



Case No: PT-2021-000152

Neutral Citation Number: [2022] EWHC 2672 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CHANCERY DIVISION

Royal Courts of Justice

Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 21 /10/2022

Before: Charles Morrison
(sitting as a Deputy Judge of the High Court)

Between:

(1) PATRICIA KELLY-LAMBO

Claimant

- and -

ESTHER OLUFUNMILAYO LAMBO

Defendant

Tiki Emezie (of Jaycee Gold Solicitors) for the Claimant
Richard Alomo (instructed by Topstone Solicitors) for the Defendant

Hearing date: 5 October 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment was handed down by the judge remotely by circulation to the parties' representatives by e-mail and release to The National Archives. The date and time deemed for hand down is deemed to be 10.30am on 21 October 2022.

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Charles Morrison (sitting as a Deputy Judge of the High Court):

Introduction

1. The proceedings commenced in this court in February 2021 by Mrs Patricia Lambo, as I will in this judgment refer to her, came before me for trial on 5 October. The hearing continued into the next day. The substance of the claim was straightforward; a Grant of Letters of Administration was asked for, along with the rectification of the Death Certificate, both in relation to Mrs Patricia Lambo's deceased husband, Mr James Olayiwola Akanbi Lambo. I say husband, because it was the essence of Mrs Patricia Lambo's case before me that she was his surviving spouse, indeed Mr Lambo's sole surviving spouse.
2. The unhappy foundation of the trial was the position adopted by the defendant, Mrs Esther Lambo; the Defendant also claimed to be the sole surviving spouse of Mr Lambo or, at any rate, to be entitled to a Grant of Letters of Administration on account of her relationship to the deceased. I heard evidence from both women and also from the children of Mr Lambo.

The Pleadings

3. The pleaded position of Mrs Patricia Lambo is that she married the deceased in 1993 in Lagos, Nigeria. This fact is admitted in the Defence; it goes on at paragraph three to allege that Mrs Patricia Lambo was divorced from the deceased in March of 2000, by order of the Chief Registrar of the Lagos Judicial Division. It was upon that order, and the fact of the divorce, that reliance was to be placed at trial.
4. It is the pleaded case of the Defendant that she married the deceased on 10 November 1962, again, in Nigeria. That marriage, she asserts, subsists and founds her claim to a Grant of Letters of Administration. The Defendant denies that she was ever divorced as had in previous proceedings been alleged by Mrs Patricia Lambo.
5. The Defendant admitted the claim made by Mrs Patricia Lambo that she had attended the hospital upon the death of Mr Lambo and had ensured that her name was applied to the death certificate. The Defendant's case at paragraph nine of the Defence and Counterclaim is that such a step was consistent with her status as the spouse of the deceased.
6. On the face of her Defence and Counterclaim, the Defendant raised the possible, but not admitted, existence of another spouse being a Mrs Adebisi Lambo. So far as the pleading is concerned, the relationship would remain speculative unless proved at trial: no appearance was made at trial by this lady and no evidence was led on her behalf. So far as I was concerned, this issue went no further.
7. At paragraph 13 of her Particulars of Claim, Mrs Patricia Lambo asserted that she had lived with the deceased as husband and wife in a property which at the trial it became clear was the matrimonial home at 16 Hillcrest Road Bromley. This marital cohabitation, denied by the Defendant, subsisted, she alleged, from 2006 until Mr Lambo's death in 2017. It was the Defendant's case that the cohabitation was not matrimonial in character; the parties

slept in separate bedrooms; the deceased visited the Defendant on most days of the week and acted towards her as husband and wife.

The Issues

8. Having regard to the controversy arising on the pleadings, it became clear that the principal issue before the court was whether the Defendant could establish that the deceased had indeed divorced Mrs Patricia Lambo in March 2000, as averred in the Defence, or at any rate that the marriage had come to an end at some point prior to the death of Mr Lambo.
9. If that dissolution could not be established, the answer to the next question turned on the extent of the relationship between Mrs Patricia Lambo and the deceased at the time of death; was there any good reason not to make an order for a Grant of Letters in accordance with the usual principles?
10. In any event, it was a question before the court as to whether some form of order for the Grant of Letters, should be made in favour of the Defendant.

