

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Tuesday, 25 September 2018

BEFORE:

MASTER SHUMAN

BETWEEN:

ESTHER OLUFUNMILAYO LAMBO

Claimant

- and -

PATRICIA KELLY-LAMBO

Defendant

MR JAMES ALOMO (instructed by Topstone Solicitors) appeared on behalf of the
Claimant

MR PAUL CORBEN (instructed by Margaret Olusegun) appeared on behalf of the
Defendant

JUDGMENT

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8th Floor, 165 Fleet Street, London, EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
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MASTER SHUMAN:

1. This is a dispute concerning the disposal of the body of Mr Olawola Akambi Lambo ("the deceased"). He died on 3 November 2017 intestate. On 17 May 2018 that Esther Lambo brought a claim by Part 8 claim form, asserting that she was the surviving spouse of the deceased and seeking an order granting her letters of administration limited to the disposal of the body of the deceased either under section 116 of the Senior Courts Act 1981 or under the inherent jurisdiction of the court.
2. The claimant wishes to bury the deceased in Lagos, Nigeria. She is supported by all of the adult children of the deceased.
3. The claim is opposed by Patricia Kelly-Lambo, who also asserts that she is the spouse of the deceased. Her reply to the claim was filed on 20 June 2018. It is wide-ranging in nature. She denies that the claimant is the spouse of the deceased, arguing that the marriage was dissolved in accordance with Sharia law in the 1970s. The defendant says that she married the deceased on 17 April 1993 in Lagos, Nigeria.
4. In her acknowledgement of service the defendant has sought the following remedies: (1) an order dismissing the claimant's action for passing over brought under section 116 because it is predicated on fraud, forgery and false representations and a court ought not to lend its hand to the furtherance of illegal conduct; (2) a declaration that the defendant is the sole surviving spouse of the deceased and is entitled to obtain the letters of administration and she is entitled to collect the deceased's body and make appropriate arrangements for his befitting burial and proper disposal of the body; (3) a declaration that entries procured in the Bromley death register made by the claimant are incorrect, false and should be expunged from the records; (4) a declaration that, the claimant not being the wife and next of kin of the deceased, by false representations made in the claimant's solicitor's letter of 25 October 2017, collected the medical certificate of the deceased and procured the registration of the death of the deceased at the Bromley Register Office by giving false particulars; (5) an order that the defendant's application pending at the General Registrar Office made pursuant to section 29 of the Births and Deaths Registration Act 1953 and the Fraud Act 2006, should proceed.

5. That gives a flavour of the wide-ranging nature of the defendant's response to this claim.

6. In her statement dated 20 June 2018 she said at paragraph 15:

"I am convinced the claimant's intention was to make funeral arrangements for the deceased without giving me any notice of those arrangements and to exclude me from attending any funeral and to have any knowledge of the deceased's final resting place. I should have been allowed to mourn the passing of my husband in peace and not to have to face this saga which has, I am sure, the end game of seizing control of the deceased's estate."

7. Curiously, it was only on 10 July 2018 at the direction hearings before me that the defendant, through her counsel, stated that it was the deceased's wish to be buried in England and that is also recorded in her subsequent witness statement, although it is apropos that her statement says at paragraph:

"I want him to be buried where I can be seeing his graveyard all the time. I don't want to forget him. Taking him to Nigeria is like throwing him away."

8. This matter came before me for review on the papers and I listed an urgent directions hearing on 10 July 2018. I was particularly concerned when reviewing the papers that, despite the deceased dying on 3 November 2017, his body had still not been buried.

9. The deceased dying intestate means the determination of who is the spouse is of vital importance in the distribution of his estate. That will not be a straightforward issue to determine given the cross-allegations in this case about the authenticity of documents produced from Nigeria and also given the complicated intertwined and long family history. However, I considered that the most important consideration was that the deceased's body was disposed of with proper respect and decency and without further delay. It is to the parties credit that they agreed that I should list this claim for hearing promptly, that the hearing should be limited to the issue of the disposal of the deceased's body and that the trial should be concluded within one-and-a-half days.

10. My order of 10 July 2018 contained the following recitals:

"AND UPON the parties agreeing that the court can use its inherent jurisdiction to determine the dispute and in order to determine the form and place of the funeral or internment, the parties agree that for these purposes only the claimant and the defendant are equally entitled to a limited grant to dispose of the body without prejudice to a determination of who is the spouse at a future hearing.

