

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA, COURT 50
TODAY TUESDAY THE 17th DAY OF JUNE 2026
BEFORE HONOURABLE JUSTICE O.A ODUSANYA (MRS.)

SUIT NO: ID/3364LM/21

BETWEEN:

1. MRS. ADENIKE OLUYEMISI AJAYI
 2. TOMI DERU (NEE AJAYI)
 3. OLUMIDE AJAYI
 4. OMOLADE SOETAN (NEE AJAYI)
 5. MAYOWA OKEOWO (NEE AJAYI)
 6. BISOLA AJAYI
- CLAIMANTS

AND

1. MS. HELEN DAVIES
 2. TOMISIN AJAYI
- DEFENDANT

JUDGMENT

The Claimants commenced this suit via Originating Summons dated 17th September 2021. Pursuant to an Order of Court made on the 12th day of October, 2022 the said Originating Summons was converted to a Writ of Summons dated 30th November, 2022 and deemed properly filed on the 1st December 2022 via which the Claimants are seeking the following Orders:

1. A DECLARATION that the 1st Claimant is entitled to the personal chattels absolutely and one-third of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
2. A DECLARATION that the Claimants and the 2nd Defendant are entitled to apply and obtain Letters of Administration of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
3. A DECLARATION that the 1st Defendant is not entitled to any share in the personal chattels and residuary Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.

Bakarey Kemi
Commissioner For Oaths
High Court, Ikeja.

HIGH COURT OF LAGOS STATE


Sign: _____ Date: _____
CASH OFFICE, IKEJA.

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4. AN ORDER directing the 1st Claimant to take the personal chattels absolutely and one-third of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
5. AN ORDER directing the 2nd, 3rd, 4th, 5th and 6th Claimants and the 2nd defendant to take an equal share of the remaining two-thirds of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
6. AN ORDER OF PERPETUAL INJUNCTION restraining the 1st Defendant whether by herself, privies and servants from interfering in the management of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020 in any manner whatsoever and howsoever.

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In response, the Defendants filed a Statement of Defence dated 6th January, 2023.

On further response, the Claimant filed a Reply to the Defendant's Statement of Defence dated 17th February, 2023.

It is the case of the Claimants that the 1st Claimant is the only surviving spouse of Dr. Tosin Ajayi who passed on April 26, 2020. That the 2nd to 6th Claimants are the issues of the 1st Claimant marriage with the deceased. That the deceased died intestate.

The Claimants further stated that the 1st Defendant has since the death of the deceased been in the habit of meddling in the affairs of the Estate of the Deceased with no justifiable reason. That the 1st Defendants had sold several properties of the deceased and attempted to sell the others. That before the deceased demise, they were co-directors of the First Foundation Medical Engineering Company Limited.

It is the case of the Defendant that the 1st Claimant is no more than an estranged spouse of the Deceased as the parties were separated for about 35 years before the demise of the deceased. That the deceased expressed his intention of marrying the 1st Defendant to her mother, and thereafter travelled to Port Harcourt to see her. That the deceased carried out all

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requisite demands under the Kalabari Custom upon acceptance of his proposal by the 1st Defendant's mother. That the standard incidence of unconditional marriage under Kalabari culture is that the wife enjoys the rights of inheritance and the home of the husband along with children of the husband where he predeceases her. That the 1st Defendant lived with the deceased as a couple for twenty-five years during which period, they had three children, one of whom survived.

The Defendants further stated that a search was conducted as to the legitimacy of the Marriage which revealed that the Marriage certificate in question does not exist in the records of the marriages or the archives. That prior to the demise of the deceased, the 1st Claimant did not relate with the deceased on a personal note nor for business purpose. That though the 1st Claimant name continued to reflect as a director of the First Foundation Medical Engineering Company Limited, she was never involved in the day to day running of the company.

On further response, the Claimants through their Reply to the Statement of Defence stated that at no point in time did the deceased and the 1st Claimant terminate their marriage. That the Defendant's claim of marriage under Kalabari Custom is a fabrication and an afterthought which the Defendants manufactured for the purpose of the instant suit. That in the prior suit which related to the burial of the deceased in Suit No: 7096GCMW/2020, the Defendants did not mention any Kalabari Customary Marriage between the 1st Defendant and the Deceased. That the deceased never lived in any part of the South South of the Country where Kalabari Custom is being practiced while alive to have made him subscribe to Kalabari Custom. That the 1st Defendant was never the wife of the Claimants' husband and father but only his concubine and baby mama. That the 1st Claimant was always involved in the day to day running of First Foundation Medical Engineering Ltd.

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Trial commenced in this matter on the 6th day of December, 2023 with the Examination-in-chief of the 1st Claimant Mrs Adenike Ajayi who resides at 6, Adedeji Close, Opebi, Ikeja, Lagos.

The 1st Claimant adopted her Witness Statement on Oath dated 30th November, 2022 and Further Witness Statement On oath dated 17th February, 2023 as her Evidence-in-chief.

In the Witness Statement on Oath dated 23rd November, 2022, the 1st Claimant being CW1 stated that she is the only surviving spouse of Dr. Tosin Ajayi who passed on April 26, 2020. That the 2nd to 6th Claimants are the issues of the 1st Claimant marriage with the deceased who died intestate.

The CW1 further stated that the 1st Defendant has since the death of the deceased been in the habit of meddling in the affairs of the Estate of the Deceased with no justifiable reason. That the 1st Defendant had sold several properties of the deceased and attempted to sell the others. That before the deceased demise, they were co-directors of the First Foundation Medical Engineering Company Limited.

In the Further Witness Statement on Oath dated 17th February, 2023, CW1 stated that the Defendant's claim of marriage under Kalabari Custom is a fabrication and an afterthought which the Defendants manufactured for the purpose of the instant suit. That in the prior suit relating to the burial of the deceased in Suit No: 7096GCMW/2020, the Defendants did not mention any Kalabari Customary Marriage between the 1st Defendant and the Deceased. That the deceased never lived in any part of the South South of the Country where Kalabari Custom is being practiced while alive to have made him subscribe to Kalabari Custom. That the 1st Defendant was never the wife of the Claimants' husband and father but only his concubine and baby mama. That the 1st Claimant was always involved in the day to day running of First Foundation Medical Engineering Ltd.

The following documents were tendered during Trial and Cross Examination of the 1st Claimant:

1. CTC of Medical Certificate of Death of Dr. Tosin Ajayi from St. Nicholas Hospital admitted and marked Exhibit C1.

2. Photocopy of Letter of Falana & Falana Chambers dated 29th March, 2021 to the Principal Partner of Synergy Attornies headed: Estate of Late Dr. Tomisin Ajayi admitted and marked Exhibit C2.
3. Photographs of People with uniform headgears, one original and 2 photocopies admitted and marked Exhibit C3 A-C.
4. CTC of document of High Court of Lagos State headed Counter Affidavit in opposition to Originating Summons dated 29th July, 2020 in Suit No: ID/70966CMW/20 between Mrs. Adenike Ajayi & 5 Ors and Jos Funeral Ltd and 2 Ors with attached receipt of Lagos Archives Property with registration receipt dated 30th November, 2023 in favour of Kunle Adegoke & Co for the sum of N5000 for search and photocopy receipt for the sum of N31,000 admitted and marked Exhibit C4 A-C
5. Photocopy of consent for postmortem document with copy of billing sheet admitted and marked Exhibit C5 A & B
6. Photocopy of 3 receipts of TOS Funerals Ltd dated 27th April, 2020 for the sum of N45,000 N60,000 and N20,000 for mortuary fees, embalment for Late Tosin Ajayi and Removal fees admitted and marked Exhibit C6
7. CTC of Memo of Decree Nisi having become absolute of the High Court of Lagos State between Helen Davies and Jimmy Tuoyo with Original receipt from Lagos Archives and property Registry in favour of Kunle Adegoke & Co dated 28th November, 2023 for the sum of N5000 and photocopy of approved purchase receipt for the sum of N31,000 admitted and marked Exhibit C7 A-C.
8. Original of Certificate of Marriage between 1st Claimant and Late Dr. Tosin Ajayi provisionally admitted as Exhibit C8 subject to further address by the parties on the admissibility of the said exhibits at the address stage
9. CTC of Certificate of Marriage between 1st Claimant and Late Dr. Tosin Ajayi with attached receipt of Ijebu Ode Local Government to Falana and Falana Chambers provisionally admitted as Exhibit C9 A-B subject to further address by the parties on the admissibility of the said exhibits at the address stage

10. Photocopies of Written Resolution of members of FFMEC Ltd dated 21st May, 2020 and 10th August 2020 provisionally admitted as Exhibit C10 (a-b) subject to further address by the parties on the admissibility of the said exhibits at the address stage
11. Print out of Status Report of Educatrix Resources Ltd dated 15 February 2023 admitted and marked Exhibit C11.
12. Certificate of Compliance dated 30 November, 2023 admitted and marked Exhibit C12
13. 2 CTC of Judgment of the High Court of Lagos State delivered by the Honorable Justice L.A.F. Oluyemi dated 26th January, 2021 in Suit Number: ID/70966CMW/2020 between Mrs. Adenike Ajayi and 5 others and TOS Funeral Ltd & 2 others admitted and marked Exhibit C13 A& B.
14. Original brochure of the celebration of Life ceremony of Dr. Tosin Ademola Ajayi admitted and marked Exhibit C14
15. CTC of certificate of Marriage between J. Ademola Oluwatosin Ajayi and Adenike Oluwayemisi Mamora admitted and marked Exhibit C15

On Cross Examination, the 1st Claimant testified that she has five children and the second Claimant is the eldest child. That she does not know the second Defendant. That she knows the 1st Defendant to be Helen Davies but she met the 1st Defendant for the first time at her daughter's wedding in London in 2010. That at the wedding she realised that the 1st Defendant was the deceased side chick.

CW1 testified that the deceased took the decision to stay away when Dele Giwa died in his hospital and took permission from her to stay at Sheraton Hotel. That the deceased did not stay in one spot as he was going and coming although they contact each other. That the deceased was a responsible father although as at 1996, her children were still little. That he knew that the deceased had different side chicks and baby mamas about 10 years before he died but she was not aware that the deceased and the 1st Defendant lived as a couple for 25 years.

She also stated that she is a nurse and has been a nurse since 1978. That she worked with the Ministry of Health but resigned in the year 2009. That

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she did not work with the deceased in the First Foundation Medical Engineering Company as the deceased advised her to stay at home to take care of the children. That the deceased lived in different places and hotels in 1996. That there was no marriage between the deceased and the 1st Defendant and that the personal letter written to the 1st Defendant's mother by the deceased were fabricated. That she had never at any time challenged the relationship the deceased had with his side chicks because they were many side chicks and baby mama. That if the deceased and the 1st Defendant lived together they were just merely deceiving themselves. That the deceased had mentioned to the 1st Claimant that he had high blood pressure, but she did not know how the deceased was admitted and how long he was admitted. That she only knew he was admitted for two months after his death. That the address on the death certificate was 39, Glover Road, Ikoyi but she does not know how long he was living there. That it was after his death that the police during the course of investigation requested for a coroner's inquest to the death of the deceased. That the death of the deceased was so sudden and unexpected. That the marriage registry where the marriage with the deceased was conducted was at Ijebu Ode and she has in her possession the CTC of the marriage certificate. That the Exhibit C8 (the original marriage certificate) and C9 A&B (CTC of the Marriage Certificate) were folded.

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That in those days, they were given only one copy and the second copy is a ledger and it has been a long time. That the reliefs sought by the 1st Claimant includes entitlement to the part of the estate of the deceased up till 1986 and the assets he acquired after he left the house to 2021. That the part of the property the deceased had that forms the estate up to 1986 includes First Foundation Medical Engineering and 36, Opebi, road and another one at 6, Adedeji Close also at Opebi Road. A residential building, land at Awosanya Opebi and another land at Woodshare Estate at Opebi, Land at Akala road and Olutosin Ajayi Street, the land at 10, Sowuren Street, Off Toyin Street, Ikeja, Acres of land at Chevron, land at Olugborugun Are at Lekki, land at Elegushi, land at Lafiaji after Lekki/Epe area. That she wants the court to grant her interest in all those properties

mentioned. That she does not have any property in her personal name as all the properties are in the deceased name and she had neither dealt with the properties of the deceased either by way of selling or letting out.

