied or stated not to be admitted must be taken as admitted – Effect thereof

INTERPRETATION OF STATUTES: - Section 96 (2) Administration And Succession (Estate of Deceased Persons Law) Cap 4 Laws of Anambra State of Nigeria, 1991

**MAIN JUDGMENT**

**ISAIAH OLUFEMI AKEJU, J.C.A.: (Delivering the Leading Judgment):**

This is an appeal against the judgment of the High Court of Anambra State holden at Awka delivered on 24/11/2006 in respect of two Suits with Nos. A/49/2004 and A/56/2004 that were consolidated for trial.

By the Writ of Summons and Statement of Claim filed at Awka Division of Anambra State High Court on 5/4/2004, Ben C. Emodi and Victoria A. Emodi as plaintiffs commenced suit No. A/49/2004 against (1) Mrs. Patricia Emodi (2) Orakwue Emodi (3) Amaechi Emodi (4) Chiago Emodi (5) The Administrator-General and Public Trustee, Anambra State of Nigeria, and (6) The Probate Registrar, High Court, Awka as defendants.

The plaintiffs sought the following reliefs:-

"1. A declaration that the plaintiffs are entitled to letters of Administration of the estate of the deceased intestate.

2. Against the 6th Defendant a grant of letters of Administration of the deceased intestate.

3. An injunction restraining the defendants from tampering with the estate of the deceased intestate."

The 2nd-4th defendants in that Suit filed their Statement of Defence on 18/6/04 and sought the following by way of Counterclaim;

"(a) That the plaintiffs have no right to dabble into the estate of the late Nnanyelugo Godfrey Umunna Emodi.

(b) A declaration that the Plaintiffs are Administrators de son tort.

(c) An order of perpetual injunction restraining the plaintiffs from ever dabbling into the Administration of the estate of Late Nnanyelugo Godfrey Umunna Emodi."

A Reply to the 2nd to 4th Defendants Statement of Defence was filed on 19/7/2004, while the 5th defendant also filed A Statement of Defence on 27/7/04 essentially admitting that the estate of the deceased had been surrendered to that office and then pledged to abide by any decision the court may deem fit and proper to make in the circumstances of the case.

Also on 14/4/2004, Orakwe Emodi, Amaechi Emodi and Chiago Emodi, the 2nd, 3rd and 4th defendants in Suit No. A/49/2004, instituted another action, No. A/56/04 through the Writ of Summons filed with the Statement of Claim against (1) Henry Emodi, (2) Benjamin Chuka Emodi and (3) Victoria Ogbolu, two of who were plaintiffs in A/49/2004. As stated in the Amended Statement of Claim filed on 19/4/2006, the plaintiffs claimed as follows:-

"(a) That the defendants have no right to dabble into the estate of the late NNANYELUGO GODFREY UMUNNA EMODI (EMODI).

(b) A declaration that the 2nd and 3rd defendants are Administrators de son tort.

(c) An order of court commanding the 2nd and 3rd Defendants to account to the plaintiffs for their illegal Administration from 22nd December 2002.

(d) An order of perpetual injunction restraining the Defendants from ever dabbling into the Administration of the Estate of Late NNANYELUGO GODFREY EMODI (EMODI)."

The 2nd and 3rd Defendants' Statement of Defence was filed on 28/5/2004. By the order of court made on 11/10/05 pursuant to the Motion on Notice filed by the plaintiffs in Suit No. A/56/04, the two Suits were consolidated and tried together with the plaintiffs in Suit No. A/49/04. Ben C. Emodi becoming the plaintiffs in the Consolidated action.

At the hearing, the parties called witnesses and after exchange of final written addresses by their Counsel, the learned trial judge, Hon. Justice M.I. Onochie dismissed the claim of the plaintiffs in suit No. A/49/04 and granted prayers (a) and (d) of the plaintiffs in Suit No. A/56/04 with the "consequential order directing the 2nd and 3rd defendants therein to return the Opel Omega Saloon Car with Registration No. BE 218 ENU belonging to late Godfrey Umunna Emodi together with all his household properties in their possession to the plaintiffs in Suit No. A/56/04 forthwith."

