

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO
ON FRIDAY
THE 11TH DAY OF JULY, 2025.

BETWEEN:

SUIT NO: B/1137/2021

AMENZE MARY ADAMS -----CLAIMANT

AND

**1. VAYO ADAMS
2. MONICA ADAMS
3. EUNICE ADAMS SAGE
4. LYDIA ADAMS
5. ELSIE ADAMS
6. RITA ADAMS**

-----DEFENDANTS

JUDGMENT

The extant pleadings of the Claimant in this suit are the Claimant's 3rd Amended Statement of Claim dated and filed on the 10th day of May, 2023 and the Claimant's Reply to the Defendants' Statement of Defence dated and filed on the 6th day of May, 2022.

In paragraph 55 of the Claimant's 3rd Amended Statement of Claim, the Claimant is claiming against the Defendants as follows:

- 1) A DECLARATION that the Claimant (being the only child of Late Mr. Kelly Adams) is the rightful owner and the person entitled to a statutory right of occupancy in respect of the house known as No. 27, Uwa Street, Off Tayo Akpata Road, Benin City and all the appurtenances therein;***
- 2) A DECLARATION that the Claimant (being the only child of Late Mr. Kelly Adams) is the rightful owner and the person entitled to a statutory right of occupancy in respect of the house (Duplex) with the boys quarter situate at No. 1, Odion Street, Off Okunseri Street, Benin City;***
- 3) AN ORDER of this Honourable Court directing the 1st – 7th Defendants to handover the building situate at No. 27, Uwa Street, Off Tayo Akpata Road, Benin City and deliver to the Claimant the title documents in respect of the said building in their possession;***
- 4) AN ORDER of this Honourable Court directing the 1st – 7th Defendants to hand over the house (Duplex) with the boys quarters situate at No. 1, Odion Street, Off Okunsri Street, Benin City and deliver to the Claimant the title documents in respect of the said house in their possession;***
- 5) AN ORDER of this Honourable Court directing the 1st – 7th Defendants to account for all the financial proceeds received from the house known as No. 27, Uwa Street, Off Tayo Akpata Road, Benin City;***
- 6) AN ORDER of this Honourable Court directing the 1st – 7th Defendants to account for all the financial proceeds received from the house (Duplex) with boys quarters known as No. 1, Odion Street, Off Okunseri Street, Benin City; and***
- 7) AN ORDER of this Honourable Court directing the 1st – 7th Defendants to exhume the corpse of Late Mr. Osagie Adams from the Claimant's property located at No. 1, Odion Street, Off Okunseri Street, Benin City.***

The extant pleading(s) of the Defendants in this suit is the Defendants' 3rd Amended Joint Statement of Defence dated the 20th day of November, 2023 and filed on the 28th day of November, 2023.

At the hearing of this suit, the Claimant testified for herself, called three witnesses. and tendered the following Exhibits: Exhibits 'A' (Minutes of Family meeting held on the 13th of August, 2022); Exhibit 'B' (Sharing Document of late Mr. Solomon Ekhomwan Charles Adams' properties); Exhibit 'C' (Unanimous Decision of the 2nd – 7th Defendants in respect of House known as No. 27, Uwa Street, Benin City

and the Duplex at No. 1, Odion Street, Benin City dated 3rd day of September, 2021); and Exhibit 'D' (Ekhorosioba Tradomedical Doctors Auxiliary Herbal Chief Priest Findings dated the 4th day of March, 2021).

From the evidence which she adduced at the trial, the Claimant's case is that the 1st to the 6th Defendants are the biological sisters of full blood with her late father named Mr. Kelly Adams.

She alleged that her late father who was the first son of his father (Mr. Solomon Ekhomwan Charles Adams) inherited house No. 27, Uwa Street, Off Tayo Akpata Road, Benin City being the Igiogbe of his late father, according to Bini custom of inheritance.

She said that her late father also inherited a Duplex with boys quarters situate at No. 1, Odion Street, Off Okunseri Street, Benin City.

She alleged that the Ekunwe family which is the family of her paternal grandfather allocated house No. 27, Uwa Street, Off Tayo Akpata Road, Benin City being the Igiogbe of Late Mr. Solomon Ekhomwan Charles Adams, to her late father, vide a certificate of sharing witnessed by the family head and principal family members.

The Claimant alleged that the Ekunwe family also apportioned the Duplex located at No. 1, Odion Street, Off Okunseri Street, Benin City with the boys quarters to her late father. At the trial, the document of sharing was admitted in evidence as Exhibit "B".

According to the Claimant, during the sharing of the property, the 1st Defendant who is the first biological daughter of the grandfather of the Claimant (Late Mr. Solomon Ekhomwan Charles Adams) was allocated a parcel of land measuring 50feet by 100feet situated at 63, Iyomoana Street, Off Adesuwa Street, Benin City.

The Claimant alleged that her father, Kelly Adams died sometime in 2010 and since then, her Uncle (Osagie Adams), brother of full blood with her father, took over all the property allocated to her late father and had been living in the Igiogbe of her late father until he died a few years ago.

The Claimant alleged that upon the demise of her uncle, Mr. Osagie Adams, her Aunties, the 1st to 6th Defendants supported by their late mother insisted that they

will bury late Mr. Osagie Adams on the Claimant's father's property located at No.1, Odion Street, Off Okunseri Street, Benin City.

She said that when she heard of their plan to bury her uncle in her father's property, she reported the matter to the Palace of the Oba of Benin, but because of the Covid-19 restrictions, the Palace directed the Claimant to report the matter to another traditional institution of the Oba the Aro'osun'oba.

The Claimant allegedly reported the matter to the Aro'osun'oba and Aro'osun'oba summoned the Okaegbe of their family, who presented a copy of the certificate of sharing to the Chiefs at Aro'osun'oba.

