DOMICILE UNDER NIGERIAN LAW: THE REVIVAL DOCTRINE REVISITED*

Abstract
The Concept of domicile as received and adopted in Nigeria is fraught with difficulty in its application due to unrealistic and artificial rules leading to uncertainty of outcome. Despite this uncertainty and inherent weaknesses in the application of the concept of domicile, it is still applied in Nigeria. The concept under the received English Law is grouped under three species, which include domicile of origin, domicile of choice and domicile of dependency. Through the doctrinal research method, this article has found that domicile of origin has the characteristic of connecting a person to a legal system which may be far and remote from the circumstances of his life. It also found that domicile of origin has the potential of reasserting itself as the person's actual domicile. It recommends that the revival concept of the domicile of origin should be abolished, as same has become archaic in this age of migratory population where the world is seen as a global village. It was suggested that an established domicile continues until the acquisition of a new one to replace the revival of domicile of origin rule.

Keywords: Domicile, Domicile of Origin, Revival Doctrine, Concept.

1. Introduction

Under the received English Law there are three kinds of domicile of natural persons; domicile of origin, domicile of choice and domicile acquired by reason of a dependent legal relationship to some other person, which may conveniently be called domicile of dependence.[1] In *Omotunde* v *Omotunde*,[2] the Nigerian Court of Appeal per *Adekeye*, JCA stated that, 'there are three basic types of domicile, namely, domicile of origin, domicile of choice and matrimonial domicile'. Domicile of origin depends on circumstances of birth or adoption. It is determined by the status of a child at the time of its birth or adoption. Thus, in Nigeria a child generally takes the domicile of the father at the time of his birth. An adopted child takes the domicile of whoever is adopting it, probably retrospectively. Domicile of origin has the potential of reasserting itself as the person's actual domicile. It is this potential of reasserting and reviving itself that has been a subject of much criticism and the focus of this article. This article analyses the operation of the revival doctrine. It examines the criticisms to the revival doctrine and makes suggestions on the reform of the doctrine in Nigeria and concludes with recommendations.

2. Analysis of the Operation of the Revival Doctrine

The Revival doctrine is a feature of the domicile of origin which can be replaced by a different domicile of dependence or choice; it is never totally lost, but rather held in abeyance. If a domicile of choice is abandoned without being replaced by a new domicile of choice, then the domicile of origin revives.[3] According to Lord Westbury;

> The domicile of origin is the creature of law and independent of the will of the party, it would be inconsistent with the principle on which it is by law created and ascribed, to suppose that it is capable of being by the act of the party entirely obliterated and extinguished. It revives and exists whenever there is no other domicile and it does not require to be reacquired or reconstituted, *animo et facto* in a manner which is necessary for the acquisition of a domicile of choice.[4]

The rule that a domicile can be abandoned without a new one being acquired, the domicile of origin reviving to file the gap was settled by the House of Lords in 1869 in *Udny's* case. In that case, Colonel *Udny* was originally domiciled in Scotland. He later acquired a domicile of choice in England. After a few years, he left England, for France in order to escape from his creditors. The House of Lords held that from the facts, it was clear that he had not acquired a French domicile and that since he had abandoned his English domicile of choice, his Scottish domicile of origin revived. Similarly, in *Winans v Att.Gen*,[5] it was held that a man who resided primarily in England for the last 37 years of his life had not lost his domicile of origin despite not having visited that place for the last 47 years of his life. A more recent case is *Tee v Tee*,[6] where a man whose domicile of origin was

***By Caroline Mbafan EKPENDU, LLB (Hons) UNIBEN), BL , LLM (BSU), PhD (BSU),** Lecturer, Department of Private Law, Faulty of Law, Benue State University, Makurdi; Private Legal Practitioner, Makurdi, Benue State. Mobile Tel. 08036285390; 08076404131. Email: carolineekpendu@yahoo.com.

[1] R H Graveson, *Conflict of Laws* (7th edn, Sweet and Maxwell 1974) 194-195
[2] (2001) 9 NWLR (Pt 718)252 at 281
[3] C M V Clarkson and J Hill, *The Conflict of Laws* (Oxford University Press 2006) 25
[4] Udny v Udny (1869) LR ISC and Div 141 at 458
[5] (1904) AC 287
[6] (1974) IWLR 213

English, acquired a domicile of choice in one of the states of the United States. Later he went to work in Germany but did not become domiciled there. At first, his intention was to return to the United States but then he decided to make his permanent home in England. While still living in Germany, he started divorce proceedings in the English Court. As the Law then stood, the Court would have had jurisdiction only if he was domiciled in England. It was held that he was. When while living in Germany, he decided that he would not return to the United States, he lost his domicile of choice there. He did not, however, acquire a new domicile of choice in Germany because he did not intend to live there permanently. Accordingly, his English domicile of origin revived.

