

## A CRITIQUE OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR PROPERTY SUCCESSION IN NIGERIA\*

### Abstract

*The issues relating to property succession and succession law generally derive their origin from history. Just as it is with institutions such as government or education, the study of history of the law may proffer explanations of how particular principles arose as soon as the roots of the current law are identified. Life issues in succession today involve, for instance, the division of the deceased's property on intestacy. These are actions which are governed and guided by rules and procedure from time immemorial. Certain things have however changed considerably. The distinctions between land and personalty, in particular, have become blurred in all areas of Law, so that most people whose interest in land is in a family home, own what is technically an interest in money and not an interest in land as such. The rules of inheritance of realty (land) and personalty have been aligned. The rise of commerce and increasing use of credit brought about changes in the role of a deceased person's personal representatives and their obligations to deal with his debts as well as his properties. These issues therefore gave rise to the need for this research, for there to be a tailored provision of the Law whereby property depicted as (realty) land are provided for and property described as personalty (other assets save land) are specifically provided for in our relevant Laws. This work embarked on a critique legal and institutional frameworks of property succession in Nigeria with a view of improving the laws relating to succession to property in Nigeria. The methodology adopted in this paper is the doctrinal research with descriptive, narrative and comparative analysis. Relevant materials were sourced from both primary and secondary sources that included statutes, books, journals and case laws. The paper found that there are no severance and specifications in the provisions of our Laws with respect to property which refer to realty (land) and personalty (other properties save land). It was also discovered that there is a lacuna in the Administration and Succession (Estate of Deceased Persons) Law 1999, with respect to devolution of intestate properties on a widow. The paper therefore made some recommendations which include that the Laws relating to property succession in Nigeria should be amended to include a different provision for succession to realty and personal properties of the deceased.*

**Keywords:** Legal, institutional, Frameworks, Property, Succession.

### 1. Introduction

The law of succession basically refers to the transfer or devolution of property upon the death of an owner to another person, usually referred to as the beneficiary. The law that governs succession in Nigeria therefore falls under two categories, these include Testate and Intestate Successions. Testate Succession is primarily governed by Wills, the applicable Wills Law and the Administration of Estates Laws as enacted in various States of the Federation.<sup>1</sup> On the other hand, the Intestate Succession is regulated by the various customary laws/Islamic Law in different ethnic nationalities in the country.<sup>2</sup> The main theme of this paper however focuses on the intestate Succession as governed by the Administration of Estates Law, the Legal and Institutional framework thereof. These properties in question can safely be classified into real and personal property.

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<sup>1</sup><https://femiatoyebi.com.ng/an-o>

<sup>2</sup><https://www.europeanjournalofsocialsciences.com>...>

## **2. Property Succession**

The word property implies different things, depending on the context in which it is used. It could mean ownership or title; it may connote the “res” (thing) over which ownership may be exercised.<sup>3</sup> It may also mean an interest in a thing, connotes the transmission of rights, responsibilities and obligations of a deceased to the descendants. The law of succession determines what happens to a person’s property upon his death. That is, the method of distributing the property left behind by the deceased person. In the absence of a male lineal descendant, the widow of the deceased succeeds a life estate. In the event that the wife predeceased the husband, the deceased mother succeeds to a life interest, provided she has not re-married. Where there are no surviving parents, sibling of full blood of the deceased will inherit his properties.<sup>4</sup>

## **3. Administration of Estates**

Estate connotes the totality of the properties acquired and left behind by a deceased person and which another person is beneficially entitled to.<sup>5</sup> These are the real property (land and whatever is affixed or attached thereon)<sup>6</sup> and personal property of a deceased. It simply means the collective assets and liabilities of a dead person.<sup>7</sup> It is also the present or future possessory interests in a property.<sup>8</sup> It includes all debts and liabilities of a deceased person prior to his death.<sup>9</sup>

Administration itself basically involves the direction of the affairs (of a business)<sup>10</sup> or series of events. In *Abdulraheem v Odunleye*<sup>11</sup>, the Court of Appeal held that the word administration is synonymous with the word management. Administration of estate further implies the manner or process by which the estate of this deceased person is acquired, managed and distributed amongst the beneficiaries or disposed of by those appointed by the deceased or the Court.<sup>12</sup> In *Kolade v Ogundokun*<sup>13</sup>, the Supreme Court held that where a person dies intestate and administration is granted under the law in respect of his estate, that estate shall be deemed to have been vested from the date of his death until administration is granted. Letters of administration can be granted even though there is a pending action in respect of the deceased estate. In *Ayorinde v Ayorinde*, appeal Court held that where there is a pending action in respect of a property of a deceased who died intestate, letters of administration could be granted in respect of the estate particularly where there is no caveat against the application for the letters of administration. Where a person dies intestate, his estate is deemed vested in the Chief Judge of the State pending when administration is granted.<sup>14</sup>

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<sup>3</sup> IO Smith, *Practical Approach to Law of Real Property in Nigeria* (Revised Edn.Lagos: Ecowatch Publication Nig. Ltd.2013) p. 3.

