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Case No: FD21F00073 / PT-2021-001013

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16th October 2023

Before :

MRS JUSTICE ARBUTHNOT

Between :

EZINNE UCHECHUKWU-ONWUBIKO

Applicant

- and -

IHEDINMA ONWUBIKO

1st Respondent

- and -

**NKECHINYEREM ADANNAYA UZOAMAKA
ONWUBIKO**

2nd Respondent

- and -

UCHECHI AKUNNA JOSEPHINE ONWUBIKO

3rd Respondent

Kerstin Boyd (instructed by Whitebridge Solicitors) for the Applicant
Chinonso Ijezie (instructed by Piperjuris Solicitors & Advocates) for the 1st, 2nd and 3rd
Respondents

Hearing dates: 26th and 27th May 2022, 8th August 2022 and
31st August 2023; draft judgment 21st September 2023

**JUDGMENT – THE ‘TRUE’ WIFE, RECOGNITION OF
AN OVERSEAS DIVORCE**

Mrs Justice Arbuthnot:

Introduction

1. These proceedings have involved a dispute between the fifth and the second wives over the body and estate of Mr Uchechukwu-Onwubiko (“the deceased”) who was found dead on 21st September 2021. He is currently with the coroner. His estate consisted mainly of a flat.

2. The Applicant is Mrs Ezinne Uchechukwu-Onwubiko who was the deceased’s fifth wife. The First Respondent Mrs Ihedinma Onwubiko was the second wife of the deceased and the Second and Third Respondents, Dr Nkechinyerem Adannaya Uzoamaka Onwubiko and Ms Uchechi Akunna Josephine Onwubiko, are their two daughters.

3. For convenience I have referred to the Applicant as “the fifth wife” and the First Respondent as “the second wife”.

4. The agreed issue for the court was whether the second wife or the fifth wife was the ‘true’ wife of the deceased. The answer to that question would lead to the grant of a Letter of Administration in respect of the estate of the deceased, an entitlement to act as the deceased’s next of kin and to take custody of the deceased’s body for burial and power to decide on the funeral arrangements.

5. The fifth wife issued her application in the Family Division on 18th November 2021 for a declaration that her marriage was a valid marriage, that the marriage between the deceased and the second wife did not subsist at the date of her marriage to the deceased and that she was the surviving spouse and next of kin of the deceased.

6. The Respondents issued their application in the Chancery Division on 23rd November 2021 for an interim order permitting them to act as the deceased’s next of kin,

to participate in the inquest into his death, to take custody of his body and be responsible for making the arrangements for his burial. They sought also a number of declarations including that the second wife was the deceased's wife at the time of his death and was the only widow.

A brief account of the proceedings

7. On 25th November 2021, Keehan J made case management orders. The Chancery proceedings were transferred to the Family Division and directions were given for an Single joint Expert ("SJE"), Oba Nsugbe KC, to be appointed.

8. Mr Nsugbe KC was to report on Nigerian statutory and customary law in relation to marriages and divorces. There was also an order that the papers in the divorce proceedings between the fifth wife and the deceased be disclosed into these proceedings and a direction for the disclosure of documentation held by the Home Office.

9. There was a further hearing on 25th January 2022, when the Home Office material was not yet available. Just before 25th January 2022, the fifth wife's brother (Kenneth Prince Ubani) found a number of significant documents belonging to the deceased in a suitcase which he said the deceased had left with him for safekeeping in Nigeria in 2016. Although the second wife challenged the genuineness of one of the documents found which purported to be a Lagos High Court decree absolute dated 9th December 2003, she did not suggest in evidence that the rest of the documentation was not genuine. She remained sceptical however about how the documentation came to be found. The fifth wife was given permission to rely on these documents.

10. Subsequently, the second wife obtained evidence about what purported to be the Decree Absolute dated 9th December 2003 between her and the deceased. This evidence

was obtained without permission of the court and provided to the fifth wife on 13th May 2022, shortly before what should have been the final hearing.

11. In the event, faced with a possible adjournment, the parties agreed that the fifth wife would not rely on the Decree Absolute and the second wife would not rely on evidence saying it was a forgery. The evidence has moved on since then.

12. The final hearing came before me on 26th and 27th May 2022. I heard evidence from the fifth wife and the second wife. I had statements from the second and third Respondents who were not able to say whether their mother was divorced from the deceased or not.

13. I had a number of other statements from various family members which I did not regard as entirely reliable. There was an expert report from Oba Nsugbe KC. I had a great deal of documentation provided by both parties.

14. I sent a draft judgment to the parties on 28th June 2022. I had found that the second wife was the 'true' wife of the deceased as there was insufficient evidence to prove that there had been a valid divorce. I gave the parties time to provide corrections. Unfortunately, one of the representative's holiday dates meant that there was some delay to this process.

15. On 18th July 2022 the fifth wife applied to re-open the proceedings. On 8th August 2022, I heard submissions. The fifth wife had found new documentary evidence which included a purported judgment of the Nkwoegwu Customary Court dated 28 November 2002 allegedly dissolving the marriage between the Deceased and the second wife. She argued this had not been available before. If genuine, this documentation could have had an important influence on the proceedings. The second wife argued the new

documentation was forged. I gave an *ex tempore* judgment and ordered the proceedings to be re-opened for the new documentation to be considered.

16. On 10th October 2022, I sought the assistance of the President of the Customary Court of Appeal (“CCA”) in Abia State, Nigeria in order to arrange for the inspection of the records of the divorce found in the Nwoegwu Customary Court in Umuahia, Abia State.

17. Meanwhile, on 11th October 2022, the second wife made a complaint to the President of the CCA that the newly found documents had been forged and manipulated by the Court Administrator at the Nwoegwu Customary Court and by others.

18. On 30th November 2022 an investigating panel made up of two retired CCA Judges, the Hon Justice Anyalewechi Onwuchekwa (Ksc) and the Hon Justice E U Onuoha sat with the parties’ respective lawyers and jointly inspected the Nkwoegwu Customary Court records. The other two dates of 13th and 22nd December 2022 when the panel met were when a video of poor quality was made of the files.

19. The Nigerian panel report was sent to me. In summary the retired Judges said the newly discovered court documentation was not genuine.

20. On 1st February 2023 the fifth wife’s Nigerian lawyer Mr Iro sent a letter to the President of the CCA challenging the panel’s report. This was rejected on 21st February 2023.

21. On 31st August 2023 I heard final submissions from the parties. I was told that proceedings were continuing in Nigeria in relation to the new, allegedly forged documentation.