The Claimant informed the Court that the Aro'osun'oba directed that the Claimant's late uncle should not be buried in any of the property in dispute, but contrary to the directives of the Aro'osun'oba the Defendants buried her late uncle at the property situate at No. 1, Odion Street, Off Okunseri Street, Benin City.

The Claimant alleged that after the burial of her uncle in the aforesaid property, the Defendants took over the Igiogbe and the other property located at No. 1, Odion Street, Off Okunseri Street, Benin City, which allegedly belongs to her by inheritance under Benin custom.

The Claimant alleged that subsequently, by a document dated 3rd September, 2021 signed by one Eunice Adams Sage and prepared by Steve A. Onokpachere Esq., the Defendants re-shared the property which belongs to Claimant among them.

According to the Claimant, by the new document of sharing dated 3rd September, 2021, the Defendants claimed full ownership of the Duplex that rightly belongs to her and gave her only the boys quarters apartment.

She alleged that through that same document, the Defendants purportedly allocated the boys quarters, which forms part and parcel of the Igiogbe, to one Maxwell Adams the son of her uncle, the late Mr. Osagie Adams. At the trial, she tendered the second document of sharing and it was admitted as Exhibit "C".

The Claimant alleged that the Defendants have been collecting rents from all the properties in dispute ever since and they have never given her any of the proceeds from the rent.

The Claimant stated that under Benin custom, the first son of the Urho inherits the property assigned to the Urho. She alleged that the Igiogbe goes to the first son and if the first son has only one female child surviving him, the Igiogbe passes over to the female child and when the female surviving child has a male child, the Igiogbe will pass to the male grandchild.

She alleged that her grandmother, who is the mother of all the Defendants, was in possession of the documents of title of the properties in dispute.

She said that the Okaegbe of the family and Elders tried to intervene so that the Defendants can restore the properties to the Claimant, but the Defendant have refused hence she has come to Court to seek redress.

In defence of this suit, the 5th Defendant testified together with their mother, Mrs. Grace Oghogho Adams (the former 1st Defendant who is now deceased) and the D.W. 1 (Chief Dr. Godwin Ekhurutomwen). They also tendered four Exhibits to wit: Exhibit 'E1' (Certified true copy of the Book Titled "From Birth to Death, A Benin Cultural Voyage by Chief S.O.U. Igbe); Exhibit 'E2' (Certified true copy of the Book Titled: "IGIOGBE AND MISCELLANY in Benin Jurisprudence) by Solomon I. Eghobamuen, Esq., Exhibit 'F1' (Petition to the Assistant Inspector General of Police by Defendants' Solicitors dated 21st day of February, 2022) and Exhibit 'F2' (CD).

At the hearing, Mrs. Grace Oghogho Adams and the 5th Defendant) also identified Exhibits 'B' and 'C' respectively as documents pleaded and relied upon by the Defendants in their extant Joint Amended State of Defence.

From the evidence adduced at the hearing, the Defendants' case is that the Claimant is the adopted daughter of their late brother, Kelly Adams.

They alleged that on the 28th day of February, 1996, their father, Mr. Solomon Ekhonmwan Charles Adams died intestate.

According to them, in his life time, their late father was married to four wives, resulting in four gates to wit: Urho Avben Grace Adams (the mother of all the Defendants who died during the pendency of this suit); Urho Avben Felicia Adams; Urho Avben Theresa Adams and Urho Avben Florence Adams.

They said that their late father also had children from four concubines.

They alleged that during his lifetime, their father lived at No. 27, Uwa Street, off Tayo Akpata Road, Benin City and had many houses and landed properties in Benin City.

The Defendants alleged that upon the demise of their father on the 28th day of February 1996, the burial rites were performed and his family resolved to share his properties amongst his wives and children.

They alleged that the sharing by the family was made vide a Document titled: ***“SHARING OF LATE BROTHER S.E.C ADAMS PROPERTY”*** duly prepared and signed by the then Head of the Adams Family (Mr. Peter Adams) dated 3rd of January, 1999; the Elders and Principal members of the Adams Family who co-signed the aforesaid sharing document. The document was admitted as Exhibit “B” at the hearing.

According to the Defendants, in the said Exhibit “B”, it was unanimously stated that House No. 27, Uwa Street, off Tayo Akpata Road, Benin City and all the appurtenances therein, remains the IGIOGBE (Family House) of the Adams family; that the Duplex situate at No. 1, Odion Street, Off Okunseri Street, Benin City with the Boy's Quarters bounded by Beacon Nos. LM 7409, LM 7412, LM 7412A and LM 7409A and the Farmland at Iguovbiobo Village are the property of MR.KELLY ADAMS (Deceased) and his uterine brothers and sisters (the 1st to 6th Defendants).

The Defendants maintain that by the said sharing document, Exhibit “B”, the subject matters of this suit was not shared to late Mr. Kelly Adams to the exclusion of his brother and his sisters.

According to the Defendants, by the sharing document, a parcel of land measuring 50 feet by 100 feet situate at No. 63, Iyomoana Street, off Adesuwa Street, Benin City was given to the 1st Defendant (being the eldest daughter of their late father) in addition to being a co-beneficiary of the House No. 27, Uwa Street, off Tayo Akpata Road, Benin City and all the appurtenances therein remains the IGIOGBE (Family House) of the Adams Family.

The Defendants testified that both Mr. Kelly Adams and his younger brother Late Osagie Adams were upon their demises, buried side by side at the premises of the Duplex situate at No. 1, Odion Street, Off Okunseri Street, Benin City which said Duplex building with Boys Quarters was collectively or jointly shared to them, both men not having or owning houses of their own during their lifetimes.