<sup>4</sup>Administration and Succession (Estate of Deceased Persons) Law, Cap 4, Revised Laws of Anambra State 1991, Section 120(1).

<sup>5</sup>ML Bhargava, *Real Estate Regulation & Development with Model and Forms* (India: Karmal Publishers 2018) p.41.

<sup>6</sup>*Ohiaeriv. Yussuf* (2009) 6NWLR (Pt.1137) 207 SC.

<sup>7</sup>*Carew v. Oguntokun* (2011) 5NWLR (Pt.1188) 513 CA.

<sup>8</sup> B Burke *et al* *Property Examples & Explanations* (2<sup>nd</sup>Edn. US: Aspen Publishers 2004) p.109.

<sup>9</sup> T Animashaun, A Onyeneyin, *Law of Succession, Wills and Probate in Nig.* (Lagos MIJ 2002) P.3.

<sup>10</sup>*Nospetco Oil Gas Ltd v Olorunnimbe* (2012) 10 NWLR (Pt. 1307) 115.

<sup>11</sup> (2005) 8 NWLR (Pt. 926) 144.

<sup>12</sup>*Duke v. Administrator General.* (2010) 15 NWLR (Pt.1217) p.442 CA.

<sup>13</sup> (2017) 18 NWLR (Pt. 1596) 152; *Re Odutola* (2002) 16 NWLR (Pt.794) 470.

<sup>14</sup> Administration of Estate Law, Cap. 3, Laws of Ondo State 2006, S. 20; *Ewarawon v F.B.N. Plc.* (2020) 5 NWLR (Pt. 1717)268; *Balogun v Agbara Estate Ltd.*(2008) All FWLR (Pt. 438) 388.

Administration of Estate Laws therefore involves those laws which guide the management, distribution of the moveable and immovable assets and offsetting any debt and or claims against the residuary estate of the deceased person.<sup>15</sup> The Administration of Estate Laws are made with the sole purpose of forestalling the properties left behind by a deceased person from falling into the hands of dubious persons and especially those persons the deceased would not ordinarily wish to inherit his or her bounties. The key roles of an administrator of an estate are; to represent and defend an estate in court, to administer and equitably share or partition the assets of person(s) who die (with or without a will) amongst qualified beneficiaries, to obtain letters of administration in respect of the estate under his management.<sup>16</sup> These obligations are derived from the letters of administration granted in respect of the said estate.<sup>17</sup>

#### **4. Legal Framework of Property Succession**

##### **4.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)**

The Constitution of the Federal Republic of Nigeria is the *grundnorm* and all laws in Nigeria derive their validity from the Constitution. Any law which is inconsistent with the provision of the Constitution shall to the extent of its inconsistency be void.<sup>18</sup> The Constitution protects the property rights of every Nigerian citizen. Section 43 provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. Although the Constitution makes general provisions for the protection of property rights particularly with reference to ownership and acquisition of properties, it does not however contain specific provisions on the acquisition of real or personal estates of a deceased person. The Constitution clothes the High Court with original jurisdiction to entertain and determine all civil proceedings in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.<sup>19</sup> These by implication include disputes arising from matters relating to succession to real and personal properties of a deceased person.

##### **4.2 Administration of Estates Laws**

###### **4.2.1 Administration of Estates Law 1959**

In all states carved out from the former Western Region of Nigeria and former colony of Lagos, the law regulating administration of estates is the Administration of Estates Law of 1959.<sup>20</sup> The States of Oyo, Ogun, Ekiti, Ondo, Osun, Lagos, Edo and Delta were within the operational jurisdiction of the law which the various states reproduced almost verbatim as part of the laws of the states upon creation at different dates. Administration of Estates Law does not apply in all cases of intestacy in any of the above mentioned States.<sup>21</sup> This provision reaffirms the provisions of Section 3(1) of the Wills Law, 1959. Example of this type of property include un-partitioned family land in which deceased had an interest in possession only, also property which belongs to first born sons as a birth right. Finally, Section 50(1) (iii) of the Administration of Estates Law, 1959 makes provision for the distribution of an intestate's estate to his children in equal proportions on the equitable principle that "equality is equity." The Administration of Estates Law, 1959 and indeed of other States of the Federation is aimed at vesting the real and personal properties of a deceased intestate in his personal representatives who is obliged to distribute it accordingly amongst the intended beneficiaries.