The Evidence

11. In support of her case, Mrs Patricia Lambo provided a witness statement and ensured that the court also had the benefit of witness statement evidence from five other witnesses of fact. The Defendant also gave evidence as did four other witnesses as part of her case.
12. At the outset of the evidence of Mrs Patricia Lambo, a number of photographs were drawn to my attention. These photographs confirmed the attendance of Mrs Patricia Lambo at Mr Lambo's funeral in Nigeria and her participation in the ceremony. Whilst the men who lowered the coffin into the grave were she conceded arranged by the Defendant, the Pastor who led the prayers was her Pastor, and there at her request. Mrs Patricia Lambo had participated in the funeral "from start to finish".
13. Mrs Patricia Lambo went on in her evidence to express her view that the Defendant was not in fact married to Mr Lambo. This position was however inconsistent with the statement signed by Mrs Patricia Lambo in earlier proceedings in this court wherein the fact of the marriage of the Defendant to Mr Lambo had been accepted, as was highlighted in a passage of cross examination by Mr Alomo, appearing on behalf of the Defendant. At all events Mrs Patricia Lambo appeared to concede that Mr Lambo had agreed that he had been married previously but suggested that there had also been a divorce. When she had challenged him about his former partner "he said he had done away with her". He said there had been a Muslim marriage but "because they had been apart for so long, there had been a divorce."
14. Mrs Patricia Lambo went on to explain how she had been married to Mr Lambo and lived together with him in Nigeria. Then he travelled to the United Kingdom. Mr Lambo had then, she believed, lived with his daughter. When she came to the United Kingdom in 2006, she found Mr Lambo living alone and no one came to say they were his wife. She

first found out about the Defendant in 2008/9. She knew a woman had given birth to children fathered by Mr Lambo, but she had not met her.

15. Mrs Patricia Lambo denied that there had ever been divorce proceedings involving her and Mr Lambo. The certificate in the trial bundle, that appeared to confirm a divorce in Lagos, was a forgery. Had she been divorced in 2000, why would I have joined Mr Lambo in 2006, asked Mrs Patricia Lambo. Nor did she have any knowledge of the so-called letter of reconciliation which appeared at page 239 in the trial bundle. This letter dated 2001 but suggesting it was written in 2000, appeared to confirm that Mr Lambo was returning to a relationship with his wife, the Defendant.
16. A witness statement from Mr Kofi Owusu was put before the court and Mr Owusu was tendered for cross examination. His evidence, in essence, was that he had known Mrs Patricia Lambo as the wife of Mr Lambo for some ten years. He had been close to the family, close enough to refer to them as mummy and daddy. Mr Owusu was himself convinced that Mrs Patricia Lambo and Mr Lambo were husband and wife. This was the impression given to the Christian community in which they seemed to be prominent. He saw them regularly in the matrimonial home. He had no knowledge of Mr Lambo's marital status from the 1960's to the 1980's.
17. I then heard from Mrs Ifeoma Obiora who is a barrister. Her evidence was similar to that given by Mr Owusu; she had known Mr Lambo and Mrs Patricia Lambo for ten years. Mr Obiora also saw Mrs Patricia Lambo at the hospital with Mr Lambo during his final illness. She too was convinced of their state of matrimony; she too agreed that she was in no position to help on question of the existence of the marriage of Mr Lambo in 1962, or whether the marriage to Mrs Patricia Lambo was dissolved in 2000.
18. The next witness was Ms Omutunde Oliyide. She was married to Mr Lambo's nephew. Her evidence was that she had known Mr Lambo and Mrs Patricia Lambo as husband and wife for some thirty years. She was present at the wedding. She had also visited the couple at the Hillcrest Road property up to the point of Mr Lambo's death.
19. Ms Oliyide was followed by Mrs Grace Anifalaje. Her evidence was consistent with the earlier witnesses; she too knew Mrs Patricia Lambo and Mr Lambo as husband and wife; she too visited them regularly up until the point of Mr Lambo's death; she too saw them as a close and devoted couple. Once again, Mrs Anifalaje was in no position to give evidence about Mr Lambo prior to 2006, although she stated that Mr Lambo had told her several times that he was not married to Tunde's mum, that is to say, the Defendant: "they had cohabited and had children, but were not married."
20. Mr Amarjit Gharial was also called to give evidence. He was a Mortgage Adviser acting on behalf of Mr Lambo and Mrs Patricia Lambo. Mr Gharial had direct knowledge of Mr Lambo and his wife, Mrs Patricia Lambo. He worked on their affairs together with the financial institutions involved with lending for the purpose of the purchase of the Hillcrest Road property. He had been engaged on a restructuring of the lending up to the point of Mr Lambo's death. So far as he was concerned, Mrs Patricia Lambo was Mr Lambo's wife. Again, he knew nothing about Mr Lambo's life prior to 2006.
21. That being the case for Mrs Patricia Lambo, the Defendant was next to give evidence. I had read her full statement which appeared at page 64 of the agreed trial bundle. The