That after the death of her husband, all the monies accrued from selling some of the properties were paid into a separate account but she could not specify the amount that was paid into that account. That the money realized from the sale of the assets are left untouched, but it was after the burial that she sold the properties. That the deceased was buried on the 11th of February, 2021 while he died on the 26th of April, 2020. That she was informed by Mr. Falana that the 1st Defendant joining the second defendant and her two siblings applied for letters of administration in respect of the estate of the deceased. That she was not aware of any injunction granted by the Federal High Court restraining her from acting or selling the assets of First Foundation Medical Engineering. That she was not bothered about the deceased lifestyle with side chicks as this is one out of his many escapades. That the deceased never told her anything about the relationship with the 1st Defendant. When asked if she is aware that the 1st Defendant bears Ajayi, she said that Ajayi is a common name. That the deceased has never told her of the children he had outside wedlock, and it was only at the burial that she discovered about his extra marital affairs.

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She also stated that at her daughter's wedding, she did not sit with the deceased. That the 1st and the 2nd Defendant were in attendance but she was not aware of any arrangement made between her daughter and the 1st Defendant as to where to sit. That she does not know anything about Kalabari Marriage as she is a Yoruba Woman and that there was no marriage between the deceased and the 1st Defendant.

There was no Re-Examination.

Trial continued with the Examination-in-chief of the Claimant's second Witness- Adeleke Olorunnibe Mamora of number 2, Ishola Solomon Street, Magodo Phase 2, Lagos.

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The Witness adopted his Written deposition dated 28th November, 2023 as his evidence.

He stated that the deceased and the 1st Claimant got married under the Marriage Act on the 6th day of July, 1974 and remained married until the demise of the deceased. That he attended the celebration of their marriage on the said day which was celebrated at the Divisional Office, Ijebu Ode. That he had lived with the deceased and the 1st Claimant for a short period before leaving for Abeokuta. That until the demise of the deceased, the deceased matrimonial home with the 1st Claimant was at No. 6, Adedeji Close, Opebi, Lagos State.

He also stated that due to the circumstances surrounding the death of Dele Giwa and the political turmoil of the aftermath of his death, the deceased refrained from going home as a result of security concerns. That he is not aware of any marriage between the deceased and the 1st Defendant or any other person throughout his lifetime.

*During Cross Examination, he testified that he is the younger brother to Mrs. Adenike Oluyemisi Ajayi and a friend to the deceased and he does not know the 2nd Defendant. That he only met the 1st Defendant at a charitable event of which the deceased was in attendance. That he only got to know of the second Defendant from the information gathered by his niece as one of the adopted children of the deceased. That he is very close to the deceased who took him as a brother and not even as a brother-in-law as he kept in touch with the deceased after moving to Abuja but he does not pry into his private affairs. That he later got to know that the 1st Defendant graduated from the same alma matter as his, but from the faculty of Law. That he never knew that Miss Nigeria in 1975 was the 1st Defendant.

He also stated that the Deceased did not abandon his home but he was not as frequent at home as before. That he cannot ascertain exactly if the deceased was a man of integrity. That the Kalabari marriage did not take place. That he is not aware of the sale of some Lekki properties of the deceased by the 1st Claimant. That he was not aware of any elaborate

birthday the deceased organised for the 1st Defendant and that the 1st Claimant never filed for divorce.

There was no Re-Examination.

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Trial continued with the Examination-in-chief of the Defendant's first witness- Ella Prest, who adopted her Witness Statement on Oath dated 6th Day of January, 2023.

In her Witness Statement on Oath she stated that the 1st Defendant is her daughter who got married to the deceased under the Kalabari Native Law and Custom in 1996 with her consent and blessing. That in the course of their marriage, they had three children but only the 2nd Defendant survived. That the deceased carried out all requisite demands under the Kalabari custom upon acceptance of his proposal. That as a Kalabari native, the standard incidence of unconditional marriage is that the wife enjoys the right of inheritance and the home of the husband along with the children of the husband where he predeceases her. That during the period of the marriage to the deceased, the deceased had no marital relationship with the 1st Claimant. That the deceased and the 1st Defendant lived together as a couple for twenty-five years. That prior to the 1st Defendant getting married to the deceased, the 1st Defendant got divorced from her erstwhile husband.

The Defendants' Witness tendered the following documents which are:

1. Handwritten letter of Dr. Tosin Ajayi dated 14th March, 1996 consisting of 3 pages admitted and marked Exhibit D1.
2. Downloaded copy of information about Kalabari Traditional marriage with certificate of compliance dated 6th January, 2023 admitted and marked Exhibit D2.
3. 4 copies of pictures the witness hugging some persons holding bouquet of flowers together with the attached Certificate of Compliance admitted and marked Exhibit D3 A-E.

On Cross-examination, DW1 testified that she does not have any pictures showing Kalabari Customary marriage between the deceased and the 1st

Defendant. That she knows the last office address of the deceased but she did not know that the 1st Claimant lives there and she does not know the 1st Claimant.

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There was no Re-Examination.

Trial continued with the Examination-in-chief of the 2nd Defendant, Tomisin Ajayi of 3A, Glover Road, Ikoyi, Lagos.

Defendants second witness adopted her Written Statement on oath dated 6th January 2022 as her Evidence in this case wherein she stated as follows;

She stated that the 1st Claimant is no more than an estranged spouse of the deceased as parties were separated for about 35 years before the demise of the deceased. That she was informed by her mother- the 1st defendant that after the separation, her father- the deceased spent the next ten years living alone before he met the 1st Defendant. That the deceased and the 1st Defendant got married under the Kalabari custom and afterwards lived together as husband and wife.

She also stated that it was her mother who took her father- the deceased to the Hospital when he fell ill. That the Claimants instituted an action against the morgue where the deceased's body was deposited seeking a release of the body to her. That she was joined along with the 1st Defendants in the said suit. That the 1st Claimant has been meddling in the affairs of the deceased's estate without justification.

She stated that before the death of her father, the 1st Claimant was never involved in the day to day running of the company as her mother took active part along with her father in managing the company

In the additional Statement on Oath of the 2nd Defendant dated 4th July 2024, she stated that based on her knowledge, she confirms that from the time she was born till when her father passed away, her mother and her father lived together as a couple with her father publicly and officially acknowledging her mother as his wife. That the additional documents were not previously listed due to the late discovery of their

critical importance and their relevance to the matters in issue and the delay in accessing and procuring them for the just determination of the suit.

In support of her testimony; DW2 being the 2nd Defendant tendered the following documents which are:

1. CTC of document of the High Court probate Registry dated 6th October, 2020 with attached revenue receipt and Bank Teller admitted and marked Exhibit D4.
2. Original Copy of Letter of Synergy Attornies dated 31st March, 2021 to the Principal Partner Falana & Falana Chambers headed with alia Re: Estate of Late Dr. Tosin Ajayi admitted and marked Exhibit D5.
3. 2 books written by Helen Prest Ajayi, titled my favourite Tortoise Tales and The Complete English Grammar admitted and marked Exhibit D6 A & B.
4. One book written by Helen Ajayi titled African Proverb for and about children admitted and marked Exhibit D7
5. Ovation magazine special Christmas bumper edition with pictures of Helen Prest Ajayi admitted and marked Exhibit D8.
6. Genevieve Magazine of October 2007 with topic of Helen Ajayi on her books admitted and marked Exhibit D9
7. This day style magazine of Sunday October 25, 2009 with topic of Helen Prest Ajayi celebrate 50 admitted and marked Exhibit D10
8. 4 copies of photograph, one showing Chief Obafemi Awolowo in the middle and another showing Abubakar Tafawa Balewa and Chief Obafemi Awolowo with Senior Tobi Macpherson attached to a certificate of authentication dated 4th July, 2024 admitted and marked Exhibit D11 A to E.
9. Document headed Certified Copy of an entry pursuant to the birth and death Registration Act 1953 being entry No 52 in respect of inter alia Helena Oluwatomisin Ajayi registered on 1st June 1998 admitted and marked Exhibit D12

10. Photocopy of letter of Synergy Attorney dated 2nd March 2021 to the Managing Director Digital Landlord Nig. Ltd headed inter alia caveat against intermeddling with attached letter of Christ living spring apostolic ministry admitted and marked Exhibit D13.
11. Court of Appeal on matter at Federal High Court process on matter at Federal High Court admitted and marked Exhibit D14.
12. Bella Naija publication on 50th Birthday celebration of Helen Prest Ajayi on October 24, 2009 with several pictures admitted and marked Exhibit D15.
13. Document headed Reception Sitting Plan with attached email address dated 22nd September, 2010 and 15th September, 2010 admitted and marked Exhibit D16.
14. Copy of Board Resolution of First Foundation dated 8th September, 2020 admitted and marked Exhibit D17 A & B.
15. Copy Of Picture Showing Home stead apartment and pictures of ongoing construction with cars parked in front admitted and marked Exhibit D18 A & B.
16. Certificate of authentication of the picture and online publication dated 4th July, 2024 admitted and marked Exhibit D19.
17. Letter of Synergy dated 2nd Nov, 2021 to the Principal Registrar of Marriages, Ministry of Interior headed inter alia Application for Search admitted and marked Exhibit D20.
18. Original letter of Synergy Attorney dated 12th November, 2021 to the Principal Registrar of Marriages, Ministry of Interior headed inter alia Application for Search admitted and marked Exhibit D21
19. Copy of letter dated 18th November 2021 for same Application to the Permanent Secretary, Ministry of Interior admitted and marked Exhibit D22.
20. Original letter of the Ministry of Interior dated 8th March, 2022 to the Synergy Attornies headed inter alia Application for Search admitted and marked Exhibit D23.
21. Enrolled Order of the Federal High Court of Nigeria Lagos in Suit No: FHC/L/CS/900/2021 in the case between Miss Tomisin Ajayi &

Anor vs. First Foundation Medical Engineering Co. Ltd dated 7th September, 2021 admitted and marked Exhibit D24.

22. First Foundation Letter dated 29th June, 2020 to the Staff of First Foundation Medical Engineering Co. Ltd- headed Indefinite Mandatory Unpaid Leave admitted and marked Exhibit D25.

23. Copy of letter of Synergy Attornies dated 8th March, 2021 to the Principal of P. Abak & Co headed inter Enquiry regarding the purported disposal of assets together with pictures and letters attached admitted and marked Exhibit D26.

24. Copy of letter from Christ Living Spring Apostolic Ministry to Sola Owolabi of First Foundation Medical Engineering Company headed inter alia Re: Land at Elegushi together with Certificate of authentication admitted and marked Exhibit D27.

25. Copy of letter of Synergy Attorney dated 4th July, 2022 to the Attorney General Of Lagos State headed inter alia Petition on Fraudulent Land grabbers of 21 Hectares together with 3 LASG Treasury Receipt in favour of Synergy Attornies admitted and marked Exhibit D28.

26. Photocopy of Deed of Assignment between First Foundation Medical Engineering Company limited and Sotayo Sonuga in respect of 2000 meters of Land at Elegushi admitted and marked Exhibit D29.

27. Judgment of the High Court of Lagos State delivered by the Honourable Justice L.A.F. Oluyemi on 26th Jan, 2021 in Suit No: ID/7096GCMW/20 between Mrs. Adenike Ajayi & 6 Ors vs. Jos funeral ltd & 2 Ors admitted and marked Exhibit D30.

28. CTC of letter of Ojomu Royal Family dated 17th November to Hon. Attorney General and Commissioner for Justice, Lagos State headed inter alia An Appeal for Intervention admitted and marked Exhibit D31.

29. Original letter from the office of the Attorney General and Commissioner for justice, Lagos State dated 13th March, 2023 to

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Synergy Attorney headed inter alia Re: Petition on Fraudulent Land grabbing admitted and marked Exhibit D32.