22. The judgment below incorporates my original decision sent out in draft on 28th June 2022 as well as the updating evidence.

23. In short, the new evidence has not led me to change my mind that there is insufficient evidence to find that the second wife was divorced from the deceased.

Background

24. The fifth wife married the deceased on 16th April 2009 under the civil and traditional laws of Nigeria and produced a statutory certificate of marriage and a declaration of customary marriage. When they married the deceased told her he had divorced his four previous wives.

25. By 2018 the deceased and the fifth wife's relationship had broken down and divorce proceedings were started. She obtained a decree nisi and a two-day financial remedy hearing was due to take place in October 2021. On 21st September 2021 the deceased was found dead.

26. On or about 8th October 2021, the second wife told the Coroner's Office that she was contesting the fifth wife's status as next of kin. Her case was that her marriage to the deceased had been registered in 1993 at Umuahia North Local Government Area in Abia State, Nigeria and that they had separated in 2000. She said she had never been formally divorced from the deceased and therefore the marriage to the fifth wife was bigamous and void under section 11(b) and (d) of the Matrimonial Causes Act 1973 ("MCA").

27. The deceased was only free to marry the fifth wife in April 2009 (and his third and fourth wives before that) if English law recognised the validity of the customary divorce which the fifth wife alleged had taken place between the deceased and his second wife in Nigeria. If the deceased was not free to marry then his subsequent marriages to wives three, four and five were bigamous.

Law

Recognition of Overseas Divorce

28. It was agreed by the second wife that although they were habitually resident in the UK, she and the deceased were Nigerian nationals at the time of any possible divorce.

29. Sections 45 and 46 of the FLA 1986 apply:

Section 45 Recognition in the United Kingdom of overseas divorces, annulments and legal separations

“Subject to [...] sections 51 and 52 of this Act, the validity of a divorce, annulment or legal separation obtained in a country outside the British Islands (in this Part referred to as an overseas divorce, annulment or legal separation) shall be recognised in the United Kingdom if, and only if, it is entitled to recognition—

by virtue of sections 46 to 49 of this Act, or (b) by virtue of any enactment other than this Part.”

Section 46 Grounds for recognition

(1) The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if—

(a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and

(b) at the relevant date either party to the marriage—

(i) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or

(ii) was domiciled in that country; or

(iii) was a national of that country.

(2) The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if—

(a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained;

(b) at the relevant date—

each party to the marriage was domiciled in that country; or

either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and

(c) neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.

30. It was agreed by Mr Ijezie the solicitor advocate on behalf of Respondents that if I found that the customary marriage of the second wife had been dissolved by a Customary Court in Nigeria that there would have been a judicial dissolution and a process with formalities. This would amount to “proceedings”¹ for the purposes of section 46(1) FLA 1986 and would be recognised as a lawful overseas divorce under the Act.

Burden of proof

31. The burden of proof in this case where there were two putative marriages shifts from one party to the other. My approach was that the burden of proof would be first on the fifth wife to prove on the balance of probabilities that the marriage of the second wife and the deceased had ended in a valid divorce which would come within sections 45 and 46 of the Family Law Act 1986. If there had been a valid divorce, then the burden would shift to the second wife to disprove the validity of the fifth wife’s marriage to the deceased.

Lies and false documents

32. The problem that I had to grapple with was not so much parties telling lies but that false documents had been produced at various times. Serious allegations also have been made variously that the lawyers representing the parties in Nigeria, the court administrator at the Customary Court (a Mr Sunday) and the panel of retired CCA judges who had produced the report were corrupt.

33. I bear in mind that if I were to find any lies had been told by the witnesses the direction in the criminal case of *R v Lucas* [1981] QB 720 would be relevant. The principle is that if, after a witness has given evidence, the court concludes that the witness has lied it does not follow that they have lied about everything in their evidence nor can

¹ S.54(1) provides ‘proceedings’ means judicial or other proceedings

the lies, of themselves, provide proof of the fact or facts alleged. A witness may lie for many reasons.

34. I adopt the lies direction to the false documents produced in this case. Just because a document has been produced which I find to be false, it does not necessarily mean that the event it purports to prove did not happen. The pressure particularly on the fifth wife from the mounting costs of the proceedings must have been considerable, when she was trying to prove a divorce had happened, many years before she had met the deceased. Pressure may lead a person to rely on documentation which is not genuine. That did not necessarily mean that there had been no divorce. The fifth wife may have been just filling in the gaps.

Evidence

35. I heard evidence from the fifth wife and the second wife. In view of the position of the parties and the proliferation of evidence suggesting various dates for a divorce between the deceased and the second wife, I had to consider the evidence in detail.

The Fifth Wife

36. The fifth wife produced a series of emails exchanged between the deceased and his father between mid-2001 and mid-2002 where a divorce from the second wife was being discussed. Having considered this evidence, the emails appeared to me to be genuine.

37. After her marriage to the deceased in Nigeria on 16th April 2009, the fifth wife came to the UK in 2010. They never had children. In late 2018 their relationship broke down and they separated whilst living at the same address. The fifth wife submitted a divorce petition. They became engaged in bitter divorce proceedings. The fifth wife said

the deceased had become abusive and violent towards her and in late 2020 she had fled to a women's refuge.

38. At the time of her evidence the fifth wife was questioning the authenticity of the second wife's certificate of marriage to the deceased and said she believed the Respondents had made their claims to obtain financial benefit from his estate. She had also questioned whether the second wife had had any contact with the deceased after 2000 but on seeing evidence provided by the Respondents, she later accepted that the deceased had sent friend requests on Facebook and LinkedIn to the Respondents. The fifth wife's position was that this did not suggest a continuing marriage or even a friendly relationship.

39. The fifth wife also criticised the second wife's reaction to the deceased's death which she said was exaggerated. She said that the second wife had kept the deceased away from his daughters when they were young, she was responsible for "financial extortion" and had caused him trauma and stress which had affected his "mental health and wellbeing".

40. The fifth wife's strongest points, or so it seemed to me, were first that the second wife had never claimed her marriage to the deceased continued when he was alive; second, that none of the Respondents who apparently knew the deceased was in a bigamous marriage had said anything about it, including one daughter who was a law graduate.

41. The fifth wife explained that after getting the expert opinion given by Oba Nsugbe KC she was speaking to her older brother Kenneth Smart Ubani in mid-January 2022 when he told her that he had a locked box and two suitcases which belonged to the deceased. He had been asked to keep them safe in 2016 as the deceased's home in Nigeria had a leaky roof. She told her brother to open the box. On 20th January 2022, he sent her the documents which she exhibited. These included the deceased's British driving licence,

his daughters' birth certificates and a number of emails between the deceased and his father.

