

37, 1952.

In the Privy Council.

No. 22 of 1951. UNIVERSITY OF LONDON
W.C.1.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

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INSTITUTE OF ADVANCED
LEGAL STUDIES
19259

BETWEEN

SOCKNA MORMORDU ALLIE, ALHAJI BABA ALLIE,
and KEMOK ALLIE *Appellants*

AND

AHMED ALHADI (Official Administrator) *Respondent*

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a judgment and order of the West African Court of Appeal dated the 1st December 1950 dismissing with costs the Appellants' appeal against a judgment of Beoku-Betts, J., dated the 2nd March 1950 in the Supreme Court of Sierra Leone whereby the learned trial judge dismissed the Appellants' claim for revocation of the grant of administration with the will dated the 30th August 1946 and codicil dated the 19th July 1947 annexed of the estate of one Mormordu Allie made to the Respondent on the 10th March 1948 and for a pronouncement against the validity of the said will and codicil.

10 2.—By his said judgment dated the 2nd March 1950 the trial judge held that the said will dated the 30th August 1946 was the true and last will of the said Mormordu Allie and not, as maintained on behalf of the Appellants, a forged document which had been substituted for it after the testator's death. The issue in this appeal is whether the West African Court of Appeal were right in holding that there was sufficient evidence to justify the conclusion at which the trial judge arrived and that they saw no reason for interfering with the decision.

20 3.—Mormordu Allie (hereinafter referred to as the testator) who was a Muslim, had two wives at the date of his death namely Socknar Mormordu Allie (the first Appellant) and Ajah Fatmatta Kata. The second and third Appellants are two of his sons.

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pp. 80-85

4.—On the 20th August 1939 the testator executed a will whereby he appointed as executors and trustees thereof his two wives and three of his sons, including the second and third Appellants, and whereby he divided up his property among his wives, sons and daughters.

pp. 62-68

5.—On the 25th July 1942 the testator executed a further will whereby he revoked all previous wills, codicils and other testamentary dispositions and appointed as executors trustees his second wife Ajah Fatmatta Kata and two of his sons, namely the second Appellant and Alhadi Antumani, and whereby he divided up his property among his said second wife his sons and daughters. The witnesses were a solicitor's clerk named John Coni 10
Dougan and a clerk in the testator's employ named Michael Selexicus Macauley.

p. 68, l. 21

6.—On the 30th August 1946 the testator executed a further will. If, as the Respondent maintains, the document which has been exhibited in these proceedings (Exhibit D) was the will so executed, the testator thereby revoked all previous wills, codicils and testamentary dispositions and appointed as executors and trustees his second wife, Ajah Fatmatta Kata, and two of his sons namely the second Appellant and Alhadi Antumani. He divided up his property between his second wife and his sons and daughters and in particular provided for his daughter Sock-Nah as follows : 20

p. 71, l. 38

“ 2. I devise unto my said Executors and Trustees Firstly :—
“ All that messuage and hereditaments situate and being No. 30
“ Kissy Street, Freetown, Secondly :—All that messuage and
“ hereditaments situate and being No. 9 Lower Bay, Kissy Town,
“ Upon Trust for my daughter Sock-Nah her heirs and assigns,
“ in fee simple and as tenants in common.”

p. 73, l. 38

“ 6. I devise unto my said Trustees Firstly :—All that
“ messuage and hereditaments situate and being No. 23 Dougan
“ Street, Freetown ; Secondly :—All those messuages and heredita- 30
“ ments situate and being No. 30-30D Garrison Street, Freetown,
“ and 22 and 22A Garrison Street aforesaid and Thirdly :—All
“ those messuages and hereditaments situate and being Nos.
“ 25-25A Pultney Street, Freetown, aforesaid Upon Trust for my
“ daughter Sock-Nah her heirs and assigns in fee simple and as
“ as tenants in common.”

p. 77, l. 20

The witnesses were the said Dougan and the said Macauley. The said will was registered on the 10th September 1946 pursuant to the Registration of Instruments Ordinance, Cap 200.

p. 77, l. 26

7.—On the 19th July, 1947, the testator executed a codicil to his said will whereby he cancelled the aforesaid devise to Sock-Nah and demised 40
the said hereditaments and premises as described in paragraphs two and sixteen of his said will to his executors and trustees upon trust for his

daughter Kadiah, her heirs and assigns as tenants in common. The witnesses were the said Dougan and the said Macauley. The said codicil was registered on the 23rd July 1947 pursuant to the aforesaid Registration Ordinance. p. 78, l. 10