30. Copy of Medical certificate of death of Dr. Tosin Ajayi from St. Nicholas Hospital admitted and marked Exhibit D33.
31. Enrolled order of the High Court of Lagos State by the Honourable Justice L.A.F. Oluyemi on 4th Feb, 2021 in Suit No: ID/7096GCMW/20 between Mrs. Adenike Ajayi & 6 Ors vs. Jos funeral ltd & 2 Ors admitted and marked Exhibit D34.
32. Original letter of the Nigerian Immigration Service Headquarters dated 24th June, 2025 to Synergy Attorney headed inter alia: Re Suit No ID/3364LM/21 with CTC of data page of Ajayi Tosin admitted and marked Exhibit D35.
33. CTC of the Punch Newspaper of 14th April 2018, Page 1 and 27 with attached receipt admitted and marked Exhibit D36.
34. Copies of acknowledgement letter of synergy attorneys dated 4th June, 2020 to the Registrar, His Honor M.F.O. Fadeyi headed inter alia investigation activities together with attached letter, copy of passport of Dr. Tosin Ajayi, medical certificate of cause of death and consent for post mortem admitted and marked Exhibit D37
35. 2 bundles of photographs one of 7 pages with certificate of authentication is hereby admitted and marked Exhibit D38.
36. Second bundle consisting of 11 photographs and photocopy of certificate of birth of Oluwatomisin Ajayi and certificate of authentication and marked Exhibit D39.
37. While the Court of Appeal Judgment dated 20th September 2024 in Suit No. CA/LAG/CV/15/2022 between Miss Tomisin Ajayi and Anor V First Foundation Medical Engineering Co. Limited and 4 Ors was provisionally admitted as Exhibit D40 during cross examination of DW3.

On Cross Examination by the Claimant's Counsel, the DW2 testified that she had never lived with the 1st Claimant. That she comes to Nigeria very frequently and she knows the relationship between the 1st Defendant and the deceased which was her dad. That she knows the office address of the

deceased which is number 36, Opebi Road, Ikeja, Lagos but did not know that it shares compound with the residence of the 1st Claimant which is Number, 6, Adedeji Close, Ikeja. That she filed a suit along with the 1st Defendant at the Federal High Court and deposed to an Affidavit in that suit. That from Paragraph 6(c) of Exhibit D14, she had stated that the 1st Defendant and the deceased were Common law partners. That there is no certificate to show that the deceased and the 1st Defendant were Common law partners. That she was raised to believe that the relationship between the deceased and the 1st Defendant was that of a Common law partnership. That the 2nd to 6th Claimants are the children of the deceased and she and her mother had included the 2nd to 6th Claimant in their application for Letters of Administration. That the 1st Claimant was meddling with the estate of the deceased, hence the decision to apply for Letters of Administration with respect to the estate of the deceased. That she was not involved in the day to day running of the deceased company. That neither she nor her mother- the 1st Defendant is a shareholder in the company. That in all the pictures tendered as exhibit before the court she has not appeared in any of them and that pictures do not establish relationship.

Trial continued with the Examination-in-chief of the 1st Defendant sued as Helen Davies.

The 1st Defendant adopted her Written Statement on Oath dated 6th January, 2023 and Additional Statement on Oath dated 18th January, 2024

In her Written Statement on Oath dated 6th January, 2023, DW3 stated that the 1st Claimant is no more than an estranged spouse of the Deceased as the parties were separated for about 35 years before the demise of the deceased. That the deceased expressed his intention of marrying the 1st Defendant to her mother, and thereafter travelled to Port Harcourt to see her. That the deceased carried out all requisite demands under the Kalabari Custom upon acceptance of his proposal by the 1st Defendant's mother. That the standard incidence of unconditional marriage under Kalabari culture is that the wife enjoys the rights of inheritance and the home of the husband

along with children of the husband where he predeceases her. That the 1st Defendant lived with the deceased as a couple for twenty-five years during which period, they had three children, one of whom survived.

The Defendants further stated that a search was conducted as to the legitimacy of the Marriage which revealed that the Marriage certificate in question does not exist in the records of the marriages or the archives. That prior to the demise of the deceased, the 1st Claimant did not relate with the deceased on a personal note nor for business purpose. That though the 1st Claimant name continued to reflect as a director of the First Foundation Medical Engineering Company Limited, she was never involved in the day to day running of the company.

In her Written Statement on Oath dated 18th January 2024, she stated that she and the deceased performed all necessary obligations under Kalabari Marriage custom to validate their marriage. That a search at the Ministry of Interior Federal Marriage Registry, Ikoyi revealed that the Marriage Certificate in question does not exist in the records of the marriages or the archives.

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On Cross Examination by the Claimant's Counsel, the 1st Defendant testified that the 1st Claimant and deceased were separated and the deceased was living alone for 10 years before she met him. That she had practised as a lawyer for 15 years before she met the deceased in 1996. That for the period while she was practising as a lawyer, the deceased was not in contact with the 1st Claimant. That she wrote to the Ministry of Interior to inquire about the marriage of the deceased with the 1st Claimant. That the letter from the Ministry of Interior does not state that the marriage between Dr. Tosin Ajayi and the 1st Claimant existed or not existed. That she also instituted Suit No FHC/L/CS/900/2021 at the Federal High Court against the 1st Claimant.

She stated that she married the deceased under the Kalabari Custom. That the Kalabari marriage was a fact and she did not state it so as to partake in the inheritance of the deceased. That during the wedding of the 5th

Claimant, the 5th Claimant prepared the sitting arrangements. That she had never set eyes on the 1st Claimant till the day of the wedding of the 5th Claimant. That she attended the wedding as the wife of the father of the bride and she stayed with the deceased as his wife. That she was acknowledged not as an event planner at the wedding of the 5th Claimant but as a wife. That she is not a shareholder in the company of the deceased and is not aware that there are 13 companies under First Foundation Medical Engineering Services. That though she was not a shareholder in the company, she signed some document belonging to the company. That she has affidavit and documents to address the contention surrounding her name.

During Re-Examination, she testified that she has two daughters from her previous relationship who are in England.

The defendants closed their case, and the case was adjourned for adoption of final written addresses.

The Defendants had in the course of examination-in-chief of CW1 on the 6th of December, 2023 objected to the admissibility of Exhibits C8 - Original Certificate of Marriage dated 6th July, 1974 between Late Dr. Tosin Ajayi and Mrs. Adenike Ajayi, Exhibit C9 (A-B) CTC of Certificate of Marriage between 1st Claimant and Late Dr. Tosin Ajayi with attached receipt of Ijebu Ode Local Government to Falana and Falana Chambers, Exhibits C10 (A-B) photocopies of Written Resolution of members of FFMEC Ltd dated 21 May, 2020 and 10 August 2020 and Exhibit C11 which are Print out of Status Report of Educatrix Resources Ltd dated 15 February, 2023, Exhibit C12 which is Certificate of Compliance dated 30 November, 2023.

The Learned Counsel to the Defendants filed a Written Address in respect of objections by the Learned Counsel to the Defendants to some exhibits admitted in the course of Examination-in-chief of the 1st Claimant and in the same vein filed their Final Written Address dated 27th January, 2026.

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The Learned Counsel to the Defendant argued that the authenticity of Exhibit C8 is contested and Exhibit C9A is a certified true copy of Exhibit C8. Also, it is not a reproduction of the original or official record of marriage issued in lieu thereof by statutory custodian and as such did not qualify as certified true copy of public document. He argued that a certificate of that age as produced by the 1st Claimant can only be certified by the Principal Marriage Registrar under the Evidence Act. He referred to the case of Obiozor vs. Nnamua (2014) LPELR-23041 (CA)

He submitted that the purported marriage certificate does not contain the father's name and surnames and it does not conform with Form E of the First Schedule to the Marriage Act. He further argued that Exhibit C10 A-B (the Board Resolution) tendered by the Claimant is a mere plain sheet of paper, headed Board Resolution, bereft of the letter head, listed directors, nor co-signed by a secretary for a Company as prestigious as First Foundation Medical Engineering and Company Ltd. He stated further that the purported written resolutions being secondary evidence of a public documents by the provisions of Section 102(b) of the Evidence Act, 2011 and Section 237 of CAMA, 2020 must be certified, to qualify as being admissible.

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He argued that (Exhibit D40) has nothing to do with the instant suit as it bears no relevance on the issue.

On the Final Written Address, the Learned Counsel raised two issues for determination which are:

- 1) Whether the Claimants are entitled to the declaratory reliefs sought in their Statement of Claim.
- 2) Whether the 1st Defendant, is a surviving wife, entitled to participate with the 2nd - 5th and the 2nd Defendant in the administration of the estate of Late. Dr. Tosin Ajayi.

On the first issue, he argued that the fulcrum of the Claimants' case is the assertion that the 1st Claimant was the lawful exclusive surviving spouse of Late Dr. Tosin Ajayi by virtue of the purported Marriage Certificate

between the 1st Claimant and Dr. Tosin Ajayi. He stated that the Defendants conducted a search at the relevant marriage registries to ascertain the authenticity of Exhibits C8 and C9 and it was revealed that the marriage in question does not exist in the records of marriage or the archives.

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He argued that on the reliefs a and c sought by the Claimants, the estate distribution will be governed by the Marriage Act where a surviving spouse is proved to have been married under the Act and on a showing that the marriage subsisted till the deceased passed. He stated that from the testimonies of CW1, the Claimant has failed woefully to prove that Late Dr. Tosin Ajayi married her under the Act. He referred to the case of Akinnubi vs. Akinnubi (1997) 2 NWLR (Pt. 486) 144 @ 156 C-E and 159 C-F.

He further contended that in all the testimonies of CW1, there was no proof of cohabitation between her and Late Dr. Tosin Ajayi from 1986 onwards, which is 35 years until his demise. He stated that the burial pictures taken in year 1999 and 2015 during the burial ceremony of 1st Claimant's parent did not establish a resumed spousal relationship. He also argued that when asked about the reception sitting arrangement at the wedding of the 5th Claimant, she admitted that "he was sitting on table one" and she was put on table two separately from the deceased, despite her bare and unsupported claim to have lived together with the deceased up until his demise. He referred to the case of Onisaodu vs. Elewuju (2006) 13 NWLR (Pt. 998) 517 @ 529-530, Paras. G-A.

He argued that the claim to exclusive spousal right by CW1, to the personal chattels of the deceased and one third of his estate must fail as the deceased died intestate and CW1 has failed to prove that the deceased was ever married under the Act to CW1, neither was CW1 a sole surviving spouse of the deceased.

On whether the 1st Defendant is not entitled to any share in the personal chattels and residuary Estate of Late Dr. Tosin Ajayi, the Learned Counsel to the Defendants submitted that the 1st Defendant is a surviving spouse

who has a valid marriage with the deceased that can inherit the Estate of Late Dr. Tosin Ajayi and the 1st Defendant did not only contract customary marriage with Late Dr. Tosin Ajayi but lived together as a couple from year 1997 up until his demise in 2020.

He also argued that the evidence of CW1 operates as estoppel by conduct and laches in the sense as to allow a man to leave his marriage for 35 years, openly represent to the whole world that another woman is his wife, led the public to accept that other woman was in lawful cohabitation with him exclusively, bear him children, never challenged the man or the other woman in the lifetime of the man about the legality of their marital relationship on the reasoning that "...my husband has a lot of them". He added that the Claimants' attempt to assert relief based on statutory marriage is undermined by clear evidence of estrangement for about 35 years and lack of authentic documentation of the alleged proof of marriage. He referred to the case of N.B.C Plc vs. Suleiman (2019) 18 NWLR (Pt.1703) 80 SC

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On issue two, the Defendants' Counsel argued that this is a contentious probate proceeding distinct from marital proceedings. He stated that the point that has to be made is what constitute the estate to be administered by those entitled to it in the instant suit.

