

Paragraphs 10, 11, 12, 14 and 18 of the respondents' amended statement of defence aver that-

10. "In answer to paragraphs 9, 10, and 11 of the Amended Statement of Claim, the Defendants aver that they on behalf of the children of Late Hon. Justice Kita Odiete Georgeman filed an application for the grant of Letters of Administration at the Uvwie Area Customary Court and were granted the Letters of Administration by the Uvwie Area Customary Court in respect of the Estate of their Late mother Late Hon. Justice Kita Odiete Georgeman on 25-9-2008. The Defendants shall at the trial found and rely on the Enrolment of Order made on 25-9-2008.

11. In further answer to paragraphs 9, 10 and 11 of the Amended Statement of Claim, the Defendants aver that the Uvwie Area Customary Court in granting their

application also deducted the sum of N823,640.00 (Eight Hundred and Twenty-Three Thousand, Six Hundred and Forty Naira) being 5% Estate Tax of the credit balance in their mother Late Hon.



Justice Kita Odiete Georgeman account Nos. 201001185501 and 51520100111855 with First Bank of Nigeria Plc and which sum was paid to the Registrar of the Court for which an official revenue collectors receipt was issued. The Defendants shall at the trial found and rely on the said Revenue Collector's Receipt dated 14-10-08.

12. In answer to paragraphs 11, 12, and 13 of the Amended Statement of Claim, the Defendants aver that they did not withdraw

any money belonging to the Claimant and also did not reach any understanding whatsoever with the Claimant to pay any alleged debt owed by their mother Late Hon. Justice Kita Odiete Georgeman

14. In answer to paragraph 14 of the Amended Statement of Claim, the Defendants aver that 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 their mother Late Hon. Justice Kita Odiete Georgeman's First Bank Accounts do not belong to the Claimant.

18. Still in further answer paragraphs 12, 13, 14, 15, 16, 17 and 18 of the Amended Statement of Claim, the Defendants aver that having paid the sum of N823,640.00 (Eight Hundred and



Twenty Three Thousand, Six Hundred and Forty Naira) being 5% Estate Tax to the Registrar of the Uvwie Area Customary Court, the Defendants proceeded to use the sums realized from the estate of Late Hon. Justice Kita Odiete Georgeman their mother for her burial and funeral rites/obsequies and thereafter distributed the remainder to beneficiaries of the estate of the Late Hon. Justice Kita Odiete Georgeman. The Defendants maintain that they are not obligated the claimant to pay the said sum claimed or any sum at all."

The evidence in examination in chief of CW1 contained in his witness statement on oath restate the above paragraphs of the amended statement of claim. The evidence in examination in chief of DW1 (1st

appellant) contained in her witness statement on oath restate the above paragraphs of its amended statement of defence.

It is clear from the above pleadings and evidence that both sides joined issues on whether the sum of N15,372,668.97 in the First Bank Account of Late Hon. Justice Kita Odiete Georgeman was still in the care of the appellants as administrators of the estate of their said late mother or completely expended on the burial and



the remainder distributed. The respondent asserted that the appellants as administrators of the Estate withdrew the

said sum from the said First Bank Account and refused to repay the debt due to the respondent from the estate. The appellants did not deny withdrawing the said money, but argued that it was not the respondent's money they withdrew, that after spending part on the ceremonies for the burial of their late mother, distributed the remainder to the beneficiaries of the estate.

The Court of Appeal wrongly understood DW1's testimony under cross-examination as meaning that the 15,372,689.97 Naira stated in the Letters of Administration withdrawn from the bank is still physically available in their possession and had not been spent at the time DW1 was testifying in Court. Such wrong meaning is the result of reading the said testimony of DW1 under cross-examination alone without regard to the above-reproduced pleadings and her testimony in examination in chief. What is

clear from the pleadings and evidence of both sides is that the appellants withdrew the N15,372,689.97 in their late mother's account in First Bank, spent part for her burial ceremonies



and distributed the remainder amongst themselves as beneficiaries of the estate.

The appellants have continued to contend that having completely expended the sum of money they withdrew from their late father's account in First Bank PLC, they have become incapable of performing their obligation as Administrators of the Estate of their late father to pay the debts due from the estate to creditors such as the

respondent as the estate cannot afford to pay such debt. The trial Court asked "now the proceeds of the estate are all gone which the claimant accepts, where does the claimant expect the defendants to get the money from to settle the liability of the deceased to the claimant" and proceeded to hold that the claimants' case against the defendants cannot succeed. The Court of Appeal decided differently on the basis of its views that the testimony of PW1 under cross-examination was evidence that the said money that was withdrawn from their late father's account in First Bank was still in their possession and care and available for use to pay the debt from the estate to the respondent and proceed to grant the respondent's claim in the terms stated in the