The second wife's evidence

42. I heard evidence from the second wife but not from her daughters. She said that she had been introduced to the deceased by his "senior brother" in 1990. On 22nd September 1993, she and the deceased married according to the native law and custom of Isingwu Community in Umuahia North Local Government Area of Abia State, Nigeria. This was witnessed by her oldest brother, Sunday Nzoke. The Second and Third Respondents are the children of that marriage.

43. On 25th June 1999, the Respondents entered the UK having been granted leave to enter as dependants of the deceased.

44. The second wife said that on 4th June 2000 the deceased locked her out of the family home. She said she was a victim of domestic abuse, and that the Respondents went to live with a friend. It was not relevant to decide whether her account was correct or whether the deceased's bizarre claim that she had left him for a man who had taken his name was true.

45. In any event by mid-2000 the Respondent and the deceased's marriage had broken down and in documentation the deceased claimed, and it appeared not to be disputed that he was unable to see his children for ten years afterwards.

46. Over the intervening years the second wife said she had had sporadic contact with the deceased. She produced a message on Facebook sent on 10th October 2010 and one on LinkedIn dated 30th June 2018 but it was not clear to me whether they were addressed to the second wife or the third Respondent.

47. More recently there was correspondence between the deceased and his lawyer daughter in relation to the divorce from the fifth wife. On 27th April 2019 he thanked her for being willing to help. He asks the third Respondent to thank the second wife warmly and sends his regards to Ada (the Second Respondent).

48. Also on the same day, 27th April 2019, the deceased made a complaint to the police about the way he was treated by them when the fifth wife had called for their help. He told the police that she had stolen a number of certificates and other unknown documents. This evidence clearly showed the antipathy between the deceased and his fifth wife.

49. On 20th May 2019, the deceased sent divorce correspondence from his fifth wife to the Third Respondent and asks her to review his reply and advise him. The second wife in an attempt to show a continuing relationship with the deceased said that when he addressed the email to “My dear Nne” this was a common Igbo name for his wife, as it means his woman or mother. I was not able to find that, it seemed to me from the tone of the letters, that he was very grateful to have the assistance of his law graduate daughter.

50. By 24th May 2019 he had spoken to his daughter about a letter he was sending to do with his divorce. Between 16th and 18th June 2019, the deceased had asked his daughter to proofread his statement. She did so, and made a few changes which he thanked her for and he thanked her mother for “giving me this excellent lead”.

51. The second wife said her relationship with the deceased went further. They had spoken over the telephone and met up several times. She said there was a time when they may have got back together again. There was no evidence in support of this and I thought it unlikely.

52. The second wife exhibited a document dated 6th November 2020 headed “Umu Enenama Family” where the President General of the Amato Isingwu Welfare Union, Deacon Amobi Ohaeri, said that the entire family of the deceased “restate” that on 1st July 2019, a traditional divorce between the fifth wife and the deceased had taken place. There was a list of attendees who had signed against their names.

53. The second wife provided an affidavit dated 1st December 2021 from the same Deacon Amobi Ohaeri. He attached a resolution of the family dated 18th November 2021 signed by him and a Zephaniah Onwubiko, made at a meeting held the day before where they say that they did not recognise the fifth wife as the wife of the deceased because “her marriage was dissolved under the custom and therefore she has no right to touch the body or corpse of Uchechukwu Onwubiko”.

54. The meeting resolved that the second wife as the wife of the deceased and her two children were required to bring his body back to be buried at the traditional homestead of the family. This is what the second wife intended to do.

55. The evidence of Deacon Amobi Ohaeri provided by the deceased which suggested a divorce had taken place between the fifth wife and the deceased in 2019 had been rejected by HH Judge Staite at the Central Family Court.

56. The second wife made a number of allegations against the fifth wife. These included that the fifth wife had tried to kill the deceased by leaving the gas on, on 14th November 2020. She said it would not be the deceased’s “wish for Ezinne to bury him as he hated her with a passion”.

57. She claimed that she had a better relationship with the deceased at the time of his death than the fifth wife. That may well have been true. The divorce proceedings were hard fought. The second wife said that the fifth wife had failed to tell the community

about the deceased's death because she knew that he was not divorced from her. I rejected that. It was abundantly clear that the fifth wife thought she had been lawfully married to the deceased.

58. The second wife's better argument was that if there had been a divorce between her and the deceased there would have been a financial settlement. She said that rather than get a divorce, she had met the deceased's father in February 2003 who told her the deceased had asked him to see her to see if he could make amends.

59. I did not accept the second wife's account that in 2019, the deceased had told her to "remember we are still married". Nor did I accept that the deceased had never wanted to divorce her because from the emails he clearly had.

60. I did accept her evidence that the deceased lied to his fifth wife and the British High Commission when he said he was divorced to get the latter into the UK.

61. The second wife explained that as the deceased was getting divorced, she did not see the point in reporting the deceased's bigamy. She did not want to see the father of her children go to prison.

62. There was an oddity about one of the documents produced by the second wife. Her native law/custom marriage registration certificate was numbered 000690 and dated 22nd September 1993. On 23rd November 2021, she had asked a lawyer in Nigeria for a verification of the document. A copy of the certificate of registration was provided by Umuahia North Local Government to the lawyer the same day. It was undoubtedly a copy of the document with the same number as the one she had produced.

63. It was curious that the number of the certificate, 000690, was not the same number found on the marriage certificate that the second wife said she had sent to the

Home Office nor was the number the same as that on the document (number 000037) the deceased had kept in his records. In all other respects the documents were identical.

64. Although the second wife said she had sent the same marriage certificate numbered 000690 to the Home Office, that could not be true. The same document with different numbers led to the suggestion by the fifth wife that the second wife had forged the document.

65. It was not in doubt that the second wife had been married to the deceased nevertheless she had not been right when she had said in evidence that the document the Home Office had was the one she had sent them. They had two different numbers.

66. The second wife produced an affidavit from her oldest brother, Sunday Nzoke dated 2nd December 2021 and one dated 1st December 2021 from the brother of the deceased and now the eldest son of the Onwubiko family, Mr Ariwa Onwubiko King John. Both explained that the bride price had been paid by the deceased, and that according to custom as it had been never returned, there was no dissolution of the marriage. Mr Ariwa Onwubiko King John confirmed that the second wife remained the deceased's wife now widow and was recognised as such by the family.