The Defendants stated that the subject matter of this suit was never reported to the palace of the Oba of Benin and/or the Aro'osun'oba as alleged by the Claimant. They maintained that they were never summoned by the Palace of the Oba of Benin and/or the Aro'osun'oba on the subject matter of this suit or in relation to any dispute as to the burial of the late Osagie Adams in the premises of the Duplex Building with Boys Quarters situate at No. 1, Odion Street, Off Okunseri Street, Benin City.

The Defendants informed the Court that based on their benevolent decision and disposition, they instructed their solicitors to prepare a Document titled ***"THE UNANIMOUS DECISION OF VAYO ADAMS, MONICA ADAMS, EUNICE ADAMS SAGE, LYDIA ADAMS, ELSIE ADAMS AND RITA ADAMS, THE BIOLOGICAL SURVIVING DAUGHTERS OF LATE MR.SOLOMON EKHOMWAN CHARLES ADAMS IN RESPECT OF THE HOUSE KNOWN AS NO. 27, UWA STREET, OFF TAYO AKPATA ROAD, BENIN CITY AND THE DUPLEX AT NO. 1, ODION STREET, OFF OKUNSERI STREET,BENIN CITY' DATED THE 3RD DAY OF SEPTEMBER, 2021.*** The document was admitted as Exhibit "C" at the hearing.

According to them, by the said Exhibit "C", the Defendants magnanimously gave the Claimant being the adopted daughter of their brother, the Boys Quarters of the Duplex Building at No. 1, Odion Street, Off Okunseri Street,Benin City exclusively for the Claimant's use and benefit.

The Defendants maintained that the Claimant is not the biological daughter of their late brother, Mr. Kelly Adams and is therefore not the biological grand-daughter of their late father.

They alleged that all the rents collected from the two properties aforesaid by late Kelly Adams while he was alive and the rents collected after his demise and the

demise of his late brother Osagie Adams have always been used for the collective good, welfare and benefit of the family.

The Defendants asserted that under the Bini Native law and custom, there is no provision for an adopted child to inherit the property of a deceased Bini Man who died intestate including the IGIOGBE. They maintain that this is forbidden under Bini Native law and customs.

The Defendants alleged that under Bini Native Law and Custom, their mother, being the first wife of their late father, had rights in her late husband's estate so long as she remained within her deceased husband's family.

The Defendants asserted that inheritance follows blood line under the Benin Native law and custom and a Girl child in preference to a relative may inherit an 'Igiogbe' where there is no male child only if a girl child is the Blood Child of the deceased.

The Defendants informed the Court that their late brother, Kelly Adams denied the paternity of the Claimant all through his life time and that it was their late mother who adopted her as Kelly Adam's daughter because Kelly Adams was childless all his life.

The Defendants alleged that the late Kelly Adams never built a house of his own during his lifetime and never challenged or contested the aforesaid document of sharing of the properties of their late father which was admitted as Exhibit "B".

Finally, the Defendants alleged that the Claimant is a gold digger and that this suit is Statute barred and caught by the provisions of section 20 of the Limitation Law of the Defunct Bendel State, Volume IV, Cap 89, 1977, now applicable to Edo State.

At the conclusion of their evidence, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the Defendants, ***Steve A. Onokpachere Esq.*** formulated a sole issue for determination as follows:

“Whether or not the Claimant has established her claim on the balance of probabilities in this suit to entitle her to the reliefs sought before this Honourable Court.”

Opening his arguments on the sole issue for determination, the learned counsel submitted that the crux of the Claimant’s case is that she is the rightful owner of the house known as No. 27, Uwa Street, off Tayo Akpata Road, Benin City and all the appurtenances therein as well as the Duplex with the Boys Quarters situate at No. 1, Odion Street, Off Okunseri Street, Benin City, Edo State on the pretext that she being the biological daughter of late Mr. Kelly Adams who purportedly inherited the said properties vide Exhibit ‘B’, is automatically the owner of the aforesaid Houses.

He submitted that from the totality of the evidence adduced in this suit, the subject matters of this suit were personally built by the late father of the Defendants.

He posited that he who asserts must prove and he cited ***sections 131 and 132 of the Evidence Act, 2011***. He said that the Claimant has a legal duty to establish the fact that she is entitled to the ownership of the properties in dispute.

He submitted that in an action for declaratory reliefs, the burden of proof which is on the balance of probabilities or preponderance of evidence lies squarely on the Claimant who must succeed on the strength of his/her own case and not on the weakness of the Defendants, if any. He relied on the cases of ***C.P.C. V. INEC (2011) 18 NWLR (Part 1279) Page 493 at Page 513; ORLU V. GOGO-ABITE (2010) Vol. 181 LRCN Page 193 at Page 204; and BELLO V. EWEKA (1981) 1 SC Page 101***

He said that the Claimant in a bid to prove her case pleaded the document titled: ***“The sharing of the properties of late Mr. Solomon Ekhomwan Charles Adams”*** (Exhibit ‘B’); Exhibit ‘A’ (***Minutes of Family meeting dated 13th of August, 2022***); Exhibit ‘C’ (***Unanimous decision of the 1st – 6th Defendants prepared by Defendants’ Solicitors***) and Exhibit ‘D’ (***Ekhorosioba Shrine Chief Priest Ruling***).

He submitted that merely tendering the aforesaid Exhibits ‘A’, ‘B’, ‘C’ and ‘D’ without more on the part of the Claimant does not in any way prove or establish the Claimant’s purported title to the two (2) Houses the subject matters of this suit.

Learned counsel gave a summary of the evidence and posited that from the contents of Exhibit ‘B’ prepared and duly signed by the then Okaigbe of the Adams family (Mr. Peter Adams), the Elders and principal members of the Adams family including CW1 (the present Okaigbe of the Adams Family), it is vividly clear that the House No. 27, Uwa Street, Off Tayo Akpata Road, Benin City remains the family house (**IGIOGBE**) of the Adams family.