The plaintiffs in Suit No. A/49/04 who were defendants in A/56/04 and plaintiffs for the purpose of the consolidation felt dissatisfied with the judgment of the High Court of Anambra State (now called the trial court) and filed Notice of Appeal on 12/12/06 with seven grounds of appeal, and in pursuance of which the Appellants' Brief prepared by Professor G.M. Nwagbogu of Counsel and dated 15th July, 2007 was filed on 18/7/2007.

The learned Counsel distilled the following as the issues for determination:-

"(i) Whether on the state of pleadings and the evidence led by the plaintiffs/Appellants in the Consolidated Suit, the presumption of legitimacy raised in favour of the 2nd to 4th Defendants/Respondents was rebutted. (Grounds 1 and 2).

(ii) Having found that the deceased intestate personal law is statute law, was the trial court correct in law in proceeding to ascribe probative value to the evidence of "ITI OBI" as well as other pieces of evidence cognizable only at customary law in the determination of the issue of legitimacy or otherwise of the 2nd-4th Defendants/Respondents? (Grounds 3 and 4).

(iii) Did the 2nd-4th Defendants/Respondents prove that they are the ones entitled to be granted Letters of Administration in priority to the plaintiffs/Appellants? (grounds 6 and 7).

(iv) Was the trial court justified in making a consequential order in the absence of a claim of substantial relief by the 2nd-4th Defendants/Respondents? (Ground 5)."

The 2nd-4th Respondents' Brief of Argument prepared by Chief Ikenna Egbunna of Counsel was filed on 16/6/09. The lone issue raised therein is;

Whether or not the 2nd to 4th Respondents are the children of late Nnanyelugo Godfrey Umunna Emodi and thus entitled to inherit his estate in preference to the Appellants in accordance with the Law.

The Appellants' Reply Brief dated 29/6/09 was filed on 2/7/09.

The learned Counsel for appellants argued issues 1, 2 and 3 in the Appellants' Brief and abandoned the fourth issue. The 1st and 2nd issues were argued together.

On the 1st and 2nd issues, the learned Counsel conceded from the evidence of the parties and finding of the trial court that the 2nd-4th respondents were entitled to a presumption of legitimacy under Section 148 of Evidence Act. It was however contended that the 1st respondent who failed to file a statement of defence at the trial is deemed to have admitted the averments of the appellants as plaintiffs in Suit No. A/49/2004 especially paragraph 2 thereof that the marriage between Nnanyelugo Emodi (the deceased) and the 1st respondent dissolved by Ihiala High court in suit No. HIH/ID/2000 was not blessed with children.

It was submitted that this fact being uncontroverted does not require evidence and needs not be proved further as no issue was joined that would require evidence to tilt the imaginary scale of justice. The cases of OKOEBOR V. POLICE COUNCIL (2003) 12 NWLR (PT. 834) 444; MOZIE V. MBAMALU (2006) 15 NWLR (PT. 1003) 466; CONSOLIDATED RESOURCES LTD. V. ABOFAR VENTURES (NIG) LTD. (2007) 6 NWLR (PT. 1030) 221 were relied upon.

It was further contended that apart from the uncontroverted averment, the appellants gave evidence and tendered the judgment in Suit No. HIH/ID/2000, while the 1st respondent who failed to file defence in any of the instant cases also did not give evidence, thereby allowing the appellants to prove their case on minimum evidence, citing BURAIMOH V. BAMGBOSE (1989) 3 NWLR (PT. 109) 352; NEWBREAD ORGANISATION LTD. V. ERHOMOSELE (2006) 5 NWLR (PT. 974) 4999. This fact of childless marriage between the 1st respondent and the deceased having been established, the 2nd-4th respondents have no basis to claim succession to the deceased's estate; it was further argued by Counsel.