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<sup>15</sup>Ibid, Section 20.

<sup>16</sup>*Uddoh v. Uddoh* (2010) All FWLR (Pt. 535) P.34.

<sup>17</sup>*Bakare v. Bakare* (2012) 16NWLR (Pt.1325) P.45 D-E.

<sup>18</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section1 (3).

<sup>19</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 272(1).

<sup>20</sup> Administration of Estates Law, Cap1, Laws of Western Nigeria, 1959.

<sup>21</sup>Ibid, Section 49(5).

**4.2.2. Administration and Succession (Estate of Deceased persons) Law, Cap 4, Revised Laws of Anambra State 1991**

Section 73 of the Law makes provision for devolution of real estate on personal representatives. It provides that the real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased to be held on trust for persons entitled thereto either on intestacy or by Will, subject to the payment therefrom in appropriate cases of the deceased person's just debts, funeral and testamentary expenses.

The personal representative for the time being of a deceased person shall be deemed in law to be his heirs and assigns within the meaning of all trust and powers. Section 81 of the law still did not help matters as it only concerned itself with vesting of estate of a deceased person who died intestate on his personal representatives. The intendment of Order 58 of the rules of Court<sup>22</sup> is that where an estate is unrepresented the Court should expeditiously move to ensure that the estate is secure. In the case of *Anowo v. Anowo*<sup>23</sup> the deceased died intestate and no letters of administration had been granted. The defendants had applied to be granted a letter of administration. The plaintiff entered a caveat. The caveat was never lifted. The position as noted by the Court of Appeal, per Oguntade JCA, is that the estate remained unrepresented. Section 120(1)(b) of the Law that would have saved the day contained a rather discriminatory provision. The section provides that only one third of the estate of the intestate shall go to a surviving spouse whose interest shall be absolute in the case of a husband or for her life or until her remarriage (which ever first occurs) in the case of a wife. It has no specific provision on who how the personal properties of the deceased intestate would be shared.

**4.2.3. Administration of Estates Law of Lagos State, 2015**

The Administration of Estates Law of Lagos State 2015 makes an extensive provision for the manner in which succession to property takes place in Lagos state, in event of intestacy. Section 49(5) of the law<sup>24</sup> provides that where a person who is subject to customary Law contracts a marriage in accordance with the provisions of the Act and such person dies intestate leaving a widow or husband or any issue of such marriage, any property of which the said intestate might have disposed by Will shall be distributed in accordance with the provisions of this Law, notwithstanding the provisions of any customary Law to the contrary, provided that any real property the succession to which cannot by customary law be effected by testamentary disposition shall descend in accordance with customary Law and shall not belong to the State. It is obvious from the above section of the Law that the above provision deals with succession to intestate property of a person married under the Marriage Act who died intestate, while residing in Lagos State. It is also clear that the intention of the law maker is that customary law be excluded in relation to the estate of persons to which the subsection applies.<sup>25</sup> The word "shall" has however been held by our Nigerian Courts in plethora of cases to mean mandatoriness. The word "shall" is used to express a command or exhortation of what is legally mandatory. In *Ekanem v Registered Trustees, CCGS*<sup>26</sup>, the Supreme Court held that the word shall is used to express command, or strict directive, or what is legally mandatory, and the use of the word in a statute makes it mandatory

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<sup>22</sup> High Court Civil Procedure Rules of Anambra State, 2019.

<sup>23</sup> (1991) 7 NWLR (Pt.201) P.58 at 75.

<sup>24</sup> Administration of Estate Laws of Lagos State, 2015.

<sup>25</sup> Per Onnoghen JSC in *Obusez v Obusez* (2007) 10 NWLR (Pt. 1043) 430 at 459.

<sup>26</sup> (2023) 6NWLR (Pt. 1879) p. 43 SC; 5.

that the rule or statute must be observed<sup>27</sup>. The implication of the apex Court's decision in the above case and many other authorities is that section 49(5) of the Administration of Estates Law of Lagos State 2015 creates a mandatory provision which must be complied with at all times, subject to the accompanying exceptions. In fact, the section specifically provides that the surviving spouse shall be entitled to two third of the real estate of the intestate. The mind bugging question is; what happens to the personal estate of the deceased intestate? It is obviously not covered in the law.