He said that this is against the backdrop of the fact that the late Mr. Solomon Ekhomwan Charles Adams, the Patriarch of the Adams Family and father of the 1st – 6th Defendants in this suit, during his lifetime had children from Ten (10) gates. He said that it was specifically stated in Exhibit ‘B’ that the said House No. 27, Uwa Street, Off Tayo Akpata Road, Benin City and all the appurtenances therein remains the IGIOGBE (Family house) of Mr. Solomon Ekhomwan Charles Adams’ family.

He maintained that there is nowhere in Exhibit ‘B’ where it was stated that House No. 27, Uwa Street, Off Tayo Akpata Road, Benin City or the House Duplex with the Boys Quarters situate at No. 1, Odion Street, Off Okunseri Street, Benin City, and all the appurtenances therein is exclusively preserved or given to late Kelly Adams as erroneously being claimed by the Claimant in this suit.

He submitted that the cardinal principle of interpretation of statutes or documents is that where the words used in a statute or documents are clear and unambiguous, the Courts should give them their ordinary natural and literal meaning in order to establish the intention of the maker(s) and he relied on the cases of ***ABACHA V. F.R.N. (2014) 6 NWLR (Part 1402) Page 43; DICKSON V. SYLVA (2017) 8 NWLR (Part 1567) Page 117 at Page 233*** and ***REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIGERIA V. NIGERIAN AIRSPACE MANAGEMENT AGENCY (2014) 8 NWLR (Part 1408) Page 1 at Page 41.***

He urged the Court to give a literal interpretation to the wordings and/or plain language used in the said Exhibit ‘B’ by the makers of Exhibit ‘B’ particularly with respect to the two (2) Houses the subject matters of this suit.

Furthermore, learned counsel submitted that Exhibit ‘A’ (Minutes of the Family meeting held on the 13th day of August, 2022) is inadmissible in law since it was made during the pendency of this suit in breach of the provisions of ***Section 83(3) of the Evidence Act, 2011***. He said that the CW1 who is the maker of Exhibit ‘A’ is an interested party in this suit.

Learned counsel posited that the Claimant having copiously pleaded and relied on Exhibit ‘B’, the document of sharing, the Claimant will either sail joyfully with Exhibit ‘B’ in the boat of victory or sink sorrowfully with Exhibit ‘B’ in the boat of defeat. She cannot be a beneficiary of both at the same time. He relied on the case of ***A.G., ENUGU STATE V. AVOP PLC (1995) 6 NWLR (Part 339) Page 90 particularly at Page 120*** where the Court held that: ***“It is settled law both in law and equity that a party who has tendered a document in Court and admitted as an Exhibit cannot dissociate himself from a portion of the document and associate himself with the other portion”***.

The learned counsel referred to the CW1’s evidence under cross-examination to the effect that the sharing document, Exhibit ‘B’ supersedes every other document(s) with respect to the properties of late Solomon Ekhomwan Charles Adams and submitted that in the light of the above, Exhibit ‘C’ which varied the terms of Exhibit ‘B’ is subservient and inferior to Exhibit ‘B’ should be discountenanced by this Honourable Court.

On the legal effect of Exhibit ‘D’ (The Ruling of Ekhorosioba Shrine Priest), he posited that the Claimant admitted under cross examination that she is not the maker of Exhibit ‘D’. He submitted that by virtue of ***Section 83(1) of the Evidence Act, 2011*** where a document is tendered in evidence in a judicial proceeding, the maker ought to be called as a witness except as permitted under ***subsections (1) and (2) of the Section***. He maintained that in the absence of the maker, Exhibit ‘D’ amounts to hearsay and he cited the following cases: ***NIMASA V. HENSMOR (NIG.) LTD (2015) 5 NWLR (Part 1452) Page 278; ABDULMALIK V. TIJANI (2012) 12 NWLR (Part 1315) Page 461; and OLATUNJI V. WAHEED (2012) 7 NWLR (Part 1298) Page 23.***

Furthermore, counsel submitted that the Claimant's case is replete with inconsistencies and/or contradictions and that the evidence of the Claimant supports the Defendants' case.

He pointed out that the Claimant admitted that there is nothing in Exhibit 'B' to establish or show that the houses in dispute were given to late Kelly Adams to the exclusion of late Kelly Adams siblings.

Furthermore, he said that the Claimant under cross-examination, admitted that she does not have any video clip or documentary evidence to prove that DW2 (Mrs. Grace Oghogho Adams) was present when late Osagie Adams (late Kelly's younger brother) allegedly or purportedly assured or told the Claimant that the subject matters of this suit will be given to her (Claimant) when she comes of age.

He said that during cross-examination, the Claimant admitted that she never met the late Solomon Ekhomwan Charles Adams in his life time and that she did not witness the making of Exhibit 'B'.

He said that the Claimant also admitted that the 1st – 6th Defendants vide Exhibit 'C' unanimously gave her the Boys Quarters with a portion of land being part of the Duplex situate at No. 1, Odion Street, Benin City as an act of benevolence but she rejected same. That on the other hand, the Claimant is contending that the Defendants are depriving her of access to the subject matters of this suit.

Again, he said that the Claimant during cross-examination admitted that her alleged father was not the person that personally built the houses in dispute but she is now contending that he was the owner and that they automatically belong to her upon his demise.

Furthermore, he pointed out that the Claimant admitted under cross examination that the DW2 gave her a shop in her house to start her Hair dressing salon but on the other hand, she alleged that her stay and further stay at the DW2's House did not go down well with the DW2 and her children.

He said that the Claimant also admitted during cross-examination that a woman under Bini Native Law and Custom cannot have or bear the staff of the ancestral family Home (Igiogbe) and perform the requisite functions related to it.