8.—The testator died on the 22nd January 1948. By an instrument dated the 10th February 1948 the said Ajah Fatmatta Kata, the second Appellant and the said Alhadi Antumani renounced all their rights and title to the probate and execution of the said will and codicil in favour of the Official Administrator of Sierra Leone, i.e. the Respondent. On the 10th March 1948 pursuant to a judge's order letters of administration with the said will and codicil annexed were granted to the Respondent. p. 68, l. 33
p. 69, l. 29
p. 80, l. 21
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9.—By a writ of summons dated the 16th July 1948 the Appellants instituted pp. 1-2

THE PRESENT SUIT

claiming to be the executors of the last will dated 1939 of the testator and to have the grant with the pretended will and codicil of the testator dated the 30th August 1946, and the 19th July 1947 revoked.

10.—On the 7th January, 1949 the Respondent's solicitor issued a summons to dismiss the action for want of prosecution. On the same day the Appellants' counsel delivered and filed the Statement of Claim in which he pleaded that the alleged will of the 30th August, 1946 was not duly executed in accordance with the provisions of Statute 7 Will 4 and 1 Vict. C. 26; that the deceased at the time the said alleged will or codicil purported to have been executed did not know or approve of the contents thereof, and that the deceased did not make or acknowledge his signature to the said alleged will and codicil in the presence of the witnesses. The Appellants claim (1) revocation of the grant; (2) that the Court should pronounce against the validity of the alleged will dated the 30th August, 1946, and the codicil dated the 19th July, 1947; and (3) that the Court should pronounce in solemn form for the true last will of the deceased dated the 20th August, 1939. By the Defence and Counterclaim delivered and filed on the 17th January, 1939 the Respondent denied the aforesaid allegation contained in the Statement of Claim and counterclaimed that the Court should pronounce in solemn form for the last will and codicil dated the 30th August, 1946 and the 19th July, 1947. p. 5, l. 27
p. 6
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30 p. 7

11.—On the 15th February, 1949 the application to dismiss the action for want of prosecution was dismissed and it was ordered that the costs thereof should be taxed and paid by the Plaintiffs to the Defendant. p. 8, l. 17

12.—The trial opened on the 13th July, 1949. The second witness called on behalf of the Respondent was the aforesaid John Coni Duogan. p. 9
p. 10, l. 9

- p. 11, l. 11 In cross-examination counsel for the Appellants suggested to this witness that Exhibit D (i.e. the will of 1946 propounded by the Respondent) was only made subsequent to 1948. Counsel for the Respondent therefore suggested that the question suggested forgery which had not been pleaded. The judge ruled that particulars of fraud must be given and the Statement of Claim was accordingly amended by the addition of the following paragraph :—
- p. 6, l. 30 “ 6. That if at all the deceased executed a will on the
 “ 30th August 1946 the will propounded is not the will executed
 “ by the deceased. That the will propounded although dated 10
 “ 30th August, 1946 was only made after the 5th February, 1948
 “ after the deceased’s death and substituted for the true will made
 “ by the Testator.”
- p. 10, l. 10 13.—Dougan deposed that he made a will for the testator in 1942 and
 in 1946 and a codicil in 1947. He prepared both wills on the testator’s
 instructions and read the 1946 will to the testator paragraph by paragraph
 in English and explained it to him in broken English. As he explained the
 testator said “ That’s right.” “ All right.” “ So I want it.” He then
 signed the will in Arabic on the last page and on each page in the presence
 of this witness and Macauley and this witness took his mark. Similarly 20
 this witness deposed that he made the codicil on the testator’s instructions
 and explained it to him and that the testator signed it in the presence of
 himself and Macauley.
- pp. 12-14 14.—Macauley confirmed Dougan’s evidence regarding the execution
 by the testator of the will and the codicil.
- p. 16, l. 15 15.—The first witness for the Appellants was the Deputy Registrar
 General who deposed that on 5th February, 1948 he delivered to one A. S.
 Wurie on behalf of Haja Fatmatta Kata the will and the codicil which were
 in sealed envelopes. The said Wurie then deposed that he thereafter
 opened the said envelopes at the house of Haja Fatmatta Kata in her 30
 p. 16, l. 22 presence and in that of Ibrahim Allie. At her request he read out the will
 and codicil. Shown Exhibit D this witness deposed that this was not the
 will he had read. On the will he had read the signature of Mormordu Allie
 on the last page only whereas this one had a signature on all the pages
 except one. “ If the will I read at Hajah Fatmatta’s house had had
 signatures on every page I would have witnessed it ” (*sic*). As regards the
 p. 17, l. 5 codicil he said “ It is the codicil I made at Haja Fatmatta Kata’s house.”
 In the house of Haja Fatmatta Kata she herself handed him the two
 envelopes containing the will and codicil which he passed on to the
 p. 17, l. 12 Respondent in her presence. In cross-examination this witness deposed 40
 that the will he read in the house of Haja Fatmatta Kata was typed on a
 thick paper like the codicil.

