**ENGR. CHINEDUM O. ANYA**

**v.**

**BARR. ONWUCHEKWA O. ANYA & ORS**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 24TH DAY OF JANUARY, 2020

SC.116/2014

**LEX (2020) – SC. 116/2014**

**OTHER CITATIONS**

3PLR/2020/17 (SC)

(2020) LPELR-49386(SC)

**BEFORE THEIR LORDSHIPS**

OLUKAYODE ARIWOOLA, JSC

MUSA DATTIJO MUHAMMAD, JSC

AMINA ADAMU AUGIE, JSC

PAUL ADAMU GALUMJE, JSC

UWANI MUSA ABBA AJI, JSC -end!

**BETWEEN**

ENGR. CHINEDUM O. ANYA - Appellant(s)

AND

1. BARR. ONWUCHEKWA O. ANYA

2. OGBONNAYA ANYA

3. BARR. (MRS.) UDEMMA NGBOR (NEE ANYA)

4. MRS. IJEOMA U. BLUNT (NEE ANYA)

5. HON. JUSTICE ORIAKU Z. IKEORHA - Respondent(s)-end!

**ORIGINATING COURT**

1. Court of Appeal

2. High Court of Enugu State, Enugu Judicial Division-end!

**REPRESENTATION**

O.A. EZE, ESQ, - For Appellant

AND

O.O. ANYA, ESQ for the 1st Respondent.

No Legal Representation for the 2nd - 5th Respondents. - For Respondent-end!

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

ESTATE PLANNING AND ADMINISTRATION - WILLS AND PROBATE - VALIDITY OF A WILL:- Proof of validity of a will - Implications for adverse claims of devolution of property based on customary law – Essentials a valid will must satisfy – Effect of proof thereof

ESTATE PLANNING AND ADMINISTRATION - WILLS AND PROBATE - VALIDITY OF A WILL:- Proof of validity of a will – Burden of – On whom lies- When would be deemed discharged

CUSTOMARY LAW –DEVOLUTION OF ESTATE:- Mediated accord as to the terms of devolution of intestate estate – Weight to be attached thereto where confronted with a valid will-end!

**PRACTICE AND PROCEDURE ISSUES**

COURT - RAISING ISSUE(S) SUO MOTU:- Discretion of Court to take on issue suo motu – Proper exercise of - Distinction between a court raising an issue suo motu and a court looking into the records of the case/file to determine a matter already ventilated - Duty of a Judge, by the nature of his adjudicatory functions, to draw inferences from stated facts in a case and by such inferences, to arrive at conclusions

EVIDENCE - STANDARD OF PROOF: Standard of proof in civil cases – Duty on parties thereto where they are asserting contesting state of affairs – Shifting burden – Proper treatment of-end!

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant/Plaintiff was the 1st son of late Oji Anya. The original 1st Respondent, was his mother (as well as those of the other parties) as well as the surviving wife of the said late Oji Anya (but she died during the pendency of the appeal at the Court of Appeal).

After the death of late Oji Anya, his immediate family believing he died intestate, held several meetings to distribute his estate among them. However, after commencing the process of obtaining Letters of Administration from the Probate Registry of the High Court, Umuahia, problem ensued as to the entitlement of the parties to the said estate and whether the female children of the family should receive any portion. The extended family intervened and it was resolved that an equitable formula for the distribution be adopted. Thereupon, the original 1st Respondent (now deceased wife/mother) rejected the resolution and alleged that the deceased left a Will prepared by one Clement H. C. Nwanya, Esq., appointing her and Mr. Nwanya as Executors of two (2) buildings forming part of the estate.

The Appellant/Plaintiff therefore brought a suit seeking, among others -

1. A declaration that the late Chief Oji Uke Anya died intestate; and that the document purporting to be the will and the last testament of Chief Oji Uke Anya is void and of no effect whatsoever.