Again, counsel pointed out that in one breath, the Claimant stated that she reported the dispute to Aro'Osunoba Shrine, in Benin City but in a sudden twist, she alleged that she reported the matter to the Ekhorsioba Shrine. He submitted that a party should be consistent in stating and proving his case and cited the case of ***OJOH V. KAMALU (2005) 18 NWLR (Part 958) Page 523.***

He submitted that from the totality of the evidence, it is clear that the sharing of the deceased's property as captured in Exhibit 'B' is in line with the Bini Native Law and Custom. He referred the Court to the Book titled: ***"From Birth to Death"*** by ***Chief S.O.U. Igbe at page 215*** admitted as Exhibit "E" where it was stated as follows:

*"In our culture the Ogbe is expected to endure forever. It is personified in the name of its founder and is expected to bear that name for Eternity.... No wonder our culture demands that the deceased principal House be inherited by a son who will be in a position as a leader to bear his father's name and inherit his responsibilities and ancestral shrines. **These are the reasons why a woman cannot inherit the IGIOGBE. For the same reasons, a woman does not have an Igiogbe and for these reasons our culture cannot approve of the sale of the IGIOGBE. It is a heritage that has to be preserved for the next eldest surviving son. Improvement may be effected on it, but it may not be alienated. That is the tradition. It is the culture of the Benin people**"*.

Counsel submitted that from the above assertions of Chief S.O.U. Igbe, the Iyase of Benin Kingdom, it is clear that an Igiogbe is not just a House but a House containing the Ancestral shrines of a Bini man. It is also clear that a woman cannot inherit an Igiogbe under the Bini Native Law and Custom due to its traditional significance and it is a heritage that has to be preserved for the next Eldest surviving son (the direct blood) of the lineage of an original Bini man.

Counsel submitted that from the totality of the evidence adduced, the Claimant cannot inherit House No. 27, Uwa Street, Off Tayo Akpata Road, Benin City (IGIOGBE) being the Igiogbe of late Solomon Ekhomwan Charles Adams the original deceased Bini man more so, and from the totality of the evidence, one Maxwell Adams the eldest son of late Osagie Adams and the eldest surviving male grandchild of the lineage of late Solomon Ekhomwan Charles Adams is now in

line to take over the leadership of House No. 27, Uwa Street, Off Tayo Akpata Road, Benin City the IGIOGBE of the Adams Family.

Furthermore, learned counsel submitted that from the evidence adduced at the hearing, the Claimant failed to prove that she is the biological child of the late Kelly Adams.

He said that the Claimant failed to call material evidence to prove that the Claimant's mother was ever married to the late Kelly Adams.

On the Claimant's allegation that the late Solomon Ekhomwan Charles Adams was a Christian and an ardent member of the Central Baptist Church, Counsel posited that at the trial, the Claimant did not lead evidence to establish that fact.

In conclusion, he urged the Court to dismiss the Claimant's case.

In his final written address, the learned counsel for the Claimant, *Immanuel Ohiořenoya Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant as the sole surviving daughter of her late father Late Mr. Kelly Adams is the rightful owner of the properties known and called house No. 27, Uwa Street, off Tayo Akpata Road, Benin City and the house (Duplex) with the boys’ quarters situate at No. 1, Odion Street, Off Okunseri Street, Benin City.”

Arguing the sole issue for determination, the learned counsel posited that the witnesses for the Claimant and the Defendants agree that the first born son of a Bini man inherits the Igiogbe.

He said that the Defendants maintain that the Igiogbe is a family house. He submitted that the eldest son of a deceased Bini man inherits the Igiogbe exclusively and he referred the Court to the case of *Agidigbi v. Agidigbi (1996) 6 NWLR (pt 454) 300 at 312 paras B-D*.

He said that in the said case of *Agidigbi v. Agidigbi (Supra)*, the Court further decided that a testator cannot validly dispose of the “Igiogbe” by his Will except to his eldest surviving male child and any devise of the “Igiogbe” to any other person is void.

He said that in the present case, the property known and called No. 27, Uwa Street, Off Tayo Akpata Road, Benin City is the Igiogbe of the deceased and any attempt by the family to share the property is null and void.

Counsel posited that by Bini customary law, the aforesaid Igiogbe belongs to Late Mr. Kelly Adams. He maintained that the custom of the Bini people with respect to the inheritance of the Igiogbe has been proved and accepted by the highest Court of the land and he referred to the case of *Salubi v. Nwariaku (1997) 5 NWLR (pt 505) 442 at 478 paras C-E*.

He said that in the case of *Yaktor v. Gov., Plateau State (1997) 4 NWLR (pt 498) 216 at 229 A-H*, the Court held that customary law are matters to be established by evidence which must be proved in any particular case unless it is of such notoriety and has been so frequently followed or applied by the Courts that judicial notice ought to be taken of it without requiring evidence in proof of it.

He submitted that the customary law of Igiogbe has been proved by the Courts and this Court should take judicial notice of it.

On the allegation of the Defendants that the Claimant is is not the biological child of late Kelly Adams, learned counsel referred the Court to the evidence of the Defendants to the effect that their mother adopted the Claimant for her son.

He maintained that it is surprising that their mother took in a child one night who she never knew, paid her school fees, paid for skills acquisition, fed clothed her and suddenly denied her paternity and affinity to the Adams family at this stage because of inheritance of property.

He said that the Claimant's witnesses who are key family members gave evidence that the Claimant is the daughter of the late Kelly Adams.

Learned counsel referred the Court to the Biblical story in Exodus Chapter 2 where Pharaoh's daughter found a baby whose origin she did not know, named him Moses, adopted him as her son and Moses became heir to the throne of Egypt. He also referred to the book of 2 Kings Chapter 11:1-3 where a very ambitious grandmother, Athaliah when she saw that her son was dead usurped the throne, killing all her grandsons because she wanted to be Queen.