He submitted that this estate relates to personal chattels and other beneficial interest vested in the deceased at his death and which are inheritable. He referred to the case of Inter Ocean Oil Dev. Co (Nig.) vs. Fadeyi (2024) 14 NWLR (Pt.1958) 239 SC 275-276, Paras F-B. He added that unlike the customary marriage of the 1st Defendant under Kalabari custom, assuming and without conceding that the 1st Claimant can be considered to also have customary marriage with Late Dr. Tosin Ajayi under native Law, since the deceased died intestate, the 1st Claimant is the one entitled to participate in conjunction with the 2nd to 6th Claimants and the 1st and 2nd Defendants in the administration of the Estate of the deceased.

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He further argued that the applicable Kalabari Marriage is unique in the sense that it gives rights and privileges to a wife married under it, including right to husband's home and right to inherit the possession of the husband along with the children of the deceased, hence this status entitles the 1st Defendant to participate in management of the intestate estate of the deceased with the 2nd Defendant and the 2nd to 6th Claimants and to take their due share in its distribution. He referred to the case of *Mgbodu vs. Mgbodu* (2015) 12 NWLR (Pt. 1474) 415 CA@ 439

He therefore urged the Court to hold that the reliefs sought by the Claimants are misconceived, oppressive, lacking merit and liable to dismissal in their entirety with substantial cost awarded to the Defendants.

In response, the Learned Counsel to the Claimants filed an Address on Argument on Admissibility of some documents and a Final Written Address dated 16th March, 2026.

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On the admissibility of Exhibits C8 & C9(A-B), the Learned Counsel to the Claimants submitted that contrary to the claim of the Defendant that the documents are non-legible and that the serial number and parents name and surname were missing, the names and surnames of the parents were boldly written as Mr. S.A Ajayi and Chief K. Mamora at the left hand side of the Exhibit and the serial number boldly written as No. 10 of 1974 in the second column making the said exhibit satisfy the content-specific provisions of Form E of the First Schedule to the Marriage Act.

On Exhibits C10 (A & B), Learned Counsel submitted that Exhibits C10 (A & B) can only be referred to as public document only when it is lodged with the Corporate Affairs Commission and until then the exhibit remains a private document. He referred to the case of *IGP vs. Bello* (2023) 1 NWLR (Pt. 1865) 265 @ 306-307, Paras H-B. He added that assuming without conceding that Exhibit C10 (a-b) is an original of a public document, the exhibit will still be admissible and probative value will be placed on it because CW1, through whom the document was tendered, was the maker

and signatory to the said Exhibit and can speak to the authenticity of the content of the document without the requirement of certification.

On Exhibit C40, he contended that that the exhibit is a judgment which arose from the action filed by the Defendants themselves before the Federal High Court. The decision in Exhibit D40, therefore touches on issues submitted before this Honourable Court for determination especially as regards the power of the 1st Claimant to deal with the affairs of First Foundation Engineering Co. Ltd.

On Exhibit D29, the Learned Silk submitted that the exhibit is a photocopy of an undated and unregistered Deed of Assignment between First Foundation Engineering Company Ltd and Sotayo Sonuga. He added that DW3 is not the maker of Exhibit D29 and it is therefore inadmissible. He referred to the case of Andrew vs. INEC (2018) 9 NWLR (Pt. 1625) 507 @ 578, Paras A-B

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On the final Written Address, the Claimant raised two issues for determination which are:

1. Considering the state of pleadings of the parties and evidence adduced in this case, has the 1st Claimant proved that she was legally married to the late Dr. Tosin Ajayi as to entitle her to inherit him to the exclusion of any other person claiming to be his wife; and if so,
2. Whether the Claimants are entitled to the grant of all the reliefs sought?

On the first issue, he argued that to prove the existence of marriage between the 1st Claimant and Late Dr. Tosin Ajayi, CW1 tendered Exhibit C8, the original marriage certificate issued by the Marriage Registry, Ijebu Ode, Ogun State, between herself and Late Dr. Tosin Ajayi, and Exhibit C9 (a-b) which is the certified true copy of the marriage certificate obtained from the Marriage Registry, Ijebu Ode, Ogun State, the Registry where the marriage is conducted.

He contended further that the Claimants have separately proved that the marriage between CW1 and the deceased subsisted till the deceased death

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and that till the death of her late husband and till the present date, the deceased matrimonial home with the 1st Claimant is at 6, Adedeji Close, Opebi, Lagos and the marriage was never dissolved by any court of law. He added that CW1 averred that the deceased played his role in fulfilment of his marital obligations during burial ceremonies of CW1's late parents. Also, in the year 2014, during the burial ceremony of the deceased's brother, CW1 also played her role as the wife of the deceased. He stated that the 1st Defendant who claimed to be the purported wife of the deceased could not point to any family function of the deceased where she was present as the purported wife of the deceased.

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The Learned Silk submitted that alleged marital separation between CW1 and the deceased and dissolution of marriage are not the same as it is not the law that mere purported separation between a husband and wife constitutes a dissolution of marriage. In the instant matter, there is no separation at all, not to talk of judicial separation.

He argued that on the clear and unambiguous content of Exhibit D23, there is a doubt as to the allegation of the Defendants that Exhibit C8 and C9 (a-c) did not exist in the record or archive of the Ministry. He stated that going by the content of Exhibit D23, what the Ministry asked for is the original of the Marriage Certificate as the copy submitted by the Defendants and in the word of the Ministry, she stated that " was not clear and visible enough for the Ministry to authenticate' and rather than producing a clearer copy to the Ministry, they refused to do so, thereby deliberately avoiding a possible confirmation by the Ministry of the authentication of the 1st Claimant's marriage certificate.

On the purported marriage between Late Dr. Tosin Ajayi and the 1st Defendant, Learned SAN submitted that the law is trite that customary law marriage, like every customary law, must be proved by the party alleging its existence because the law regards it as a fact, unless it passes the notoriety test and judicial notice is taken of the existence of it. He added that the Defendant failed to specifically plead the nature and ingredients of the Kalabari Marriage, being a matter of fact, as required by law and no

attempt was made at the trial to call evidence as to the customary law marriage of the Kalabari people. He stated that the only proof was a letter purportedly written by late Dr. Tosin Ajayi to the 1st Defendant's mother as evidence of marriage proposal and an online article as the basis of Kalabari customary law marriage. He referred to the case of Adeyemi and Ors vs. Bamidele & Anor (1968) ALL NLR 32 @ P. 34

On marriage conducted during the subsistence of a valid statutory marriage, he contended that the 1st Claimant had established that she conducted a statutory marriage with the deceased and in support of the averment, the 1st Claimant tendered Exhibit C8 and C9, and the Defendant did not however place any evidence before this Court to show that the 1st Claimant had dissolved her marriage with her late husband. He added that any marriage whether customary or statutory, conducted during the subsistence or pendency of a statutory marriage is of no effect. He referred to the provision of Section 35 of the Marriage Act and the case of Amobi vs. Nzegwu (2005) 12 NWLR (Pt. 938) 120 @ 138-139, Paras. H-B.

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He argued further that by paragraph four of DW1's Witness Statement on Oath, DW1 claimed that her daughter, the 1st Defendant and the deceased married under the Kalabari Customary Law in 1996, whereas by the content of Exhibit C7, the dissolution of the marriage between the 1st Defendant and her husband, Jimmy Tuoyo Davies, became absolute in January 1997. He added that since the marriage between the 1st Defendant and her husband, Jimmy Tuoyo Davies, became absolute in January 1997, the purported marriage conducted between the 1st Defendant and Late Dr. Tosin Ajayi whether in 1995 or in 1996 was invalid and illegal. He referred to the case of Amobi vs. Nzegwu (2014) 2 NWLR (Pt. 1392) 510 @ 562, Paras. G-H.

He also argued that to demonstrate the dishonesty and incoherence of the evidence of the 1st Defendant, the 1st Defendant in one instance claimed to have had common law partnership with the deceased and in another instance, claimed to be a civil companion with the Deceased, and yet again,

she claimed it was a Kalabari customary marriage. He referred to the case of *Emeka vs. Okoroafor* (2017) 11 NWLR (Pt. 1577) 410 @ 514, Paras. B-D.

On the alleged question of the 1st Defendant's official/legal name, the Learned Silk contended that in proof of the 1st Defendant's name, DW3 relied on several children's book as proof of her official name which does not suffice. He added that during cross examination of DW3, she claimed that she had changed her name vide an Affidavit, yet she failed to produce the said Affidavit or a government-issued means of identity, driver's license or international passport before the Court despite knowing that her true name is in issue before the Honourable Court. He referred to the case of *P.D.P vs. Degi-Eremienyo* (2021) 9 NWLR (Pt. 1781) 274 @ 290, Para. F

On the alleged doctrine of laches and estoppel. He argued that the alleged laches and estoppel is a mere afterthought given that the Defendants failed to plead these defences in their pleadings. Moreover, the nature of marriage between the 1st Claimant and her husband is a statutory marriage that admits of no other form of marriage during the subsistence of the statutory marriage. He added that the Defendants have failed to show that the 1st Claimant was aware of the purported marriage and that the 1st Claimant consented to the purported marriage, hence, the alleged conduct purportedly constituting estoppel or laches cannot be imputed to the 1st Claimant.

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He contended further that in any event, assuming without conceding that the 1st Claimant was even aware of any purported marriage between her husband and the 1st Defendant, it is the law that mere silence or refusal to act when the law has not imposed any duty to act cannot be regarded as estoppel so as to deny the 1st Claimant her statutory right to the estate of the deceased as his sole legal wife. He referred to the case of *Crosby vs. Crosby*, 769 F. Supp. 197 (1991) @ 199.

On entitlement of 1st Claimant to the Personal Chattels absolutely and one third of Estate of Late Dr. Tosin Ajayi, issue two, the Learned Silk submitted that the 1st Claimant has established that she was the legally

married wife of the deceased under the Marriage Act until his death in 2020 and that the deceased died intestate. He relied on the provision of Section 46(2) of the Administration of Estate Law of Lagos State, 2015. He added that the implication of this provision is that the 1st Claimant is entitled to one-third of the residuary estate of the deceased in addition to the personal chattels absolutely. He referred to the case of Amobi vs. Nzegwu (2005) 12 NWLR (Pt. 938) 120 @ 146, Pars. E-G

On the alleged meddling in the estate, he contended that the allegation of the Defendants are baseless and centres on dissipation of corporate properties which in the same vein and in their own words, they acknowledge are not part of the estate.

He urged the court to grant their prayers as contained in their Statement of Claim.

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On further response, the Defendant filed a Reply on Point of Law dated 30th March, 2026 and argued that the Exhibit C8 is a disputed original marriage certificate and the plenary trial in the case was ordered to enable the Claimants validate its authenticity as a public document. He added that photocopying the disputed original and taking to Ijebu Ode Marriage Registry for stamping as a CTC does not improve its admissibility or authenticity. He referred to the case of Adeniji vs. Onagoruwa (2000) 1 NWLR (Pt. 639) 1 CA 26, Para. F.

He argued that the Court has not pronounced on the authenticity of the contested document, their credibility is still in question, it is inexpedient to attach probative value to documents which have not even been determined as genuine.

He contended that on the argument of the Claimants that Exhibit D29 being undated made it inadmissible, where a document is undated or unsigned the purpose of tendering is a material consideration to determine its relevance and admissibility. He referred to the case of Ashakacem Plc vs. A.M.INV. LTD (2019) 4 NWLR (Pt. 1666) 447 @ 464, Paras. D-E.

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He also contended that the Claimants in paragraphs 2.4-2.7 and 4.15-4.17, 4.22, 4.23-4.26, 4.32-4.33, 4.48-4.63, 4.72-4.74 of their Final Written Address attempted to introduce and/or expand on facts not properly pleaded or established during trial. Such address cannot cure evidential deficiencies.

He therefore urged the Court to discountenance the arguments of the Claimants and grant the Defendants' case.

I have carefully examined the processes filed by the parties as well as perused the Exhibits and written addresses of both Counsel and it is my view that the issues to be addressed in respect of documents objected to would be:

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1. Whether the documents are admissible and if not what probative value or weight should be attached to them

The defendants have objected to the following documents: Exhibits C8, C9, C10, C11 and C12, while Exhibit D29 is objected to by the Claimant and D40 objected to by the defendant

In respect of Exhibits C8 and C9 the Defendants contest the authenticity of Exhibit C8 and that C9 is produced from C8 which they argue does not qualify as Certified True Copy as it is not a reproduction of the original or official record of marriage in lieu thereof by the statutory custodian.