#### **4.2.4. Administration of Estates Law of Bendel State 1976, as applicable in Delta State.**

The question of the applicable Law governing the distribution of the estate of an intestate in Edo (former Bendel) and Delta States, part of the Old Western Region of Nigeria became an issue of doubt and controversy in the case of *Dr. T.E.A. Salubi v Mrs. Benedicta Nwariaku & Ors.*<sup>28</sup>The case travelled from the High Court of Bendel State up to the Supreme Court<sup>29</sup>which finally laid the issues therein to rest. The dispute that led to the institution of the of the action before the High Court arouse over the estate of the late Chief T.E.A Salibi who died intestate in 1982. Pleadings were ordered, filed and exchanged. Evidence was led by each of the parties in support of their respective cases. At the close of the hearing and after taking submissions from counsels to the parties, the learned trial judge held that the first respondent had made out a case to warrant his setting aside the letters of Administration earlier granted in respect of the estate. He also made an order distributing the estate among the parties entitled thereto.

The appellant was dissatisfied with the decision and he appealed to the Court of Appeal. The 1<sup>st</sup> respondent was also dissatisfied with some aspect of the decision and he cross appealed. The appellant at the Court of Appeal and the 1<sup>st</sup> respondent are direct children of late Chief Salubi while the 3<sup>rd</sup> respondent was the wife of the late Chief Salubi and the mother of the appellant. In determination of the appeals, the Court of Appeal considered amongst others, the provisions of section 49 of the Administration of Estate Law of Bendel State, 1976, section 2 of the Probate (Re-Sealing) Act<sup>30</sup>, and section 39(2) and 274 of the Constitution of the Federal Republic of Nigeria, 1979. The Court of Appeal (on the need for Court to determine value of the estate before making order of distribution), that notwithstanding the fact that the estate of a deceased person who died intestate is to be distributed in cash or "in specie", it is improper for a Court to embark on any form of distribution without first determining the value of the estate. Where such valuation report is not before the Court at the time of deciding the issue of distribution, the best it can do is to give a broad outline in principle in accordance with which the estate should be distributed. The appellate Court finally held that the trial judge erred in Law when it proceeded to distribute the properties of the deceased without any evidence of the value of the estate.

On further appeal to the Supreme Court, the apex Court held inter alia that the applicable law to the distribution of estate of an intestate who died leaving a husband or wife and issue is section 49(1) of the Administration of Estate Law, Laws of Bendel State, his lordships at the apex Court also held that it is wrong for a Court having determined the manner of distribution of properties comprising an intestate estate to proceed to share the properties without first attempting to value the assets for the purpose of distribution in the manner determined. On the issue of whether the residuary estate in cases of intestacy

<sup>27</sup>*Access Bank Plc v Ogboja* (2022) 1 NWLR (Pt. 1812) p. 547 SC; *Ibrahim v Akinrinsola* (2022) 18 NWLR (Pt.1862) p.455, SC; *Nwankwo vYar'adua* (2011) 13 NWLR (Pt. 1263)p. 96; *Onochie v. Odogwu* (2006) 6 NWLR (Pt.975) p.125.

<sup>28</sup> (1997) 5NWLR (Pt.505) 442.

<sup>29</sup> (2003) 7NWLR (Pt. 819) 438.

<sup>30</sup> Cap 370, Laws of Federation of Nigeria, 1990.

includes real estate or property, the apex Court stated unequivocally that residuary estate in cases of total intestacy includes the entire estate of the intestate after payment of funeral, testamentary and administration expenses, debts and other liabilities of the estate. His lordships however noted that the term “residuary estate” is not used to indicate a distinction between the real and personal property. The apex Court faulted the Court of Appeal’s decision to the effect that section 49 of the Administration of Estates Law of Bendel State comes under part 6 of the Law which deals with Distribution of “Residuary Estate” and not real estate as are involved in the instant case.

#### **4.3. Land Use Act, 1978:**

The Land Use Act is said to be the most important legislation affecting land in Nigeria. Even though it is a Federal Law, it applies in all states of the Federation. All land comprised in the territory of each State in the federation are vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.<sup>31</sup> The concept of trusteeship as used in section 1 of the Land Use Act is not intended to confer upon every citizen of Nigeria the benefit which a beneficiary has against the trustee under the common law. No Nigerian citizen can, under the section as enacted, claim against the ‘Military Governor’ an account for any benefits accruing from land held by him under the Act in trust and administered by him for the common benefit of all Nigerians. In another vein however, Uwais, J.S.C. (as he then was), in the case of *Attorney General of Bendel State v. Attorney-General of the Federation*<sup>32</sup> stated categorically that it is the duty of a trustee to keep a proper account of the trust he administers. And the beneficiary has the right to call upon the trustee for accurate information as to the state of the trust. One thing that remains constant is that Nigerians in the state are the intended beneficiaries under the Land Use Act, while the Governor is a trustee. Consequently, the legal trust created under section 1 of the Act is simply trust ownership and not necessarily a legal estate<sup>33</sup>. Strictly speaking, the power of the Governor is limited to giving or refusing consent to alienation<sup>34</sup>. Hence the purport of section 1 of the Act is to translate the concept of family or community holding of land to the state by vesting all land in the Governor<sup>35</sup>. It is worthy of note however, that the extensive provisions of the Land Use Act concerned itself with the real estate of a person only.