He said that the DW2 “adopted” the Claimant for her son, but when it was time for the Claimant to reap the benefit of the adoption, she found it very convenient to say that the Claimant is not her blood line, holding unto the position that the Igiogbe is a family house.

Again, the learned counsel referred the Court to the book of Numbers Chapter 27:1-8 where Moses passed a judgment to the effect that the five daughters of one Zelophehad were entitled to inherit their father’s property.

Finally, he urged the Court to grant the Claimant’s claims.

I have carefully gone through the processes filed by the parties in this suit together with the evidence adduced at the hearing and the final written addresses of the learned counsel for the parties.

In this suit, I am of the view that the sole issue for determination is: ***Whether the Claimant is entitled to the reliefs claimed in this suit?***

I will proceed to resolve the sole issue for determination.

It is settled law that in a civil suit such as this, the burden of proof lies on the Claimant to establish her case upon a preponderance of evidence to the satisfaction of the Court.

In the case of ***OKOYE V. NWANKWO (2014) LPELR-23172(SC)***, the apex Court while expounding on the meaning of burden of proof in civil cases stated thus: -

"The burden of proof in civil cases has two distinct meanings, viz: (a) The first is the burden of proof as a matter of law and the pleadings usually referred to as legal burden or the burden of establishing a case; (b) The second is the burden of proof in the sense of adducing evidence usually described as the evidential burden. While the legal burden of proof is always stable or static the burden of proof in the second sense i.e. evidential burden of proof may oscillate constantly according as one scale of evidence or the other preponderates. In civil cases, while the burden of proof in the sense of establishing the case initially lies on the plaintiff, the proof or rebuttal of issues which arise in the course of proceedings may shift from the plaintiff to the defendants and vice-versa as the case progresses...."

Furthermore, in the case of *OWIE V. IGHIWI (2005) LPELR-2846(SC) Tobi, JSC*; stated thus: -

"It is elementary law that the burden of proof in a civil matter is on the party who makes the assertion and in this case, he is the plaintiff/respondent. He must satisfy the Court that he is entitled to the declaration sought as it relates to the right of occupancy."

See also *Sections 131-133 of the Evidence Act, 2011*.

A Claimant must succeed on the strength of his case and not on the weakness of the case of the Defendant. See the case of *UJUM V. IKANI & ORS (2024) LPELR-61777(CA) (PP. 39 PARAS. E)*.

In the instant suit, the Claimant's principal reliefs are for the Court to declare that being the only child of Late Mr. Kelly Adams, she is the rightful person to inherit the house at No. 27, Uwa Street, off Tayo Akpata Road, Benin City and all the appurtenances therein and the Duplex with the boys quarters at No. 1, Odion Street, off Okunseri Street, Benin City.

The other reliefs which the Claimant is seeking in this suit are consequential reliefs which are contingent on the grant of the principal reliefs.

Essentially, the Claimant's case is that she is the only surviving child of the late Kelly Adams who undoubtedly was the eldest son of her alleged grandfather, (late Mr. Solomon Ekhomwan Charles Adams).

She alleged that upon the demise of her grandfather, her father inherited house No. 27, Uwa Street, Off Tayo Akpata Road, Benin City being the Igiogbe of his late father, according to Bini custom of inheritance.

She said that her late father also inherited a Duplex with boys quarters situate at No. 1, Odion Street, Off Okunseri Street, Benin City.

She alleged that her father's family allocated house No. 27, Uwa Street, Off Tayo Akpata Road, Benin City being the Igiogbe of Late Mr. Solomon Ekhomwan Charles Adams, to her late father, vide a certificate of sharing.

The Claimant alleged that the family also apportioned the Duplex located at No. 1, Odion Street, Off Okunseri Street, Benin City with the boys quarters to her late father. At the trial, the document of sharing was admitted in evidence as Exhibit “B”.

At the trial, the Defendants led evidence to dispute the Claimant’s claim that she is the biological child of their late brother, Mr. Kelly Adams. They asserted that their late brother consistently denied the paternity of the Claimant all through his life and that it was their mother who out of sympathy, decided to adopt the Claimant as the daughter of Kelly Adams because he was childless. They maintained that Kelly Adams died childless and never acknowledged the paternity of the Claimant.

From the evidence, the Claimant’s right to inherit the disputed properties is primarily contingent on proof of the fact that she is the daughter of the late Kelly Adams.

As I have already stated in this judgment, the burden of proof in a civil matter is on the party who makes the assertion and in this case, it is the Claimant who is asserting that she is the daughter of the late Kelly Adams. Thus the burden of proof of this fact is on her. See the case of *OWIE V. IGHIMI (2005) supra*. See also *Sections 131-133 of the Evidence Act, 2011*

In Nigeria, paternity of a child can be determined by three major ways similar to the ways of proving legitimacy of a child, to wit:

(1) Paternity by existing marriage. A child/born during the pendency of a valid marriage between a couple is automatically presumed to be legitimate for a marriage under the Act, *Section 165 of the Evidence Act* has extended this period of presumption of paternity to 280 days after the dissolution of the marriage if the mother remained unmarried;

(2) Paternity by subsequent marriage to the mother;

This is when a child is born at a time the mother was not married to the father but after whose birth the mother and father contract a valid marriage; and

(3) Paternity by acknowledgment by the father accepting paternity of the child. This composes payment of hospital bills and upkeep of the child, introducing the child to his family as his child, etc.

See the following cases: ***BAMGBOSE V DANIEL 14 WACA, 111 AT 115; ADEYEMI & ORS V BAMIDELE & ORS (1968) NSCC, 26 AT 31;*** and ***OKOLONWAMU V OKOLENWAMU (2014) LPELR -2263 (CA).***

In the instant case, the burden is on the Claimant to lead cogent evidence to establish the Paternity of Kelly Adams by any of the three methods.