AND UPON the parties agreeing that the evidence and submissions shall be limited to the factors set out in *Hartshorne v Gardner* [2008] EWHC 3675 (Ch) with the most important consideration being that the body is to be disposed of with all proper respect and decency without further delay; and -

(i) the deceased's wishes;

(ii) the place with which the deceased had his closest connection; and

(iii) the reasonable wishes and requirements of family and friends of the deceased."

11. I turn to the law and for completeness I will set out the relevant rules. The Non-Contentious Probate Rules 1987, rule 22 provides that:

"(1) Where the deceased died on or after 1 January 1926, wholly intestate, the person or persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following classes in order of priority, namely -

(a) the surviving husband or wife; ..."

12. Under section 116 of the Senior Courts Act 1981:

"If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient..."

13. However, the court also has an inherent jurisdiction which provides an alternative and equally valid route.
14. In *Hartshorne v Gardner*, Miss Sonia Proudman QC was sitting as a Deputy High Court Judge. In that case the deceased died intestate at the age of 44 in a road traffic accident. The claimant was his father and the defendant his mother. They had divorced many years previously. The father wanted his son buried in Kington and the mother wanted her son cremated in Worcester.
15. At paragraph 7 of the judgment, the judge said:

"... some helpful guidelines may be distilled from some of the cases. Thus the deceased's wishes are one of the relevant factors to be taken into consideration (see, for example, *Grandison v. Nembhard* (1989) 4 BMLR 140). Again, the place with which the deceased had the closest connection is relevant as to the ultimate resting place (see *Fessi v. Whitmore* [1999] 1 FLR 767)."

16. At paragraph 9 she says:

"The most important consideration is that the body be disposed of with all proper respect and decency and, if possible, without further delay. Subject to that overriding consideration, it seems to me that there are two types of factor that are relevant in the present case. First, those that do or might be expected to reflect the wishes of the deceased himself. Secondly, those that reflect the reasonable wishes and requirements of family and friends who are left."

17. In that case, despite the wishes of the mother and her evidence about the difficulty in travelling to her son's grave, the judge decided the issue in favour of the claimant. As I have indicated, the parties are in agreement as to the law. I should consider all the circumstances of the case, that the most important consideration is that the body is disposed of with proper respect and decency without further delay and that in particular I should consider (1) the deceased's wishes so far as they are ascertainable; (2) the places which the deceased had his closest connection; and (3) the reasonable wishes and requirements of family and friends of the deceased.
18. I turn now to the factual background. There is much in dispute between the parties, this has become an increasingly bitter dispute with allegation and cross-allegation. Yet the background reveals that the parties used to have a perfectly civil relationship, indeed the claimant's children had had a good relationship with the defendant. The following will give a flavour of the issues between the parties. Even during the hearing, the defendant sought to question the paternity of the deceased's children with the claimant.
19. On 10 November 1962, the deceased married the claimant and they had five children. One sadly has passed away. In 1965, he moved to the United Kingdom and was then joined by the claimant in 1969. The defendant says that the deceased divorced the claimant in the 1970s by Islamic custom. That is disputed by the claimant. On 22 January 1975, the deceased married Vanessa Allan. In the 1970s, the deceased returned to Nigeria. It is disputed whether he returned with the claimant or Ms Allan. The claimant says that the deceased's relationship with the defendant started in 1983. The defendant disputes this. In 1989 the claimant says that she separated from the deceased and returned to the United Kingdom. In or about 1994, she acquired British citizenship.
20. On 27 November 1991, the deceased's marriage to Ms Allan was dissolved. On 17 April 1993, the deceased married the defendant in Lagos. The claimant disputes that this was a valid marriage. In 1991, the defendant says that the deceased was in a relationship with Ms Adegbite with whom he had twins, although she says there was a question mark over their paternity. The claimant says no, this relationship was in 1999.
21. It does appear to be agreed between the parties that in 1999 the deceased returned to the United Kingdom. He was granted an extension of stay in the United Kingdom on the

basis of his marriage to the claimant and sometime after this, the deceased acquired British citizenship. However, he never renounced his Nigerian citizenship.