Defendant's evidence was clear and straightforward. Sixty years ago, she had married Mr Lambo in a Muslim ceremony. She was underage when she married; an uncle on Mr Lambo's father side had arranged the marriage. She was 17 and he was 25. The marriage which took place in the afternoon, was well celebrated.

22. The Defendant was carefully cross-examined by Mr Emezie, appearing on behalf of Mrs Patricia Lambo, and was, to some extent, hazy on some of the facts surrounding the marriage, such as the day of the week, the precise time and her exact age and the age of Mr Lambo. In many respects, such lack of precision was understandable given the passage of sixty years.
23. As to the certificate of marriage itself, this the Defendant had obtained from her father's files of papers upon his death in 1985. She could not say what had become of the original of the certificate, save that it was perhaps with the papers of Mr Lambo. The Defendant was also vague in her understanding of the provenance of the supposedly certified copy of the certificate.
24. Although pressed hard on why she had not signed the marriage certificate that had been produced, it was perhaps the case that the parties themselves had no place to sign the certificate, that being a task reserved for the witnesses and celebrant.
25. The Defendant recalled attending Mr Lambo's funeral and seeing Mrs Patricia Lambo there; she did not speak to her; she accepted that Mr Lambo's relatives did not tell her to leave. The Defendant also accepted that Mrs Patricia Lambo did cast sand into the grave upon the coffin.
26. There followed an altogether unhelpful passage of evidence relating to whether the Defendant had or had not converted to or from the Muslim faith. In my view nothing of substance turned on this evidence, contradictory though at times it might well have been.
27. A document purporting to be a Decree Absolute of divorce, that being the divorce of Mr Lambo from Mrs Patricia Lambo, was produced to the Defendant. She denied it was a forgery. She did not possess the original and claimed it was obtained by her from Mr Lambo's papers that he produced to the Home Office for the purposes of his permission to remain in the United Kingdom.
28. The Defendant accepted that she did not contribute to the cost of the Hillcrest Road house occupied by Mr Lambo. He was working, why should I, was her position on this point. She had separated from him as he had many, many women in his life, "so I separated myself from him." Despite Mr Lambo committing bigamy, the Defendant's relationship with him did not come to an end as "we were still family even though he married Vanessa. He had left the country. But we did not divorce." I should add that Vanessa was another lady to whom it seems that Mr Lambo was perhaps married at some stage during his time in the United Kingdom.
29. Nor did the Defendant dispute that Mrs Patricia Lambo had made contributions to the mortgage costs of the Hillcrest Road property. This was in her view because Mr Lambo could not afford the costs himself. It was the Defendant's firm view that Mr Lambo lived separately, downstairs, in the house, and not as man and wife with Mrs Patricia Lambo. She had bought herself a house in Catford which was her house. Mr Lambo had moved

out in 2004. He then moved to his sister's house and then he had bought the Hillcrest road property. Since 2004 she had not lived with Mr Lambo but saw him regularly and travelled with him.