It was contended that being a court of coordinate jurisdiction with the High Court in Ihiala that determined Suit No. HIH/ID/2000, it was not right for the trial court to have embarked upon evaluation or dissection of the judgment tendered as exhibit B by alluding to the absence of evidence to corroborate the 1st defendant on the issue of deceased's impotence that caused the childlessness of the marriage, since the 1st defendant who gave the evidence was competent to do so and actually testified voluntarily. For the reason of the foregoing the presumption of legitimacy in favour of the 2nd-4th respondents stood rebutted, the learned Counsel argued.

The appellants contended further that the 2nd-4th respondents who joined issues by filing a statement of defence and Counterclaim as well as another action (No. A/56/2004) had made evasive traverse on the fact of childlessness of the marriage between 1st defendant and the deceased as alleged by the plaintiffs regarding their paternity as they failed to specifically deny the allegation of the appellants and failed also to introduce their own facts.  
The learned counsel argued that the 2nd-4th respondents did not join issues with the appellants as their averment in paragraph 2 of their statement of defence in A/49/2004 did not constitute sufficient joinder on the issue of their legitimacy which they are deemed to have admitted and therefore established by minimum evidence which the court ought to act upon. The decisions in ODOGWU V. ODOGWU (1990) 4 NWLR (PT. 143) 224; MOJEKWU V. EJIKEME (2000) 14 NWLR (PT. 657) 402; FBN PLC V. AKINYOSOYE (2005) 5 NWLR (PT. 918) 340; DAGGASH V. BULAMA (2004) 2 NWLR (PT. 892) 114; BALONWU V. OBI (2007) 2 NWLR (PT. 1028) 488 were relied upon.

On the evidence of the parties, it was contended that following the finding of the trial court that the 1st respondent was married to the deceased under the Act in 1977, the deceased's personal law under which he lived and died is statute law and not customary law, so the applicable law to his estate is Sections 71 (2)(c) and 120 of Administration And Succession (Estate of Deceased Persons) Law of Anambra State, 1991. The case of AYORINDE V. KUFORIJI (2007) 4 NWLR (PT. 1024) 341 was relied upon.

It was argued that the 2nd-4th respondents relied on acts or events that are cognisable only under native law and custom with reference to the roles of "Iti Obi" they played as the children of the deceased during his initiation into Agbalanze Society of Onitsha as well as during the burial under native law and custom. The learned Counsel then submitted that this evidence is irrelevant to the determination of the issue of legitimacy which is acquired by birth and not by events or acts, subsequent thereto, which can be relied upon only in cases of illegitimacy of birth, citing Section 3 of Legitimacy Act and the cases of LAWAL V. YOUNAN (1961) 1 ALL NLR 245; ABISOGUN V. ABISOGUN (1963) 1 ALL NLR 237; SALUBI V. NWARIAKU (2003) 7 NWLR (PT. 819) 426.

It was also contended that if the trial court had refrained from subjecting the evidence of the 1st respondent to further scrutiny and evaluation, it would have become obvious that the 2nd-4th respondents could not have been children of the deceased and their claim to paternity by the deceased will be baseless in view of Exhibit B and Section 54 Evidence Act.

The conclusion will be that the 2nd-4th respondents are not the children of the deceased, a clear rebuttal of the presumption of legitimacy in their favour citing ODUCHIE V. ODUCHIE (2006) 5 NWLR (PT. 972) 102.

The learned Counsel argued that the finding of the learned trial judge that the 1st respondent and the deceased had access to each other due to the act of "Iti Obi" during the deceased's Ozo title taking is speculative because that isolated act during an event is not conclusive of access between spouses, moreso that the 2nd-4th respondents were already born at the time of Ozo title taking in December 1993, and access between the deceased and 1st respondent could not lead to a conclusion that deceased was their father. It was contended that the learned trial judge failed to advert his mind to the evidence of PW 1 that the respondents performed the "Iti Obi" in error and the letter admitted as exhibit t which omission was quite grievous.

The learned Counsel submitted that both on the pleadings and the evidence, the 2nd-4th respondents are not the natural or biological children of the deceased and the presumption of legitimacy raised in their favour was rebutted. The 2nd-4th defendants therefore cannot have any right to the estate of the deceased, relying on the cases of CHINWEZE V. MASI (1989) 1 NWLR (PT. 97) 254; OLAIYA V. OLAIYA (2002) 12 NWLR (PT. 782) 652.

