# Territorial Jurisdiction relating to Succession and Administration of Estates under Nigerian Private International Law

Issues relating to succession and administration of estate of a deceased person raise significant issues in Nigerian private international law (or conflict of laws), whether a person dies testate or intestate. In the very recent case of *Sarki v Sarki & Ors,*[1] the Nigerian Court of Appeal considered the issue of what court had territorial jurisdiction in a matter of succession and administration of estate of a deceased person's property under Nigerian conflict of laws dealing with inter-state matters. While this comment agrees with the conclusion reached by the Court of Appeal, it submits that the rationale for the Court's decision on the issue of territorial jurisdiction for succession and administration of estates under Nigerian private international law in inter-state matters is open to question.

In *Sarki*, the claimants/respondents were the parents of the deceased person, while the defendant/appellant was the wife of the deceased person. The defendant/appellant and her late husband were resident in Kano State till the time of his death. The deceased was intestate, childless, and left *inter alia* immovable properties in some States within Nigeria – Bauchi State, Gombe State, Plateau State, Kano State, Jigawa State and the Federal Capital Territory, Abuja. The deceased's family purported to distribute his property in accordance with Awak custom (the deceased's personal law) with an appreciable proportion to the defendant/appellant. The defendant/appellant was apparently not pleased with the distribution and did not cooperate with the deceased's family, who tried to gain access to the deceased's properties. The claimants/respondents brought an action against the defendant/appellant before the Gombe State High Court. The claimants/respondents claimed *inter alia* that under Awak custom, which was the personal law of the deceased person, they are legitimate heirs of his property, who died childless and intestate; a declaration that the distribution made on 22 August 2015 by the deceased's family in accordance with Awak custom, giving an

appreciable sum of the property to the defendant/appellant is fair and just; an order compelling the defendant/appellant to produce and hand over all the original title documents of the landed properties and boxer bus distributed by the deceased family on 22 August 2015; and cost of the action. In response, the defendant/appellant made a statement of defense and counter-claim to the effect that she and the deceased are joint owners of all assets and properties acquired during their marriage; a declaration that the estate of the deceased is subject to rules of inheritance as envisaged by marriage under the Marriage Act[2] and not native law and custom; a declaration that as court appointed Administratrix, she is entitled to administer the estate of the deceased person; an order of injunction restraining the claimants/respondents to any or all of the assets forming part of the estate of the deceased person based on custom and tradition; and costs of the action.

The Gombe State High Court held that the Marriage Act was applicable in distributing the estate of the deceased person and not native law and custom. However, the Court distributed the property evenly between the claimants/respondents and defendant/appellants on the basis that it will be unfair for the claimants/respondents as parents of the deceased not to have access to the deceased's property. The defendant/appellant successfully appealed this ruling and won on the substantive aspect of the case. The private international law issue was whether the Gombe State High Court had territorial jurisdiction in this case, rather than the Kano State High Court where the defendant/appellant alleged the cause of action arose? The defendant/appellant argued that the cause of action arose exclusively in Kano State because that is where the deceased lived and died, and the defendant/appellant had obtained letters of administration issued by the Kano State High Court. The defendant/appellant lost on this private international law issue.

The Court of Appeal began on the premise that the issue of whether Gombe State or Kano State had jurisdiction was a matter of private international law, and not an issue of that was governed by a States' civil procedures rules that governs dispute within a judicial division.[3] It also held that it is the plaintiff's statement of claim that determines jurisdiction.[4] The Court of Appeal then approved its previous decisions that in inter-state matters of a private international law matter, a State High Court is confined to the location of the cause of action.[5] In this connection, the Court of Appeal rejected the argument of counsel for the

defendant/appellant and held that the cause of action arose both in Kano and Gombe State – the latter State being the place where the dispute arose with the deceased's family on the distribution of the deceased's estate. Thus, both the Kano State High Court and Gombe State High Court could assume jurisdiction over the matter.[6] The Court of Appeal further held that other States such as Kano, Bauchi and Plateau could also assume jurisdiction because letters of administration were granted by the State High Courts of these jurisdictions.[7] In the final analysis, the Court of Appeal held that the claimants/respondents could either institute its action in either Gombe, Kano, Bauchi and Plateau – being the place where the cause of action arose, but procedural economy (which leads to convenience, saving time, saving costs, and obviates the risk of conflicting orders) encouraged the claimants/respondents to concentrate its proceedings in one of these courts – Gombe State High Court in this case.[8] Accordingly, this private international law issue was resolved in favour of the claimants/respondents.

