



DAURA & ANOR V. UNION BANK

(2024) LPELR-62008(SC)

**MISS EZE KITA ODIETE DAURA &
ANOR v. UNION BANK OF NIGERIA
PLC**

(2024) LPELR-82008(SC)



In The Supreme Court Of Nigeria

On Friday, the 26th day of January, 2024

Suit No: SC.273/2015

Before Their Lordship

JOHN INYANG OKONO	Justice of the Supreme Court
UWANT HUSA ABBA AIT	Justice of the Supreme Court
IBRAHIM MOHAMMED HUSA SADLAWA	Justice of the Supreme Court
TIJANI ABUBAKAR	Justice of the Supreme Court
EMMANUEL ARDHAJE AGIN	Justice of the Supreme Court

Between

**1. MISS EZE KITA ODIETE DAURA
2. MISS CLEDPATRA BAROBE
(For themselves and on behalf of APPELLANT(S)
the Estate of Late Hon. Justice
Kita Odiete Georgman)**

And

UNION BANK OF NIGERIA PLC RESPONDENT(S)

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Administration Of Estate.

FACTS:

This appeal is against the judgment of the Court of Appeal.

The deceased Hon. Justice Kita Odiete Georgeman, mother of the appellants obtained a loan facility of Six Million Naira only (N6,000,000.00) from the respondent on 24th July, 2008. The interest accruable thereon was at the rate of 18% per annum. She died a few days after the grant upon which these appellants applied for an obtained customary letter of Administration over the estate of their late mother. The said letter of Administration covered a total sum of N15,372,868.97 realized from the deceased accounts with First Bank of Nigeria Plc. The appellants used part of the money for the funeral of their late mother and distributed the remainder to the beneficiaries of the estate of the deceased without defraying the indebtedness of their mother to the respondent.

The appellants as children of the late Hon. Justice Kita Odiete Georgeman applied by a motion ex parte filed on 24-8-2009 in the Uvwie Area Customary Court of Delta State for an order granting them "Letters/Powers of Administration of the Estate, both real and personal, of Hon. Justice Kita Odiete Georgeman (deceased)" and an order to enable them operate, manage and withdraw monies from the account of late Hon. Justice Kita Odiete Georgeman with First Bank of Nigeria PLC in which the loan sum was deposited by Hon. Justice Kita Odiete

Georgeman before she died on 1-8-2008. The Uvwie Area Customary Court granted the application. The appellants thereupon became the administrators of the estate of the late Hon. Justice Kita Odiete Georgeman.

As administrators of the said estate, the appellants withdrew monies standing to the credit of Hon. Justice Kita Odiete Georgeman in the First Bank of Nigeria PLC and used all the monies without repaying the said loan that had become a debt payable by the estate. The respondent herein on 16-1-2010 commenced Suit No UHC/5/2010 in Delta State High Court at Ughelli against the appellants herein as administrators of the Estate of late Hon. Justice Kita Odiete Georgeman to recover the loan sum and interests.

After the conclusion of evidence and written addresses by all parties to the suit, the trial Court on 30-3-2012 rendered its judgment holding that the respondent did not prove its case and dismissed the suit.

Dissatisfied with this decision of the trial Court, the respondent appealed to the Court of Appeal. Following filing, exchange and adoption of written addresses by the parties, the Court of Appeal on 6-3-2015 allowed the appeal in part.

Dissatisfied with this judgment, the appellants appealed.

ISSUES:

The Court determined the appeal on the following

issues:

1. Whether given the facts, evidence adduced and the extant law in this case, the Court of Appeal was right in holding that an Administrator who has fully administered the estate of a deceased cannot be heard to say that there is no fund left to settle the alleged debt of the deceased which the administrators had no notice of?

2. Whether the Court of Appeal can validly re-evaluate the evidence of parties and/or whether the Court of Appeal properly evaluated the evidence of Dw2/Appellants when it came to the conclusion that the lower Court was wrong to conclude that there was no fund left in the Estate of the deceased to liquidate the alleged loan?

3. Whether the Court of Appeal was right in holding that evidence extracted under cross-examination not pleaded by the Respondent herein as Claimant in the lower Court is admissible, material and relevant to the case of the Respondent herein.

4. Whether the Court of Appeal was right in holding that a contract between a Banker and Customer upon the death of such a customer can only be validly terminated upon a formal Notice of death given to the Respondent's bank and thus proceeded to award interest on the loan sum, up to 5/11/2008 after the death of the deceased, being the time the Respondent's bank claimed to have notice of the deceased?

DECISION/HELD:

On the whole, this appeal was dismissed.