Furthermore; The Defendant submitted that no weight or relevance should be accorded Exhibit C8 and 9 (A-B) as the purported marriage certificate has vital missing portions. He stated that the law requires a marriage certificate to have a serial number and for parent's name and surname to be written but none of these was on the face of both the purported original before the Court and the CTC tendered. He referred to the case of Ijioma vs. Ijioma (2009) 12 NWLR (Pt. 1156) 593 CA 610-611, Paras G-A.

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He also argued that the law requires copy of the Marriage Certificate to be kept at the marriage registry where the wedding was conducted and subsequently transmitted to the Principal Registrar's office and search conducted at the Ijebu-Ode Marriage Registry and the Principal Marriage Registry reveal that there is no record of such original Marriage Certificate of 1st Claimant and Late Dr. Tosin Ajayi.

The Learned Counsel to the Claimant in response argued that on Exhibit C8 & C9 (A-B), the Defendants have failed to show why probative value should not be attached to these exhibits. He further stated that under the column father's name and surname at the right-hand side of both exhibit C8 and C9, the names and surnames of the parents were boldly written. Both Exhibits C8 and C9 are in Form E as prescribed in the First Schedule to the Marriage Act. He stated that the original marriage certificate in Exhibit C9 are individually admissible as evidence of marriage.

He also argued that the Defendants have neither provided any contrary evidence to rebut the original or certified copy of marriage certificate nor called the officer who certified the document to disprove its genuineness.

While examining and evaluating the Exhibit C8 referred to; this Honourable Court observes that it contains the names of the couple as Oluwatosin Ajayi and Oluwayemisi Mamora, witnesses as I. Daniel and Abiodun Williams ; Residential Address as Plot 2 Aina Eleko Street, Maryland, Lagos and Merry Monarchy Mansion, Isapodo Quarters, Ijebu Ife residential address, rank,/profession of the couple, Fathers name as Mr. S. A. Ajayi and Chief K. Mamora

Other witness after signature of the Registrar Mrs E. F. Olalere and another name of a person described as Ajoalorun Ile ife

The Learned Silk, Counsel for the Claimant submitted that contrary to the assertion of the Defendants in paragraph 16 and 17 of the Defendants' Statement of Defence and paragraphs 19 and 20 of DW3

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Witness Statement on Oath, Exhibit D23 does not imply that the marriage certificate does not exist or is invalid. He cited paragraph 1 of Exhibit D23 which clearly stated that:

".... The copy of the Certificate of Marriage forwarded was not clear and visible enough for the Ministry to authenticate, accordingly, you may wish to present the original copy of the said Marriage Certificate at the office of the Director, Citizenship and Business for sighting and authentication."

He argued that other than the said Exhibit D23, no subsequent correspondence occurred between the Defendants' counsel and the Ministry who requested for further document. Hence, it is misleading for the Defendants to conclude that the Marriage Certificate does not exist.

Looking through the documents tendered specifically Exhibits C8 and C9, both documents are very legible to this honourable court. The Claimants went the extra mile of producing a CTC. Even if the arguments of the Defendant avail them on Exhibit C9, it cannot avail them in respect of Exhibit C8. Both are already exhibits of court and although this honourable court has the power to expunge same at judgment stage or even attach probative value to them. The said documents are found to be admissible relevant, pleaded and admissible.

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This is partly because, it is the Claimants who had challenged the authenticity of the marriage certificate. They wrote to the Ministry of Interior via their Exhibit D20, D21 and D22 who responded via Exhibit D23. The content of the said Exhibit as previously stated above is as follows and I quote:

RE: APPLICATION FOR SEARCH ON AN ALLEGED MARRIAGE BETWEEN LATE DR. TOSIN AJAYI AND OLUYEMISI AJAYI AND AN APPLICATION FOR A CERTIFIED TRUE COPY OF THE MARRIAGE CERTIFICATE IF ANY.

I am directed to acknowledge your letter dated 10th January, 2022 on the above subject and to inform you that the copy of the Certificate of

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Marriage forwarded was not clear and visible enough for the Ministry to authenticate, accordingly, you may wish to present the original copy of the said Marriage Certificate at the Office of the Director, Citizenship and Business for sighting and authentication.

Please accept the assurances of the Honourable Minister's warm regards.

End of quote

The submission of the Learned Counsel to the Claimant is that the defendants failed to respond to the above correspondence nor provide the clearer copy or original as requested. I agree with the submissions of the learned Claimant Counsel.

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They have argued that the burden of proving that the marriage certificate being Exhibit C8 was not authentic lay on the Defendants who are making such allegations. I agree with them. It is the law that he who asserts must prove. See the case of *I.G.N (Nig) Ltd & Anor V. Pedmar (Nig) Ltd & Anor* (2013) LPELR-41064(CA) (Pp. 53 paras. A) where the court stated this position of the law as follows:

"Stated in a nutshell - "he who asserts must prove" - see *Kalu V. Uzor* (supra). It is the party that asserts the existence of a particular fact that must prove it; if he fails to prove that fact, his case will definitely collapse like a pack of cards." Per AUGIE, J.C.A

The said Exhibit C8 is documentary evidence of a statutory marriage. It is settled law that documentary evidence, which is not effectively challenged in any manner pejorative to its integrity and authenticity, must be believed and acted upon by the Court. - See *GWACHAM V. ILONDU & ANOR* (2016) LPELR-42095(CA)." Per SENCHI, J.C.A in *Ibrahim V. Shinkaye & Anor* (Pp. 39 paras. D)

This Honourable Court finds that the said Exhibit C8 was not successfully challenged. And I so hold

I therefore overrule the objections of the learned defendant counsel on this issue and will ascribe probative value on this over 50-year-old

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document. I will however not attach any weight to Exhibit C9 which is a merely a copy of Exhibit C8 certified by the Ijebu Ode Marriage Registry.

In respect of the 3rd document being Exhibit C10 the Defendants counsel argued that Exhibit C10 (A-B) is a mere plain sheet of paper, headed Board Resolution, bereft of the letter head, listed directors, nor co-signed by a secretary. He additionally stated that the Claimants presumptuously but fatally treated the written resolutions as private document, but by the provisions of section 237(4) of CAMA, 2020 resolutions must be filed within 15 days of passing same, a vital statutory step they neglected and for which time has long elapsed.

In response, the Claimant argued that Exhibits C10 (A-B) can only be referred to as public document only when it is lodged with the Corporate Affairs Commission, thus, the said exhibit remains a private document until it is received by CAC. More so, the original of Exhibit C10 (a-b) is not with the CAC as to qualify it as public document. He referred to the case of I.G.P vs. Bello (2023) 1 NWLR (Pt. 1865) 265 @ 306-307, Paras. H-B.

He further contended that assuming without conceding that Exhibit C10 (a-b) is an original of a public document, the exhibit will still be admissible and probative value will be placed on it because CW1 (the 1st Claimant), through whom the document was tendered, was the maker and signatory to the said Exhibit C10 (a-b) and can speak to the authenticity of the content of the document without the requirement of certification.

The instant case is distinguishable from the case of STERLING BANK PLC v. SAMAK ASSOCIATES LTD & ORS (2021) LPELR-56409(CA) (Pp. 22 paras. C) where the court held that;

"... As rightly submitted, even as a private document, the purported board resolution, will still fail the test of admissibility, because among other things, the person through whom it is sought to be tendered is not the

maker, he cannot answer any questions regarding its content, because he lacks personal knowledge." Per MUSTAPHA, J.C.A

The witness in the box being CW1 was actually the maker of the said Exhibit D10.

See ANAGBADO V. FARUK (2016) LPELR-41634 (CA) where it was held that:

"What qualifies as public or private document has been defined under Section 102 of the Evidence Act 2011 thus: "The following documents are public documents: - (a), documents forming the official acts or records of the official act of - (i) the sovereign authority; (ii) official bodies and tribunals; or (iii) public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and (b) public records kept in Nigeria of private document". Section 103 of the Evidence Act provides that - "All documents other than public documents are private documents Per BDLIYA, JCA (P. 15, paras. B-E) See also the case of Ighodaro V. Ighodaro & Ors (2025) LPELR-81709(CA) (Pp. 61-62 paras. D)

The document sought to be tendered is pleaded, admissible and relevant. The Claimant are in custody of the said document as same has not been lodged with the Corporate Affairs Commission it can therefore only be classified as a private document which they are entitled to do since the said document is not in public custody. As a result, this honourable court is not inclined to expunge the said document and will also attach the necessary weight to it and I so hold

In respect of Exhibit D40; being Judgment of the Court of Appeal dated 20th September 2024 in Suit Number CA/LAG/CV/15/2022 in the case between Miss Tomisin Ajayi and Anor V First Foundation Medical Engineering Co. Ltd and 3 Ors, the Learned Counsel argued that the said judgment albeit its admissibility has nothing to do with the instant suit and the substantive derivative action brought by the Defendants or the injunction granted in Exhibits D14 and D24. He further stated that it has no weight or probative value on the matter before this Court.

In response, the Learned silk argued that Exhibit D40 is a judgment in Suit No: FHC/L/CS/900/2021 between Miss Tomisin Ajayi & Anor vs. First Foundation Medical Engineering Co. Ltd & 3 Ors, which arose from the action filed by the Defendants before the Federal High Court. The decision in Exhibit D40, touches on issues submitted before this Court for determination, especially as regards the power of the 1st Claimant to deal with the affairs of First Foundation Engineering Company Ltd, whose shares form part of the estate of Late Dr. Tosin Ajayi and is therefore distributive as such in this case.

He also added that the Defendants never denied the judgment of the Court of Appeal as arising from the decision of the Federal High Court which they have relied upon before this Honourable Court. Hence, the judgment is not only relevant, but also admissible in evidence. He referred to the case of Iregu vs. State (2025) 13 NWLR (Pt. 2002) 189 @ 226, Paras. A-C.

I agree with the submissions of the learned Claimant Counsel and therefore overrule the objection of the defendant counsel.

In respect of Exhibit D29B, the Claimant's counsel argued that Exhibit D29 is a photocopy of an undated Deed of Assignment which is also unregistered. He further stated that DW3 is not the maker of Exhibit D29 and is therefore inadmissible. He referred to the case of Chinedu vs. Osawota & Ors (2021) LPELR-56058 (CA).

He therefore urged the Court to expunge Exhibit D29 from the list of exhibits admitted before the Court. In response, learned Counsel to the Defendant argued that the Deed of Assignment (Exhibit D29) is admissible in the instant case for the purpose it was pleaded and tendered as evidence of misconduct, not evidence of title. He referred to the case of TAAN vs. SCOA (Nig.) Plc (2025) 6 NWLR (Pt.1985) 1 @ page 62, Paras. C-D. He further stated that the Deed of Assignment was signed and executed by the 1st Claimant on behalf of Late Dr. Tosin Ajayi's company dissipating the property of the estate of Late Dr. Tosin

Ajayi to the Assignee mentioned therein. The 1st Claimant never denied her signature on the said Exhibit D29 and she never alleged its forgery whatsoever.

He argued that where a document is undated or unsigned, the purpose of tendering is a material consideration to determine its relevance and admissibility. He referred to the case of Ashakacem Plc vs. A.M. Inv. Ltd (2019) 4 NWLR (Pt. 1666) 447 @ 464, Pars. D-E.

As stated in Ruling of this Honourable court on 24th January 2024:

It is settled law that the issue of admissibility of any documentary evidence is governed by the principle as to whether or not the document is pleaded by the party(ies) to the proceedings; whether it is relevant to the subject matter of inquiry by the Court or tribunal and whether it is admissible in law. Per ONNOGHEN, J.S.C in Okoye & Anor A. Obiaso & Ors (2010) LPELR-2507(SC) (Pp. 21-22 paras. F)

This Honourable court finds the said document is pleaded relevant and admissible.

The reason for tendering the said Exhibit D29 has been clarified by the Defendant. It was not tendered to show proof of title. Same is therefore relevant for the purpose it is being tendered.