67. In her written evidence the second wife had said the deceased's documents found in Nigeria by the fifth wife's brother had been fabricated. She questioned the timing of this documentation and pointed out that they arrived 'conveniently' after the single joint expert's report. By the time of her oral evidence, however, the second wife accepted that many of the documents found were duplicates of ones sent by the deceased to the Home Office. She queried instead where they had been found suggesting they had been stolen by the fifth wife.

The Second and Third Respondents

68. Neither the Second nor the Third Respondent gave evidence, but they had provided statements. Unsurprisingly they had no personal knowledge about whether their mother and the deceased were divorced.

69. They did not like the Applicant when they had contact with her after the deceased died. The Second Respondent said she found her to be “unfair, untrustworthy, and conniving”. They believed that the Applicant hid the deceased’s death to benefit herself financially. The Second Respondent spoke of the “visceral hatred, anger and animosity my father had towards Ezinne” (para 33 C126). She said the divorce proceedings were distressing for him as he believed he had already divorced her in Nigeria. From what she said the father had not suggested to her he was not married to the fifth wife.

70. The Second Respondent produced text messages exchanged with her father which showed she was in touch with him for the first time after many years on 13th April 2021. She then helped her father with his divorce by sending him a link to a Government website concerning divorce. In July 2021 he said he was grateful that she was willing to meet him.

71. The Third Respondent explained that the deceased contacted her asking for help in his divorce proceedings. He knew she had studied law at bachelor and master’s level. She had not known he was married. They were in touch by email and she and her sister had spoken with him over the phone in the past year.

72. Despite not knowing him well, she said they had been distraught when they found out about their father’s death.

Home office evidence

73. The Home Office provided evidence from the deceased’s file. On 5th January 2005 the deceased had sent to the Home Office a certificate of decree absolute to prove that his

second wife had obtained a divorce on 9th December 2003. The second wife denied that she had ever applied for a divorce from the deceased.

74. The deceased had told the Home Office that this certificate was to replace a sworn affidavit of divorce dated 19th June 2002 made by the deceased's father which the former had sent to the Home Office on 28th June 2002. This document had been rejected by the Home Office Entry Clearance Officer on 22nd December 2004 at a full hearing.

75. The Home Office provided the affidavit. It said the marriage was dissolved on 7th March 2001. The year had to be wrong; it should have read 2002.

76. A letter dated 15th June 2002 sent to the Home Office immigration department by the deceased set out his concerns that the second wife was using his personal details to make an application for indefinite leave to remain.

77. In the letter he said the second wife terminated the marriage and ceased to be his wife on 5th June 2000 when she left his home to live with another man. He asked the immigration authorities to investigate her "criminal and fraudulent acts". He referred to her twice as his ex-wife. As can be seen from the chronology set out below, he did not mention the customary divorce which the grandfather was supposed to have obtained for him just three months before.

78. Also in the Home Office papers was the deceased's sworn affidavit for dissolution of a traditional marriage between him and the fourth wife. He said her parents had refunded to him the dowry. There was no similar affidavit for the second wife.

79. The next tranche of evidence came from the proceedings in relation to the divorce of the deceased from the fifth wife. On 30th October 2020, the order said that the deceased was maintaining his position that the parties were already divorced.

Expert evidence

80. Oba Nsugbe KC SAN had provided a report in which he set out the various ways a divorce might be obtained in Nigeria. He explained customary law which was simply a body of rules regulating rights and imposing duties upon a particular community or set of people. These rules could differ from locality to locality and from tribe to tribe. They drew their authority from established usage and acceptance thereby assuming the force of law.

81. Customary Law had three unique features in that it was generally unwritten, it had to be a mirror of accepted usage and its rules changed with time. When disputes arose it was the elders who would interpret customary law. Customary Courts resolved customary law disputes. They were usually presided over by non-legally trained people.

82. Mr Nsugbe KC said customary marriages might be dissolved either non-judicially or judicially. Non-judicial dissolution could be unilateral or by mutual agreement as long as the dowry was returned. A judicial dissolution of a customary marriage was carried out by the Customary Courts where the marriage was contracted or where the party or parties resided. As I understood his evidence the dowry did not have to be returned in the case of a judicial dissolution of a customary marriage.

83. A point repeated by Mr Ijezie for the Respondents was that Mr Nsugbe KC's account of how dissolutions of customary marriages occur made it clear that it was not "effected through wishful thinking and assertions".

New evidence provided after the draft judgment was sent to the parties

84. On 18th July 2022, the fifth wife provided new evidence of a divorce. She said that during the proceedings she had become aware that Customary Courts kept written records. She had not known this before. She had approached her church's sick and poor

fund to fund a lawyer in Nigeria who would look for the records. A Mr Iro was instructed and provided an affidavit. On 13th July 2022, he had made an application for a search of the records of the Nkwoegwu Customary Court in Umuahia, Abia State.

85. On 14th July 2022, the Registrar of the Court sent Mr Iro evidence of a suit which showed that a petition for divorce was filed on 7th March 2002 as suit no. CC/NE/8/2002. Mr Iro got back to the Registrar the same day asking for a certified true copy of the judgment in the suit CC/NE/8/2002. He obtained the divorce judgment the same day after payment of the fees. It was dated 28th November 2002.

86. There had been various hearings leading up to the date of judgment, these were set out as well as the names of the witnesses who gave evidence to the court. It included the deceased's father who gave evidence to the court on 14th August 2002.

87. The documentation was sent to the fifth wife's instructing solicitors on 15th July 2022. This formed the basis for the fifth wife's submission that these were genuine documents which should lead the court to re-open the proceedings.

88. In response, the second wife provided a statement setting out her view that the document was forged in Nigeria by people acting on behalf of the fifth wife.

89. On 8th August 2022 I heard submissions and with some reservations allowed the fifth wife's application. The next step was to have the documents examined by an independent party.

90. The President of the CCA in Umuahia, Abia State was asked for his assistance. He set up a panel of two retired CCA Judges to act as independent experts to inspect the file alongside the parties' two Nigerian lawyers Mr Iro for the fifth wife and Mr Ndife for the second wife. The inspection was to be videoed.