30. The first witness appearing as part of the Defendant's case was Mr Lambo's daughter, Mrs Oluwafemi Bamiro. The Defendant was Mrs Bamiro's mother. In her witness statement, Mrs Bamiro recounted the unhappy family history which developed as a consequence of Mr Lambo's romantic involvement with a number of different women throughout his life. Certain of these relationships resulted in marriage. One such relationship was with Mrs Patricia Lambo.
31. Towards the end of his life, it was clear to Mrs Bamiro that her father was effectively running two households: one with her mother and the other with Mrs Patricia Lambo at Hillcrest Road. So far as she was aware, her mother had little choice to but to accept this state of affairs. Whilst she had challenged her father over his *modus vivendi*, he did not seem willing to change and in any event continued to visit her mother's house on a regular basis and keep up some appearance of a husband-and-wife relationship.
32. Mrs Bamiro's brother, Mr Abiola Lambo, also gave evidence. His evidence was substantially similar to that of his sister. He too knew of the existence of Mrs Patricia Lambo. Her existence had been a running sore in the family. At times Mr Lambo had assured the family that he was fully reconciled with his mother, the Defendant, and indeed had told of a divorce from Mrs Patricia Lambo. Nevertheless, to their utter disappointment, their father had brought Mrs Patricia Lambo from Nigeria to live with him in England. Mr Abiola Lambo accepted that his father had been living with Mrs Patricia Lambo at the Hillcrest Road property, albeit still in regular contact with his mother until his death. Mr Abiola Lambo had visited Hillcrest Road but had not lived there. He had not spent any night there but visited frequently. He had seen his father in his room upstairs but did not know where Mrs Patricia Lambo slept.
33. Another brother also gave evidence, Mr Babatunde Azziz Lambo. In his witness statement he did not hide his dislike of Mrs Patricia Lambo who he described as manipulative and willing to go to any lengths to achieve her ends. So far as this brother was concerned, his mother was the sole surviving spouse on account of his father's divorce from Mrs Patricia Lambo. He himself had not served Mrs Patricia Lambo with what were described as divorce papers from Mr Lambo, but his brother did. It was a court document, and he had seen it. "It said that the marriage was done." Although this founded his belief in the divorce, he had no way of knowing whether the documents he was referring to were in fact part of an official court process or not.
34. The final witness to give evidence to the court was estate agent, Mr James Ademuyiwa. He had helped Mr Lambo and the Defendant sell a Catford property in 2004. Since then he had known them as couple and had treated them, as had those he interacted with around them, as husband and wife.

The law

35. When a person dies, someone needs to deal with their estate. An estate is made up of everything owned by the deceased. If the deceased had made a Will, an Executor would have been named who would then have the responsibility for dealing with the estate and

the necessary Grant of Probate. If however the deceased did not make a Will, that is to say dies intestate, someone needs to apply for a Grant of Letters of Administration. It is this Grant that takes the place of Probate where there is a will. In the absence of a Will giving instructions on how to divide an estate, the Rules of Intestacy must be followed.

36. It was common ground before me that the approach to the Grant of Letters of Administration in this case would be governed by the Non Contentious Probate Rules 1987 (the **Rules**). Rule 22 of the Rules provides, so far as relevant, as follows:

“Order of priority for grant in case of intestacy

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

(a) the surviving husband or wife;

(b) the children of the deceased and the issue of any deceased child who died before the deceased;

(c) the father and mother of the deceased; ...”

37. As Mr Alomo submitted in his helpful skeleton argument filed in advance of the trial, neither party sought to be treated as joint surviving spouse. He made that submission despite inviting my attention to the decision of Mr Elleray QC, sitting as a Deputy Judge of the High Court in the *Official Solicitor to the Senior Courts v Yemoh and others* [2010] EWCH 3727 (Ch), a case in which the court considered the definition of “surviving spouse” in the context of section 46 of the Administration of Estates Act (“AEA”) 1925. The court decided that surviving spouses from a polygamous marriage that was valid according to the law of the intestate’s domicile, could be recognised as the surviving spouse for the purposes of section 46 AEA 1925.