Based on the above, all objections to the already admitted Exhibits are hereby overruled.

Now in respect of the final written addresses the court will adopt the issues as formulated by the defendants' counsel as follows:

1. Whether the Claimants are entitled to the declaratory reliefs sought in their Statement of Claim?
2. Whether the 1st Defendant is a surviving wife entitled to participate with the 2nd to 5th Claimants and the 2nd Defendant in the administration of the estate of late Dr. Tosin Ajayi

The issues will be taken seriatim.

As a preliminary point however, learned counsel to the defendants has contended via their Reply on points of law that the Claimants in paragraphs 2.4-2.7 and 4.15-4.17, 4.22, 4.23-4.26, 4.32-4.33, 4.48-4.63, 4.72-4.74 of their Final Written Address attempted to introduce and/or expand on facts not properly pleaded or established during trial. Such address cannot cure evidential deficiencies.

He therefore urged the Court to discountenance the arguments of the Claimants and grant the Defendants' case.

This honourable court is aware that addresses no matter how brilliant can not take the place of evidence and I refer to the case of in *ANGADI v. PDP & ORS* (2018) LPELR-44375(SC) (Pp. 51 paras. B) where the apex court held that; "It has to be stated that address of counsel does not take the place of evidence. *Adua v Essien* (2010) 14 NWLR (Pt.1213) 141 at 167; *Atamah v Ebosele* (2010) All FWLR (Pt.1925) at 19394." Per PETER-ODILI, J.S.C

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I have however gone through the said paragraphs and do not see how facts have been expanded and will therefore not discountenance arguments contained in the said paragraphs of the Claimants final written address.

Now back to the issues raised above:

In order to respond to the first issue raised, it is essential to note that the basis of the Claimants case is that the 1st Claimant has a statutory marriage with the deceased Dr. Tosin Ajayi backing same up with Exhibits C8 and C9. That despite not staying at the matrimonial home due to security reasons after the death of Dele Giwa in his facility at No. 6 Adedeji Close, Opebi, Lagos in 1986 they were in contact with each other. CW1 stated under cross examination that her deceased husband comes and goes. That he started by staying in hotels and was a responsible husband to her and a good father to her children.

Some of the Exhibits relied on were Exhibit C8 being the original marriage certificate, Photographs of People including the Claimant and the Deceased Dr. Tosin Ajayi with uniform headgears, one original and 2 photocopies

admitted and marked Exhibit C3 A-C. to show her continued relationship with the said Dr. Tosin Ajayi.

Also is brochure produced for the funeral of Dr Tosin Ajayi where at page 6 and 7 is assumably a picture of her wedding with Dr Ajayi as well as her tribute stating most of what she has informed this Honourable Court of at trial. Some of the contents were and I quote;

We were living together with our five children happily until one day when you informed me you needed to stay away from home for "security reasons". Your explanation sounded reasonable to me and I consented, and you were still visiting home almost on a daily basis. I usually try to go along with your wishes to avoid what could affect the children adversely.

Thank you for all your hard work for the family. You worked so hard to provide for the children. Our welfare was always your priority.

You were particularly focused in ensuring the children have the best, always saying that the children must be more successful and have greater achievements than us.

Thank you for your decades of love and friendship. I am grateful for all the years we worked together and how you continued to check up on me. I appreciate all your financial and other gifts over the years. I am thankful for your presence as well as your financial contributions towards the funeral ceremonies of my late father in 1999 and my late mother in 2015. I am grateful that you were always thanking me for looking after the children and seeing to their welfare even when you were not around. Thank you for always being proud of me and the children.

Despite everything, I never lost faith in our love. I consistently prayed for you. I also prayed and waited for your return and hoped that you would return home someday. But God knows best. I continued living in the first house we built since 1980 and you never asked me to leave the house.

End of quote.

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From the above, the Claimant has confirmed that the deceased left the matrimonial home in 1986 and never came back although may have stayed in touch. He also attended CW1's Late Father burial in 1999 and her mother in 2015. It is also clear from the Exhibits tendered that all the properties purchased by the deceased were either in his name or in the name of the companies he registered which only had him and the first Claimant as shareholders and directors. None of the properties were purchased in the name of the 1st Claimant.

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What is also clear is that for several years, the deceased showcased the 1st defendant as his partner with the 1st Claimant watching without batting an eyelid. Under cross examination on whether the 1st Claimant challenged the 1st defendant, her response was that they are many, how many will I challenge? Although in pictures tendered being Exhibit C3A to C, the deceased and the 1st Claimant do not look estranged in any way; also there are no picture showing the 1st Defendant in any family event except for the wedding of the 5th Claimant.

Also clear is that despite not living with the 1st Claimant, he lived up to his responsibilities and never attempted to divorce the 1st Claimant.

The Claimants further contend that the Defendants relied on letters (Exhibits D20-D22) sent to the Federal Marriage Registry seeking verification of the marriage. However, these letters do not constitute proof that the marriage certificate is invalid or non-existent. The Ministry's response (Exhibit D23) merely stated that the copy provided was unclear and requested the original certificate for sighting and authentication. It did not state that the marriage never existed or that the certificate was invalid.

Furthermore, during cross-examination, DW3 admitted that Exhibit D23 did not say the marriage between the 1st Claimant and the late Dr. Tosin Ajayi never existed. The Claimants therefore argue that the Defendants have misinterpreted the Ministry's response and are attempting to create the false impression that the marriage certificate does not exist.

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The Claimants also point out that the Defendants failed to provide the Ministry with a clearer copy or the original certificate for authentication, despite the Ministry's request. No further correspondence was made with the Ministry after Exhibit D23, making the Defendants' conclusion that the certificate does not exist unsupported by evidence.

Additionally, during cross-examination, DW3 acknowledged that she did not write to the Marriage Registry in Ijebu-Ode—the registry that conducted the marriage and maintains the relevant records—although she claimed to have conducted a search there without finding any record. The Claimants maintain that the Defendants have failed to produce credible evidence on the non-existence of the marriage certificate of the deceased Doctor Tosin Ajayi and the 1st Claimant.

The defendants tendered Exhibits D20, D21, D22 being letters, reminders dated 2nd November 2021, 17th November 2021 and 18th November 2021 to the Ministry of Interior headed Application for search on an alleged marriage between late Dr. Tosin Ajayi and Oluyemisi Ajayi. The response is dated 8th March 2022 which has been captured above.

The Claimants argue that the Defendants' allegation that the marriage certificate does not exist effectively amounts to an accusation that both the original marriage certificate (Exhibit C8) and its certified true copy (Exhibit C9) are forged. Since forgery is a criminal allegation, it must be proved beyond reasonable doubt, as established by the Supreme Court in *Onubogu v. Anazonwu* (2023).

The arguments of the learned Claimant Counsel are sound and unimpeachable because, if the allegation is that the marriage certificate of CW1 and the deceased is not authentic or genuine, it means that same is forged or fake which is a criminal offence. I agree with the standard of proof would be beyond reasonable doubt.

While addressing a similar issue in the case of *STATE v. ONYEUKWU* (2004) LPELR-3116(SC) (Pp. 44-45 paras. 6) the court held as follows:

"It must be stated and emphasized that proof beyond all reasonable doubt does not mean or import or connote beyond any degree of certainty. The term strictly means that within the bounds of evidence adduced and staring the Court in the face, no tribunal of justice worth its salt would convict on it having regard to the nature of the evidence led and the law marshalled out in the case. It can be said that evidence in a criminal trial that is susceptible to doubt cannot be said to have attained the height or standard of proof that can be said to be beyond all reasonable doubt. Regardless of what one might think in a given state of affairs in a given case, neither suspicion nor speculation or intuition can be a substitute for a proof beyond all reasonable doubt. It is a proof that precludes all reasonable inference or assumption except that which it seeks to support and must have the clarity of proof that is readily consistent with the guilt of the person. The expression beyond all reasonable doubt should not be susceptible to any ungainly and abstract construction or understanding. A priori, it is a concept founded on reason and rational and critical examination of a state of facts and law rather than a fanciful, whimsical or capricious and speculative doubt." Per PATS-ACHOLONU, J.S.C.

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In the instant case, it is clear that the defendants never went back to give the Ministry of interior a clearer copy of the marriage certificate, the original marriage certificate or at all. Burden of proof in respect of the lack of authenticity of the said marriage certificate has therefore not been satisfied and I so hold.

As stated above, the arguments of the learned Defendants Counsel though brilliant cannot fly in respect of Exhibits C8 which is the original of Certificate of marriage between the 1st Claimant and the deceased Dr. Tosin Ajayi on the 6th July 1974.

As a result, this Honourable court restates its finding that Exhibit C8 complies with the requirements of the law and is valid and I so hold.

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yes, the said deceased Dr. Tosin Ajayi did not fully stay in the matrimonial home and probably stayed more at No 39, Glover Road, Ikoyi, Lagos and in the UK but despite that, he never deemed it necessary to file divorce proceedings, he retained the 1st Claimant as the Director and Shareholder in his companies being First Foundation Medical Engineering and Company Ltd and several other subsidiaries.

The Defendant tried to establish that even if there had been a marriage, the 1st Claimant and the deceased Dr. Tosin Ajayi they were divorced and separated for over 35 years before Dr. Ajayi passed.

Under cross examination Claimant Counsel asked the DW3 as follows

CLAIMANT COUNSEL: Look at paragraph six, you alleged that the couple were separated; is that correct.

A. Yes.

Q. Do you have the certificate of their marital separation?

A. No.

While examining a similar situation in the case of AMAKA EZEAKU v. DELPHINE ZIKERE OKONKWO & ANOR (2011) LPELR-57009(CA) (Pp. 27-36 paras. D) the court held as follows;

In the instant case, the bottom line is that there is no proof of dissolution of marriage between the appellant and J.C. Okonkwo (deceased). The fact of living apart for 17 years and the content of the affidavit (Exhibit 'A') does not provide sufficient moral or legal justification to hold that the said marriage had ceased to subsist prior to the death of the deceased." Per OSEJI, J.C.A

In the case at hand the Defendant has no proof of dissolution of marriage nor separation. It is the law that he who asserts must prove. See the case of in NASIRU v. STATE (2025) LPELR-83134(SC) (Pp. 38 paras. C-C)

where the apex court held that: "... the law still remains that he who alleges must prove." Per OKORO, J.S.C. The Defendants were not able to prove dissolution of marriage of the deceased Dr. Tosin Ajayi and the first Claimant. In fact, the 1st Claimant remained in her matrimonial home being Number 6, Adedeji Close, Opebi, Lagos till the death of Dr Tosin Ajayi

In the case of AMAKA EZEAKU v. DELPHINE ZIKERE OKONKWO & ANOR (2011) LPELR-57009(CA) (Pp. 27-36 paras. D) while examining a similar situation as the current one, the court held as follows;

"The issue then, is whether the fact of separation for 17 years between the appellant and her deceased husband and the affidavit sworn to by him in 1998 is enough to hold or even imply that the appellant was divorced from her husband before his demise in 2005.....To my mind, when there is evidence of the de facto celebration of marriage either under the Marriage Act or under customary law there is a very strong presumption in favour of the validity of the marriage. In the same vein, the said marriage cannot be said to have been dissolved by mere wishful thinking or assertion as in the instant case. **CERTIFIED TRUE COPY**

There is a standard process for the dissolution of marriage whether statutory or customary and concrete evidence that the necessary requirements were satisfied must be adduced before a Court can hold that there has been a divorce and the validly contracted marriage between a couple had formally and legally come to an end...

This Honourable court finds that the 1st Claimant celebrated a statutory marriage on 6th July 1974 and never divorced. The 1st Claimant seems like a witness of truth giving her testimony with candour, honestly without embellishment. The 1st Claimant may have been an estranged wife but certainly not divorced. The 1st defendant herself was able to produce evidence of her divorce from her 1st husband but none is available in respect of the 1st Claimant and the deceased Dr Tosin Ajayi. **CERTIFIED TRUE COPY**

On ownership of property by spouses, the court held in the case of Onyia & Anor V. Nwaigwe (Pp. 28-31 paras. C) that:

"It is also an elementary knowledge, that the presumption of joint ownership of property exists between husband and wife, while the marriage subsists, and that the party that survives the other, inherits such property, and has power to administer it, the way he/she wants, this principle applies especially in statutory law marriages (or monogamous marriage). Per MBABA, J.C.A

Based on the above analysis, issue one is resolved in favour of the Claimants.

