

**The Law & Practice of Nigerian Wills,
Probate & Succession**

BRIAN W. HARVEY

STEELE
ALBION

The Law and Practice
of
Nigerian Wills, Probate
and Succession

by

BRIAN W. HARVEY,

M.A., LL.B. (Cantab.), A.T.I.I.

*Solicitor (England); formerly Senior Lecturer at
the Nigerian Law School, Lagos*

with a Foreword

by

The Honourable Mr. Justice G. B. A. COKER

Justice, Supreme Court of Nigeria

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PREFACE

THE opportunity can be taken by an author in the preface to explain what he had in mind as the purpose and scope of his book. In this particular work I have tried to do something which, extraordinarily enough, does not seem to have been much attempted before, namely to provide a short book which deals with both the theoretical and academic problems arising out of the subject matter and also to indicate, with the practitioner in mind, the procedure and technique of solving some of these problems. Most of the law students in West Africa go on to become practitioners and so there is even less reason than in England for doing anything to preserve the "iron curtain" between academic law and the law as practised. For this reason I have devoted a fair proportion of the space at my disposal to both the formalities pertaining to wills and also to the technique, as yet not fully developed in Nigeria, of drafting them.

Whether the attempt at combining the academic and practical approach to the same subject has been at all successful is not for me to say. My hope is, however, that this book will be found useful and sufficient to those students at Nigerian Universities and at the Nigerian Law School who study testate and intestate succession, together with the Nigerian Legal Practitioner who has anything of a Probate practice. I am much aware that the latter who has hitherto primarily been trained at the English Bar is unlikely to have had any guidance such as is given as a matter of course to the English Solicitor's articulated clerk in Probate practice. I have therefore tried to give as clear as possible a picture of the usual procedure to be adopted in these matters (concentrating particularly on Non-Contentious Practice) and throughout have tried to view the topic through the eyes of the Nigerian practitioner who wants to know *what* to do and *how* to do it as well as *why* it should be done.

I have made no attempt to deal with such administration problems as are normally dealt with in the textbooks on Equity nor have I done more than briefly to mention the principles laid down by the courts in construing wills. In practice in England both these matters come within the jurisdiction of the Chancery Division and I have deliberately limited the scope of this book primarily to matters which would be dealt with in England by the Probate Division. I

have accordingly inserted a chapter on the formalities pertaining to wills in the hope that the Nigerian university student whose course includes this topic will not find it necessary to acquire an English law text book purely to cover it. The practitioner, too, should find it when read with the footnote references, a sufficient *vade mecum*. Similarly I cannot pretend that this book is more than a practical introduction to Non-Contentious Probate Practice; the experienced practitioner will no doubt continue to find invaluable as a basic work of reference either Tristram and Coote or Phillips on Probate Practice to which some cross-references are made in the text.

Acknowledgments are due to a number of people who have kindly given help to me in the course of my writing this book. Firstly thanks are due to my wife for her encouragement (if so sustained a campaign of prodding can be so described). Dr. Okoro kindly gave me permission to make a few quotations from his book on Customary Succession in Eastern Nigeria. Mr. O. Chukura, an Administrator of the Continuing Legal Education Scheme, let me have much helpful information on Customary Courts based on his experience as President of the Grade A Customary Court, Benin. My former colleague at the Nigerian Law School, Mr. Peter Willoughby, was mainly responsible for devising the Instruction Forms in the Appendices. Mr. Ola. Orojo read sections of the manuscript and made perceptive and useful comments, as have students at the Law School in the course of our tutorials and lectures. I am particularly indebted to Mr. Kiri-Kalio, Chief Clerk of the Lagos Probate Registry, for reading through the probate chapters and his predecessor who gave me the necessary material and background information to make it possible to write it, and to typist Stephen of the Law School. Mr. S. A. Adesanya of Ife University kindly read some of the proofs and made a number of helpful comments.

A very special word of thanks must go to The Honourable Dr. G. B. A. Coker J.S.C. who not only read the entire manuscript and spared me some of his valuable time to go through his stimulating comments and criticisms with me but in addition consented to write the very gracious Foreword. It is, I think, greatly to Nigeria's credit that the senior judiciary should take such an interest in legal education and research in this way, and though Dr. Coker would probably not associate himself with all the opinions expressed in the ensuing pages he did provide invaluable constructive "pre-natal" encouragement.

