

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

16TH DAY OF JANUARY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/956/2015

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

1. MUKHTAR ABUBAKAR TAFAWA BALEWA }
2. SADDIK ABUBAKAR TAFAWA BALEWA } CLAIMANTS
3. UMAR ABUBAKAR TAFAWA BALEWA }
(For themselves and on behalf of the surviving
wife and 13 children of Alhaji Sir Abubakar
Tafawa Balewa, K.B.E of blessed memory)

AND

DR. ABDULJALIL TAFAWA BALEWA DEFENDANT

JUDGMENT

The Claimants' claim against the Defendant vide a Writ of Summons dated and filed on the 30th day of January, 2015 is for the following:

- (a) A Declaration that the Defendant was never a son or grandson or blood relation of Alhaji Tafawa Balewa.

- (b) A perpetual injunction restraining the Defendant by himself, agents or servants, privies, howsoever from referring to himself as a son, grandson or blood relation of the late Prime Minister of the Federal Republic of Nigeria, Alhaji Sir Abubakar Tafawa Balewa.
- (c) A public apology and retraction of all previous claims in the prints, electronic media and his website that he is a son or grandson of late Prime Minister, Alhaji Sir Abubakar Tafawa Balewa.
- (d) ₦250,000.00 as cost of this action.

The Writ of Summons, Statement of Claim and all other processes were served on the Defendant. The Defendant's Statement of Defence is dated 27/06/2016, which was subsequently amended by an Amended Statement of Defence dated 10/12/2020.

The Claimants opened their case and called five (5) witnesses in proof thereof. The first Claimant's witness is

Mukhtar Abubakar Tafawa Balewa. He lives at Plot 866, 64 Crescent, Gwarinpa II, Abuja. He is a Consultant, a retired public servant and a former Senior Special Assistant to President Goodluck Jonathan on Poverty Eradication. He was also a Special Assistant to President Obasanjo on Small and Medium Scale Enterprises.

He deposed to a Witness Statement on Oath dated 30/01/2015. He adopts same as his oral evidence. He states as follows:

That during his life time, Alhaji Abubakar Tafawa Balewa married four wives namely - Alhajiya Lami also known as Zainab Inni, Jummai, Laraba and Umma and was blessed with twenty (20) children.

That upon his assassination on January 15, 1966, he was survived by his mother Alhajiya Makwalla, four wives with nine sons namely: Yakubu Baba, Balarabe Abubakar, Mukhtar Saddik, Umaru, Ahmadu, Usman, Ali and Haruna and eleven daughters namely: Binta, Talle, Saude, Amina, Hadiza, Hafsatu, Rabi, Yalwa, Uwani, Zainab and Fatima.

That he is the third male child while 2nd Claimant is the 4th male child. The 3rd Claimant is the 5th male child of late Abubakar Tafawa Balewa.

That Abubakar Tafawa Balewa is a devout Muslim and humble. His close associates includes Dr. Yusuf Maitama Sule (Dan Masanin Kano) and Mallam Adamu Bello.

That Ambassador (Dr.) Yusuf Maitama Sule was a parliamentary later Chief Whip of the NPC, a cabinet Minister and Nigeria's Permanent Representative in the United Nations in New York.

That while in New York, Ambassador (Dr.) Yusuf Maitama Sule acted as guardian to the children of Abubakar Tafawa Balewa namely: Rabi, Usman and Ahmadu who studied in the United States and escorted himself and Saddik to school in the United Kingdom.

That when Abubakar Tafawa Balewa was killed on January 15, 1966, Ambassador (Dr.) Yusuf Maitama Sule

initiated and arranged the movement of members of his family and corpse to Bauchi.

That after the burial of Abubakar Tafawa Balewa, his assets were shared among his mother, wives and children in accordance with Islamic injunction. That in the said three documents relating to sharing of the estate, the Defendant was not mentioned and never inherited anything from Abubakar Tafawa Balewa as one of the sons.