In respect of the second issue raised above on: Whether the 1st Defendant is a surviving wife entitled to participate with the 2nd to 5th Claimants and the 2nd Defendant in the administration of the estate of late Dr. Tosin Ajayi: The evidence provided shows that the 1st defendant openly moved about with the deceased: attended several events with him and was celebrated by him during her 50th birthday, but there is no clear evidence that he ever formalised the relationship. Exhibit D1 which is a handwritten letter dated 14th March 1996 a day after the decree nisi shown at Exhibit C7 was granted to CW1 and I quote same for clarity as follows:

Dear mum,

I am sorry I am writing you a letter before I have the opportunity of meeting with you. Actually, I considered coming to Lagos this weekend to see you but on second thought, I feel coming to Port Harcourt will be more appropriate and that I'll do as soon as you are back home

I guess I need little introduction as I think Helen would have told you as much as she can remember about me. I will answer all your questions when we see, and you'll know me better then

I am able to appreciate the love, and respect Helen has for you and members of her family. In fact, know Helen very well bestows respect for her family as we all mirror our parents in one way or the other. Also a disciplined, caring, loving daughter reflects her mother.

I personally thank you very much. May God bless you and give you healthy long life to enjoy us all

Mum, I am sure about this and you have it in writing.

I love Helen with a passion and she knows it. I pray to God to give me the wisdom and knowledge and everything I need to love and care for and make her a happy woman. End of quote.

I have read the said letter several times and find that apart from planning to visit the 1st defendants' mother in Port Harcourt, nothing was said about Calabari marriage.

Also to support their case is the downloaded article on Calabari marriage being Exhibit D2 and I quote some portions as follows;

This form of marriage often allows the couple to stay together until a substantive amount of bride price is paid. Most often, few members of the families come together to receive a little token from the groom and the bride is allowed to stay with the groom as a wife. The most important thing is that consent is sought, and approval granted by both parents and relations before the bride is given over to the groom. Again, the token to be paid is not determined by the bride's parent; it is offered by the groom waiting for the substantive amount to be paid.

Another form of marriage, which improves on the Ari Ibara emi is called "Iru sama" that is to mean, present drink to the parents of the bride. This form of marriage in traditional Calabari is recognized since the consent of the parents is sort for and approval granted. The groom and his family members can pay some amount of bride price and his household: and some to the mother

the groom's house to spend the night with her husband. It is the night of "bo ari ilekiri" "come let me know you" (meaning that, the groom had not had a carnal knowledge of the bride until that particular night when the relationship would be consummated).

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The third category of marriage in traditional Kalabari which is higher in status and is prestigious is called "Igwa Sime". Igwa Sime is not as expensive as that of Iya Sime, which is the highest in rank and prestige. Nevertheless, children produced in Igwa Sime are as honourable and respected as that of the Zya Sime. The main difference between them is that an Igwa marriage, the wife would be taken over to his parents' house if and when she dies. Her children may not be recognized in the sharing of the father's wealth if there was no written will made by the father. End of quote

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The above shows that the types of Kalabari are further broken down into three. The defendant failed to supply the information on which one was carried out, when it was carried out, who attended the said Kalabari customary marriage if at all.

In the case of EKONG & ANOR v. AKPAN (2020) LPELR-49575(CA) (Pp. 19 paras. A) the court held as follows:

"The provision of Section 166 of the Evidence Act deals with presumption of marriage and it provides that:- "166, when in any proceeding whether civil or criminal, there is a question as to whether a man or woman is the husband or wife under Islamic or customary law of a party to the proceeding the Court shall, unless the contrary is proved, presume the existence of a valid and subsisting marriage between the two persons where evidence is given to the satisfaction of the Court of cohabitation as husband and wife by such man and woman." In ANYAEGBUNAM V ANYAEGBUNAM (1973) LPELR 507, the Supreme Court has held that it will be inappropriate to suggest that the only way to prove a birth, death or marriage is by the production of the relevant certificate or a certified copy thereof. Thus, where there is evidence of a ceremony of marriage having been gone through, followed by the cohabitation of the parties, everything necessary for the validity of the marriage will be presumed; in the absence of decisive evidence to the contrary, even though it may be necessary to presume the granting of a general licence." SHUAIBU, J.C.A

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In the instant case, this honourable court finds that there is no evidence of any celebration of marriage between the Defendant and the deceased Dr. Tosin Ajayi and I so hold

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Furthermore, in Exhibit D14 being affidavit Tomisin Ajayi at paragraph 5b; The 2nd defendant stated on oath that and I quote; *The relationship between my late father and mum commenced in year 1995 after both parties had terminated their previous spousal commitment to their erstwhile marital partners. As the experiences of their previous spousal relationship ended bitterly and with sour memories, they took a joint decision to cohabit as common law partners as allowed and recognized in the United Kingdom where they co-habited and maintained a second home.* End of quote. This was the affidavit of Miss Tomisin Ajayi on the 23rd July 2021

Also in Counter affidavit dated 16th December 2020 (Exhibit C4) in Suit No ID/7096GCMW/2020 in opposition of the originating summon dated 29th July 2020, the deponent being Sesan Adebayo, a litigation Assistant in the law firm at Synergy Attornies counsel to the defendants on the authority of the current defendants stated that and I quote;

The 3rd Defendant, contrary to paragraph 7 of the Supporting Affidavit, was not a mere friend of the deceased, but was his Partner and Civil Companion for the past twenty-five years prior to his death. The loving relationship was blessed with a daughter who is now 22 years of age born to them in London in 1998. End of quote

The evidence given by the Defendants therefore seem contradictory, inconsistent and tailored for this particular case, especially based on evidence in previous proceedings.

While addressing a similar issue in the case of Chukwuma V. Chukwuma & ors (2009) LPELR-11907(CA) (Pp. 31-32 paras. D) the court held as follows;

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"I think at this stage it will be only fair if the correct position of the law on evidence of witness taken in an earlier proceeding is stated. The law is

trite and well settled too, that evidence of a witness taken in an earlier proceedings is not relevant in a later trial or proceeding except for the purpose of discrediting such a witness in cross-examination and for that purpose alone. In *Ariku vs. Ajiwogbo* (1962) All NLR (Pt.4) 629, Ademola CJF (of blessed memory) delivering the judgment of the Supreme Court succinctly stated the law as follows: "This Court has frequently directed attention to the practice now not uncommon of making use of evidence of witness in the case on trial. As was pointed out in *Alade vs. Aborishade* 5 FSC 161 at 171, this is only permissible under Section 33 or 341 of the Evidence Act. Where a witness in a former case is giving evidence in a case in hand his former evidence may be brought up in cross-examination to discredit him if he was lying but evidence used for this purpose does not become evidence in the case in hand for another purpose. There are also prerequisites to the making use of the former testimony of a witness; for example this allusion must be called to the former case where such evidence was given and he would be reminded of what he had said on the occasion." (Emphasis supplied by me). See also *Adeyemi Ogunnounge vs. Taiwo Ojeyemi* (1987) 3 SC 213." Per SANUSI, J.C.A

From the above, it is clear that the Claimants have successfully discredited the evidence of DW2 and DW3 and I so hold.

Furthermore, the 1st defendant who tried as she could apparently adopted the name Ajayi without any formal marriage. Although, she tried to establish having a Kalabari customary marriage, there was no date indicated of the marriage, nobody called as witness to testify to attending the said marriage and even DW1 being Ella Prest mother of the 1st defendant stated under cross examination that there were no pictures which seems strange for a former Miss Nigeria who seemed to love pictures.

In all the 1st Claimant seemed more like a witness of truth. This I say because several documents tendered such as Exhibit C8 and C3A to C, while in all previous processes the 1st defendant was referred to as a Civil law partner or Common law companion. Nothing was mentioned about Kalabari marriage until now.

Also is Exhibit C4 affidavit of Sesan Adebayo with the authority of the defendants deposed to at the Federal High Court which has already been reproduced above.

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Other Exhibits tendered by the Defendants are Exhibit D3A TO E D6 A and B, D7 which are books, D8, D9, D10, D15, D16; sitting plan at the wedding of the 5th Claimant and D36, D38, D39 are all pictures and publications over the years where DW3 was addressed as Helen Prest Ajayi or Helen Ajayi. The Claimant Counsel had argued that DW3 relied on several children's book as proof of her official name which does not suffice. He added that during cross examination of DW3, she claimed that she had changed her name vide an Affidavit, yet she failed to produce the said Affidavit or a government-issued means of identity, driver's license or international passport before the Court despite knowing that her true name is in issue before the Honourable Court

Furthermore, by Exhibit C5 and C6 dated 27th April 2020 and C11 dated 16th September 2020; she addressed herself as Helen Davies! This is also contradictory as it seems she is also not sure whether she is married to the deceased or not.

Exhibit D11 however shows her privileged and solid background and heritage.

In a recent inaugural lecture delivered on the 3rd of June 2026 by Professor Oluwakemi Mary Adekile at the University of Lagos on Unequally yoked; matrimonial property rights not a promise of law. The Professor defined cohabitation at page 47 as and I quote; the mere living together of a man and a woman in an intimate relationship, but without lawful marriage. She noted that cohabitation has become a common practice even in Nigeria with the increasing number of relationships producing babies out of wedlock. She referred to the under the English law, that Nigeria does not recognise cohabitation in the sense that parties are not recognised as a married couple and enjoy no automatic property rights. It is often said that cohabitants ignore the law and the law ignores them. End of quote

The above is apparently what played out in the instant case as the defendants stated during their testimonies that they had a second home in the UK.

It all seems unfortunate because it can be seen from the several Exhibits tendered by the Defendant that she was portrayed publicly as having a relationship with the deceased. She allegedly had 3 children for the deceased but only one survived. However, there was no evidence to prove any form of marriage to the deceased Dr Tosin Ajayi. I must say with due respect that sitting with the deceased, taking pictures with him, taking care of him, taking him to the hospital, living with him and even having children for him, does not materialise into having a legal marriage recognised under the law.

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Also, unfortunate is that the deceased Dr Tosin Ajayi was a renowned medical practitioner, a Cardiologist and Administrator (as indicated in Exhibit C14) in a relationship with the 1st Defendant who is a lawyer of over 40 years. The deceased did not tidy up his affairs before his death probably because it was unexpected and sudden, while the 1st defendant failed to do due diligence about the deceased marital status nor insist on the formalisation of their relationship. Now here we are.

In the case of *Amobi V. Nzegwu & Ors* (2013) LPELR-21863(SC) (Pp. 61 paras. D) "Marriage under the Marriage Act generally means the legal union of a couple as spouses. In other words, it is "the voluntary union for life of one man and one woman to the exclusion of all others." See: *Hyde vs. Hyde and Woodmansee* (1866) LRP & D 130, per Lord Penzance." Per *ARIWOOLA, J.S.C*

Learned Defendant Counsel had suggested that at best the 1st Claimant was married under Yoruba Customary law which does not allow her to inherit and that the 1st Claimant and the 1st defendant at a point were agreed as to being co wives. With due respect, the argument of the Learned SAN for the Defendant on this issue cannot fly.