22. The claimant says in 2000 she reconciled with the deceased and they lived together in Catford. Whilst she questions whether there was ever a valid marriage between the defendant and the deceased, the claimant says if there was a marriage it was dissolved in March 2000. The defendant says that the documents that the claimant relies on in support of this are forgeries.
23. In 2004, the claimant became ill and moved to live with her daughter in Warlingham, Surrey. The deceased at some stage moved out of their Catford home and went to live with his sister in Deptford. In 2006, the deceased moved to the United Kingdom and she says she lived with the deceased at 100 Edistone Tower, SE8. In 2006 or thereabouts, the deceased purchased Hillcrest Road, Bromley. The claimant says this was funded with the assistance of his children. The defendant denies this, saying that it was in fact funded by her and the deceased. It was around this time or perhaps 2007/2008 that the deceased retired.
24. On 10 July 2017, the deceased sent the claimant to Nigeria to make plans to renovate his property known as the Lambo Foundation Estate. Whilst she was there, the deceased was admitted to hospital having suffered a stroke. He suffered a severe stroke. The claimant returned to the United Kingdom. The deceased was transferred to the Princess Royal Hospital for permanent care. On 3 November 2017, he died and on 6 November 2017 the claimant registered the deceased's death.
25. Turning now to the evidence that is before me. The claimant relies on her three witness statements and I heard her give oral evidence. In addition, her son, Mr Bapatunde Lambo, gave evidence. He and all of the deceased's children support the claim. They wish the deceased's body to be returned to Nigeria and buried in his land there. Mr Lambo Junior lives in Bromley, is a retail loss prevention officer and a British citizen. I have also heard from Mr Savage. He is the deceased's first cousin from his maternal side and he knew the deceased throughout his lifetime. Mr Savage lives in Wembley, is retired and is a British citizen.

26. The defendant relies on her two witness statements and I heard her give oral evidence. In addition, Ms Oliyide gave evidence. At one stage she was married to the deceased's nephew. Ms Anifilaje also gave evidence. She lives in New Cross, is a specialist nurse and a British citizen. She met the defendant on the bus and they struck up a firm friendship thereafter. Ms Buahin also gave evidence. She lives in Kenley, was a co-worker and friend of the deceased. Counsel for the claimant criticised her statement and inaccuracies within it. Certainly it seems to have been prepared with little care, as she describes herself in the male gender rather than the female gender and, until she walked into court, I thought that the witness that was going to give evidence was a male.
27. In addition, the defendant relies on a raft of other witness statements in support of her case. Counsel for the defendant says that, whilst these are all hearsay evidence, they are admissible. He submits that no hearsay notice was required to be served in relation to them because the hearing of this matter did not dispose of the dispute between the parties. He said it was in the manner of a preliminary issue. I do not accept that analysis. The claimant's claim is for a limited grant, whether under section 116 or the inherent jurisdiction of the court limited to the disposal of the body of the deceased. The defendant has sought to make this claim wide-ranging in what is in effect her counterclaim. The claimant's claim will be disposed of at this hearing. It is not a preliminary issue. Undoubtedly, there will be a dispute between the parties as to who is the spouse and therefore entitled on intestacy to a distribution of the deceased's estate, but that will either be determined on the defendant's counterclaim or in separate proceedings.
28. I am entitled to consider the witness statements filed on behalf of the defendant, even though no hearsay notice has been served. However, the weight I attribute to them is limited, because the claimant has not had the opportunity to cross-examine those witnesses. So I have read and I have taken into consideration all of the statements that have been filed in support of the defendant's case.
29. Turning to the claim and the issue before me, the deceased was born on 28 October 1940 in Nigeria. He was a member of the Yoruba tribe, was of royal heritage and a prince. He retained his Nigerian citizenship through his life and later acquired British citizenship.