On the contrary, in Case No. 90/67 each of the sons received $\text{£}395 = 14 = 14 \frac{6}{10}$ inheritance; in Case No. 90/67 each of the sons received $\text{£}232.1.1$ as inheritance and in Case No. 95/67 each of the sons received $\text{£}420 = 7 = 8$ as their inheritance.

That while Alhaji Sir Abubakar Tafawa Balewa was the Prime Minister the senior wife Hajia Zainab stayed in Bauchi with some of the children while the others stayed with him in Lagos with the rest of the children. That Sir Abubakar Tafawa Balewa never had a Yoruba wife or

concubine and never had a son called Abduljalil or Dr. Abduljalil Tafawa Balewa.

In 2007, the Defendant paid a courtesy visit to the household of Tafawa Balewa in Bauchi. He was warmly received like any other visitor. He had photographs with family members. However, when he told them that he was a son of the late Prime Minister, Abubakar Tafawa Balewa, the family rejected the claim and the three surviving wives told him that he was not a son.

That the Defendant changed to be the grandson. The family promptly rejected the claim. The family believed that was the end of the claim. That late Sir Abubakar Tafawa Balewa had another close friend, Mallam Adamu Bello who was a quoranic tutor for the children of Abubakar Tafawa Balewa and was with him until his death.

The Defendant has through several fora, print, electronic media claimed that he is the son of late Alhaji Sir Abubakar Tafawa Balewa. That in furtherance of his false

and malicious claim the Defendant set up a website - <http://jhahjba lewa.com>. He registered the website as 2014 DR JHAHL BALEWA and the website is powered by Wit.Worth Solutions.

That on the 10th of May 2013 at the 3rd Annual Lecture of Aare Afe Babalola University, Ado Ekiti in his lecture titled - Nigeria Security Challenges: Genesis and Possible Redemption, the Defendant was referred to as a son of the late Prime Minister of Nigeria.

The publication was posted by the Defendant in his internet website. That as a result of the malicious claim by the Defendant, coupled with the commissioning of the website, the media was awash with several publications referring to the Defendant as the son of Alhaji Tafawa Balewa.

That Defendant had interview with Ray Power Radio and he claimed (though falsely) to be a son of Alhaji Sir Abubakar Tafawa Balewa. That the Defendant has used the name Alhaji Sir Abubakar Tafawa Balewa to gain

several favour and connections with prominent personalities in Nigeria including and not limited to President and Commander-in-Chief of the Armed Forces, leadership of the PDP and top government functionaries.

That several prominent personalities and media houses have bombarded the family with questions about the Defendant's relationship with the family and his claims. That the false claim is a sign of high disrespect for the noble person and memory of Alhaji Sir Abubakar Tafawa Balewa Knight of British Empire KBE.

The action of the Defendant is an attempt to bring into disrepute the impeccable reputation enjoyed by the late Alhaji Sir Abubakar Tafawa Balewa. That the claim of the Defendant to be son of the late Alhaji Sir Abubakar Tafawa Balewa when he is not or in any way related to him has soiled the locally and internationally acclaimed integrity of late Alhaji Sir Abubakar Tafawa Balewa.

That the Claimants have suffered untold mental agony and embarrassment by the action of the Defendant

whereof the Claimants claim as per the Writ of Summons and Statement of Claim.

The PW1 tendered Exhibits A - A20 which include:

- (1) Document in Hausa and English translation titled - Estate Sharing of late Sir Abubakar Tafawa Balewa dated 30/05/2006 in case No. 52/66.
- (2) Certified True Copy (CTC) of the Case 90/67 dated 24/02/1967 also titled Estate Sharing of late Sir Abubakar Tafawa Balewa in Hausa and its English translation.
- (3) CTC is document dated 24/04/1967 in Case No. 95/67.
- (4) Document dated 10/11/2014 titled Moment with President Olusegun Obasanjo and President Goodluck Jonathan: Abubakar Tafawa Balewa First Speech as Prime Minister.
- (5) CTC of ThisDay Live of 10/11/2014 titled Balewa: Paternity Claim Politically Motivated.
- (6) CTC of ThisDay Live dated 10/11/2014 Article titled Paternity Puzzle: Balewa Family seeks solace in DNA Test.

