

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?"

The respondent's brief raised four issues for determination as follows-

1. "Whether given the facts, evidence adduced and the extant law in this case, the Court of Appeal was right in holding that the Appellants' first duty is to settle debts or Claims against their mother's Estate and/or whether the appellants as administrators can be head to say



that there is no fund to settle the deceased debt.

2. Whether the Court of Appeal was right in holding that the sum in the letter of administration is under the care of the Respondents' (Appellant).

3. Whether the Court of Appeal was right in holding that evidence extracted under cross-examination by the Respondent is admission, material and relevant to the case between the parties.

4. Whether the Court of Appeal was right in granting of 18% from the date the loan was granted to the deceased to the 5th of November, 2008 when the Respondent became aware of the death of the deceased customer."

I prefer to determine this appeal on the basis of the issues raised for determination

in the appellants' brief.

Let me determine issues 1, 2, and 3 together as they relate to the evidence of availability of funds or assets of the estate to pay the debt due to the respondent from the estate after the administrators of the estate had expended the N15,372,689.97 they withdrew from the First Bank account of the late Justice Kita Odiete Georgeman.

The trial Court found that there is no evidence of the existence of any funds or assets of the



estate from which the debt due from the estate to the respondent can be paid after

their expenditure of the money withdrawn by them from the First Bank Account of late Hon. Justice Kita Odiete Georgeman. The Court of Appeal held that the evidence of the existence of funds of the estate at the date of commencement of the suit from which the debt due to the respondent from the estate could be paid is contained in the testimony of DW1 (the 1st appellant herein) under cross-examination thusly- **"In the letter of administration the total amount in the account is N15,372,689.97 other banks. That sum is under our care"**

I agree with the decision of the Court of Appeal that the trial Court's decision that the DW1's testimony under cross-examination goes to no issue as it is contrary to the pleadings is wrong. The testimony is in line with the pleadings and is therefore relevant and admissible having regard to paragraphs 8, 9, 10, 11, 2, 14, and 15

of the appellants' amended statement of claim and paragraphs 10, 11, 12, 14 and 18 of the amended statement of defence.

Paragraphs 8, 9, 10, 11, 12, 14 and 15 of the appellants' statement of claim aver thusly-

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8. "The Claimant avers that after the death of the said Justice Kita Odiete Georgeman, the representatives of the claimant visited the Defendants to commiserate with them over the death of their mother to also inform them of their late mother's indebtedness to the Bank. The 1st Defendant visited the Ugheli Branch of the Claimant where she

assured the Bank's Representative of her readiness to pay the said debt after obtaining the relevant Letters of Administration. The Claimant shall at the trial rely on the letters dated 5th November, 2008 sent to the Defendant.

9. The Claimant further avers that the Defendants subsequently filed an application at the Uvwie Area Customary Court for a grant of Customary Letters of administration in which the Claimant was made one of the Defendants. The said application was served on the Claimant. The Defendants subsequently withdrew the said application. The Claimant shall at the trial rely on a copy of the said application.

10. The Claimant avers that unknown to it; the Defendants filed another application for customary Letters of Administration at the Uvwie Area Customary Court in which application only First



Bank PLC was made a Defendant. The Application was granted on 25th of September, 2008. The Claimant shall at the trial rely on the said application the enrolment of order and a copy of the ruling

11. The Claimant further avers that after the grant of the application in favour of the Defendants, the latter withdrew the money stated in the order and refused to pay their late mother's debt to the Claimant despite repeated demand for same.

12. The Claimant avers that when the Defendants refused to come forth to make good their promise to pay their mother's debt to the Claimant, the latter wrote a letter to the 1st Defendant demanding the payment of the said debt. The Claimant shall

at the trial rely on a copy of the said letter dated 26th August, 2009

14. As at the death of the said late Justice Kita Odiete Georgeman, she was having the sum of N15,372,668.97 (Fifteen Million, Three Hundred and Seventy Two Thousand Six Hundred and Sixty Eight Naira, Ninety Seven Kobo) in her First Bank Account which sum was over and above her indebtedness to the Claimant.

15. The Claimant shall at the trial contend that by virtue of the Customary Letters of



Administration granted in favour of the Defendants, they are under obligation to pay the debt of their late mother, late Justice Kita Odiete Georgeman to the Claimant."