There are three comments that could be made about the Court of Appeal's judgments. First, it appears the issue of territorial jurisdiction was raised for the first time on appeal. It does not appear that this issue was raised at the lower court. If this is the case, it is submitted that the defendant/appellant should have been deemed to have waived its procedural right on jurisdiction on the basis that it submitted to the jurisdiction of the Gombe State High Court. Matters of procedural jurisdiction can be waived by the parties but not substantive jurisdiction such as jurisdiction mandatorily prescribed by the constitution or enabling statutes in Nigeria.[9] The issue of territorial jurisdiction among various State High Courts was a procedural matter and should have been raised promptly by the defendant/appellant or it would be deemed to have waived its right to do so by submitting to the jurisdiction of the Gombe State High Court.

Second, the Court of Appeal appeared to miss the point that there are Nigerian Supreme Court authorities that addressed the issue before it. According to the Supreme Court of Nigeria, in matters of succession and administration of states, the *lex situs* is given a predominant role for matters of jurisdiction purposes so that a Nigerian court would ordinarily not assume jurisdiction over foreign property, whether in an international or inter-state matter. Nigerian courts, as an exception, apply the rule to the effect that, where the Court has jurisdiction to administer an estate or trust, and the property includes movables or immovables situated in Nigeria and immovables situated abroad, the court has jurisdiction to

determine questions of title to the foreign immovables for the purpose of administration. Again Nigerian courts apply this rule both in inter-State and international matters.[10] This rule established by the Nigerian Supreme Court in accordance with the English common law doctrine should have guided the Court of Appeal to hold that since it had jurisdiction over the deceased immovable properties in Gombe State, it also had jurisdiction over other immovable properties constituting the deceased's estate in other States in Nigeria. The issue of where the cause of action arose was clearly irrelevant.

This brings me to the third and final comment – where the cause of action arose – the issue of territorial jurisdiction. The Nigerian Supreme Court has held in some decided cases that in inter-state matters, a State High Court cannot assume jurisdiction over a matter where the cause of action is exclusively located in another State, irrespective of whether the defendant is resident and willing to submit to the court's jurisdiction.[11] This current approach by the Supreme Court may have influenced the Court of Appeal to be fixated on the issue of territorial jurisdiction and confining itself to where the cause of action arose. Looking at the bigger picture, the current approach of the Nigerian Supreme Court in relation to matters of action *in personam* demonstrates a clear misunderstanding of applying common law private international law matters of jurisdiction in inter-state matters.[12] If a defendant is resident in a State and/or willing to submit, it shouldn't matter where the cause of action arose in inter-state and international matters. Indeed, there is no provision of the Nigerian 1999 Constitution or enabling statute that prohibits a State High Court from establishing extra-territorial jurisdiction in inter-state or international matters, provided the defendant is resident and/or wiling to submit to the Court's jurisdiction. The current approach of the Nigerian Supreme Court unduly circumscribes the jurisdiction of the State High Courts in inter-state matters, and also risks making Nigerian courts inaccessible in matters of international commercial litigation in matters that occur exclusively outside Nigeria, thereby making the Nigerian court commercially unattractive for litigation, and resulting in injustice.[13] Therefore it is time for the Supreme Court to overrule itself and revert to its earlier approach that held that in inter-state or international matters a Nigerian court can establish jurisdiction, irrespective of where the cause of action arose, provided the defendant is resident and/or submits to the jurisdiction of the Nigerian court.[14]

In my final analysis, I would state that the Court of Appeal in *Sarki* reached the right conclusion on the issue of private international law, but the rationale for its decision is open to question. Moreover, though this private international law issue was resolved against the defendant/appellant, it substantially won on the substantive issues in the case. If this case goes on appeal to the Supreme Court, it should be an opportunity for the Supreme Court to set the law right again on the concept of jurisdiction in matters of succession and administration and estates, and overrule itself where it held that in inter-state matters, a State High Court is restricted to the place where the cause of action arose, irrespective of whether the defendant is resident and/or willing to submit to its jurisdiction.