16.—The first Appellant deposed (*inter alia*) that she was in the testator's house at his death and remained there for forty days thereafter. Dougan and Macauley called at the house three times after the testator's death. p. 18, l. 10

17.—Ibrahim Allie (son of the testator and the first Appellant) deposed that he was present when Wurie read the will and codicil to Haja Fatmatta Kata. Exhibit D was not the same document he had seen when Wurie read it. Exhibit E was the same document he had seen with Wurie. He had seen Dougan and Macauley go to the house two or three times after his father's death. As regards the signature on the will this witness said "It is similar to my father's signature and it is not like his signature." p. 18, l. 40
p. 19, l. 15

18.—Iscankanda David Salamah, an arabic expert, was called by the Court to compare the signatures Exhibit " D " with those on Exhibit " E " and on the will of 1939. He observed certain differences but stated " A "person who is only trained to write his signature is always trying to improve his signature and sometimes two of his signatures differ." p. 21, l. 32

19.—The Respondent's counsel called Haja Fatmatta Kata in rebuttal. Referring to the occasion when Wurie brought the will and codicil to her house she deposed as follows :— pp. 24-5

20 " In evening Wurie brought the two documents. In presence
" of Ibrima Allie and me Wurie opened will and read it out.
" Wurie opened the codicil and read it. He explained will and
" codicil to me. He left the documents with me and went away.
" Ibrima then said I had been given the best part of the properties
" and he would fight me for that. The next day Wurie came. I
" suggested giving the estate to big lawyer Wright. He suggested
" I should take the estate to government to administer. Wurie
" went away. I gave the will to Wurie. He came back and said
" government said he should write another paper. He then left
30 " and went away. Two days after he came with a document
" which I signed. Wurie took the paper away. He came later
" and told me he had given the paper to the Master with the will."

She further deposed that she knew Dougan and that he never came to the house after the death of her husband. p. 25, l. 7

20.—At the conclusion of the evidence counsel on both sides addressed the Court on the issue of forgery. On the 3rd August, 1949, the trial judge gave his ruling thereon which included the following passage :— p. 25, l. 16

" I do not think where the question is an alleged forgery it
" would be right to decide whether I should accept the evidence

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- “ of Dougan and Macauley with the rebutting evidence of Ajah
 “ Fatmatta Kata or the evidence of Wurie and Ibrahim Allie on
 “ the other hand. If Dougan and Macauley are believed the will
 “ would be genuine. If Wurie and Ibrahim Allie are believed
 “ forgery would be disclosed. In the interest of justice I consider
 “ that the most satisfactory thing to do is to stay the action unti
 “ the alleged forgery has been prosecuted. I propose to forward
 “ the record to the Attorney General for him to consider whether
 “ a *prima facie* case exists for prosecution for forgery.”
- p. 26, l. 24 On the 21st November, 1949 the trial judge informed counsel of the reply 10
 received from the Attorney General which was that he was satisfied that a
prima facie for prosecution did not exist.
- pp. 32-47 21.—The trial judge delivered judgment as aforesaid on the 2nd March,
 p. 37, l. 19 1950. He held that the opinion of the Attorney General that there was no
 case for a criminal prosecution for forgery did not dispose of the question
 in a civil action where forgery was alleged and that a judge trying a civil
 case must accept the responsibility of deciding all the issues involved. He
 p. 38, l. 18 further held that, where an act which was a crime was alleged in a civil
 action, if a crime were prosecuted the proof must be beyond reasonable
 doubt but in a civil action it could be decided on the balance of probabilities. 20
 He then proceeded to review the evidence and to consider the credibility
 of the various witnesses. Finally he arrived at the following conclusion :—
- p. 46, l. 37 “ I have now fully considered the law and reviewed the
 “ evidence as fully as possible. The conclusion that I have come to
 “ is that while there are some circumstances which call for scrutiny
 “ and examination, on the probabilities of the case, the document
 “ Exhibit ‘ D ’ is, in my opinion, the true and last will of the
 “ testator. I will therefore dismiss the claim of the Plaintiffs-on-
 “ record and grant the claim on the counterclaim and pronounce 30
 “ that the Will produced in Court—Exhibit ‘ D ’—be granted
 “ probate in solemn form as well as the codicil. I will hear Counsel
 “ as to costs.”
- p. 47, l. 4 The learned judge ordered that both parties should have costs out of the estate
 except that the Appellants were not to have their costs on any evidence in
 proof of the allegation of forgery.
- p. 48, l. 28 22.—Conditional leave to appeal to the West African Court of Appeal
 p. 50, l. 11 was granted on the 5th June 1950 and final leave on the 12th July, 1950.
 The grounds of appeal were as follows :—
- “ 1. The judgment is against the weight of evidence.
- “ 2. The learned trial judge having in doubt forwarded the 40
 “ papers in the action to the Honourable the Attorney General