On the third issue it was the contention of the appellants that the court has a duty to ascertain the strength of the appellants' case that the presumption of 2nd-4th respondents' legitimacy was rebutted, and where this court so accepts, it will then pronounce on the legal effect of the admitted or proved facts in favour of the appellants that the 2nd-4th respondents are not entitled to the grant of letters of administration in preference to the appellants.  
We were urged to resolve the issues in favour of the appellants and allow the appeal.

In response to the foregoing arguments and in support of the lone issue raised in their Brief of Argument, the learned Counsel for the 2nd-4th respondents copiously referred to paragraphs of the pleadings in suits A/49/04 and A/56/04 and contended that the 1st respondent was sued separately as parties and not in representative capacity, So the 2nd-4th defendants who filed a defence at the trial could not be affected by the 1st respondents' failure to file a defence. It was contended also that by the provision of Order 13 Rule 4 of High Court (Civil Procedure) Rules 2006 it is the 1st respondent alone that will bear the consequence of her failure to file a defence.

On the answer to paragraphs of the statement of claim which the appellants described as evasive pleading or an admission, it was submitted that the court must not read paragraphs of the pleadings in isolation, but should read all the paragraphs together so as to appreciate the case of the party whether plaintiff or defendant, citing MISS OLUREMI OLADIPO V. AYANTUYI (2003) 1 NWLR (PT. 831) 418. It was submitted that a joint reading of paragraphs 2 and 3 of the statement of defence in A/49/04 will answer the facts in paragraphs 2 and 3 of the statement of claim.

On the answer to paragraph 3 of the statement of claim it was contended that the appellants could not rely on the 1st line of paragraph 3 of the statement of defence while ignoring the remaining averments in the same paragraph that properly and fully traversed the statement of claim. It was submitted that the essential feature of a traverse in a statement of defence is that the defendant should present a case that conflicts with that of the plaintiff in material particulars citing SHABA AUDU V. GUTA (2004) 4 NWLR (PT. 864) 463.

It was contended that the averment of the 2nd-4th respondents in paragraph 3 of the Statement of Claim that the deceased took care of them throughout his lifetime was not controverted by the appellants and the PW1 accepted under cross examination that he published an obituary of the deceased where he stated that they were the deceased's children.

The learned Counsel argued that what the appellants relied upon is the finding of fact by the court in Suit No. HIH/ID/2000, the judgment of which was admitted as exhibit B, but the appellants and 2nd-4th respondents were not parties to that suit. It was submitted that the evidence in a previous proceedings cannot be relied upon in a subsequent proceedings unless the circumstances stipulated in Section 34(1) of Evidence Act are in existence citing AKOMA V. OSENWOKWU (2004) 11 NWLR (PT.883) 98.

It was contended that from the facts, the instant case is not within the contemplation of Section 34(1) of Evidence Act as the appellants failed to call the 1st respondent as a witness and failed to establish their allegation that the deceased was impotent and could not be the father of the 2nd-4th respondents who were born during the subsistence of a valid marriage between the 1st respondent and the deceased and by virtue of Section 148 of Evidence Act must be presumed to be the legitimate children of the deceased except there is compelling evidence that the husband and the wife did not, or could not have had sexual intercourse. Section 81 of Matrimonial Causes Act, and the cases of ODUCHIE V. ODUCHIE (2006) 5 NWLR (PT. 972) 102; OGBOLE V. ONAH (1990) 1 NWLR (PT. 126) 357 were relied upon. It was also contended that the presumption of legitimacy under Section 148 Evidence Act was not rebutted as no medical evidence was tendered in exhibit B to show that the deceased was impotent or incapable of having sexual intercourse, moreso that the same deceased was alleged of committing adultery in exhibit B.

According to learned Counsel, it has been proved under native law of Onitsha that the 2nd-4th respondents were children of the deceased. From both the pleadings and the evidence it was established that the 1st, the 2nd and the 4th respondents were presented as the wife, first son and 1st daughter respectively of the deceased during the ceremony of his initiation into the Agbalanze Society while they also performed customary rites at the burial and they received from the Agbalanze Society, of Onitsha, the purse meant for members of the family. It was submitted that the findings of the trial court on these issues having been based on unchallenged credible evidence cannot be faulted, citing AGUOCHA V. AGUOCHA (2005) 1 NWLR (PT. 906) 165.