#### **4.4. Case law**

This is the Law found in judicial decisions. It comprises the judicial pronouncements made by the Courts in Nigeria in relation to matters of succession, inheritance and other areas of law in Nigeria. Case law established the principles of *stare decisis* which presuppose that the law has been solemnly declared and determined in a former case. Lower courts are therefore bound by the decisions of the superior Courts.<sup>36</sup> It precludes subordinate courts from changing what has been determined. It follows therefore that the doctrine of judicial precedents (*stare decisis*) requires that the principle of law on which a court bases its decision in relation to the material facts or issues before it must be followed by courts of lower hierarchy in future or similar cases<sup>37</sup>. This principle of law was well mirrored in the case

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<sup>31</sup> Land Use Act 1978, Section 1.

<sup>32</sup> (Unreported suit), suit no. ID/115/81.

<sup>33</sup> Per Olagunju JCA in *Ofodile v. COP Anambra State* (2001) FWLR (Pt.33) 309 at 337.

<sup>34</sup> Land Use Act, Sections 21 and 22.

<sup>35</sup> Per Karibi- Whyte, JSC in *Abioye v. Yakubu* (1991) 5 NWLR (Pt.190) 130 at 232.

<sup>36</sup> *Edo State v. Aguele* (2018) 3 NWLR (Pt.1607); *Osakue v. Fed. College of Education (Technical) Asaba* (2010) 10 NWLR (Pt. 1201)1.

<sup>37</sup> *AIC Ltd. v. NNDC* (2005) 11 NWLR (Pt. 93) 563 SC; *Ajibola v. Ajadi* (2004) ALL FWLR 1273 at 1289 CA; *EmekaNwanna v. Fed. Capital Development Authority & Sors* (2004) ALL FWLR, 1243 SC; *Clement v. Iwuanyanwu* (1993) 3 NWLR (Pt. 107) 54.

of *Adetoun Oladeji v. Nig. Breweries Plc*<sup>38</sup> Where his lordship Niki Tobi JSC succinctly stated that factual distinctions or differences in cases can only avail a party when they are germane or material to the *stare decisis* of the case not when the cause of action originates from the same state. *Stare decisis* is based on a certain state of facts which are substantially the same. This also means that the facts need not be in all fours in the sense of exactness or exactitude. The doctrine of *stare decisis* which has been built by the judicial system over the years does not insist that the facts must be the same exactly. There could be some inarticulate differences that will not necessarily hinder the application of the doctrine.<sup>39</sup> There is therefore no doubt that case laws have been effective and useful in setting judicial precedents which aids the lower Courts in reaching its judgments on issues involving succession and inheritance in Nigeria, for instance the case of *Okonkwo v Okonkwo*<sup>40</sup>, where the appellate Court having found that there exists a lacuna in section 120(1) (a) of the Administration and Succession (Estate of Deceased persons) Law of Anambra State 1991, decided to deviate from the provisions of the said law and applied the principles of equity in doing substantial justice in the case. Some of these cases are reported in various law reports across the country.

## 5. Institutional Frameworks:

### 5.1. Courts:

The High Court of a State derives its authority from both the Constitution of the Federal Republic of Nigeria 1999, as amended and Laws enacted by the various State Houses of Assembly pursuant to the requisite powers granted them by the 1999 Constitution. Section 255(1) and 270(1) of the Constitution establishes the High Court of the Federal Capital Territory and States respectively. These Courts consists of a Chief Judge and such number of judges of the Court as may be prescribed by an Act of the National Assembly (in the case of the High Court of the Federal Capital Territory, Abuja)<sup>41</sup> and a Law of the House of Assembly (in the case of a state).<sup>42</sup> The High Court is clothed with original jurisdiction to entertain and determine all civil proceedings in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue<sup>43</sup> these also includes disputes arising from matters relating to succession to real and personal properties of a deceased person. The Court seized with an estate matter is under a duty to ensure that the estate is not exposed to waste.<sup>44</sup> The Court is duty bound to preserve and prevent wastage of the unrepresented estate of a deceased. The Court shall appoint and authorize an officer of court or some other person who is fit to take possession of the deceased property within the court's jurisdiction, as the need arises.<sup>45</sup> The Court shall also, when the circumstances of the case appear necessary, forthwith, upon the death of a deceased person or so soon after, appoint and authorize such officer of court or a fit person, to put the deceased' property under seal and so keep it, until the said property or properties can be dealt with in accordance with the law. The word 'shall' imposes such mandatory duty on the Courts to carry out the said exercise.<sup>46</sup>