30. Turning first to the disposal of a body with proper respect and decency and without further delay, the claimant and Mr Lambo Junior have provided detailed evidence of the plans they have made for a commemoration service of the life of the deceased to be held in England and a burial in Lagos. The family understand the financial commitment of this and have either provided or pledged to cover the costs. I am satisfied on the evidence before me that the arrangements set out by the claimant would be respectful and decent. They would provide for the deceased's body to be buried within a relatively short period of time. It would enable the family and friends in England to celebrate his life and allow his extended family in Lagos to attend his burial ceremony.
31. A significant part of the cross-examination of the claimant and her son was devoted to these arrangements, the suggestion being that it would be a much larger affair in England than in Lagos. The implication, of course, being that his connection was with England rather than Lagos. I am satisfied on the evidence that the burial in Lagos will be attended by a large number of the wider Lambo family and, as is customary, many will bring food with them, so an estimate of catering numbers in England and in Lagos does not assist me and take matters any further forward.
32. The claimant also emphasises that the deceased is a royal prince and must have a burial that reflects his status. She says that the defendant is not from the Yoruba land, unlike both the deceased and her. Mr Savage gave evidence that it would be unusual for someone of a royal lineage not to be buried in Lagos State. He said it would be disastrous for the deceased's family and they would lose their royal lineage. There is no expert evidence before me on this point. It is difficult for me to assess this factor without more, not least when I asked Mr Lambo Junior what would happen if the deceased was not buried in Lagos State, what the implications of the royal lineage for him and his siblings would be. He said there were none. The only consequence for him, he said in his evidence, was that he would have failed in his promise to his father to bury him in Lagos. So on the evidence before me at best, this factor is neutral.
33. Counsel for the defendant also challenged the claimant and her son on whether they needed Government permission to bury the deceased on his land. No evidence was put in by the defendant in relation to this aspect. I accept the claimant's evidence that local laws needed to be followed and that any requirement will be properly complied with by

the deceased's family and specifically his children. I am told it is customary that the children of a deceased take charge of the burial arrangements.

34. There was also a suggestion by the defendant's counsel in closing that the deceased's Nigerian estate might be reduced in value if his body is buried there. This was speculation at best. No evidence was put before me on this issue and I do not consider that it has any relevance to my consideration.

(1) the deceased's wishes.

35. There is a chasm in the evidence between that of the claimant and that of the defendant. The claimant says that it was the deceased's expressed wish to be buried in Nigeria. Mr Lambo Junior in evidence also says that his father's wish was to be buried there. He made it very clear to him that he wanted to be buried there. Mr Savage in his evidence said that the deceased also expressed his desire to be buried in Nigeria.
36. Ranged against this is the defendant, her witnesses and the witness statements. They say that it was the deceased's express wish to be buried in England. Some of the evidence in this case sheds some light on this issue. In particular, I consider that the claimant gave credible evidence about the deceased's wish to be buried at a spot near a pond on his Lambo Foundation land, an area that he looked out on from his house. He had fond memories of feeding his pet tortoise and an alligator, which I presume was a crocodile or cayman, at the back of a house by the pond. She also gave powerful evidence that she simply wanted to honour the deceased's wish and for that wish to be carried out and that wish was to be buried on his land in Lagos.
37. There was also evidence that when other Lambo family members have died, they have been repatriated to Nigeria so that their bodies can be buried in Yoruba land. The defendant disputed this in her evidence, but this was never put to the claimant or her witnesses in cross-examination.
38. There was a series of questions put to the defendant in cross-examination about when she first knew of the plans to repatriate the deceased's body to Nigeria. Her evidence was that she only knew of this very late in the day. I do not consider that she was a

credible witness in relation to this point. Many of the questions put by the claimant's counsel to her were left unanswered.

39. I consider that certainly by January 2018, if not earlier, she knew of the plans to repatriate the deceased's body to Nigeria. Despite this, it was only on 10 July 2018 at the directions hearing before me when I pressed her counsel that she stated that it was the deceased's express wish to be buried in England.
40. I also consider that the correspondence between the solicitors is significant on this aspect. On 6 April 2018, the claimant's solicitors wrote to the defendant's solicitors and the material part of that letter is:

"Our client is very concerned and hurt that her husband remains unburied to date and now put forward her proposal to your client that, as a last resort to resolve the stalemate relating to the release of her husband's body, our client invites your client to agree to the release of the deceased's body to the children of the deceased so that they can immediately commence burial arrangements and this is without prejudice to any claim our client has against the estate.

Of course, if your client refuses our client's proposal, then our client will be forced to issue proceedings."

41. One would have expected the response from the defendant's solicitors to be, "But the deceased's express wish was to be buried in England", but that was not the response of the defendant's solicitor. After chasing on 11 April 2018, the solicitor replied as follows (and I take extracts from that letter):

"If your client is really ready for a peaceful resolution of the stalemate which she created, my client has promised to engage in the process. It is our client's wish that in order to ensure successful resolution, it is vital to look at the totality of the issues and tackle them from the root rather than partial approach.

...

5. Regarding your client's proposal to resolve the stalemate on the release of the body, you need to note that your client in 2017, shortly upon her procuring the registration of death, which is in issue, presented at the hospital to collect the body of the deceased without informing my client. The intention was to exclude my client from her late husband's funeral arrangements, such that she will not know when and where it took place.