38. My attention was also invited to the power available to the court under section 116 of the Senior Courts Act 1981, which in essence provides power to the High Court to pass over prior claims to grant:

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

(2) Any grant of administration under this section may be limited in any way the court thinks fit.

39. In *Gudavadze & ors v Kay & ors* [2012] EWHC 1683 (Ch), Sales J (as he then was) held that the *s116* power should be read as a general power for the High Court to override what

would otherwise be the position under the Non-Contentious Probate Rules 1987. It is on that basis that I will consider the exercise of the jurisdiction.

40. It also seems to me to be relevant to have regard to the principles that might give rise to a presumption of a state of marriage. In his judgment in *Akhter v Khan* [2018] EWFC 54, Williams J, addressed the question of the presumption of a valid marriage under English law. At [31] he said this,

“The presumption of marriage has a long history. The cases I have been referred to range from Piers v Piers (1849) 11 House of Lords cases (Clarks) 9 ER 1118 through to Hyatleh v Mofdy [2017] EWCA Civ 70. The article ‘The Presumptions In Favour of Marriage’ by Prof Probert Cambridge Law Journal 77 (2) provides a fascinating analysis of the presumptions.

Two forms of the presumption exist. Rayden and Jackson on Relationship Breakdown, Finances and Children, 19th edition, identifies them as follows.

- a. *Presumption from cohabitation and reputation;*

Where there is no positive evidence of any marriage having taken place, where parties have cohabited for such a length of time and in such circumstances so as to have acquired the reputation of being spouses, a lawful marriage may be presumed to exist. This is particularly so when the relevant facts have taken place outside the jurisdiction.

- b. *Presumption from ceremony followed by cohabitation.*

Where the court has evidence that the parties have undertaken a ceremony of marriage and have subsequently cohabited then, unless there is cogent evidence to the contrary, the existence or happening of all other things necessary for the validity of the marriage will be presumed. This extends to making presumptions about the granting of a special licence.”

41. It is plain that the presumption explained at b., in the judgment of Williams J. has some relevance to the matters now before me.

Discussion

42. At an early stage in the trial, I drew Mr Alomo’s attention to the fact of his client’s admission of the marriage in Nigeria of Mr Lambo to Mrs Patricia Lambo. His case was that there had been a divorce. It is also important to understand the case the Defendant did not advance. It was not claimed that the marriage of Mr Lambo to Mrs Patricia Lambo was bigamous. There was no Nigerian law evidence led before me to suggest that this marriage was invalid or indeed unlawful in the jurisdiction in which the ceremony took place. The case for the Defendant involved an admission of the marriage *simpliciter*. The objection taken was there had subsequently been a divorce. The difficulty that it seemed to me the Defendant faced, was that there was no evidence before the court to establish the fact of the divorce. At best there was a purported Nigerian court document the provenance

of which was challenged. What there was not was evidence from a Nigerian lawyer confirming the fact of the divorce as a matter of Nigerian law.