The learned Counsel contended that the appellants did not correctly apply Section 71(2) (c) of Administration And Succession (Estate of Deceased Persons) Law of Anambra State in the argument that the personal law of the deceased was statute and could not be bound by native law and custom because it was established that the deceased was also married under native law and custom apart from under the statute as shown in exhibit B.

The implication of this is that while the marriage under the statute was dissolved via exhibit B, the marriage under native law and custom was not dissolved "even if exhibit "B" is swallowed took (sic) live (sic) and sinker".

On exhibits O, R and S tendered as the deceased's record of service, it was contended that the deceased initially made his father his next of kin but when he had a son, he changed his next of kin to the 2nd respondent and the 1st respondent was his wife. These findings of fact by the learned trial judge, Counsel argued, are justified and the appellants have not shown why the judgment should be set aside.

We were urged to dismiss this appeal and uphold the judgment of the trial court with the consequential order.

The contention of the appellants in their Reply Brief is that the argument of the 2nd-4th respondents that exhibit B is not applicable to the instant proceedings on the childless marriage between the 1st respondent and the deceased was not considered in the judgment and did not arise from the grounds of appeal. It follows that since the appellants did not cross appeal or file a respondents' notice, the issue is new and can only be raised with the leave of this court. The cases of C.S.S. BOOKSHOP LTD. V.R.T.M.C.R.S. (2006) 11 NWLR (PT. 992) 530; KADZI INTERNATIONAL LTD. V. KANO TANNERY CO. LTD. (2004) 4 NWLR (PT. 864) 545; IMONIYAME HOLDINGS V. SONEB ENTERPRISES LTD. (2002) 4 NWLR (PT. 753) 648: JOU V. DOM (1999) 9 NWLR (PT. 620) 538; and ATTORNEY GENERAL LAGOS STATE V. CATTLE UTILITIES SERVICES LTD. (2002) 14 NWLR (PT. 786) 105 were cited and relied upon.

It was submitted also that notwithstanding any marriage under native law and custom, the law applicable to the distribution of the estate of the deceased who married under the Act is the Administration And Succession (Estate of Deceased Persons) Law of Anambra State, especially Section 71 (2) (c) thereof, citing JADESIMI V. OKOTIE-EBOH (1996) 2 NWLR (PT. 420) 128; SALUBI V. NWARIAKU (2003) 7 NWLR (PT. 819) 426; OBUSEZ V. OBUSEZ (2007) 10 NWLR (PT. 1043) 430.

The learned Counsel argued that the remarks by respondents' Counsel that the case of the appellants was ungodly and that they do not deserve to be accommodated in a civilized society where rule of law reigns are unnecessary and undeserving, and as such should be disregarded by this court in the consideration of this appeal.

At the hearing of this appeal, the parties were represented by learned Counsel who adopted and relied on their respective brief(s) of argument and urged that the prayers therein be acceded to by this court.

From the pleadings and evidence of the parties as gleaned from the record of this appeal, the dispute in the two consolidated Suits, A/49/04 and A/56/04 is about the actual persons that are entitled to Letters of Administration over the estate of one Nnanyelugo Godfrey Umunna Emodi a civil servant who died intestate on 22/12/2002 and was buried on 1/3/2003.

He is hereinafter called the deceased.

The appellants who were sister and brother respectively of the deceased claimed as plaintiffs in A/49/04 that the deceased had no children surviving him and as such they, as deceased's blood relations were the persons entitled to letters of administration in respect of his estate. On the other hand, the 2nd-4th respondents in this appeal who were defendants in A/49/04 and plaintiffs in A/56/04 claimed to be children of the deceased through the 1st respondent who was also the 1st defendant in A/49/04, and so they were the rightful persons to be granted letters of administration in order of priority.