2. A declaration that the estate of Chief Oji Uke Anya is to be distributed in accordance with the custom of inheritance of Igbere people of Abia State of Nigeria.

d. A perpetual injunction restraining the defendants from acting or purporting to act as Executors of the said purported will and last testament of Chief Oji Uke Anya; and an order directing the defendant to render an account unto the plaintiff of all monies collected by them as rent from 2 buildings in the estate located at Uwani Enugu State.

The Respondents counter-claimed and defended. The trial Court gave judgment in favour of the Respondents, which was affirmed by the Court of Appeal.-end!

DECISION(S) APPEALED AGAINST

1. Court of Appeal upheld the decisions of the trial Court including:

a. decision that the Will was valid having been made in accordance with the applicable Law.

b. the preference of the legal validity of the asserted Will over the aborted accord mediated by the extended family when the existence of valid will had not been revealed.

2. Additionally, the Court of Appeal perused the records of proceedings transmitted from the trial court and made a pronouncement on the allegation of forgery of the will (which had been omitted by the trial court) without affording the parties an opportunity to address the Court of Appeal on same -end!

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Was the Court of Appeal right to set aside the findings of facts by the High Court against which there was no appeal?

2. From the unchallenged findings of fact by the High Court, was the Court of Appeal right when it found that failure to attach weight to Exhibit T did not affect the conclusion reached by the High Court?

3. Was the Court of Appeal right to suo motu raise and resolve the issue of purported allegation of forgery without affording the parties an opportunity to address it?-end!

*BY RESPONDENTS*

[Adopted issues as framed by Appellants]-end!

*AS ADOPTED BY COURT*

[Adopted issues as framed by Appellant]-end!

DECISION OF THE SUPREME COURT

All issues resolved against Appellant. Appeal dismissed.

1. Will satisfied all the formal requirements of a valid Will. There was cogent evidence that the testator, Chief O.U. Anya had the mental and educational capacity to make a Will. The validity and legal superiority of the Will over the aborted accord of distribution mediated by the extended family was such that no weight should in fact be attached to the accord, same having been knocked down by the Will.

2. Appellant's case before the trial Court was founded on the fact that the Will left by the deceased was forged. Evidence adduced showed otherwise. The Court of Appeal being confronted with the whole facts and as reflected in the record, discovered that the issue of forgery was well founded and cannot be a new issue calling for address of parties. I think the Appellant is lost as to the distinction between raising an issue suo motu and looking into the case/file by the Court to determine a matter.-end!

**MAIN JUDGMENT**

UWANI MUSA ABBA AJI, J.S.C. (Delivering the Leading Judgment):

The Appellant as Plaintiff at the trial Court is the 1st son of late Oji Anya who died in Enugu on 16/6/2004 while the original 1st Respondent was the mother of the Appellant with others, who was the surviving wife of the said late Oji Anya but she died during the pendency of the appeal at the lower Court. After the death of late Oji Anya, his family had several meetings to distribute his estate among them since it was believed that he died intestate. After commencing the process of obtaining Letters of Administration from the Probate Registry of the High Court, Umuahia, problem ensued as to the entitlement of the parties to the said estate and whether the female children of the family should receive any portion. This caused the extended family to intervene and resolved that an equitable formula for the distribution be adopted. The original 1st Respondent (now deceased) rejected the resolution and alleged that the deceased left a Will prepared by one Clement H. C. Nwanya, Esq., appointing her and Mr. Nwanya as Executors of the 2 buildings forming part of the estate as Exhibit A. The will was doubted by the Appellant (Plaintiff) which caused him to file the suit against the Respondents at the trial Court as follows:

a. A declaration that the plaintiff's father late Chief Oji Uke Anya who died on the 16th day of June, 2004 at Enugu, Enugu State died intestate.

b. A declaration that the document dated the 26th day of October 1998 purportedly deposited at the probate registry Enugu purporting to be the will and last testament of Chief Oji Uke Anya is void and of no effect whatsoever.

