

Exhibits F and L which in my opinion were not delivered. In the circumstances, it is safe to hold that the defendant had no knowledge of the loan until the suit and by which time the proceeds had been expended and so there is no money to offset the loan and as such the claimant has to pay for its failure to act on time to notifying the defendants of the loan the deceased, their mother took from the bank. This delay is a fundamental defect of their case.

I have difficulty in agreeing from the evidence before me that the deceased took a N6,000,000 facility which she has a duty to pay back herself since it was a personal loan. On her death, they should be paid off with the proceeds from her estate by the administrators. I agree that the



administrators must first settle liabilities before sharing the balance to the beneficiaries. The administrators without due communication or knowledge either actual or constructive cannot settle a liability they know nothing about. Now the proceeds of the estate are all gone which the claimant accepts, where does the claimant expect the defendants to get money from to settle the liability of the deceased to the claimant. As sad as it is, Court deals with evidence and law. In my opinion and in the light of the evidence before me, the claimants case against the defendants cannot succeed. The claimant's claim fails in its entirety and hereby dismissed with N10,000.00 (Ten Thousand Naira) cost in favour of the Defendant."

Dissatisfied with this decision of the trial

Court, the respondent herein appealed against to the Court of Appeal. Following filing, exchange and adoption of written addresses by the parties, the Court of Appeal on 6-3-2015 rendered its judgment, resolved issues 1 and 3 in favour of the appellant, allowed the appeal in part, holding inter alia thusly-

"I agree with the appellant therefore that the evidence to the effect that the sum



in the letter of administration is under the care of the respondents, elicited under cross-examination is relevant and material to the case at hand.

Furthermore, a plea of plene administravit raised by the respondents is a plea in bar

entered by an executor or administrator by which he affirms that he had not in his possession on the time of the commencement of the suit, nor had at any time since any of the goods of the deceased to be administered. When the plaintiff replies that the defendant had goods in his possession at that time, and the parties join issues; the burden usually being on the plaintiff from the evidence so far elicited as indicated above, I do agree with the appellant that the respondents failed to lay evidence as to how the estate of the deceased was administered and whether there still remain assets which would in the circumstance satisfy the loan against the deceased. I note that the respondents apart from the monetary assets left by the deceased did not state whether they administered other assets left by the deceased. I share the view therefore that the holding of the lower Court to the effect

that the proceeds of the estate are

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all gone, and therefore where will the defendants get money to settle the liability of the deceased as a misapplication of the law and a travesty of justice.

It is my view which agrees with that of the appellants, that the first duty of the administrator is to settle debts or against the estate. It is not right and equitably unjustified to hoodwink a debtor on the premise that the assets and estate of the debtor has been distributed amongst beneficiaries. I resolve this in favour of the appellants.

Issue two

Whether on the death of a Banker's

customer, further interest on the loan taken should be terminated.

This issue raises a straightforward question, whether upon the death of a customer, as in the present case, interest on the loan outstanding against the deceased person ceases to be charged against the loanee's account.

I think that the learned counsel for the respondent and the lower Court are correct when they stated that once the appellant are fully informed of the demise of the loanee, the contract and by implication the accrual of interest is terminated. This is because the relationship of the two parties was founded on



simple contract and the death of one of the parties determined the agreement. See [D. Stephen's Industries Vs BICI of Credit and Commerce Int'l](#) (1999) 7 SCNJ 238 at 241. It is however for the estate of the deceased to notify the debtor bank promptly in order to arrest the accrual of interest as the loan undoubtedly survives the death of the borrower. It follows therefore that as at the time when the appellant was fully made aware of the death of the customer, interest on the loan is arrested forthwith. Consequently the computation of interest as done in Exhibit M, cannot be justified in view of the admission by the appellant that they knew of the death of the customer shortly thereafter. I resolve this issue against the appellant."

The Court of Appeal then granted the reliefs claimed for by the respondent in its amended statement of claim in the trial nisi

prius in the following terms-

1. "The 1st and 3rd issues having been determined in the appellants' favour, this appeal succeeds in part and it is hereby allowed.

2. The claim of the claimant/appellant against the defendants/respondents for the sum of N6,000,000 (Six Million Naira) is hereby



granted with 18% interest from the date the loan was granted to the deceased to the 5th of November 2008, when the appellant admitted knowing about the death of the deceased customer.

3. Court interest at 10% per annum from today to the final liquidation of the debts.

Costs of N50,000 are awarded to the appellant."

Dissatisfied with this judgment, the appellants herein appealed against it by a notice of appeal filed on 7-4-2015.

The parties herein filed, exchanged and adopted the following briefs - appellants' brief, respondent's brief and appellants' reply brief.

The appellants' brief raised the following issues for determination-

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?"