

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN –
CHIEF JUDGE**

FRIDAY, 20TH APRIL, 2018

SUIT NO. B/79/OS/2017

BETWEEN:

DR. JOSEPH AMADASU í . í í í í í í í CLAIMANT

AND

- | | | |
|--|---|-----------------|
| 1. MR. SAMUEL IYAHEN AMADASU. | } | í DEFENDANTS |
| 2. MRS. ELIZABETH TANIMOWO
OSATOHAMWEN OMOZUSI (NEE AMADASU) | | |
| 3. MR. JOHNBULL AMADASU | | |
| 4. MISS AMENAGHAWON OROBATOR | | |
| 5. MR. EKHATOR OSAROGIUWA | | |
| 6. MR. SAPELE OMOREGBEE. | | |

J U D G M E N T

The Claimant herein filed an originating summons against the defendants on 19/5/2017. From the supporting affidavit, of the four new executors of his father's Will he appears to be suing 1st and 2nd Defendants while 3rd Defendant is sued for being the eldest son of one of the deceased executors and 4th Defendant is the 1st child of one Mrs. Onaiwu Orobator now deceased and a witness to the execution of his late father's Will. The 5th and 6th Defendants are said to be members of Iyase family and participated in the execution of the Will.

The case is undefended and so in my respectful view, there is no legal reason why 3rd, 4th, 5th and 6th Defendants are made parties to this suit. Their

names are ordered struck out from the case. Parties to a suit must be persons who are to be bound by the decision. The person who allegedly bought the property and the estate of his late brother who sold are very necessary parties and they are not sued.

The Claimant's originating summons is for a declaration that any thing done, purportedly done contrary to his father's Will of 2/6/1961 to render it ineffective and to alter the Will in any form after its execution is null and void.

An order declaring any steps, actions, sale, re-sharing, redemarcation of any property bequeathed to the Claimant contrary to the Will is illegal and of no effect and for perpetual injunction.

I have read the affidavit evidence and the documents attached and I fail to find any reason for this action. The cause of action arose around 1990 as per paragraph 20 and 10/3/1991 as stated in paragraph 24 of the supporting affidavit to the originating summons. In paragraph 25 of the said affidavit, Claimant stated that his brother had sold the land which is his share of his father's estate and he made efforts to reverse the illegal sale to no avail. The Claimant has failed to state when this sale took place and it is safe to infer it must be around 1991. He has not sued the estate of his late brother who he claimed sold. He has not stated whether he was given a share from the sale. It is my finding that if these infractions happened in 1991 and he brought this action in 2017, well over 12 years, then the action is not maintainable in law as it is statute barred. See Section 4 of the Limitation Law.

I am afraid also that the claims as framed are not envisaged to be within the scope for originating summons. In the case of **Keyamo v LSHA** (2000) 12 NWLR (pt. 680) 196, Originating Summons is used to commence an action where the issue involved is one of the construction of a written law, or any deed, contract or instrument made under a written law where there is unlikely to be any substantial dispute of fact.

In his case from paragraphs 20, 24 and 25 of the supporting affidavit, the issues arising appear to be the re-demarcation and the illegal sale of the land and devise to the Claimant. This has no need for interpretation of the Will of the Claimant's father. This action is totally unwarranted, not maintainable in law. Resultantly, the address of counsel with due respect to him is a sheer waste of time. The cases cited on Originating Summons by learned counsel especially **Loyo v Alegbe** (1983) 2 SCNLR 35 at 67 are against him. The case of the Claimant is struck out as incompetent, not maintainable and for being statute barred.

Hon. Justice E. F. Ikponmwen,
Chief Judge.

Counsel:

S. E. Edokpaigbe Esq. í í í í í for the Claimant.