c. A declaration that the estate of Chief Oji Uke Anya is to be distributed in accordance with the land and custom of inheritance of Igbere people of Abia State of Nigeria.

d. A perpetual injunction restraining the defendants from acting or purporting to act as Executors of the said purported will and last testament of Chief Oji Uke Anya or in any way or manner tempering with or dealing in the assets of the estate of late Chief Oji Uke Anya wherever found or situate.

e. An order directing the defendant to render an account unto the plaintiff of all monies collected by them as rent from 2 buildings in the estate of late Chief Oji Uke Anya respectively situate at No. 35 Zik Avenue and No. 25 Ibiam Street all in Uwani Enugu State.

The Respondents counter-claimed and defended it wherein the trial Court's judgment favoured the Respondents, same affirmed by the lower Court, hence this appeal.

To argue the appeal, the Appellant formulated 3 issues for the determination of the appeal thus:

1. Was the Court of Appeal right to set aside the findings of facts by the High Court against which there was no appeal?

2. From the unchallenged findings of fact by the High Court, was the Court of Appeal right when it found that failure to attach weight to Exhibit T did not affect the conclusion reached by the High Court?

3. Was the Court of Appeal right to suo motu raise and resolve the issue of purported allegation of forgery without affording the parties an opportunity to address on it?

The 3 issues formulated and responded to by the Respondents shall be considered together.

It is the contention of the Appellant that the lower Court set aside the findings of the trial Court which were not appealed against by the Respondents. He submitted that the raising of the issue of forgery as a fresh point by the lower Court without affording the parties the opportunity to address it was perverse, having resolved same against the Appellant that since there was no cross appeal or Respondents' notice, the lower Court was wrong to set aside the findings of facts by the High Court. He on Exhibit T concluded that it was wrong for the lower Court to hold in one breath that Exhibit T being admissible did not affect the conclusion reached by the High Court. His submission is that Exhibit T by its circumstances and Section 26 of the Evidence Act is inadmissible in evidence. He also cited in support FAWEHINMI V. NBA (NO.2) 1989 2 NWLR (PT.105) AT 622-623.

Furthermore, he submitted that the lower Court having raised the issue of forgery suo motu and did not give the parties the opportunity to address it violated the right to fair hearing of the Appellant. He relied on AMALE V. SOKOTO LG (2012) 5 NWLR (PT. 1292) 202.

The Respondents argued that the lower Court was right to set aside the findings of facts by the trial Court even though there was no appeal against it since the decision was right though the reasons may not be right. He relied on L.T.P.P. LTD V. UBN PLC (2007) 1 WRL 117. They submitted that the Respondents did not appeal by cross appeal or Respondents' Notice since they were comfortable with the decision reached in their favour.

On Exhibit T, it was contended that being an aborted Terms of Settlement, no value ought to be attached to it since by the independent evidence, the case was in favour of the 1st Respondent. On the issue of forgery raised by the lower Court suo motu, it was argued that it was there before the trial Court where a handwriting expert testified as PW2 and in favour of the 1st Respondent. Thus, the issue of forgery was not raised for the first time on appeal suo motu by the lower Court. The Appellant was given fair hearing on it but failed.

On the dismissal of the case of the Appellant by the lower Court, the question is not whether there was an appeal on it or not, but based on the proof of the counterclaim of the Respondents which the lower Court upheld. Every civil case is determined by balance of probability on the scale of justice. The case herein is between the weight of Exhibit T and the Will. To rehearse the facts again, after the death of late Oji Anya, his family had several meetings to distribute his estate among them since it was believed that he died intestate. After commencing the process of obtaining Letters of Administration from the Probate Registry of the High Court, Umuahia, problem ensued as to the entitlement of the parties to the said estate and whether the female children of the family should receive any portion. This caused the extended family to intervene and resolved that an equitable formula for the distribution be adopted (Exhibit T). The original 1st Respondent (now deceased) rejected the resolution and alleged that the deceased left a Will prepared by one Clement H. C. Nwanya, Esq, appointing her and Mr. Nwanya as Executors of the 2 buildings forming part of the estate as Exhibit A. The lower Court considered that based on the evidence, it was proved that the Will left by the deceased was valid and hence to be honoured as the last testament of the deceased.