[1] (2021) LPELR – 52659 (CA).

[2] Cap 218 LFN 1990.

[3]*Sarki* (n 1) 13-14.

[4] *Ibid* 14.

[5] *Ibid* 14-18, approving *Lemit Engineering Ltd v RCC Ltd* (2007) LPELR-42550 (CA).

[6] *Sarki* (n 1) 21.

[7]*Ibid* 21-3.

[8] *Ibid* 23-5, approving *Onyiaorah v Onyiaorah* (2019) LPELR-47092 (CA).

[9] See generally *Odua Investment Co Ltd v Talabi* ( 1997 ) 10 NWLR (Pt. 523) 1 ; *Jikantoro v Alhaji Dantoro* ( 2004 ) 5 SC (Pt. II) 1, 21 . This is a point that has been stressed by Abiru JCA in recent cases such as *Khalid v Ismail (* 2013 ) LPELR-22325 (CA ); *Alhaji Hassan Khalid v Al-Nasim Travels & Tours Ltd* ( 2014 ) LPELR-22331 (CA) 23 – 25 ; *Nigerian National Petroleum Corporation v Zaria* ( 2014 ) LPELR-22362 (CA) 58 – 60; *Obasanjo Farms (Nig) Ltd v Muhammad* ( 2016 ) LPELR-40199 (CA). See also *The Vessel MT. Sea Tiger & Anor v Accord Ship Management (HK) Ltd* (2020) 14 NWLR (Pt. 1745) 418.

[10] *Ogunro v Ogedengbe* (1960) 5 SC 137; *Salubi v Nwariaku* (2003) 7 NWLR 426.

[11] *Capital Bancorp Ltd v Shelter Savings and Loans Ltd* (2007) 3 NWLR 148; *Dairo v Union Bank of Nigeria Plc* (2007) 16 NWLR (Pt 1059) 99; *Mailantarki v Tongo & Ors* (2017) LPELR-42467; *Audu v. APC & Ors* (2019) LPELR – 48134.

[12]See generally Abiru JCA in *Muhammed v Ajingi* (2013) LPELR-20372 (CA) 23 – 25, 25 – 26; CSA Okoli and RF Oppong, *Private International Law in Nigeria* (1st edition, Hart, Oxford, 2020) 95-103; AO Yekini, "Comparative Choice of Jurisdiction Rules in Cases having a Foreign Element: are there any Lessons for Nigerian Courts?" (2013) 39 *Commonwealth Law Bulletin* 333; Bamodu O., "In Personam Jurisdiction: An Overlooked Concept in Recent Nigerian Jurisprudence" (2011) 7 *Journal of Private International Law* 273.

[13] See for example *First Bank of Nigeria Plc v Kayode Abraham* (2003) 2 NWLR 31 where the Court of Appeal held the lower court did not have jurisdiction because the cause of action arose exclusively outside Nigeria. This decision was however overturned by the Supreme Court in *First Bank of Nigeria Plc v Kayode Abraham* (2008) 18 NWLR (Pt 1118) 172 on other dubious grounds. For a critique, see CSA Okoli and RF Oppong, *Private International Law in Nigeria* (1st edition, Hart, Oxford, 2020) 90.

[14] See generally *Nigerian Ports Authority v Panalpina World Transport (Nig) Ltd* (1973) 1 ALR Comm 146, 172; *British Bata Shoe Co v Melikan* (1956) SCNLR 321. See also *Barzasi v Visinoni* (1973) NCLR 373., 381-2.