This revival of the domicile of origin rule, conceived and developed in Victorian England, assumes that if ever a person ceases to have a permanent home, the most appropriate personal law to allocate to him is the law of the original native home.[7] Rather like elephants who allegedly return to their birth place to die, British Colonists, for whom these rules were primarily designed, would naturally return to Britain to see out their final days.[8] These rules were designed for the class of persons who might have an ancestral home to which they would long feel a commitment. However, in the more migratory modern world it would normally be more sensible to attribute to a person the law of the country which was most recently the home, rather than that of a country which has been abandoned, perhaps very many years previously. A person may have few or no connections with the domicile of origin, and even may never have been there.[9] The writer agrees with the views of Clarkson and Hill above, that the rule on the revival of the domicile of origin is no longer sensible and realistic in the 21st Century to subject an individual to a place which he has either lost touch with or never been to or even ever had any connection with, in the guise of domicile of origin of either the father or mother reviving to connect such a *propositus*. This rule of revival is however abolished in the United States of America,[10] as was revealed in the case of Re Jones Estate.[11] In that case, Evan Jones was born in Wales in 1850 with an English domicile of origin. In 1883, he put a Welsh girl in the family way and she threatened him with affiliation proceedings. To escape this prospect, he emigrated to the United States, where he acquired a domicile of choice in Iowa, became a naturalized American citizen, and married an American wife. He was 'a coal miner and industrious, hardworking, thrifty Welshman who accumulated considerable amount of property'. In 1915, after the death of the wife he decided to return to Wales for good and live there with his sister. He sailed from New York on May 1 in the Lusitania and was drowned when she was torpedoed by a German sub-marine off the South Coast of Ireland. He died intestate. By English law, his brothers and sisters were entitled to his properties, by the law of Iowa, it went to his illegitimate daughter, from whom he had fled over 30 years ago, and with whom he had never had anything to do. The Supreme Court of Iowa held that he died domiciled in Iowa and that the daughter was entitled. Reacting to this decision Collier declares that:

> This is hardly satisfactory in that it frustrated Jones' intentions which were to reacquire his connection with English law and to avoid having responsibility for his illegitimate daughter. It is also just as artificial as the revival of the domicile of origin, since it makes the devolution of a person's estate depends on the law of a country which he had left, wishing never to return to it.[12]

The writer agrees with Collier's reaction to the decision of the Supreme Court of Iowa and views same as actually not a case of abolishing the revival doctrine on a general note, but a case technically decided to frustrate Mr. Jones' intentions even as he had re-established contacts with Wales, his English domicile of origin. It is further observed from the case that the devolution of Mr. Jones' estate on the illegitimate daughter, the very reason for which he fled Iowa for over 30 years and wishing never to return is very much artificial as the revival of the domicile of origin which completely disregarded Mr. Jones' intentions and caused substantial injustice to the late Jones' brothers and sisters for which he hoped will inherit his estate. One wonders the difference between the artificiality of the revival of the domicile of origin and the decision in the case which invariably is based on the domicile of choice of the late Mr. Jones. It is therefore submitted that both principles appear artificial and are not commendable.

[7] Clarkson and Hill (n3) 26
[8] ibid
[9] ibid
[10] The Doctrine of revival has in fact been rejected in New Zealand and Australia. Its rejection in the United Kingdom was proposed by the Law Commissions but the Law commissions 'Proposals' have themselves been rejected.
[11] 192 Iowa 78, 182 NW 227 (1921)
[12] J G Collier, *Conflict of Laws* (2nd edn, Cambridge University Press 1994) 57

3. Criticisms against the Revival Doctrine

The revival doctrine of domicile of origin has lent itself to so much criticism due to its operation as earlier discussed. Criticizing the revival doctrine, *Agbede,* stated, 'the revival doctrine of domicile of origin runs counter to the fundamental principle of domicile as it may locate a person's domicile in a country which cannot be regarded as his home by any stretch of the imagination'.[13] Also criticizing the revival doctrine, Morris regards this rule as artificial. According to him:

> If for instance, an English man emigrates to New York at the age of 25, remains there for the next 40 years and then decides to retire to California, but is killed in an air crash en route, it does not make much sense to say that he died domiciled in England, especially as an American Court would undoubtedly hold that he died domiciled in New York.[14]

Although he expressed the above view with regards to the revival doctrine, Morris nonetheless criticized the rejection of the rule by the Iowa Supreme Court as represented in the case of Re Jones' Estate. He pointed out that the decision is unsatisfactory. He even contends that the American rule sometimes produces equally bizarre results as the English revival doctrine. For him, 'the American rule is much a fiction as the English one'.[15] The question is, hence, these two rules are unsatisfactory with the likelihood of producing bizarre results, wherein lies their attractions? It is the writer's position that the ends of conflicts justice will be best served if the intentions of a *propositus* as presented from the facts of a case are taken into cognizance and implemented whether based on the rule of revival or the law of a country of acquisition of a domicile of choice. Also criticizing the revival doctrine, Fawcett and Carruthers stated: 'Is it so absurd to prefer the law under which the man has recently been living, perhaps for a prolonged period? Are the claims of the law, which is imposed on him at birth, independently of his volition, superior to that which he has voluntarily chosen and long retained?'[16] Similarly criticizing the revival doctrine, the Commonwealth Law Bulletin,[17] declares, another unsatisfactory feature is the technical rule that a person's domicile of origin automatically revives whenever he abandons his domicile of choice without immediately acquiring another one. This rule ('the revival rule') can produce absurd results when a person has never had any connection with the country of his domicile of origin. For example, a person born in England to parents domiciled in India would acquire an Indian domicile of origin although he may never in the course of his life set foot in that country. If when he died, he had abandoned his current domicile, his Indian domicile of origin would revive and his movable estate would be distributed according to Indian Law, though he had never been there.[18] In recognition of this problem, the adequacy and sustainability of the revival doctrine in Nigeria, has been questioned and recommendations for its abolition proffered.