The cumulative effect of the discretionary powers bestowed on Courts by section 26 and 27, respectively, of the Administration of Estate Law of Lagos State relates to the discretion of Court as to

<sup>38</sup>(2007) 5 NWLR (Pt. 1027) 415.

<sup>39</sup>(Emphasis supplied.

<sup>40</sup>Supra.

<sup>41</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 255 (1) (b)

<sup>42</sup>Ibid, s. 270 (1) (b)

<sup>43</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 272(1)

<sup>44</sup> Per Achike JCA in *Chukwuma v. Chukwuma* (1996) 1 NWLR (Pt. 426) 543 at 554.

<sup>45</sup> B.C. Ezeunegbu, *A Trial Hand Book For Practising Lawyers* (2<sup>nd</sup>Edn. Enugu: Facts & Details Publishers, 2017) p. 617

<sup>46</sup>*Mrs L.N. Okafor & anor v. Elizabeth Onedibe & Ors* (2003) 9NWLR (Pt.825) 413, *Onewokae v. Onewokae* (2007) ALL FWLR (Pt. 358) P. 797

person to whom the administration is to be granted and administration (*pendent lite*), during the pendency of proceedings. In other words, the sections vest in the Court the absolute discretion to make orders as to whom the management of a deceased person's estate should be granted. At the same time, where there are pending proceedings as to the validity of the Will, the law gives the Court the power to grant administrators the authority of general administration of the deceased person's estate. This discretion has to be exercised on the basis of all the material facts and evidence placed before the Court. It shall also be the duty of the Court to have regard to the right of all persons interested in the estate of the deceased persons or the proceeds of the sale thereof. This is the reasoning of Akanbi JCA in *Aseré v Aseré*<sup>47</sup>, where his lordship held that the paramount consideration is for the Court to examine the claims of the applicants, define their interest to the estate and decide whether or not they are entitled to a grant. The Courts are generally concerned with resolving legal matters that may arise from administration of a deceased estate.<sup>48</sup> These also include administration of estates of a deceased person located interstates. In other words, the High Court can also assume jurisdiction in a probate or administration action even when property covered in the letters of administration issued by it is in another State. In explaining this position, Obande F. Ogbuinya<sup>49</sup> stated that Letters of administration granted by a probate Registry of a High Court of one State, including the property situate outside the territorial jurisdiction of that issuing High Court, is not a bar to that High Court adjudicating a matter involving that property located out of its territorial jurisdiction.

In the case of *Salubi v. Nwaneriaku*<sup>50</sup>, his lordships in addressing the issue of jurisdiction of the Court to administer the deceased person's estate (located outside jurisdiction), said that the question whether the lower Court had the power to make any order in respect of some of the properties of the estate of the deceased in Lagos is totally not in doubt<sup>51</sup>. The High courts are also responsible for granting probate to named executors, who are saddled with the responsibility of administering the estate of a deceased person<sup>52</sup>. These estates include the real and personal properties of the deceased.

## **5.2 Probate Registry:**

The probate registry is under the supervision of the High Court. It is a division of the High Court of every state of the Federation. The probate registry has the exclusive jurisdiction to issue and revoke grants of probate and letters of administration of the real and personal estate of a deceased. The probate laws guide the probate registry. These laws regulate how the estate of the deceased will be administered by executors or administrators to ensure that the estate is distributed in accordance with the wishes and desires of the deceased. The probate registry is saddled with the duties of overseeing all probate and other ancillary matters to ensure justice and fairness in the administration and distribution of the deceased estate. The probate registry is the center of testate and intestate administration of non-contentious probate applications<sup>53</sup>. Pursuant to section 90 of the Administration and Succession (Estate

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<sup>47</sup>(1991) 6 NWLR (Pt. 197) 316 at 329

<sup>48</sup><http://www.mondaq.com>>Nigeria “Overview of Probate Laws and Probate Registry in Nigeria-Wills” Accessed last on 29/9/2023 at 12:56pm.