The Respondents produced the Will of the deceased albeit the resolution of Exhibit T, which the lower Court compared to dismiss the case of the Appellant. The Will therefore supervened and knocked down the case of the Appellant. The validity of the Will was tested and proved to have been made by the deceased against Exhibit T. This was the reason the lower Court affirmed the case of the Respondents against that of the Appellant on the authority of ADEBAJO & 7 ORS V. ADEBAJO & 7 ORS (1973) 3 ECSLR 544. The validity of a Will under Section 4 of the Wills Law of Lagos State came up for interpretation, wherein Per ONNOGHEN, JSC in DAWODU V. ISIKALU & ORS (2019) LPELR-46435(SC), expounded the matter especially on the genuineness of a Will and proving same.

“By the provisions of Section 1 of the Wills Law of Lagos State:

"It shall be lawful for every person to bequeath or dispose by his will executed in accordance with the provisions of this law, all property by which he is entitled to either in law or equity, or at the time of his death."

This means that a person who desires to make a Will must satisfy the requirements of law for the Will to be valid, else it will be invalid. The burden, however, for the proof of validity of a document (will), the genuineness or authenticity thereof lies on the person propounding it and once this is satisfied, the burden is cast upon those attacking it.

In the instant case, the respondents have made a claim in respect of their entitlements pertaining to the property on the ground that it is family property - the subject matter covered by Exhibit TD1. Appellant denied the entitlement and asserted that there was no such entitlement, as there was a Will which had bequeathed the said property to her mother solely and with her mother's death, she was now a sole beneficiary. It is therefore a case of communal (family) ownership against personal/individual ownership of property. Respondents therefore denied the validity of the Will, Exhibit TD1, while appellant said it was valid. It is trite law that for a will or testamentary intention of a deceased person which ought to be respected, to be given effect to, there must be absolute compliance with the requirements of the Wills law. The provisions of the Wills Law, as in all laws, where they are clear and unambiguous, must be given their ordinary and literal meaning... Now, Exhibit TD1 under consideration fell short of the mandatory minimum of two (2) required subscribing witnesses as required by Section 4 (1) of the Wills Law Cap 194 Laws of Lagos State 2003.”

Unlike the above case, where the Will was held invalid for not meeting up with the requirements of the Law, the instant case proved and as confirmed by the lower Court that the Will of the deceased, Exhibit A, met all the requirements of a valid Will to be sustained and granted. In fact, the requirements of 2 witnesses who witnessed the deceased, Chief O.U. Anya, appending his signature to the Will and they thereafter signed and put their names therein was abundantly proved.

It was further proved on the weight between Exhibit A and Exhibit T that the Will satisfied all the formal requirements of a valid Will; that there was cogent evidence that the testator, Chief O.U. Anya, had the mental and educational capacity to make a Will. There was also evidence that the deceased had no disability with his eyes and that 2 persons (Legal Practitioners) witnessed him append his signature to the Will before they subscribed to same. This therefore has proved the validity and superiority of Exhibit A over Exhibit T that no weight should in fact be attached to Exhibit T at all having been knocked down by Exhibit A.

The lower Court was therefore right to dismiss the Appellant's case.

Another gravamen of the Appellant is that the lower Court raised the issue of forgery suo motu without affording the parties the opportunity to address it. The law is well entrenched further that the Appeal Court has the discretion to take on a point suo motu and the general principle is that the parties must be given an opportunity to be heard. However, authorities have shown that the failure to observe this principle would result into a misdirection which will be over-turned only if there has been a substantial miscarriage of justice. Per OGUNBIYI, JSC in DICKSON OGUNSEINDE VIRYA FARMS LTD V. SOCIETE GENERALE BANK LTD & ORS (2018) LPELR- 43710(SC).