91. On 29th December 2022 this Court was sent the panel's report. The panel had made a number of findings which I have set out below which were agreed at the time by the parties' Nigerian lawyers, Mr Iro and Mr Ndife:

a. A copy of the petition that was meant to be served on the second wife was still in the original file.

b. There was another file jacket with the same suit number within the original file.

c. The second file jacket showed more parties, including the deceased's father acting as his son's representative.

d. The second file jacket had various date of hearings endorsed on it.

e. The second file jacket had endorsed an ex parte motion dated 12th June 2002 applying to re-list the suit.

f. The ex parte motion was a photocopy and not in accordance with the rules. The pagination of this motion however was in order.

g. There was a photocopied power of attorney dated 7th February 2002 appointing the deceased's father as his representative in the suit. There was no evidence that it had been admitted into evidence.

h. There was a second power of attorney, this time dated 26th June 2000 and a scanned copy appointing the deceased's father as his representative executed before a notary public. There was no suit number mentioned and it was dated before the suit CC/NE/8/2002 started.

i. There was a copy of an application that Mr Ndife had made applying for a search as to whether there was a petition between the deceased and the second wife. The Court Administrator Mr Omejuo Sunday had confirmed there was.

j. Although there was a discrepancy in the date for the judgment on divorce, the Court Administrator confirmed it was 28th November 2002 and not 26th November 2002.

k. An inspection of the Court record book took place. The signatures of the chairman and members of the Court were the same “and regular” on the 27th March 2002, 10th April 2002 and 20th May 2002 when the suit CC/CE/8/2002 was struck out for want of prosecution.

l. On 26th June 2002 an entry showed the parties had changed, and the deceased’s father was present representing his son in the Customary Court. The second wife was not present. The signatures of the member of the court were pasted into the Court record book for the hearing on that date.

m. On 12th August 2002 the signatures were pasted on again. They were set alongside the wrong date, 6th August 2002 which was not the date of the hearing.

n. In the Court record book for 14th August 2002 and 21st August 2002, there was only one signature of a member of the Court for each entry and it was not the same as that person’s previous signatures earlier in the proceedings.

o. On 13th September 2002 the signatures of the Court were again pasted onto the proceedings in the Court record book. The date alongside the signatures, 13th December 2001 was different to that of the date of the hearing.

p. On 28th November 2002 the judgment was said to have been delivered. It was pasted at folios 411-412 on top of a judgment in another case, suit number CC/NE/14/2002 involving different parties.

92. The Report produced by the panel concluded that the “entire proceedings in relation to Suit No. CC/NE/8/2002 is tainted with serious illegalities and breaches of

adjudicatory rules”. The panel said it held the “strong view” that the Registrar of the Customary Court should be asked for an explanation “as to the mutilations and pastings of signatures against proceeding as found in the record book as he is the legal custodian of the court record books”.

93. In its final paragraph, the panel said on “ an overview of the entire proceedings as recorded on the trial courts Record Book, the panel is of the view that the entire proceedings and judgment was a forgery”.

94. The matter came before me on 27th February 2023, when the parties had both seen the video made and had read the panel’s report.

95. The fifth wife was very concerned about Mr Ndife’s involvement. She suspected the file may have been tampered with. The fifth wife had no confidence in the panel. She was concerned about what she said was “widespread corruption”. In her position statement Miss Boyd explained that the fifth wife’s lawyer Mr Iro was challenging the report and was seeking a forensic analysis of the records. He had made the application to the President of the CCA.

96. Miss Boyd explained that she had been going to invite this Court to adjourn and await the response to Mr Iro’s petition but having seen a recent letter from the Court of Appeal’s Registrar, the fifth wife did not think this would be dealt with fairly. The letter implied that Mr Iro had misled the President of the CCA.

Discussion

97. With the deceased dead and no live witnesses who were likely to tell the truth about any divorce which may or may not have taken place between him and the second wife, there has been little reliable evidence to go on.

98. I accept there was written evidence from the heads of the deceased's family (his brother) and the second wife's family (her oldest brother) which supported the second wife's claim that she was the 'true wife' but their evidence was untested and with forged documents having been relied on more than once I did not give great weight to their evidence.

99. I noted that during the divorce proceedings between the deceased and the fifth wife in front of HH Judge Staite, an affidavit was provided from someone who was described as the "most senior uncle" living in the village of the deceased in Nigeria which said that he and the fifth wife had been divorced. When the "most senior uncle" was contacted, he said the document was a forgery and had not been sworn by him.

100. In any event the relations who had provided statements had not been privy to any email correspondence the deceased had when he was arranging his divorce with his father's help. Until the new evidence produced by the fifth wife there were three possible dates for the divorce and no clear documentation proving that a divorce had taken place.

101. The fifth wife had asked that I draw inferences from the emails exchanged between the deceased and the grandfather and the other documentary evidence. Once I had the panel's report she asked me to consider it very carefully and set out in her written and oral submissions the reasons why I could not rely on it.

102. I have proceeded on the basis that the emails produced by the fifth wife are genuine for two reasons. First a number of these documents were sent by the deceased to the Home Office, some of them before he married the fifth wife. Second, if these had been forgeries created by the fifth wife or someone on her behalf, I find there would have been nothing to stop them providing false evidence of a judicial dissolution.

The email evidence

103. The emails exhibited were exchanges between the deceased and his family. I accept Miss Boyd's argument that they would not have included all the correspondence that occurred between the family.

104. The first email relevant to the deceased's relationship with the second wife was dated 29th June 2000 when he told his mother his marriage had ended and that she had moved in with another man. In relation to what must have been an intended customary divorce he said that he would "see her people when I come home".

105. On 17th May 2001 it was clear that the plans for a divorce were continuing with the deceased's father sending an email explaining that he needed a "strong letter of authority from you to carry out the assignment".

106. The deceased's father said he was required to summons their family to raise the issue before the second wife's family would be informed. He said that "there and then the issue of Divorce will be carried out traditionally" ... and since "you didn't marry in the court or church, it is simple". He asked the deceased to send him his "charges against her" and to authorise him to act on his behalf. The father said his son should pay for his costs of travel to and from Umahia which was about 600 kms away from Lagos where he lived.

107. The deceased set out his side of the case against the second wife on 24th December 2001 including allegations that she had assaulted their daughter and that as a result social services were involved. He said he had not seen the children since June 2000.

108. The arrangements for the divorce continued in two emails sent on 27th December 2001. In one the deceased's father said he was going to see the second wife's family concerning the divorce and to hear their own side of it and he wanted the deceased to set out what he wanted him and the family to do.

109. In the second, the deceased told his father he wanted his traditional marriage to be annulled and needed a traditional marriage divorce certificate from a local authority. He had paid a dowry and therefore the second wife had no right to deny him contact with their daughters. He said if she denied him the divorce he would take her to court in the UK. It was the first time that there was a reference to him wanting a judicial dissolution.