In support of their assertion that the deceased died childless, the appellants proffered oral evidence that the 1st respondent who got married to the deceased in 1977 had secured a decree of dissolution of that marriage through a divorce proceedings in Suit No. HIH/ID/2000 at the Ihiala Division of the High Court of Anambra State. They tendered the proceedings in that suit and the judgment delivered on 21/11/2000 which was admitted as exhibit B. They then contended that the court granted the divorce sought by the 1st respondent as petitioner in that suit upon the finding inter alia that the marriage did not produce any child because the deceased was impotent.

The 2nd-4th respondents on their own part based their assertion of being the deceased's children on the following grounds:

(1) That they were born on 18th March 1985, 18th October, 1986 and 29th March, 1989 respectively during the pendency of the marriage between their mother, (the 1st respondent) and the deceased, and they were baptized at St. Peters (BCM) Parish with Birth Certificates issued to them.

(2) That at the ceremony performed on 14th and 15th December, 1993 to initiate the deceased into the Agbalanze Society of Onitsha, the 2nd and 3rd respondents performed the "Iti Obi" by embracing the deceased which under Onitsha native law and custom implied that they were the eldest son and daughter respectively of the deceased.

(3) That the deceased took care of the 2nd-4th respondents during his lifetime and was responsible for their education and welfare particularly during Christmas and other activities.

(4) That during the funeral rites for the deceased, the 2nd and 3rd respondents were called out as the eldest son and daughter respectively of the deceased and they received the purse presented by the Vice President of Agbalanze Onitsha Society.

(5) That the records of service of the deceased made in 1980 which was admitted as exhibit R wherein the deceased made his father his next of kin was amended or updated in 1995 by changing the next of kin to the 2nd respondent as the eldest son in the documents admitted as exhibits O and S.

They tendered certificate, photographs and other documents.

The learned trial judge held that the 2nd-4th respondents were children of the deceased and were the persons entitled to be granted letters of administration in preference to the appellants and further ordered the appellants to surrender the deceased's property in their custody.

The contention of the appellants in their issues 1, 2 and 3 which was also argued by the 2nd-4th respondents (now simply called the respondents) is that from the state of pleadings and evidence at the trial court, the respondents failed to prove their entitlement to letters of administration in priority to the appellants as the presumption of legitimacy they raised had been effectively rebutted.

The appellants had contended that the 1st respondent failed to file a defence and to testify at the trial of the consolidated cases and as such must be deemed to have admitted the assertions of the appellants particularly in paragraph 2 of their statement of claim in A/49/04 while the respondents who filed a statement of defence but made evasive averment in respect of same paragraph did not sufficiently deny the averment therein.

In response the learned Counsel for the respondents contended that since they had filed a statement of defence, it is the 1st respondent who failed to file a defence that should bear the consequence of this failure. It was further argued that in an attempt to determine whether a defendant has challenged averments in the statement of claim the statement of defence must be given a composite reading which in the instant case will show that the respondents have actually set up a case that conflicts with that of the appellants.

In civil actions it is the pleadings that define in clear details and give notice to the other party about the real issues or matters in controversy and which are the only ones the parties and the court must be prepared to meet at the trial of the action. See ATOLAGBE V. SHORUN (1985) 1 NWLR (PT. 2) 360; OSHODI V. EYIFUNMI (2000) 7 SC (PT. II) 145; OLADUNJOYE V. AKINTERINWA (2000) 4 SC (PT. 1) 19; UKAEGBU V. UGOJI (1991) 6 NWLR (PT. 196) 127: ORUNENGIMO V. EGEBE (2008) ALL FWLR (PT. 400) 655.

Where therefore a plaintiff files his statement of claim raising an allegation of fact against the defendants or one of them, such defendant(s) who do/does not admit the truth of the allegation must file a defence to contradict, controvert, challenge or deny the allegation. Where no defence is filed, the defendant is deemed to have admitted the assertion and the court may peremptorily enter judgment against the defendant. See AJIBADE V. MAYOWA (1978) 9-10 SC 1; OKE V. AIYEDUN (1986) 4 SC 61; MOSHOOD V. BAYERO (2001) 52 WRN 42.