The facts in this case do not show that this was the case. The Appellant's case before the trial Court was founded on the fact that the Will left by the deceased was forged wherein in proof or otherwise, a handwriting expert testified, which was in favour of the Respondents. How then did the issue of forgery become fresh on appeal? The lower Court being confronted with the whole facts and as reflected in the record, discovered that the issue of forgery was well founded and cannot be a new issue calling for address of parties. I think the Appellant is lost as to the distinction between raising an issue suo motu and looking into the case/file by the Court to determine a matter. This was touched by Per OKORO, JSC in AKEREDOLU V. ABRAHAM & ORS (2018) LPELR-44067(SC), when he inter alia proposed that:

I agree with the Court below that the fact of the appellant carrying on part of his law business in Abuja was not introduced into the litigation by the learned trial Judge. Rather, it was exposed to the Court by the learned Senior counsel for the Appellant via a letter to the Deputy Chief Registrar of the Court where one of the offices of the Appellant's Law office is shown to be located in Abuja. A distinction must be drawn between a Court raising an issue suo motu and looking into its records to resolve the issue, and the Court looking into its records suo motu to resolve an issue raised by the parties. In respect of the former, a Court raising an issue suo motu, must invite the parties to address it before using the issue in the judgment. But on the latter situation where the Court looks into the record of appeal to enable it resolve issues already raised by the parties, a Court is not bound to invite the parties to address it. A Court can only be accused of raising an issue, matter or fact suo motu if the issue, matter or fact did not exist in the litigation. A Court cannot be accused of raising an issue, matter or fact suo motu if the issue, matter or fact exists in the litigation. A Judge, by the nature of his adjudicatory functions, can draw inferences from stated facts in a case and by such inferences; the Judge can arrive at conclusions. It will be wrong to say that inferences legitimately drawn from facts in the case are introduced suo motu. That is not correct.

This is nothing but a foul cry as the records do not demonstrate it. Besides, where is the injustice wrought against the Appellant? The case of the Appellant is far from what he is asserting.

The appeal of the Appellant is most unmeritorious and must be dismissed and is hereby dismissed. The concurrent judgments of the 2 Courts is affirmed. I award costs of N200,000.00 against the Appellant.

**OLUKAYODE ARIWOOLA, J.S.C.:**

I had the opportunity of reading in draft the lead judgment of my learned brother, Abba Aji, J.S.C. just delivered. I am in agreement with the reasoning therein and conclusion arrived thereat, that the appeal lacks merit and should be dismissed. I too will dismiss the appeal.

I abide by the consequential orders including that on costs. Appeal dismissed.

**MUSA DATTIJO MUHAMMAD, J.S.C.:**

I read in advance the lead judgment of my learned brother UWANI MUSA ABBA AJI J.S.C. just delivered. I entirely agree with the reasoning and conclusion therein that the appeal has no merit. I imbibe the reasoning in the lead judgment as mine in dismissing the appeal and abide by the consequential orders outlined in the lead judgment.

**AMINA ADAMU AUGIE, J.S.C.:**

My learned brother, ABBA-AJI, J.S.C., who just delivered the lead Judgment, dealt extensively with the Issues canvassed by the Parties, and I agree entirely with his reasoning and conclusion, which represents my views on all the issues.

In the circumstances, I also dismiss this Appeal, which totally lacks merit, and I also abide by all the consequential Orders he made in the lead Judgment.

**PAUL ADAMU GALUMJE, J.S.C.:**

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, UWANI MUSA ABBA AJI, J.S.C and I agree with the reasons leading to the conclusion that the appeal is bereft of merit and should be dismissed. Accordingly, I join my brother in dismissing it. The concurrent findings of the two (2) lower Courts are affirmed. I endorse the consequential order made as to costs.-end!