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While examining a similar issue in the case of Nola & Ors V. Graham-Douglas & Anor (2019) LPELR-48285(CA) (Pp. 14-16 paras. E) the learned trial Judge cited and quoted Section 33 (1) of the Marriage Act which provides that "No Marriage in Nigeria shall be valid where either of the parties thereto at the times of the celebration of such marriage is married under Customary law to any person other than the person with whom such marriage is had." His Lordship then stated that: "The above provision is very clear, it gives due respect and credence to a preexisting customary marriage. It provides no dichotomy between a marriage under the Act and under Customary Law in the sense of one being main and the other minor... In view of the clear provision of Section 33 (1) of the Marriage Act and having regard to the fact that there was an existing customary Iya marriage between the late Chief Donald Graham-Douglas and the late Mrs. Gladys Claudiana Graham-Douglas, it is very clear that the marriage between the late Chief Donald Graham-Douglas and the 2nd defendant was invalid. That being the case, it follows that the 2nd defendant was in law, not the wife of the late Chief Donald Graham-Douglas and therefore cannot be described as the sole surviving wife of the late Chief Donald Graham-Douglas." Per AKEJU, J.C.A

In Mgbodu V. Mgbodu (2018) LPELR-43770(CA) (Pp. 7-9 paras. B) the court while examining the provision of the law held as follows;

"Section 35 of the Marriage Act provides as follows:

35. Any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law; but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriages so contracted. (Underlining mine) The Appellant in this case has strenuously argued that the proviso hereinabove recognizes customary law despite a prior celebration of a statutory marriage. That couldn't be more wrong. The underlined phrase 'SAVE AS AFORESAID' which translates as 'EXCEPT AS STATED ABOVE'

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completely put paid to the erroneous arguments of the Appellant. Without much ado, what Section 35 simply means is that any marriage celebrated in accordance with customary law shall be valid notwithstanding anything contained in the Marriage Act EXCEPT where it is invalid by reason of the existence of a Statutory marriage before the said customary marriage. In other words, the only condition that can invalidate an otherwise proper marriage conducted in accordance with customary law is when one of the parties to the customary marriage was at the time the customary marriage was conducted, married to another person under the Marriage Act and the marriage was still subsisting. Let me say that while a subsequent Statutory marriage by or to a person who is either married under the Act or in accordance with Customary law is forbidden, subsequent marriage under the Act or in accordance with Native law and Custom is not forbidden under any law where the parties remain the same. In other words, where Mr. A marries Mrs. A in accordance with Native law and custom, they can proceed to conduct another marriage under the Act if they so wish and vice versa. However, during the pendency of either a marriage in accordance with Native law and custom or a marriage under the Act, Mr. A or Mrs. A cannot validly conduct any marriage with another person under the Act. This is the position of the law as provided in Section 33 (1) of the Marriage Act as follows:

33. (1) No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had.

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That been said, the proviso in Section 35 as I said earlier in this judgment is irrelevant to the circumstances of this case where there was a valid and subsisting statutory marriage " Per OGUNWUMIJU, J.C.A

The Claimant had also raised the issue of when the first marriage terminated stating that as the time she purportedly married the deceased Dr Tosin Ajayi, her divorce to Mr. Davies had not been finalised. They referred to paragraph four of DW1's Witness Statement on Oath, where

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DW1 claimed that her daughter, the 1st Defendant and the deceased married under the Kalabari Customary Law in 1996, whereas by the content of Exhibit C7, the dissolution of the marriage between the 1st Defendant and her husband, Jimmy Tuoyo Davies, became absolute in January 1997. He added that since the marriage between the 1st Defendant and her husband, Jimmy Tuoyo Davies, became absolute in January 1997. They submitted that the purported marriage conducted between the 1st Defendant and Late Dr. Tosin Ajayi whether in 1995 or in 1996 was invalid and illegal. He referred to the case of *Amobi vs. Nzegwu* (2014) 2 NWLR (Pt. 1392) 510 @ 562, Paras. G-H.

In the case of *AMOBİ v. NZEGWU & ORS* (2013) LPELR-21863(SC) (Pp. 52 paras. B-B) the court held that:

"...by Section 58 of the Matrimonial Causes Act, a decree nisi becomes absolute at the expiration of three months after its issuance." Per PETER-ODILI, J.S.C

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"In that case, the Apex Court further held that "Decree nisi is "a Court's decree that will become absolute unless the adversely affected party shows the Court within a specified time, why it should be set aside." Whereas, decree absolute is a ripened decree nisi, that is, a Court's decree that has become unconditional because the time specified in the decree nisi has passed." See; *Blacks Law Dictionary*, Ninth Edition, pages 471 and 472." Per ARIWOOLA, J.S.C

In the instant case, although the decree nisi was pronounced by the court in 13th May, 1996, the decree absolute was only entered on January 1997; so technically it could be said that the 1st defendant was still married to Mr. Davies when she purported to have a relationship with Dr. Ajayi and allegedly entered into a Kalabari customary marriage if at all.

Now on the issue raised of laches and acquiescence, the argument of the Defendants is that the evidence of CW1 operates as estoppel by conduct and laches in the sense as to allow a man to leave his marriage for 35 years, openly represent to the whole world that another woman is his wife, led the

public to accept that other woman was in lawful cohabitation with him exclusively, bear him children, never challenged the man or the other woman in the lifetime of the man about the legality of their marital relationship on the reasoning that "...my husband has a lot of them". He added that the Claimants' attempt to assert relief based on statutory marriage is undermined by clear evidence of estrangement for about 35 years and lack of authentic documentation of the alleged proof of marriage.

While the Claimants response is that the alleged laches and estoppel is a mere afterthought given that the Defendants failed to plead these defences in their pleadings. Moreover, the nature of marriage between the 1st Claimant and her husband is a statutory marriage that admits of no other form of marriage during the subsistence of the statutory marriage. He added that the Defendants have failed to show that the 1st Claimant was aware of the purported marriage and that the 1st Claimant consented to the purported marriage, hence, the alleged conduct purportedly constituting estoppel or laches cannot be imputed to the 1st Claimant.

He contended further that in any event, assuming without conceding that the 1st Claimant was even aware of any purported marriage between her husband and the 1st Defendant, it is the law that mere silence or refusal to act when the law has not imposed any duty to act cannot be regarded as estoppel so as to deny the 1st Claimant her statutory right to the estate of the deceased as his sole legal wife. He referred to the case of Crosby vs. Crosby, 769 F. Supp. 197 (1991) @ 199.

On entitlement of 1st Claimant to the Personal Chattels absolutely and one third of Estate of Late Dr. Tosin Ajayi, issue two, the Learned Silk submitted that the 1st Claimant has established that she was the legally married wife of the deceased under the Marriage Act until his death in 2020 and that the deceased died intestate. He relied on the provision of Section 46(2) of the Administration of Estate Law of Lagos State, 2015. He added that the implication of this provision is that the 1st Claimant is entitled to one-third of the residuary estate of the deceased in addition

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to the personal chattels absolutely. He referred to the case of Amobi vs. Nzegwu (2005) 12 NWLR (Pt. 938) 120 @ 146, Pars. E-G. I agree with him.

The above reasoning of the learned SAN for the Claimants was also stated in the case of Lawal-Osula v. Lawal-Osula (1993) 2 NWLR (Pt. 274) 158 at 172 where it was held that:

"Living with a man and having children for him alone does not necessarily make a woman a wife of the man under native law and custom. In the same way, a woman who is a wife of a man under native law and custom does not divorce the man merely by leaving him and staying with another man for who she has children."

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While analysing a similar situation in the case of Okafor & Ors V. Okafor & Anor (Pp. 14 paras. A) the Court held as follows;

In the instant case, the above stands stronger in the sense that though the appellant and the deceased Senior Advocate lived apart for about 17 years before he died, there is no iota of evidence that she cohabited with another man or had any other child outside the marriage.

The court further held that; "...this Court found as a fact that late Chief Clement Okafor contracted a statutory marriage with the 1st plaintiff on the 30th December 1967. The implication of this is that late Chief Clement Okafor was incapable legally speaking of contracting another marriage with another woman during the subsistence of his statutory marriage to the 1st plaintiff. Any subsequent alleged marriage, customary or otherwise between late Chief Clement Okafor and any other woman during his statutory marriage to the 1st plaintiff was rendered invalid by operation of law. From whatever angle this is considered, there is no basis from which a customary law marriage between that 1st appellant and late Chief Clement Okafor can be inferred." Per MAHMOUD, J.C.A

In the case of NEBUWA v. NNENNA (2018) LPELR-45097(CA) (Pp. 42-43 paras. B) which is almost on all fours with the instant case the court held as follows;

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"The union in marriage between the Appellant and her deceased husband, Dr. John Ikechukwu Nebuwa, was a marriage or union contracted under the Marriage Act, which, till death do us part, does not permit the parties to it, to contract any other marriage, whether Statutory or under the Native Law and custom, as the respondent purportedly did. Such subsequent marriage is of course, null and void. The purported marriage of the respondent to Dr. J. I. Nebuwa, now late, is a farce and the trial Court rightly declared it to be a nullity.

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One of the incidents of Marriage is right of cohabitation between the couple. The other of course, is the right of the party to the marriage to inherit the other in the event of the demise of that other partner. The respondent, not being the wife of Dr. J. I. Nebuwa, under the Marriage Act, has no right of succession to the estate of the deceased person and any order made in that regard which make it possible for the respondents to benefit from the estate of the deceased is clearly wrong and must be set aside." Per HUSSAINI, J.C.A

In the case of Amaka Ezeaku V Delphine Zikere Okokwo & Anor (2011) LPELR 57009 (CA) (Pp. 27-36 paras. D) the court held that:

In the instant case, there is no iota of evidence anywhere including the controversial affidavit (Exhibit 'A') that the deceased learned Senior Advocate made effort or attempted to dissolve the marriage between him and the appellant or that there was any meeting held between both families in connection with the refund of any dowry....

I need add here that a marriage whether statutory or customary is not dissolved by effluxion of time. So, the 17 years of living apart cannot be a ground to hold that the marriage between the appellant and the deceased Senior Advocate had been dissolved."

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The above authority resonates with the instant case which clearly shows that living apart for 35 years does not equate to divorce where no divorce proceedings had been instituted.

As a result of the above analysis in addition to the evidence led by parties, this honourable court finds that the doctrine of laches acquiescence and standing by is found not to be applicable in this case.

The marriage between the 1st Claimant and the deceased Dr. Tosin Ajayi subsisted till his death despite their alleged living apart for several years and no other marriage if any could be recognised without dissolution of the subsisting one.

Evidence shows that the deceased lived with the 1st defendant for several years, took care of him when he was ill, had children for him but never actually married him.

Based on the above analysis, this Honourable Court finds that the 1st Defendant does not qualify as a surviving wife entitled to participate with the 2nd to 5th Claimants and the 2nd Defendant in the administration of the estate of late Dr. Tosin Ajayi.

The relationship of the 1st defendant and Dr. Tosin Ajayi deceased can only at best be described as the deceased Doctors mistress and mother of his daughter. While both of them during his lifetime could be described as cohabitants or undocumented partners.

Issue 2 is therefore resolved against the defendants.

As a result of the above this Honourable Court finds in favour of the Claimants and make the following declarations and orders:

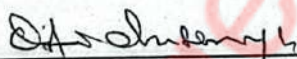
1. It is hereby declared that the 1st Claimant is entitled to the personal chattels absolutely and one-third of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
2. It is hereby declared that the Claimants and the 2nd Defendant are entitled to apply and obtain Letters of Administration of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.

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3. It is hereby declared that the 1st Defendant is not entitled to any share in the personal chattels and residuary Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
4. AN ORDER of this honourable court is granted directing the 1st Claimant to take the personal chattels absolutely and one-third of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
5. AN ORDER of this honourable court is granted directing the 2nd, 3rd, 4th, 5th and 6th Claimants and the 2nd defendant to take an equal share of the remaining two-thirds of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020.
6. AN ORDER OF PERPETUAL INJUNCTION is hereby granted restraining the 1st Defendant whether by herself, privies and servants from interfering in the management of the Estate of Dr. Tosin Ajayi who died intestate in Lagos State on April 26, 2020, in any manner whatsoever and howsoever.

This is the Judgment of this Honourable Court.

I so hold



Honourable Justice Oluwatoyin Atinuke Odusanya

Judge

Appearances:

1st Claimant present

Afeez Saliu for Claimant with Azeez Isiaka

A.B Ariyibi for Defendant with Learned Colleague C.I. Okafor for the Defendants

Bakarey Kemi
Commissioner for Oaths
High Court, Ikeja

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HIGH COURT OF LAGOS
29-6-2026
CASH OFFICE, IKEJA