<sup>49</sup>OF Obande, *Understanding The Concept Of Jurisdiction in The Nigerian Legal System*, (Enugu: Snaap Press Ltd. 2008) p.139

<sup>50</sup> (1997) 5 NWLR (Pt. 505) p.442, at 468

<sup>51</sup> The Court of Appeal, per Ba'aba JCA in *Okonjia v. Ikengah & Anor.* (2001) 2 NWLR (Pt. 697) P.336 at 362, stated that ‘the jurisdiction of the Court to administer an estate was jurisdiction to determine the question of title to property outside the jurisdiction of the trial Court for the purposes of administration but the order that certain persons should be given that property outside the trial Court's jurisdiction was an error and should be replaced by a declaration as to the entitlement of the beneficiaries.

<sup>52</sup><http://nji.gov.ng>>2021/12 Probate Registry and Administration of Estate in Nigeria.

<sup>53</sup><https://trustedadvisorslaw.com> procedures for Grant of Probate in Nigeria.



of Deceased Persons) Law of Anambra State<sup>54</sup> provides thus: ‘An application for the grant or revocation or letters of administration may be made in the probate registry of the Court.

It is an effective channel of dispensing justice in matters of intestacy and testacy. Such activities include registering of wills, obtaining letters of administration and grant of probate and other ancillary matters.<sup>55</sup> No grant can be sealed if the probate Registrar has knowledge of an effective caveat.<sup>56</sup> The probate registry is saddled with the following functions; (i).It is a secured place for the custody of a testator’s will. (ii).The probate registry (under the supervision of the High Court) is responsible for the issuance of grant of probate to a deceased person’s executors where the deceased person died testate. The effect of grant probate is that it is accepted as conclusive evidence of the executor’s title as personal representatives of the estate. Order 58 Rule 1 of the High Court (Civil Procedure Rules) of Anambra State 2019, further that when any person subject to the jurisdiction of the court dies, all petitions for the granting of any letters of Administration of the estate of the deceased person, with or without a Will attached, and all applications on other matters connected therewith shall be made to the probate Registrar of the Court<sup>57</sup>.(iii).The Probate Registry also plays a vital role in the administration of properties left behind by an intestate. This is because; the process for grant of probate also applies to events where executors or administrators need to obtain letters of administration. Letters of administration cannot be applied for and obtained by any member of the family. The probate law considers the hierarchy of the members of the deceased’s family. For example, the surviving spouse and children of the deceased are given priority in distribution of a deceased estate.<sup>58</sup> Afterwards, other family members (like the parents and siblings) will follow subsequently. (iv) The probate registry is responsible for revoking the grant of probate and letters of administration issued to personal representatives, executors or administrators, upon discovery of some adverse facts, like fraud, deceit or concealment of vital information relating to them or the estate of the deceased. (v)The probate registry also reseals grants of probate or letters of administration obtained from another state within the country or outside Nigeria. Probate actions are not commenced by a motion on notice; rather it has to be commenced by a common form probate business.<sup>59</sup>

## 6 A critique of the Legal and Institutional Frameworks

The mode of distribution created by section 120(1) (a) of the Administration and Succession (Estate of Deceased persons) Law of Anambra State 1991 created “a statutory inequality” in the property inheritance of a deceased intestate. This is because, it provides that only one third of the estate of the intestate shall go to “the surviving spouse whose interest shall be absolute in the case of a husband or for her life or until her remarriage (which ever first occurs) in the case of a wife”, the widow is put under great disadvantage particularly in case where she had toiled all her life with her husband building

<sup>54</sup> Cap. 4 the Revised Laws of Anambra State 1991, similarly provided for in the Administration of Estates Law of Lagos State 2004, s. 20.

<sup>55</sup><https://www.aziza.com.ng>>2018/11 functions of probate Registry in Nigeria, 26 Nov.2018.

<sup>56</sup> Per Kolawole JCA in *Dan-jumbo v. Dan-Jumbo* (1989) 5NWLR (Pt. 119) p.40. His Lordship also defined a caveat to mean a notice in writing lodged in the principal registry or in any registry that no grant is to be sealed in the estate of the deceased named therein without notice to the person who has entered the caveat.

<sup>57</sup> High Court (Civil Procedure Rules) of Anambra State 2019, O 59 R 4(1).

<sup>58</sup> High Court (Civil Procedure Rules) of Anambra State O 58 Rule 1 is similar High Court (Civil Procedure Rules) of Lagos State to O 61 R 1, in this regard and it provides that when a person subject to the jurisdiction of the Court dies, all petitions for the grant of letters of Administration of the estate of the deceased person, with or without a Will attached, and all applications on matters relating to the Administration of the deceased estate shall be made to the probate Registrar of the Court in Probate Form 1 or 2 as applicable.