The material averment of the appellants which they have urged us to consider as admitted or undenied on pleadings and as proved is paragraph 2 of the Statement of Claim as follows:-

"2. The 1st defendant was the wife of the deceased intestate. Their marriage was dissolved in Suit No. HIH/ID/2000 by the Ihiala High Court. Their marriage was not blessed with children."

I quite agree from the state of the law as dictated by the authorities cited hereinbefore that the failure of the 1st respondent to file a defence to controvert or deny the averment in the above quoted paragraph 2 of the statement of claim constitutes an admission of that averment.

For the respondents who filed a statement of defence in A/49/04 and another action in A/56/04, it is correct that the statement of defence must be read together in order to ascertain whether there has been sufficient traverse of the facts in the statement of claim. See AJA V. OKORO (1991) 7 NWLR (PT. 203) 260; BUHARI V. OBASANJO (2005) 13 NWLR (PT.941) 1, (2005) ALL FWLR (PT. 273) 1.

In line with this principle, I have calmly and painstakingly perused the pleadings in the two consolidated cases, the result of which is that while the respondents have resisted the claim of the appellants in general terms, the only allusion to the above paragraph 2 of the appellants' statement of claim is in paragraph 2 of the respondents' statement of defence in A/49/04 as follows:-

"2. Paragraph 2 of the Statement of Claim is true.

The 2nd to 4th defendants are hearing of it from the plaintiffs and the plaintiffs are put to strictest proof".

The settled position is that an allegation not specifically denied or stated not to be admitted must be taken as admitted. See OSAFILE V. ODI (1994) 2 NWLR (PT. 325) 125; CARDOSO V. DANIEL (1986) 2 SC 491. The above pleading of the respondents in my view constitutes an admission or insufficient denial of the appellants' averment.

Notwithstanding the position of the pleadings the appellants testified and tendered exhibit B in support of their assertion while the 1st respondent did not give any evidence in opposition, and in the circumstances, it must be taken that the appellants sufficiently and effectively established on pleadings and evidence that the marriage between the 1st respondent and the deceased was childless.

Now exhibit B is the proceedings and judgment of a competent court which has not been proved to be the subject of an appeal. It is of course settled that a finding of court against which there is no appeal remains binding and conclusive. See OKOTIE-EBOH V. MANAGER (2005) ALL FWLR (PT.241) 277; IYOHO V. EFFIONG (2007) ALL FWLR (PT. 374) 204; F.I.B. PLC V. PEGASUS TRADING OFFICE (2004) 4 NWLR (PT. 863) 369. By virtue of Section 62 of the Evidence Act, 2011, the issues decided in exhibit B and the facts upon which the judgment had been based remain conclusively proved as against the parties and their privies.

What is material here is the finding of the court in exhibit B that the marriage between the 1st respondent and the deceased was not blessed with any child and indeed that the deceased was impotent. It becomes an exercise in futility for the learned trial judge in the instant case to embark on the scrutiny or interpretation of exhibit B or a re-evaluation thereof as that court lacks the jurisdiction so to do, exhibit B being the judgment of a court of coordinate jurisdiction. See GISPEL INTER CO. NIG. LTD V. HENRY EYA & ANOR (2010) LPELR 4198 per OWOADE JCA with reliance on RACE AUTO SUPPLY CO. LTD. V. AKIB (2006) 13 NWLR (PT.997) 336, (2006) ALL FWLR (PT. 327) 496.

There is another finding in exhibit B which is relevant here and which must not be glossed over, this is the finding that the 1st respondent had indeed left the matrimonial home in 1982 i.e. about three years before the birth of the eldest of the respondents in 1985. There is no evidence that any sexual relationship took place between the 1st respondent and the adjudged impotent deceased thereafter.