RATIO DECIDENDI

ADMINISTRATION OF ESTATE - ADMINISTRATORS/EXECUTORS OF AN ESTATE

- *Duties of the administrator(s) of an Estate*

"The Administrator of an estate has the duty to first take steps to find out or identify any debts incurred by the deceased in his lifetime, which debts have now become debts due from the estates of the deceased, before distributing the estate to the beneficiaries of the estate. An administrator of an estate cannot avoid this duty by simply claiming or asserting that he or she is not aware of the existence of a particular debt and that therefore he or she is not bound to pay an estate debt he or she is not aware of. It is the duty of the administrator to take steps to identify and inventory both the assets and debts of the estate and pay the debts before distribution."

Per **EMMANUEL AKOMAYE AGIM, JSC** (P. 22, paras. C-F)

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ADMINISTRATION OF ESTATE - ADMINISTRATOR(S) OF AN ESTATE

- *Whether when an administrator of an estate has distributed the residue of an estate to the beneficiaries, an unpaid creditor can recover a debt due from the estate from the beneficiaries.*

"When an administrator of an estate has distributed the residue of an estate to the beneficiaries of the estate, an unpaid creditor of the deceased intestate

can recover the debt due from the estate from that residue and the beneficiaries can be compelled to refund so much of the amount paid to them as may be required to satisfy the claim. See *Hunter V Young* (1879) 4 Ex D 258 and *Dodson V Sanmell* (1861) 30 L.J. Ch 799)."

Per **EMMANUEL AKOMAYE AGIM**, JSC (P. 37, paras. A-C)

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BANKING LAW - BANKER-CUSTOMER RELATIONSHIP - Nature of a banker/customer relationship; whether the banker-customer relationship being primarily that of a debtor-creditor will survive the death of the customer.

"Generally, the death of a customer of a bank brings to an end the banker-customer relationship contract between that customer and the bank. However, the banker-customer relationship being primarily that of a debtor-creditor, an existing obligation to pay money under the contract and entitlement to be paid money under the contract survive the termination of the banker-customer contract. Just as the obligation of a bank to pay interest on money standing to the credit of a customer in his or her account is not affected by the death of the customer and survives that death as part of his estate, the customer's obligation to pay periodic interest charges on loans or overdrafts applied for and obtained from the bank survive the death of the customer and becomes a debt on his or her estate. The agreement to pay interest on the loan subsists so long as the loan remains unpaid and the death of

the debtor customer will not affect it. The accruing interest is money the bank is contractually entitled to be paid on the loan it gave the customer. I think it is necessary to restate the nature of the legal relationship that arises between a bank and its customer, when the customer applies for a loan from the bank and agrees to repay same on written terms and conditions. In a situation such as this, the banker customer relationship is the primary contract that exists before the customer's application for loan. This primary contract is the platform on which the customer was able to apply for and secure the loan. The loan contract is contained in the application for the loan, the letter granting the loan and stating the terms and conditions of the loan, his acknowledgment of receipt of the letter and cheque by which he withdrew the loan sum. The acceptance of the written terms and conditions for the grant of the loan brought into being a loan contract with a life of its own separate from the primary contract of banker customer. The death of the customer would not terminate the loan contract until the loan is fully repaid by his estate."

Per **EMMANUEL AKOMAYE AGIM**, JSC (Pp. 28-30, paras. F-0)

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APPEAL - **UNAPPEALED**
FINDING(S)/DECISION(S) - Effect of failure to appeal against specific findings of facts of Court

"The Court of Appeal was wrong to have ordered interest charges to stop on 5-11-2008, when the

respondent became aware of the death of its customer. Late Hon. Justice Kita Odiete Georgman, while the loan remain unpaid by the administrators of the estate that utilized the entire loan sum. Since there is no appeal complaining against that part of the decision of the Court of Appeal that stopped interest charges after 5-11-2008, instead of allowing it till the loan was fully repaid in keeping with the loan contract, this Court will not interfere with it.”

Per **EMMANUEL AKOMAYE AGIM**, JSC (Pp. 30-31, paras. E-A)

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ADMINISTRATION OF ESTATE - ADMINISTRATOR(S) OF AN ESTATE - Powers of an administrator of an estate

“Admitted that the properties of the deceased to be administered by an administrator or administratrix of the estate are usually clearly spelt out or covered by the grant of letter of Administration, howbeit, the powers conferrable on an Administrator by a letter of Administration are wide. It includes the power to hold the real estate as a trustee and also to bear the liabilities of the estate. See *Folarin Vs. Agosto* (2023) LPELR-59845 (SC); *Amobi vs. Nzegwu* (2014)2 NWLR (Pt.1392) 570; *Kolade & Ors. vs. Ogundokun* (2017) LPELR - 48001 (SC); *Jeddo & Anor. vs. Imiko* (1972) LPELR - 1599 (SC).”

Per **JOHN INYANG OKORO**, JSC (P. 32, paras. D-E)

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