



Judgment.

The approach of the two lower Courts in determining the liability of the administrators of the estate of Late Hon. Justice Kita Odiete Georgeman on the basis of whether or not the estate money withdrawn by them from First Bank PLC had been fully spent at the time before the administrators became aware of the existence of the debt due to the respondent from the estate is not correct.

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. In this case, the evidence shows that upon the death of their mother on 1-8-2008, the

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appellants proceeded to obtain letters to administer her estate on 25-9-2008 and thereafter withdraw the sum of N15,372,668.77 in their late mother's account

in First Bank PLC, that they expended part of the said money on burying their mother and distributed the remainder amongst themselves and that after burying their late mother, they did not, as the administrators of the estate, identify and inventory his assets and debts before distributing the remainder of the amount they withdrew from First Bank PLC.

It is obvious from the resolution of the children of the late Hon. Justice Kita Odiete Georgeman at their meeting of 10-9-2008 that the estate is constituted by real and personal estate of their late mother including her shares in Zenith bank PLC. This resolution was part of the document attached to the affidavit in support of the motion *ex parte* by which the appellants obtained the letters of administration of the estate from Uvwie Area Customary Court in Delta State. This application is pleaded in

paragraphs 9 and 10 of the amended statement of claim and paragraphs 10 and 11 of the amended statement of defence and is in evidence as part of exhibits H

and J.

The resolutions read thusly-

**"At the meeting held by the children of the Late Hon. Justice Kita Odiete Georgeman at No. 11 Akhigbe Street, Opposite Gold Spot, Effurun, Delta State on 10th September 2008, it was resolved as follows-**

**1. That as a result of the death of Hon. Justice Kita Odiete Georgeman on the 1st day of August, 2008 the children hereby authorise Miss Ese Kita Odiete - Daura and**

**Miss Cleopatra Barovbe (children of the Deceased) to apply for Customary Letters/Power of Administration to administer the Estate both personal and real of Justice Kita Odiete Georgeman**

**2. That Miss Ese Kita Odiete-Daura and Miss Cleopatra Barovbe should operate/manage and withdraw monies from the Bank Accounts and also take charge of the Zenith Bank Plc Shares of Hon. Justice Kita Odiete Georgeman (Deceased)**

**3. It is further resolved that the proceeds from the Deceased Bank accounts shall be used for the welfare and Education of his children.**

**4. That Miss Ese Kita Odiete-Daura and Miss Cleopatra Baroube should adopt all necessary and appropriate legal measures to achieve the above purpose."**

The affidavit in support of the

motion ex parte applying for the grant of the letters of administration was deposed to by the 1st appellant herein. In paragraphs 12 to 17 therein she deposed thusly-

**12. "That the deceased while she was alive was a High Court Judge with the Delta State Judiciary and maintained current Accounts with First bank Of Nigeria Plc. With account Nos. 201001185501 and 5152010011855.**

**13. That I know as a fact that the deceased is entitled to payment/withdrawal of monies from the said accounts with the Defendant.**

**14. That my late mother has other properties including cars, lands, buildings within Nigeria**

**15. That the children and family of Late Hon. Justice Kita Odiete Georgeman have agreed**

and duly authorized Applicants herein to administer the Estate of the deceased especially to operate/manage her Bank Accounts with the Defendant. A copy of the resolution is attached hereto and marked as Exhibit "C".

16. That the said monies from the deceased accounts are needed for the burial of the deceased who is still in the Mortuary and for the upkeep of her children she left behind.

17. That I am informed by my Solicitor J.E Emelue (Mrs) of K.K.

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lhome & CO., and I verily believed her that it is absolutely necessary to bring this application to obtain Customary Letters/Power of Administration from this

**Honourable Court so as to enable us operate/manage and withdraw monies from her said Accounts with the Defendant and to manage her other properties which includes cars, lands, buildings within Nigeria."**

It is glaring from the affidavit in support of the motion ex parte for the grant of the letters of administration and the resolution of the children of the late Hon, Justice Kita Odiete Georgeman in support of the application that their late mother also had buildings, lands cars, shares in Zenith Bank PLC in addition to the monies in the First Bank PLC and that the administrators of the said estates did not intend to pay any debt due from the estate. Payment of such debts was not stated in the affidavit and the resolution as part of the things the administrators were to do. As it is, the administrators can pay the debt due from the estate to the respondent from the other

assets of the estate, if they have completely expended the money withdrawn from the First Bank PLC. In any case, assuming those

assets do not exist, the appellants who are also beneficiaries of the estate are liable to pay the debt from the share of the money distributed to them. 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 Sammel \(1861\) 30](#)

**L.J. Ch 799)**

In the light of the foregoing, I resolve issues Nos. 1, 2, and 3 against the appellants,

Let me now determine Issue No. 4 which asks- **"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?"**

I have carefully read and considered the