110. By 16th January 2002, the deceased's father was telling him: "I completed all formalities concerning the divorce before returning to Lagos on Sunday 6/1/2002 because the Customary Court to issue the certificate was on Christmas recess, hence the delay in getting the document. But I have completed the necessary forms in the presence of elder Job Ugboaja who stood as my witness and the charge fee of N 10,00 handover to him to hand over to Hon G. O.N Uchendo representing Iseingwa in the customary court Nkwoegwu".

111. The deceased's father said that when the court resumed and the documents had been handed over to the Hon G. O. N Uchendo they would later be returned in Lagos. He would let him know by email when that happened. Furthermore, if Chief Okosisi was still in Lagos then the deceased's father would hand the document over to him to give to the deceased. The grandfather told the son to be patient for two to three more weeks.

112. The deceased's father said "Ihedinma presented a lot of lies against you which I counteracted at home and our people supported my actions against her. I ignored it and went ahead to pursue my action which was unanimously approved". He said he would send him the copy of her unfounded allegations through Chief Okosisi.

113. This email was significant. It appeared to show that the formalities concerning the divorce had been completed: a fee was handed over; it happened in front of an elder; the divorce was obtained through a Customary Court and the second wife was aware of

what was happening as she had presented her side of the breakdown of the relationship. Finally, the certificate had been delayed by the Christmas recess, but it would be sent to him within two or three weeks.

114. There must have been some form of delay, however, as on 7th February 2002, the certificate still had not been received by the deceased. He sent a letter to his father giving him power of attorney to act on his behalf “in respect of pursuing the issuance of Traditional Customary Marriage Divorce Certificate proceedings at the Umahia North Local Authority Customary Court”.

115. He also set out various allegations against the second wife: she had married him for immigration purposes and had moved out on 4th June 2000 when she had moved in with a man who curiously then took the deceased’s own name. He ended with “I now require the Traditional Marriage Divorce Certificate for my record purposes”. It seemed to me clear that no divorce can have taken place

116. Four months later, on 10th June 2002, the certificate cannot have been obtained as the deceased asked his father to swear a “Native Law and Tradition Divorce Declaration” for him “from a Nigerian court”. This was for the Home Office immigration department. He would then send it as “my proof of divorcing her formally”. He wanted to say that by the Igbo Native Law and Tradition by which the second wife had married him, the marriage “ended on 4th June 2000 when she intentionally moved out of her matrimonial home... to join her concubine, impersonator Uchechukwu Joseph Onwubiko”.

117. In my judgment, the second wife was right when she argued that the email indicated that the marriage had not yet been dissolved. I noted that the deceased’s purpose was to prevent the second wife from remaining in the UK. It is difficult to see why the

deceased would not have said if he had had a judicial dissolution through the Customary Courts.

118. A letter from the deceased to the Home Office on 15th June 2002 is significant because he referred to the second wife as his “ex-wife” but that appeared to be a reference to her leaving him on 4th June 2000 for another man.

119. The deceased’s father swore an affidavit of divorce on 19th June 2002 in Lagos. It was witnessed by a Commissioner for Oaths and took place at the High Court Registry in Ikeja. The date for the dissolution of the marriage was said to be 7th March 2001. This date had to be wrong. This was the document rejected by an Entry Clearance Officer which is why the deceased had to provide the Home Office with the certificate of Decree Absolute dated 9th December 2003.

120. On 21st June 2002, the father asked his son, whether he had received the Divorce Declaration (the affidavit) he sent to him on 19th June 2002. The original copy was sent through Chief Okosisi. A lawyer had been involved and the whole cost was N 6,000. He asked his son for the money. This was not a divorce certificate.

121. The email exchanges which I found particularly significant were the ones sent on 26th June 2002. They were significant because of what the new evidence from the Court Records of Umuahia Customary Court purported to say.

122. On 26th June 2002 the deceased’s father wrote to him and said that when he took the original document to Chief Okosisi he was told by the Chief’s sister-in-law that he was still at Umuahia and would return to Lagos on the way to London. He left the envelope containing the original Declaration with the sister-in-law to deliver it to the Chief on his return. He asked the deceased to let him know when he received the Declaration. This was acknowledged by the deceased by email the same day.

123. The new evidence provided by the fifth wife suggested that on 26th June 2002 the father of the deceased was present in court in Umuahia in Abia State when the re-opened suit, number CC/NE/8/2002, was heard. Abia State is nearly 600 kms from Lagos where the deceased's father lived. There was no evidence in the emails that the deceased's father had travelled from Lagos to Umuahia on behalf of his son that day.

124. The emails exchanged between the deceased and his father on 26th June 2002 concern the practical arrangements for the transfer of the deceased's father's affidavit or declaration of divorce. There was no suggestion that the deceased should pay for his father's travel to Umuahia. The case was adjourned and if the records are genuine the deceased's father was going to have to travel again to Umuahia in Abia State in August. This was not mentioned in the emails of that date.

125. Another potentially relevant document produced by the fifth wife was a certificate of Decree Absolute from the High Court in Lagos dated 9th December 2003 showing the second wife as the Petitioner and the deceased as the Respondent. The date of the Decree Nisi was shown as 5th September 2003.

126. The Decree Absolute was no longer being relied on although the deceased had provided it to the Nigerian High Commission which said he would be registered as formerly married to the Respondent. It was produced by the deceased to prove to the immigration authorities that he was divorced. This allowed immigration clearance entry to the deceased's wives numbers three, four and five. There were questions about whether this document was genuine. In the event the fifth wife did not rely on it and so I did not have to conclude whether this was so.

127. As to the deceased' state of mind, on 19th November 2009 there was a letter from him to the British High Commission in Lagos consenting to the fifth wife joining him in

the UK. He said: “I have been in previous marriages with good intention but did not work out (sic) between us. I have since divorced them”.

128. On 1st March 2010, the deceased sent a letter to the pension company in Abuja notifying them of a change of next of kin from the second wife to the fifth wife. He described the latter as “my lawfully married wife”.

129. On 23rd March 2021, HH Judge Staite held that the deceased had behaved “in such a way that the petitioner [the fifth wife] cannot reasonably be expected to live with” him. The Judge also found that no customary/traditional divorce had taken place on 1st July 2019 and that “the signatory of an affidavit sworn on 30th July 2019 (Mr Inyama Azubuike) which had purported to confirm that a divorce had been pronounced...had subsequently denied ever having sworn the said affidavit and had asserted, during a police investigation, that the document had been a forgery”. The deceased was relying on a forged document.