43. It seemed to me, therefore, that Mr Alomo had to proceed on the basis that Mrs Patricia Lambo was the wife of Mr Lambo. Although his skeleton adverted to it, the avenue of an argument that the marriage was polygamous in the Lagos State of Nigeria, and therefore, not one that I could recognise, was also closed off to him by virtue of the very same evidential defect: he could not prove it.
44. As the evidence developed before me, I have to say that it was hardly contested that Mrs Patricia Lambo was living with Mr Lambo up to the point of his passing; to the extent that it was, I am prepared to make a finding that she was living with him as his wife at the date of his final fatal illness. The evidence that I have recounted is overwhelming in favour of such a finding.
45. To my mind it must follow that Mrs Patricia Lambo can be characterised as a surviving spouse for the purposes of the Rules. On the face of it therefore, and applying rule 22 of the Rules, Mrs Patricia Lambo is entitled to a Grant of Letters of Administration. The point that must be dealt with now is the standing of the Defendant. Notwithstanding Mr Alomo's submission that neither party seeks to be treated as joint-surviving spouse, is she in any case also entitled to a Grant?
46. The Defendant seeks to rely upon the reasoning in *Yemoh* and invites the court to say that if for whatever reason, as a fact, she is also a spouse of the deceased, then she too should be entitled to a grant. The first question that must be answered in this analysis is whether the Defendant was indeed a spouse. To my mind, the evidence on this point was inconclusive and open to real doubt. At its highest, the evidence turned on the memory of the Defendant as to a ceremony at a Mosque some 60 years ago. There is also a copy of a form of certificate purporting to be the certificate produced in 1962 at the time of the wedding; no original is available; how it came to be certified as a true copy, no one could say. There was no Nigerian law evidence led so as to confirm the validity of the marriage.
47. I accept the proposition as a matter of law that the validity of a marriage will be presumed where there is evidence that the parties have undertaken a marriage ceremony and where they have subsequently cohabited. Is there sufficient evidence of the marriage ceremony here? In my judgment it is not the answer to this question that is determinative of the claims made in this case, difficult though it would undoubtedly be on the evidence that I have heard, to arrive at an answer.
48. In my judgment the issue to be resolved is whether a grant of letters ought to be made in favour of the Defendant, alongside Mrs Patricia Lambo, who, as I have already indicated is in my view certainly entitled to such an order. Taking into account the date of the purported marriage to the Defendant, whatever its actual status, the dates of cohabitation between the Defendant and Mr Lambo, the fact that on any view such cohabitation came to an end at least by 1993 when, as is admitted by the Defendant, Mr Lambo married Mrs Patricia Lambo, the length of time that Mr Lambo cohabited both in Nigeria and in the United Kingdom with Mrs Patricia Lambo, and that he was living with her at the time of

death, the appropriate order for me to make is a sole grant of letters in favour of Mrs Patricia Lambo.

49. Insofar as it might have been considered that the Defendant was, by virtue of a spousal status, which in any event I have not recognised, entitled to a joint grant pursuant to Rule 22 of the Rules, in all the circumstances that I have set out, it is in my judgment both just and expedient to appoint some other person, that is to say Mrs Patricia Lambo alone, as administrator of the estate of Mr Lambo. In this respect, and following the position explained by Sales J in *Gudavadvze* with which I respectfully agree, I am availing myself of the general power to override what might otherwise be the position under the Rules. Thus, and in summary, to the extent I might be wrong and that the marriage of the Defendant to Mr Lambo can be presumed or ought in any case to be recognised as a fact, and that adopting the reasoning of the learned Deputy Judge in *Yemoh*, I ought to treat a surviving polygamous spouse as a surviving spouse for the purposes of the Rules, for the reasons I have given, I consider it expedient and indeed just to make an order in favour only of Mrs Patricia Lambo, as I am entitled to do having regard to my powers under section 116 of the Senior Courts Act 1981.

50. Taking this approach to the power under section 116, is entirely consistent with the submission made to me by Mr Alomo in the final paragraph of his skeleton argument, wherein he argued that:

i. The court's discretion under section 116 Senior Courts Act 1981 is wide and unfettered.

ii. The defendant respectfully invites the court to appoint her in the place of the claimant in the event that court determines that she (the claimant) is the sole surviving spouse of the deceased for the reasons set out at paragraph 19 of her defence [21-22].

51. This, of course, was a submission that anticipated a finding by the court that the Defendant was *not* a spouse and therefore not someone otherwise entitled under the Rules to a grant. It rightly, in my judgment, pointed to the wide nature of the general power to override what would otherwise be a position under the Rules.

Order

52. As I have indicated, I will make an order of grant in favour of Mrs Patricia Lambo. I am also prepared to consider the issue of rectifying the death certificate so as to recognise Mrs Patricia Lambo as the surviving spouse, but I will require short written submissions from the advocates as to my powers in that respect. Costs must follow the event.

53. I will, as necessary, hear the advocates on the form of the order and any other consequential matters, although it is to be hoped that an agreed draft can be submitted to the court.