At the trial, the Claimant led some evidence in a bid to prove that her mother was married to Kelly Adams before her birth. Her mother testified on her behalf as the C.W. 3. In her evidence, she alleged that she was married to the deceased Kelly Adams and that her bride price was paid in her father's house in Jos. She said that there were no photographs taken when her bride price was paid. She said that the said Kelly Adams saw her when she was pregnant with the Claimant in her womb.

The said C.W.3 did not call any member of her family or the family of Kelly Adams who witnessed the alleged payment of her dowry. Unfortunately, she alleged that no photograph was taken during the alleged ceremony so there is no documentary evidence of the alleged ceremony. The only evidence of the alleged marriage is the ipse dixit of the C.W. 3 that there was a ceremony of dowry payment.

I am of the view that the mere oral evidence of the C.W.3 is too weak to establish the existence of any marriage between Kelly Adams and the C.W.3, more so when all the members of the family of Kelly Adams who testified denied any knowledge of the D.W. 3. They maintained that in his lifetime, Kelly Adams denied any marital relationship with the Claimant's mother.

Furthermore, the burden of proof is not on the Defendants who denied the existence of such an alleged marriage between the deceased Kelly Adams and the C.W.3.

With regards to the issue of proof by the acknowledgment of paternity, there is unchallenged evidence from most of the Defendants and their witnesses that the late Kelly Adams consistently denied the paternity of the Claimant all through his

life time. The purported adoption of the Claimant by the mother of Kelly Adams appears curious and spurious.

It is pertinent at this stage to first define the term adoption in a simple parlance. It is a process whereby a person assumes the parenting of another, usually a child, from that person's biological or legal parents, and in so doing, permanently transfers all rights and responsibilities, along with filiations, from the biological parents. Conversely, the foster parent has no legal rights or duties towards the child under customary law. However, in terms of statutory adoption, children who have been formally adopted in accordance with the adoption statutes inherit from their parents in the same way as biological children do. See the case of ***CHIBUZOR & ANOR V. CHIBUZOR (2018) LPELR-46305(CA) (PP. 22-27 PARAS. B).***

In the instant suit, there is no evidence of any legal adoption under the statute; at best we are faced with a situation that has a semblance of customary adoption of a child.

Although there is no mandatory requirement of writing of instrument of adoption under customary law, the presence of witnesses is a vital condition for customary adoption process. In this case, no credible evidence was led to substantiate the claim of adoption of the Claimant by the deceased Kelly Adams. From the available evidence, the said Kelly Adams never consented to the purported adoption.

This case presents quite a novel situation where a mother (the D.W.2) purportedly adopted a daughter for her unmarried son without the consent of his son, as a matter of fact against the expressed wishes of her son. I am aware of some customs that permits a parent to marry a spouse for his/her child but I am not aware of any custom that permits a parent to adopt a child for his/her child against his will. That type of custom must be established by evidence before the Court can act on it.

The position of the law on "proof" of custom is very settled. In the case of ***TEMILE V. AWANI (2001) LPELR-3140(SC)*** the Supreme Court stated thus: -

"The law is that the burden of proof of custom is on the person alleging its existence. - See Section 14(1) of the Evidence Act. Proof of native law and

custom which is regarded as a question of fact to be pleaded is necessary unless where by frequent proof it has been judicially noticed."

By Section 16 (1) of the Evidence Act, 2011 -

"A custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence. (2) The burden of proving a custom shall lie upon the person alleging its existence."

In the instant case, there was no evidence whatsoever to establish any custom that permitted the mother of Kelly Adams (D.W.2) to allegedly adopt the Claimant as the daughter of Kelly Adams without his consent. In the absence of proof of such a custom, I hold that the purported customary adoption is non-existent.

In his written address, the learned counsel for the Claimant made copious references to several passages of the Bible to buttress his case that the Claimant was adopted by the deceased Kelly Adams. In an Ecclesiastical Court such submissions may be tenable but unfortunately, this is a civil Court where we apply civil law.

Another means of proof of paternity which was not canvassed in this suit is the scientific proof by DNA examination.

To my mind, in a digital age such as we are presently, the proof of the paternity of a person can easily be determined scientifically by referral for a DNA test of the parties involved. After such test the Court has a duty to declare the actual father of the child in dispute, in consonance with the evidence at its disposal. See the case of ***OLAYINKA V. ADEPARUSI & ANOR (2011) LPELR-8691(CA) (PP. 42-43 PARAS. F)***.

Unfortunately, the Claimant did not make any attempt to take advantage of this cutting edge technology in proof of her case.

From the foregoing, it is apparent that the Claimant has failed to establish the basic fact that she is the daughter of the late Kelly Adams which is the foundation of her claims.

At the trial, the parties raised some other issues relating to the interpretation of the sharing document Exhibit “B” and the issue of whether a female child can inherit her father’s Igiogbe.

On the interpretation of the sharing document, Exhibit “B”, upon a careful reading of the contents of Exhibit “B”, *Clause 1(a), (b) & (c)* states as follows:

“1(a) House No. 27 Uwa Street, off Tayo Akpata Road, Benin City and all the appurtenances therein. This house remains the Igiogbe (family house) of the family;

(b) Duplex at No. 1 Odion Street, off Okunseri Street, Benin City. This building with the Boy’s Quarters is bounded by beacons Nos. LM 7409; LM 7412; LM 7412A; and LM 7409A;

(c) Farmland at Iguovbiobo Village: The above property are for MR. KELLY ADAMS and his brothers and sisters born of Avben Grace Adams to late Mr. S.E.C. Adams.”