- (7) CTC of BBC News of 30th August 2010 titled Nigeria Mystery Over Balewa Impersonation.
- (8) CTC of News of the World titled Why President Jonathan Must Run in 2015: Dr. Jahl Tafawa Balewa.
- (9) CTC of Vanguard with Isalekoto Ilanidu Muktar & 8 Others.
- (10) CTC of PM News of Sept/2010 titled: Balewa's Fake Son is Yoruba.
- (11) CTC of NTA News Jhalil Tafawa Balewa withdrawn from the 2015 presidential race.
- (12) CTC of Gbooza African Social News Network and Events dated 23 January 2011 titled Buhari Cannot Defeat Jonathan by Tafawa Balewa's Son.
- (13) CTC of Point Blank News of 10 November 2014 titled Tafawa Balewa's Son Kidnapped, demanding ₦100 Million.
- (14) CTC of document titled - Nigeria: Vocal Support of Resident Kidnapped.
- (15) CTC of TNN Africa.
- (16) A document titled - Nairaland Forum: Balewa's Fake Son is Yoruba - Politics Nairaland.

(17) CTC of Vanguard Newspaper dated 01/Nov/2014 titled - Tafawa Balewa Son withdraws to Support Jonathan.

(18) Another CTC of document titled - Medical Doctor Best Suited for Health Minister dated April 16, 2010.

(19) Exhibit B is a CD tape titled - Political Platform.

Witness refers to Exhibit A3, page 3, page 21, 2nd paragraph from bottom page 22 wherein the Defendant was variously referred to as the son of Tafawa Balewa.

Under Cross-Examination, he answered he was born in 1955. That he was 9 - 10 years old when his father was assassinated. That the family is well known. That if the Defendant's mother was married by his father, it would have been public knowledge. He would not know if he had a concubine. He further said he would not be in a position to know because he was very young.

He confirmed that Defendant came to the house to introduce himself as son of their late father. That he wrote to the their President complaining of the activities of the Defendant as they border on impersonation.

That in 2007 when he first appeared, he called himself the grandson while in 2009, he called himself the son. They told the Defendant to desist from the claim.

To a question he further answered that he spoke to national television denying his claim. That Defendant sought favour with the name. That vide Exhibit B, Defendant claimed he was born a Balewa and will die a Balewa. It was a recording of Ray Power.

The 2nd Claimant's witness is Sadiq Tafawa Balewa, a Senior Lecturer of Ahmadu Bello University. He also run a media production company called Jaka Diya Pictures Company.

That the first time he ever met the Defendant is during Umaru Yar-Adua presidency. He swore to a Witness Statement on Oath dated 11/10/2016. He adopts it as his oral testimony.

He deposes that he is the 2nd Claimant. He denied the claim that Defendant is the biological son of late Alhaji

Sir Abubakar Tafawa Balewa and that he was born in Lagos in 1957 by late Mosunmola Modele. That she was not married to Alhaji Sir Tafawa Balewa. That Defendant was not named Abduljalil Tafawa Balewa by Abubakar Tafawa Balewa.

The Claimants denied that Defendant was willfully, deliberately and unlawfully excluded in sharing the assets/estates of late Abubakar Tafawa Balewa. That if the Defendant ever lived in Sietchrette Switzerland which is denied, that was not a reason for his exclusion from the estate of Abubakar Tafawa Balewa.

The 1st and 2nd Claimants were students in Britain at the time of the assassination of Abubakar Tafawa Balewa in 1966, yet they received their due shares as biological children of their father. That a child in Islam has no right to refuse to participate in the sharing of assets of his late father.

That his father had no son called Billy Abubakar Tafawa Balewa. That Defendant was received just like any other

numerous visitors to the family of late Abubakar Tafawa Balewa. That Defendant has used the media both print and electronic to pass off or launder his image as son of late Abubakar Tafawa Balewa.

That if any pictures were taken, they were taken at the insistence of the Defendant. The pictures if any were not taken as biological brother of children of late Prime Minister, Abubakar Tafawa Balewa. The impression which the Defendant gave to the then Vice President and former President, Dr. Goodluck Jonathan is that he is a biological son of Abubakar Tafawa Balewa.