4. Suggestions for the Reform of the Revival Doctrine in Nigeria

There have been differences in approach between the English and the American conception of the domicile of origin with its consequential revival doctrine. This is because the English attachment to their homeland as well as the myth of their superiority provides a socio–historical explanation for the tenacity and adhesive quality of the domicile of origin. While the multi-racial and plural nature of the American society would definitely not permit such a rigid doctrine of domicile of origin to hold sway in the United States. Indeed, Beale declared:

> In America, the British loyalty to one's place of birth is little felt. The immigrant who identified himself with his new country or the easterner, who goes west and identifies himself with the new part of the country, is a common figure. To refer such a man in course of moving from one place in his new country to another to a forgotten or half-forgotten domicile of origin would be absurdly unreal.[19]

Nigeria having been tutored along the lines of the common law, acquired the revival doctrine as part of her colonial heritage.[20] However, the social–political structure of Nigeria greatly differs from that of England and thus, the concept of domicile as received from English law cannot adequately meet the needs of the Nigerian legal system. The Federal principle as operated in Nigeria provides a fundamental departure from the English legal system which is so fundamental that the rules of English conflict of laws generally can only operate based

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[13] 10 Agbede, *Themes on Conflict of Laws* (Shaneson C. I. Limited 1989) 59
[14] D McClean and K Beevers, *The Conflict of Laws* (6th edn, Sweet and Maxwell, 2005) 40
[15] ibid 41
[16] J J Fawcett & J M Carruthers, *Cheshire, North and Fawcett Private International Law* (14th edn, Oxford University Press 2008) 178
[17] January 1988, p. 341; see also July 1985, pp 951-952
[18] ibid (n 17)
[19] Beale, *Treatise on the Conflict of Laws* (1935) 184-185 quoted in Agbede (n 13) 59
[20] Interpretation Act, Cap 123 LFN 2004 s 32 (1)

on the recognition of the fundamental difference and an adaptation of the rules to local circumstances.[21] However, the rules of domicile as adopted in Nigeria operate in the same manner as in the country of adoption, the British without any modifications. For instance, in *Udom v Udom*,[22] Coker, J. held:

> The subject must not only change his residence to that of a new domicile, but also must have settled or resided in the new territory *cum animo manendi.* The residence in the new territory must be with the intention of remaining there permanently. The *animus* is the fixed and settled intention permanently to reside. The *factum* is the actual residence.

The decision in *Udom's* case was an interstate conflict problem, yet it was decided as if it was an international conflict problem between two different countries, thereby employing the full requirements of an acquisition of a domicile of choice in a territory or country.

Furthermore, the concept domicile relates to countries or territories or states and not to localities within countries or territories. Given the hardship caused by this problem, it is suggested that where the *propositus* has abandoned his domicile of choice but does not have the intention of reverting to his domicile of origin, the rule in *Udny v Udny*,[23] should not be applied to hold that his domicile of origin revives. It is suggested that a person continues with his domicile of choice until another is acquired without a revival of that of origin. The English and Scottish Law Commissions have also recommended the abolition of revival doctrine.[24] Furthermore, they have suggested a new rule to the effect that an established domicile continues until the acquisition of a new one should replace the former rule as enunciated in *Udny's* case and the other cases on the point.

5. Conclusion and Recommendations

It is clear from the foregoing discussion, that the revival doctrine in domicile of origin has a technical nature of connecting a person to a country or constituent state which he has abandoned or may never have set foot on. And since domicile serves as a person's connecting factor to a place where he has chosen such a revival is a breach of his fundamental rights when alive and if dead, a negation of his wishes while alive. This work has recommends, among others, that the revival doctrine is now archaic and should give way to a simple and more workable concept which recognizes for instance, the length of time spent in a place other than the country of origin, a person's investments, connections and so on in another country or state which he is habitually resident rather than a domicile of origin. The writer agrees with the recommendations for the abolition of the revival doctrine for the reason that, the affairs of a person will no longer be slavishly determined by the law of a country or state with which he has abandoned many years previously or ever had connections with or even may have never visited but rather with his established domicile as recommended. It is submitted therefore, that the Nigerian Courts should adopt the Law Commission's suggestion as the right way forward in the twenty first century in jettisoning the revival doctrine.

[21] I O Omoruyi, 'Domicile as a determinant of personal Law: A case for the Abandonment of the Revival Doctrine in Nigeria' <https://www.academicjournals.org/INGOJ> accessed 27 September, 2010
[22] (1962) LLR 112 at 117
[23] ibid (n4)
[24] Commonwealth Law Bulletin (n 17)