From the above stated contents of the sharing document, Exhibit ‘B’ it is clear that the House No. 27, Uwa Street, off Tayo Akpata Road, Benin City **remains** the family house (**IGIOGBE**) of the Adams family.

As the learned counsel for the Defendants rightly pointed out, this is against the backdrop of the fact that the late Mr. Solomon Ekhomwan Charles Adams, the Patriarch of the Adams Family and father of the 1st – 6th Defendants in this suit, the father of late Kelly Adams and late Osagie Adams during his lifetime had children from Ten (10) gates (Urho) of which DW2 (Mrs. Grace Oghogho Adams) and her children (1st – 6th Defendants), late Kelly Adams and late Osagie Adams constitute the 1st Gate as shown in Exhibit ‘B’ hence after the performance of the funeral/burial rites of the said late Mr. Solomon Ekhomwan Charles Adams, the family, vide Exhibit ‘B’ shared the properties of late Mr. Solomon Ekhomwan Charles Adams amongst his ten (10) gates (Urhos) and specifically stated in the said Exhibit ‘B’ that the said House No. 27, Uwa Street, Off Tayo Akpata Road, Benin City and all the appurtenances therein remains the IGIOGBE (Family house) of his family.

There is nowhere in Exhibit ‘B’ where it was stated or suggested that House No. 27, Uwa Street, Off Tayo Akpata Road, Benin City and all the appurtenances therein was exclusively given to late Kelly Adams as asserted by the Claimant in this suit. Similarly, there is nowhere in the said Exhibit ‘B’ where it was stated that the Duplex with the Boys Quarters situate at No. 1, Odion Street, Off Okunseri Street, Benin City, was exclusively given to the said late Kelly Adams as also asserted by the Claimant in this suit.

It is settled law that in the interpretation of documents, "*... the words in a document must first be given their simple and ordinary meaning and under no circumstances may new or additional words be imported into the text unless the document would be, by the absence of that which is imported, impossible to understand. The presumption is that the parties have intended what they have in fact said so that their words must be construed as they stand.*" See the case of *UNION BANK V OZIGI (1994) LPELR-3389(SC)*.

See also the following cases: *SOLICITOR GENERAL, WESTERN NIGERIA V. ADEBONOJO (1971) 1 ALL NLR 1978*; *GANA V. SDP & ORS (2019) LPELR-47153 (SC)*; *OMOJAHE V. UMORU & ORS (1999) LPELR-2645(SC)*; and *INC. TRUSTEES OF UNITED VISIONARY YOUTH OF NIGERIA V. SUKUBO (2021) LPELR-52916(CA) (PP. 33-34 PARAS. C)*.

Furthermore, in interpreting a document where there are listed or mentioned items, the rule is that the express mention of a thing is to the exclusion of another. The Latin maxim is: "*Expressio unius est exclusion alterius*", the express mention of a thing means the exclusion of others. See the cases of: *BUHARI & ANOR V. YUSUF & ANOR (2003) LPELR-812(SC)*; *OGBUNYIYA V. OKUDO (1976) 6-9 SC 32*; and *UDOH V. ORTHOPAEDIC HOSPITAL MANAGEMENT BOARD (1993) 7 NWLR (PT. 304) 139*.

Flowing from the foregoing, I hold that upon a clear interpretation of Clauses 1(a), (b) and (c) of Exhibit “B”, the houses in dispute were not given exclusively to the late Kelly Adams so the question of the Claimant asserting that she has a right to inherit her purported father’s properties is quite erroneous.

Furthermore, I hold that Exhibit ‘B’ is still valid and subsisting and the purported agreement signed by one Eunice Adams Sage (the 3rd Defendant in this suit) on

behalf of the other Defendants, tendered and admitted as Exhibit “C” in this proceedings cannot supersede or override the clear provisions of the original sharing document made by the family which is Exhibit “B” in this proceedings.

Coming to the issue of whether a female child can inherit her late father’s Igiogbe, I must observe that traditionally under *Benin Customary Law*, the *Igiogbe*—which is the principal house where a Benin man lived and died—is typically inherited by his *eldest surviving male child*, following the principle of *primogeniture*. This practice has deep cultural roots and is considered sacrosanct in many Benin families. See: the Book titled: “*From Birth to Death*” by *Chief S.O.U. Igbe, the Iyase of Benin*, at page 215 admitted as Exhibit “E” in this proceedings.

However, the question of whether a female can inherit the Igiogbe has sparked legal and social debates.

The traditional view appears to be that, women—whether daughters or widows—were excluded from inheriting the Igiogbe. The eldest son was seen as the custodian of ancestral rites and the family shrine, which are often located in the Igiogbe.

However, contemporary challenges arising from cases where a man dies without male children as in the instant case, has reinforced the view that a daughter may inherit the Igiogbe, especially if she is the eldest surviving child. This view is gaining traction as courts increasingly uphold *gender equality* under the Nigerian Constitution, particularly *Section 42*, which prohibits discrimination based on circumstances of birth. The recent decision of the apex Court in the case of *UKEJE & ANOR V. UKEJE (2014) LPELR-22724(SC)(PP. 37 PARAS. B)* is the *locus classicus* in this regard.

However, in view of my findings on the failure of the Claimant to establish the fact that she is the biological or adopted daughter of the late Kelly Adams, the issue of female inheritance of her father’s Igiogbe has become a mere academic exercise in this suit. That subject can be pursued by legal academicians and scholars involved in legal research.

From the foregoing, I hold that the Claimant is not entitled to the reliefs which she seeks in this suit. The sole issue for determination is resolved against the Claimant

and the suit is dismissed with N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Defendants.

P.A.AKHIHIERO
JUDGE
11 /07/2025

COUNSEL:

Immanuel Ohiorenoya Esq. -----Claimant.

Steve A. Onokpachere Esq-----1st to 6th Defendants.