The 1st respondent was the wife of the deceased and undoubtedly the closest person to the deceased in the matter of their matrimonial affairs. The 1st respondent as a woman is to me, the most competent person when it comes to the paternity of the 2nd-4th respondents and having stated under the judicial proceedings tendered as exhibit B that her marriage with the deceased produced no child, that completely eliminates any contention by the respondents about their paternity. It is important to note here that the 1st respondent who had all the opportunity in the instant proceedings to make any denial or even comments on exhibit B failed to do so but chose to remain mute thereby affirming the content of the exhibit. It is important too, to note that exhibit b was issued in the year 2000 when the deceased was still alive and had knowledge thereof but did not do anything to challenge it.

It is to me, unsafe to ignore exhibit B or give preference to the customary acts asserted by the respondents as the learned trial judge had tended to do in his judgment.

It is my candid view from the foregoing that the grounds relied upon by the respondents are not concrete or cogent enough to defeat the decision in exhibit B which was at the instance of their own mother, the 1st respondent. I am therefore satisfied that the appellants successfully established in A/49/04 that the marriage of the deceased with the 1st respondent was childless and the respondents were not products of that marriage or the children of the deceased, a complete rebuttal of respondents' claim to be deceased's children.

The law that governs the grant or issuance of letters of administration in Anambra State as it is relevant to this appeal and the deceased's estate is the Administration And Succession (Estate of Deceased Persons Law) Cap 4 Laws of Anambra State of Nigeria, 1991 which provides in Section 96 (2) that persons deemed to be interested in the estate of a deceased intestate and entitled to the grant of administration in respect of the estate include, in order of priority, the children of the deceased and the brothers and sisters of whole blood. In so far as the respondents have sought the grant of letters of administration in this case upon the basis that they are the deceased's children which they have failed to establish, they are not entitled in priority over the appellants who are the deceased's blood relations.

I resolve all the issues in this appeal in favour of the appellants and come to the conclusion that the appeal is meritorious and I allow it. The judgment of the trial court in consolidated Suits A/49/04 and A/56/04 delivered on 24/11/06 is perverse and it is accordingly set aside.

In its place I hold that reliefs sought by the appellants as plaintiffs in A/49/04 are granted while the counterclaim of the respondents is dismissed.

I further hold that the claims of the respondents as the plaintiffs in A/56/04 are dismissed while order made therein is accordingly set aside.

Before I put my final full stop here, let me say that I note the complaint of the appellants' Counsel about the comments of the respondents' Counsel concerning this case, but I do not intend to join issues with the learned Counsel in this appeal or any of them on the need to adopt complimentary words in writing briefs or indeed any court process for that matter. I will however opine here that Counsel should adopt and stick only to words that edify the case of their clients while avoiding any word or phrase that are derogatory, or insultive or embarrassing to the adversary. I end this judgment by ordering the payment of N30,000.00 to the appellants by the 1st, 2nd, 3rd and 4th respondents as costs in respect of this appeal.

**ABUBAKAR JEGA ABDUL-KADIR, J.C.A.:**

I had the privilege of reading the draft of the lead Judgment of my learned brother Akeju, JCA. I had read, before now, the briefs of argument of the Learned Counsel to the respective parties and the record of appeal, as a whole. The reasoning and conclusion reached in the lead Judgment accord with mine.

Hence, having adopted the reasoning and conclusion reached in the lead Judgment as mine I too find the appeal meritorious and I allow it. The Judgment in consolidated Suits A/49/04 and A/56/04 delivered on 24/11/06 is perverse and it is accordingly set aside.

In its place I too hold that the reliefs sought by the appellants as plaintiffs in Suit A/49/04 are granted while the counter-claim is dismissed. I further hold that the claims of the respondents as plaintiffs in Suit A/56/04 are dismissed while the order made therein is accordingly set aside.

I also abide by the consequential order awarding N30,000.00 to the appellants by the 1st, 2nd, 3rd and 4th respondents as costs in respect of this appeal.

**EMMANUEL AKOMAYE AGIM, J.C.A.:**

I had read the draft of the lead judgment just delivered by my Learned brother ISAIAH OLUFEMI AKEJU JCA. I completely agree with the reasoning and conclusion therein. This appeal is meritorious and I allow it. I equally hereby set aside the judgments in the consolidated suits Nos A/49/04 and A/56/04 delivered on 24-11-2006. I abide by other consequential orders including the award of costs.