“ for prosecution for forgery and the Honourable the Attorney General having found that there was no case for prosecution, was wrong in continuing to hear the case. ” RECORD
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“ 3. The learned trial judge having predicated the law as to the burden of proof, did not receive the doubt which admittedly existed and which he found admittedly existed in his mind in accordance with the law so laid down.”

23.—The principal judgment in the West African Court of Appeal was delivered by Blackall, P. As regards the second ground of appeal he held that it was perfectly clear from the terms of the judgment that the trial judge was in no way influenced by the Attorney-General's opinion and that this ground of appeal therefore failed. As regards the first and third grounds the learned President considered the evidence of Wurie, Ibrahim Allie, Dougan and Macauley. He observed that Wurie might well have overlooked the signatures other than the last one when he read the will in 1948 because the intermediate signatures were not at the bottom of the page but were written along the margin. As regards Wurie's other allegation that the will he read was on thick paper like the codicil he observed that the codicil was in fact written on paper only slightly thicker than the will and he recalled the trial judge's comment that it would be difficult for a person who saw the will only once and had no special reason for scrutinising it closely to be able to remember very exactly the texture of the paper on which it was written. Ibrahim Allie's testimony that the signatures on the other disputed will was “ similar but not like ” his father's signature, was “ a distinction without a difference.” As regards the two attesting witnesses, Dougan and Macauley, there was nothing to suggest that they had anything to gain by giving false evidence. The learned President concluded his judgment as follows :—

“ I do not think it is necessary for me to recapitulate the evidence any further, as the learned Judge had done so very exhaustively. This is a case which depended very largely on oral evidence, and the trial Judge had the great advantage of seeing the witnesses and hearing them. He accepted the evidence of the Defendant's witnesses on material questions in issue and having considered the evidence on both sides, I am of opinion that there was sufficient evidence to justify the conclusions at which the Court below arrived, and I see no reason for interfering with the decision. In my opinion therefore the appeal should be dismissed.”

40 Hallinan and Ragnar Hyne, JJ. concurred. A formal judgment dismissing the appeal with costs of appeal was passed accordingly.

24.—Conditional leave to appeal to His Majesty in Council was granted on the 19th December, 1950, and final leave on the 16th March, 1951.

RECORD
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25.—The Respondent humbly submits that this appeal should be dismissed with costs and the judgment and order of the West African Court of Appeal affirmed for the following amongst other

REASONS

- (1) BECAUSE the only ground suggested in the Courts below for setting aside the disputed will is that it was a forgery and both Courts have found that it was the true and last will of the testator.
- (2) BECAUSE the West African Court of Appeal were right in holding that there was sufficient evidence to justify the 10 conclusions at which the trial judge arrived and that there was no reason to interfere with his decision.
- (3) BECAUSE the issue of forgery had to be decided upon the oral evidence of certain of the witnesses and the West African Court of Appeal were right in deferring to the conclusion formed by the trial judge who had seen and heard these witnesses as to the weight on balance of their evidence.
- (4) BECAUSE the judgments of both Courts below were right and should be upheld.

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In the Privy Council.

No. 22 of 1951.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL.

BETWEEN

SOCKNA MORMORDU ALLIE

AND OTHERS *Appellants*

AND

AHMED ALHADI *Respondent.*

CASE FOR THE RESPONDENT

BURCHELLS,
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Temple, E.C.4.
Solicitors for the Respondent.