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Assignment  
24, 1954

In the Privy Council.

No. 19 of 1953.

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL

IN THE MATTER OF THE ESTATE OF JOHN ST. MATTHEW DANIEL, deceased.

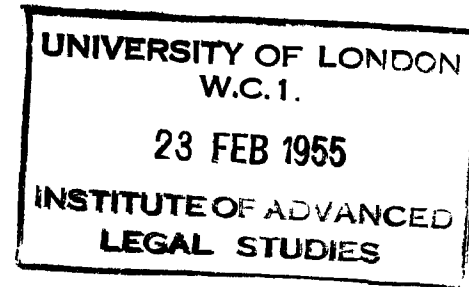
BETWEEN

MATTHEW OLAJIDE BAMGBOSE ... .. *Appellant*

AND

1. JOHN BANKOLE DANIEL
2. MRS. FEYISHITAN BAMBOYE
3. MRS. ABIMBOLA OLADUMIYE
4. CRISPINAH DANIEL now Mrs. Debayo (Married Woman)
5. OLABODE DANIEL } by their guardian and next friend
6. MOBOLAJI DANIEL } MUNIRATU AYINKE AJIBOLA
7. ABIODUN DANIEL by his guardian and next friend  
JANET CLAY
8. OLAYINKA DANIEL } by their guardian and next friend
9. ADEYANJU DANIEL } SABIYITU ADAMO
10. ADEYEMI DANIEL by his guardian and next friend  
REBECCA LAYINKA
11. KOLAPO DANIEL by his guardian and next friend  
S. A. LEWIS
12. OLAYIWOLA DANIEL by his guardian and next friend  
NUSIRATUE OSHODI

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AND

THE ADMINISTRATOR GENERAL ... .. *Respondents.*

**CASE FOR THE RESPONDENTS**

(Other than THE ADMINISTRATOR GENERAL)

1.—John St. Matthew Daniel (hereinafter called “the deceased”) died intestate on the 25th day of April, 1948, at Lagos, Nigeria.

2.—The deceased died domiciled in Nigeria and the distribution of all his movable estate and such part of his immovable estate as is situate in Nigeria is accordingly governed by the law of Nigeria.

3.—Polygamy is lawful in Nigeria.

4.—During his lifetime the deceased polygamously and in accordance with native law and custom married nine wives and the first twelve named Respondents to this Appeal are the issue of those marriages. According to the law of Nigeria all the issue of these polygamous marriages are legitimate.

5.—The Appellant is a nephew of the deceased, the Appellant's father 10 having been the deceased's elder brother. Although the Appellant's father was born out of wedlock, that is to say before the marriage of his parents, the Appellant claims that his father was legitimated by the subsequent marriage of the parents which marriage was a monogamous and Christian one.

6.—If the Appellant's father was so legitimated then the Appellant is the lawful nephew of the deceased and if none of the Respondents is entitled to share in the estate of the deceased the Appellant is entitled to the whole estate.

7.—Because the deceased's parents were married in the Christian form 20 the deceased himself was a person to whom Section 36 of the Marriage Ordinance of Nigeria applied.

8.—By Section 36 of the said Marriage Ordinance it is provided :

“ Where any person who is subject to native law and custom  
 “ contracts a marriage in accordance with the provisions of this  
 “ Ordinance and such person dies intestate subsequently to  
 “ the commencement of this Ordinance leaving a widow or husband  
 “ or any issue of such marriage ; and also where any person who  
 “ is the issue of any such marriage as aforesaid dies intestate  
 “ subsequently to the commencement of this Ordinance the 30  
 “ personal property of such intestate and also any real property  
 “ of which the said intestate might have disposed by Will, shall  
 “ be distributed in accordance with the provisions of the law of  
 “ England relating to the distributions of the personal estate of  
 “ intestates, any native law or custom to the contrary  
 “ notwithstanding. . . .”

9.—It follows that the estate of the deceased falls to be distributed in accordance with the provisions of the law of England relating to the distribution of the personal estates of persons dying intestate.

10.—The law of England relating to the distribution of the personal estates of persons dying intestate provides that where the intestate leaves children they, subject to certain rights of a surviving spouse, take the whole estate. It is only on failure of children or remoter issue, parents, grandparents, brothers and sisters that a nephew could become entitled.

11.—It is conceded that it is only legitimate children who, according to the law of England, can succeed to the estate of an intestate.

12.—The only question to be decided on this Appeal is whether the Respondents are legitimate children of the intestate.

10 13.—It is submitted that the Respondents were all born in lawful wedlock and are therefore legitimate.

14.—It is further submitted that legitimacy, being a matter of status, is governed by domicile and that if a person enjoys the status of legitimacy in the country of his domicile then he is legitimate everywhere.

15.—A child, even if not born in lawful wedlock, is legitimate in England if he is legitimate by the law of the domicile of each of his parents at the date of his birth and this law, in the case of all the Respondents, was Nigerian law.

20 16.—The Respondents other than the Administrator General submit that the Judgment of the Court below should be maintained and the Appeal dismissed for the following among other

### REASONS

1. THAT the Judgment of the Court below, save insofar as it ordered further evidence to be adduced, was based on correct and well established principles of law correctly applied to the facts which were proved.

H. BRUCE CAMPBELL.

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OF APPEAL.

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MATTHEW DANIEL, deceased.

BETWEEN

MATTHEW OLAJIDE BAMGBOSE  
*Appellant*

AND

JOHN BANKOLE DANIEL and  
11 Others

AND

THE ADMINISTRATOR GENERAL  
*Respondents.*

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CASE OF THE RESPONDENTS  
(Other than THE ADMINISTRATOR  
GENERAL)

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HATCHETT JONES & CO.,  
66a Fenchurch Street,  
London, E.C.3,  
*Solicitors for Respondents 1 to 12.*