130. The deceased had failed to produce any witnesses to verify that a customary or traditional divorce between him and the fifth wife had taken place in Nigeria on 1st July 2019. The court found that even if one had taken place they did not come within the meaning of “proceedings” within section 46(1) of the Family Law Act 1986.

Submissions on behalf of the fifth wife

131. Miss Boyd for the fifth wife argued that there was evidence suggesting a divorce had taken place. She pointed out that the fifth wife and the deceased had considered themselves to be lawfully married. The divorce and ancillary relief proceedings between them were contested and at no stage did the deceased suggest he was not married to her. The deceased had not told his law graduate daughter that he was not married to the fifth wife. Furthermore, the second wife had no documentation suggesting that she and the

deceased were still married. The statutory marriage to the fifth wife could not have taken place had the Registrar in Nigeria known there was a pre-existing customary marriage.

132. Miss Boyd made a significant point that the deceased would not have needed to forge or have arranged the forgery of a divorce document which showed he had divorced the fifth wife in Nigeria in 2019 if he had had never been divorced from the second wife.

133. The evidence from the head of the Umu Enenama Family, one of the second wife's witnesses was that the family considered the fifth wife was not the deceased's wife because her marriage was dissolved in 2019. This was a reference to a document which HH Judge Staite had found to be a forgery. That divorce had not taken place.

134. The second wife said in evidence that she had told the deceased that she was going to come to the court and say that they were still married. She said he had told her he would handle it. This was unlikely in Miss Boyd's submission.

135. The new evidence produced in July 2022 was significant too. Miss Boyd said the new evidence provided to this Court in July 2022 was genuine and if there were irregularities that related to the way records were kept that was because lay people ran the court in those days.

136. Miss Boyd made written and oral submissions about the approach the Court should take to the panel's report which undermined the evidence. She said that I should look critically at the evidence and determine the authenticity of the divorce judgment of 28th November 2002. She submitted that, if I found any, I should determine when the irregularities occurred. The fifth wife's position was that any irregularities found clearly occurred before her involvement in these proceedings. The first she knew about the new documentary evidence was when Mr Iro received the information from the Registrar of the

Customary Court on 13th and 14th July 2022. If it was being suggested Mr Iro had a hand in the irregularities then he had had very little time to produce the documents.

137. Miss Boyd pointed out that the second wife had been aware as of 4th February 2022, months before the final hearing in May 2022, that there was a divorce petition CC/NE/8/2002 through Mr Ndife's correspondence with the Court Registrar and the reply he had received that there was a petition for divorce filed in the Customary Court on 7th March 2002.

138. Mr Ndife apparently had seen the file on that date and would have seen that the suit had been struck out for want of prosecution on 20th May 2002. He had told the second wife about this yet she had not informed the court.

139. Mr Ndife had also said that when he saw the file in February 2022 there was no second suit between the father of the deceased on his behalf and the second wife. He had made the allegation that the second suit had been forged and manipulated by Mr Sunday the Registrar of the Customary Court on the application of Mr Iro.

140. Miss Boyd pointed out there was no record at all of Mr Ndife seeing the file in February 2022 so he had misled the CCA in his letter alleging forgery against Mr Iro and Mr Sunday.

141. Miss Boyd's concerns about the Panel Report were the following:

- a. The Panel had applied today's standards of record-keeping and not those that were common in 2002 when the records were kept by lay people.
- b. The record book was a bound book and it was not possible to insert pages. The various hearings were set out on specific pages. The typed Judgment reflected what the long hand records showed.

c. There were unrelated hearings including other divorce cases and civil cases recorded on intervening pages. It was difficult to see how this could happen if the records were forged.

d. There was no comparison to see if similar irregularities such as cutting and pasting of signatures occurred with other cases.

142. Miss Boyd had urged me to list a hearing for Mr Iro and Mr Ndife to attend remotely for cross examination. She said further video footage of the records should be obtained which would include the intervening pages in the record book which would show the practices adopted at that time.

143. I had refused Miss Boyd's application to obtain new evidence. The costs of the proceedings were great, the resources of the parties small and with each new piece of evidence produced by one party, the other party alleged forgery and corruption. It was increasingly difficult to get to the truth. The proceedings had to conclude with the evidence the Court had before it.

Submissions on behalf of the Respondents

144. Mr Ijezie relied on the fact that no certificates of divorce had been found in the deceased's records nor was there a clear reference to a divorce having taken place. The deceased had kept important documentation including the emails I have set out above but there was no sign of any certificate. There is no mention furthermore in the emails that he had in fact obtained a customary dissolution either judicially or otherwise.

145. The deceased had said on 10th June 2002 that he wanted his father to swear an Igbo Native Law and Tradition Divorce Declaration. He wanted to say that the marriage ended on 4th June 2000 when the second wife moved out. If he did that it was because no divorce had taken place.

146. The grandfather's sworn affidavit of divorce of 19th June 2002, was rejected by the Entry Clearance Officer shortly before 22nd December 2004. It was for that reason that the deceased had to produce the forged certificate of decree absolute of 9th December 2003.

147. The second wife pointed out that if there had been a divorce in Nigeria, there would have been a financial settlement. I accepted that there may have been a pension to divide up at the time.

148. Mr Ijezie relied on the written evidence given by the oldest son in the deceased's family and the oldest brother of the second wife both of whom believed that she remained the wife of the deceased.

149. Finally, Mr Ijezie understandably relied heavily on the panel report produced by the two retired members of the CCA. He contended suit number CC/NE/8/2002 was a forgery but said it was not for this Court to decide who forged the documents and at what point. The Nigerian authorities were going to consider that point.

Conclusion

150. As is clear from above, there is much evidence going each way. Miss Boyd asks the court to rely on the emails, the deceased's belief he was divorced and the way he made no mention of being still married to the second wife in the contentious divorce proceedings which were taking place. The emails show that the deceased wanted a divorce. There were gaps in the correspondence but he then married three more times with no suggestion he was not divorced from the second wife.

151. Miss Boyd contended the new evidence was genuine and the panel's report was not to be relied on. Her final submissions on 31st August 2023 asked the Court to look very critically at the retired CCA Judges' panel report.

152. I gave weight to the emails that went back and forth between the deceased and his father which suggested that great efforts were being made to ensure a divorce took place. I have accepted they are genuine but there was no reliable evidence in my judgment of a divorce.

153. I have no doubt that the second wife's family were involved in discussions with the deceased's family but that is not enough.

154. I had reservations about two or three pieces of evidence given by the second wife and reminded myself that although I might find she had embellished her evidence or not given an entirely truthful account, that did not mean there had been a divorce between her and the deceased.