I have attempted to state the law as at April 30, 1967 since when

the following changes have occurred. In England the Non-Contentious Probate (Amendment) Rules 1967 extend the discretionary powers of district probate registrars and make a number of minor amendments to the 1954 Rules. These are unlikely to be of practical significance in Nigeria save in the most exceptional case. Also, as a result of the decision in *Re Bravda* [1968] 1 W.L.R. 479 (where beneficiaries were held disqualified from taking benefits under a will which they had witnessed after two independent witnesses had already done so) a Wills Bill has been introduced by a group of solicitor-members of Parliament to amend section 15 of the 1837 Act. If this becomes law, such supernumerary signatures would be disregarded.

In Nigeria, the former Regions have been converted into a number of States which receive the law of the Regions out of which they were carved. The Capital Gains Tax Decree 1967 introduces a capital gains tax at twenty per cent. on the disposal of chargeable assets. By section 8, the death of an individual is deemed to be a disposal by him on the date of his death of such assets. Exempted from the tax are (*inter alia*) private residences, stocks and shares and life assurance policies. The forthcoming book by Mr. P. G. Willoughby and myself on Taxation in Nigeria (in the Nigerian Practice Notes Series) will deal with the position more fully. Finally, it was held in *Macaulay v. Probate Registrar* M/219/67 (Lagos, Feb. 12, 1968) that leasehold property comes within section 2 of the Administration (Real Estate) Act (Cap. 2) and consequently is not "property affected by the grant" for the purpose of estate fees. Though doubtless the decision is a welcome one for administrators, the obscurity of the *ratio decidendi* and the apparent conflict with previously understood authority underlines the need for reform of the estate fees system as discussed in the text.

BRIAN W. HARVEY

Faculty of Law,
The Queen's University,
Belfast, Northern Ireland.
May 31, 1968.

FOREWORD

By The Honourable Mr. Justice G. B. A. Coker
Justice, Supreme Court of Nigeria

THE problem of administration of estates of deceased persons is a difficult one everywhere, and the lawyer who undertakes the assignment is always at pains to justify the expectations of at least the beneficiaries! Viewed from any angle, succession to, and administration of, estates must continue to engage a substantial portion of legal professional practice. The average lawyer everywhere—and perhaps more so in Nigeria—must welcome the production of any book which can furnish him with up-to-date information on matters both of substantive law and of practice in these matters.

It is no overstatement to say that Mr. Harvey in this book has traversed a very wide field a large part of which had never been trodden before. The book is a courageous attempt to reduce into some permanent form matters of which we assume to know much but which constantly elude us when we come to apply them. Besides this, the book is another witness to the truth that customary law in Nigeria is not impossible of categorisation, and it confirms in yet another way the falsity of the suggestions in some quarters that customary law is still in the atomistic stage.

I have had the honour of reading through the book. I venture to say that it has the peculiar advantage of being a record produced by a completely independent study carried out by an independent observer. The parts dealing with succession rules will be found most re-assuring—as indeed they are—and it is to the credit of the author that he had kept his law up-to-date, despite the local difficulties in obtaining published copies of court judgments expeditiously. The parts dealing with practice and procedure constitute a major effort in a virgin field. As far as I know, no other local work dealing with this aspect of practice is yet available. The blend of practical knowledge, mastery of subject, and style of writing—all combine to make the book what it really should be—an indispensable item of the practitioner's library. So much must be expected of a teacher at the Nigerian Law School!

I do not hesitate to commend the book to lawyers—who cannot do without it; to others whose duties involve the management of the estates of deceased persons—who should not do without it; and to others who for good reasons desire to know about their estates—they too may not do without such a book.

G. B. A. COKER

Supreme Court, Lagos
July 5, 1967.

ABBREVIATIONS OF AFRICAN LAW REPORTS

ALL N.L.R.	All Nigeria Law Reports, 1961-1962
E.A.L.R.	East Africa Law Reports, 1957-
E.N.L.R.	Eastern Nigeria Law Reports, 1956-1960
E.R.L.R.	Eastern Region Law Reports, 1956-1960
F.S.C.	Selected Judgments of the Federal Supreme Court of Nigeria, 1956-1960
L.L.R.	Lagos Law Reports, 1957-1962
N.L.R.	Nigeria Law Reports, Vols. 1-21
N.N.L.R.	Northern Nigeria Law Reports, 1961-1964
N.M.L.R.	Nigeria Monthly Law Reports, 1964 to date
N.R.N.L.R.	Northern Region Nigeria Law Reports, 1956-1960
Ren. Rep.	Renner's Reports of the Gold Coast Colony, 1861-1914
W.A.C.A.	Selected Judgments of the West African Court of Appeal, 1930-1955
W.N.L.R.	Western Nigeria Law Reports, 1960-1961.
WR.N.L.R.	Western Region of Nigeria Law Reports, 1955-1956

N.B. Cases in the Table of Cases listed as unreported are given in the text with their suit numbers, and where ascertainable, their date of decision.

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