<sup>59</sup>*Afolabi v Igunbor* (1992)8NWLR (Pt.257) 115S; Administration of Estates Law of Oyo State, 1978 s. 26(1)(a).

and investing her life savings in the estate. In *Okonkwo v Okonkwo*<sup>60</sup>, the Court of Appeal had cause to interpret section 120(1)(b) of the Law and his lordships arrived at the conclusion that there exists a lacuna in the above section of the Law. The case involved the inheritance rights of the appellant, (a childless widow). The appellant contracted a statutory marriage with her deceased her husband by name Christopher Onyebuchi Okonkwo. They cohabited as husband and wife, pooled their resources together and acquired and developed many properties. Though they had no child. The husband however had four children from another woman, the 2<sup>nd</sup> respondent, (a situation that was arranged by the 3<sup>rd</sup> respondent). After the death and burial of the appellant's husband, his siblings, the 1<sup>st</sup> and 3<sup>rd</sup> respondent started threatening her life and the appellant ran away for her dear life. The 1<sup>st</sup> and 3<sup>rd</sup> respondent proceeded to the appellant's shop and carted away her goods. They also went into the appellant's block of six flats at No. 14 Umueze Street, Amudo Village, Awka and started collecting rents from the tenants therein. The accounts of the said rents were not accounted to the appellant. The appellant took out an action against them at the High Court of Anambra State. The trial Court held that by the provision of section 120(1)(b) of the Administration and Succession (Estate of Deceased persons) Law of Anambra State 1991, the appellant was only entitled to one-third of the estate. The Court however failed to pronounce on some other reliefs claimed by the appellant. The appellant proceeded to the Court of appeal. In allowing the appeal, the appellate Court per Agube, J.C.A held that section 120(1)(b) of the Administration and Succession (Estate of Deceased persons) Law of Anambra State 1991 no doubt discriminates or dichotomizes between male and female intestate spouses and as such is inconsistent with section 42(1) (a) of the 1999 constitution. His lordship held that the said section 120(1)(a) is void to the extent of its inconsistency. The Court further held that since it has been acknowledged that the appellant is the only legitimate wife and widow of the deceased intestate, she ought to take half of the estate absolutely while the remaining half shall be shared amongst the legitimized 2<sup>nd</sup> set of the respondents by virtue of the provision of section 42 (1) and (2) of the 1999 constitution.

By implication, the Court of Appeal helped to ameliorate the injustice that would have been occasioned in this case pursuant to the provisions of section 120(1)(a) of the Law. The mind bugging question is; what happens to other cases where the Court is not bold enough to toe the part which the appellate Court did in the above case? More so, the said section has no specific provision on who get what out of the personal estate of the deceased intestate. This is unlike section 46(1) of the Administration of Estate Act<sup>61</sup>, (which is the Law that regulates the succession to estate of a deceased person in UK).The Administration of Estate Act(in section 46(1)) makes distinct provisions for the mode of distribution of the personal as well as the real properties of a deceased intestate.

## **7. Conclusion and Recommendations**

The Administration of Estate Laws of various States of the Federation put in place measures for distribution of and succession to the real estate of a deceased person. Sometimes these legal frameworks cause hardship on one party, other times, little or no attention is paid to the personal estate of the deceased. It was this anomaly and confusion that the apex Court sought to correct in the case of *Dr. T.E.A. Salubi v Mrs Benedicta Nwariaku&ors*<sup>62</sup> when it held that the residuary estate of an intestate includes the entirety of his estate and these are the real and personal estate of the deceased, which the Court is enjoined to take into full consideration before embarking on distribution of same.

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<sup>60</sup> (2014) 17 NWLR (Pt. 1435).

<sup>61</sup> Administration of Estate Act 1925,

<sup>62</sup>(n.28).

It is for this reason that the researcher makes the following recommendations.

- a. Amendment of the Relevant Statutes that provides for succession to properties of an intestate deceased in Nigeria. Section 120(1)(b) of the Administration and Succession (Estate of Deceased persons) Law of Anambra State 1991 and other statutes with similar provisions in Nigeria should be amended to make clear and specific provisions for the means and mode of distribution of the personal estate of an intestate just like the realty is provided for. That way, the little confusion that crops up after the death of an intestate would be averted. The above section should also be amended with a view of ameliorating the injustice meted out on a spouse (mostly the wife of a deceased intestate), in the sharing formula of the intestate estate.
- b. The Court should be emboldened to do substantial justice in any given situation even if it means diverting from particular provisions of the statute that would occasion injustice. The Courts should call in aid the principles of equity and do substantial justice in all cases.