155. The accounts I had trouble accepting from her was her account that her family were not involved in divorce discussions with the deceased's family in early 2002. The emails which were contemporaneous with the events showed they were. I also did not accept what she said about her reminding the deceased that they were still married.

156. Against the fifth wife's case I find there are some particularly significant pieces of evidence: the email of 10th June 2002, the letter to the Home Office dated 15th June 2002 (see above), the emails exchanged between the deceased father and his son on 26th June 2002 and the panel's report.

157. As at June 2002, three months after a divorce was supposed to have taken place, I find the deceased, who was desperate to prevent the second wife from being able to remain in this country, did not believe he could prove he had been divorced. He was hoping his father would assist with an affidavit and was saying that the divorce was instigated by the second wife when she left the family home in June 2000. There was no

later document (other the 2003 Decree Absolute) that suggested a divorce. The Home Office in particular was never sent another document.

158. I have considered the points made by Miss Boyd in relation to the panel's report. It was unfortunate and disappointing that a clear video had not been made of the panel's investigation. Nigeria has a sophisticated mobile telephone network and a mobile could have been used to take the film but what was provided was so blurred that it was impossible to make anything out.

159. What the CCA panel saw in the records was also seen and agreed by the lawyers for both parties. They saw signatures pasted on to documents, the wrong dates affixed to the signatures and the 28th November 2002 judgment which should have been pasted on folios 4111-2 of the Court record book superimposed and pasted on top of another judgment. That for suit number CC/NE/14/2002 which was an unrelated matter.

160. I have no reason to question the conclusions of the panel report despite Miss Boyd's submissions. I did not give much weight to her complaint that the panel had applied today's standards of record-keeping and not those that were common in 2002 when the records were kept by lay people. The panel had the records to look through. The panel consisted of retired judges from the CCA. They would have understood the standards which would have applied. During the investigation they had seen the earlier suit number CC/NE/8/2002 which was struck out for want of prosecution. In that earlier suit the signatures looked genuine, and they had not been pasted on.

161. I agreed with Miss Boyd that it was unfortunate that the conclusions of the panel appeared to be sweeping in that they categorised the entirety of suit number CC/NE/8/2002 as a forgery when it may well have been that the first suit which was struck out for want of prosecution was genuine. At the same time, the discrepancies and

irregularities were in relation to the second part of the suit which started up in June 2002 and was ostensibly prosecuted by the deceased's father on his behalf.

162. Her next point was that the record book was a bound book and it was not possible to insert pages. The panel saw all of this. They would have taken it into account before coming to their decision. I do not want to speculate but the record book may have had gaps which were filled after the event between records of other cases.

163. Miss Boyd contended that the panel made no comparison to see if similar irregularities such as the cutting and pasting of signatures occurred with other cases. That is true but the point I made above is that in the earlier part of the same suit there was no cutting and pasting and irregular signatures.

164. Miss Boyd argued that the fact that the panel was appointed by the CCA did not guarantee its independence. She said that lawyers and the judiciary in Nigeria had not escaped allegations of dishonesty including in Abia State as recently as November 2021. She pointed out that the panel had been appointed as a result of Mr Ndife's petition rather than as a result of an order of this Court.

165. I did not consider that Miss Boyd's assertions of a dishonest panel lacking in independence were supported by the evidence provided to me. In my judgment, the panel's conclusions were supported not just by what they saw and noted, observations that were confirmed by the fifth wife's own Nigerian lawyer, Mr Iro, but also by the lack of a reference in the emails exchanged between the deceased and his father to the former's supposed role in pursuing a divorce in Abia State (particularly the ones exchanged on 26th June 2002). These emails were contemporaneous with the supposed hearings of the Customary Court.

166. I bear in mind that Abia State is nearly 600 kms away from where the deceased's father lived in Lagos. Had he been involved in representing the deceased in the proceedings in Abia State, I do not accept he would not have referred to them in his June emails to his son.

167. When he went to Abia State on behalf of his son earlier on 17th May 2001, he had asked him to pay for his travel. There was no mention that he was incurring that sort of expenditure in the contemporaneous correspondence with the deceased. I found therefore that the new evidence of the Customary Court proceedings CC/NE/8/2002 showing that the deceased's father was present in court during the hearing of 26th June 2002 was undermined by the contemporaneous emails.

168. I bear in mind too that had there been a judicial divorce obtained through the Customary Courts on 28th November 2002 I have no doubt that the deceased who wanted to rid himself of his second wife would have had every reason to produce the proof. He could have asked for a copy of the judgment in the way that Mr Iro did on behalf of the fifth wife. What the deceased did instead was to rely on his father's affidavit and then on the forged decree absolute from the High Court in Lagos of 2003.

169. The evidence had showed four possible dates for a divorce: 4th June 2000, 7th March 2001 (which must have been 2002), the 28th November 2002 and the 9th December 2003 at the Lagos High Court. On the balance of probabilities, I find the fifth wife has not discharged the burden of proving that there was a divorce between the deceased and his second wife at all.

170. Had I been able to find a divorce had taken place on 28th November 2002 based on the Customary Court records, I would not have found that there would be grounds for

recognition according to section 46(1)(a) FLA as the divorce would not have been effective under the laws of Nigeria.

171. I find that at his death the second wife was still validly married to the deceased.

172. Mr Ijezie does not ask me to make a finding that the fifth wife forged or arranged the forgery of the records found in the Customary Court file and certainly I cannot say when the falsification of the records occurred. It is likely however, to have occurred after the deceased's death in September 2021 or he would have used the divorce judgment. I cannot say whether it was at the behest of the fifth wife or not or whether her lawyer Mr Iro may have or may have not had something to do with it.

173. Section 11(b) of the Matrimonial Causes Act 1973 provides that a marriage shall be void if at the time of the marriage either party was already lawfully married. In my judgment, the deceased remained lawfully married to the second wife when he purported to marry the fifth wife (and wives three and four). The fifth wife's marriage to the deceased was bigamous. The next of kin for all purposes is the second wife.

174. I find that the fifth wife would have had no idea the deceased had not been divorced from the second wife when she married him. The fifth wife cannot be blamed for what has happened. She is the victim of the deceased's behaviour. He wanted a divorce from the second wife and took some steps to obtain it but never followed through. The loser in this was the fifth wife.

175. I make the following declarations:

The marriage of the deceased and the second wife never ended in a divorce.

The marriage of the deceased and the fifth wife was not a valid marriage.

The second wife is therefore the surviving spouse and the next of kin of the deceased.