6. Nonetheless, we are mindful of the obligations on the parties under the Civil Procedure Rules to try to resolve their disputes where possible. Hence, my client will in principle agree to holding talks with the children of the deceased in anticipation of the release of the body for burial arrangements and for tranquillity in the family, conditional on your client dropping all her claims to being surviving spouse."

42. The focus of that letter is not the deceased's express wishes but that the claimant should drop her assertion that she is the surviving spouse of the deceased and I read into that and would therefore be beneficially entitled to share in the deceased's estate under the intestacy rules. I would have expected the issue of where the deceased should be buried, in particular his express wishes, to have been dealt with in that letter.
43. Regardless of the myriad of issues that were thrown up by this stage by both the claimant and the defendant, their primary concern should have been the proper and decent burial of the deceased without further delay. I accept and prefer the evidence put forward by the claimant on this issue rather than that of the defendant. I find it was the deceased's express wish to be buried in Nigeria.

(2) the place with which the deceased had his closest connection.

44. Undoubtedly, the deceased had a close connection with the United Kingdom. He had settled here from 1999 and acquired British citizenship. He bought a house here and

certainly for a long period of time, up until his admission to hospital, he lived with the defendant as man and wife. During this period, he only returned to Nigeria twice.

45. Whilst I have heard conflicting evidence about the deceased's relationship with Nigeria, it is clear that he retained a connection there. He owned land known as the Lambo Foundation. I am told that the layout of the foundation is that it comprises seven buildings, one of which has long collapsed. There was a restaurant on the land and being run as a restaurant until the tenants moved out. There are still some tenants on the land in occupation of the buildings. There is a church and there is a school that is still run from the land.
46. Although there was some evidence that he sought to sell his land, it was still retained by him at the time of his death. Indeed, he had sent the claimant to Nigeria to make plans to renovate buildings on the land which has partially collapsed. The defendant blames the claimant indirectly or perhaps even directly for the deceased's stroke. She said that the deceased seeing photographs of some of the collapsed buildings on his land caused him extreme distress and anguish and contributed to his stroke. If he had no interest in Nigeria and no interest in the property in Nigeria, I question why he had such an extreme reaction to the photographs of the Lambo Foundation. That does not sit comfortably with the picture presented by the defendant. I also consider it relevant that the deceased never gave up his Nigerian citizenship.
47. The defendant's evidence and those of her witnesses was that the deceased had, in effect, turned his back on Nigeria. However, that was plainly not the case. He was an entrepreneur throughout his life as well as an engineer, he had a number of business ventures that did not prosper, but that did not seem to daunt him. There was evidence before me that in August 2013 a company had been incorporated in Nigeria. He was the majority shareholder of that company. It was incorporated with a view to him obtaining a licence to distribute a medicine designed to help with cataracts.
48. I accept the submission of the claimant's counsel that this is inconsistent with the defendant's case that the deceased wanted to put as much distance between himself and Nigeria as possible. I also accept the claimant's evidence that he kept in touch with his family in Lagos, in particular he enjoyed a very close relationship with his sister, who

sadly passed way in 2014. I consider that the deceased retained a close connection with Nigeria and also had a close connection with the United Kingdom.

49. Turning finally to the reasonable wishes and requirements of family and friends of the deceased, whatever the romantic relationships that the deceased enjoyed during his lifetime, it is clear that he had a close relationship with both the claimant and the defendant. It is also clear that he enjoyed a close relationship with all of his children. The defendant elected during her evidence to question the paternity of the deceased's four children with the claimant. That evidence was spiteful. She alleged in evidence that he did not have a close relationship with Mr Lambo Junior. However, that was not put to him in cross-examination and I simply do not accept the defendant's evidence on this. Whilst the defendant wishes the deceased to be buried here, his family, including his children and the claimant, wish him to be buried in Nigeria. I am satisfied that, despite the allegations advanced by the defendant that Mr Lambo Junior and his family will involve the defendant in the plans for both the commemoration service in England and the burial in Nigeria.
50. Whilst this is difficult for the defendant, I consider that the weight of the evidence is overwhelmingly in favour of the deceased's body being repatriated to Nigeria for burial on his land and before his body is returned to Nigeria, there will be a commemorative service in the United Kingdom. That is my judgment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: civil@epiqglobal.co.uk