That the Claimants are well to do and never made any or excessive demand on the Defendant. That the ten ambulances donated to Bauchi State government were not donated by virtue of being a son of late Prime Minister, Abubakar Tafawa Balewa.

That the letter dated January 17, 2007 by Elders and Youths of Tafawa Balewa Local Government was politically motivated and never authenticated that the

Defendant is a son of late Tafawa Balewa. It was an appeal to unity and peace in the local government.

That the estate of late Tafawa Balewa were shared on 30/05/1966, 24/02/1966 and 24/04/1967 which is about 49 to 50 years ago. That the Counterclaim should be dismissed.

Under Cross-Examination, he said his father had four wives. That each of the wives are from well-known families. To a question, he answered that he did not witness the marriages. That he is willing to go for a DNA test as shown in Exhibit A5.

The 3rd Claimant's witness is Aishatu Jumai Tafawa Balewa. She made a Witness Deposition on 16/12/2014. She adopts same as her evidence. She deposes that Sir Abubakar Tafawa Balewa was her husband. That she married him in 1945 and was with him in Lagos till 1966 when he was assassinated. That her marriage was blessed with Amina, Saddik, Hauwa, Yelwa, Usman, Haruna and Zainab Audi. He was married to four wives.

That the senior wife was at home while the remaining three of them were with him in Lagos. That her late husband never had a Yoruba wife or child out of wedlock. That the late Prime Minister never had a son called Abduljalil or Dr. Abduljalil Tafawa Balewa.

That Defendant paid the family a courtesy call in 2007. That he informed them that he is a son of late Sir Abubakar Tafawa Balewa. That the wives told him he was not a son. That he later changed and said he was a grandson. That they also denied same.

That her late husband never had a Yoruba wife or concubine. That they never knew him or seen him until he appeared in 2007. That she testifies before Allah that he is not a son.

Under Cross-Examination she answered as follows:

That she was in Bauchi when her husband died but her relations were in Lagos. She travelled home each time she wanted to give birth. She was always with her husband.

To a question, she said she did not follow him to work neither did she travel with him. She would not know if he was seeing another wife. That it is left for God to judge.

The 4th Claimant's witness is Adamu Bello Nufawa Bauchi. He resides in Wufawa Bauchi. He adopts his Written Deposition on Oath. He is the son of Mallam Bello, a bossom friend of Mallam Abubkar Tafawa Balewa. He is the Quoranic Tutor of the children of Sir Abubakar Tafawa Balewa.

That he was in Lagos with Sir Abubakar Tafawa Balewa up to the time of his death in 1966. That he had four wives and none of them is from Yoruba land. None of them is called Abduljalil. That Abduljalil is not a son of Abubakar Tafawa Balewa.

Under Cross-Examination, he answered that he saw them last when the coup happened. That the first two Claimants were about 10 years while the third was about 7 years. That he was with the late Sir Abubakar Tafawa Balewa until his death.

He was with him when the soldiers took him but was not there when he was killed. To a question he answered that he was not telling him everything. That he was there to teach his children.

The 5th Claimant's witness is Jumai Bulus, a Principal Librarian with the National Library, FCT Branch. She is in charge of Serial Section. She was served with a subpoena. She is in Court with some documents.

The Certified True Copy (CTC) of Saturday Vanguard of November 1, 2014 pages 6, 7, 8 and 9 are tendered by her and admitted as Exhibit C.

On 25/02/2021, the PW1 was recalled upon an application. He said on 30/1/2015 when the Originating Process was filed he attached the Written Statement on Oath of Ambassador Yusuf Maitama Sule. He died sometime in 2020. That he knew his father since 1940 through politics. He was a Minister in his father's government. The Statement is Exhibit F.

Under Cross-Examination, he answered that he did not sign the said document. The above is the case of the Claimants.

The Defence opened and the Defendant gave evidence for himself. He is Abduljhalil Tafawa Balewa. He said he is a Medical Doctor. He has a PHD in Nuclear Ezimology. He deposed to a Witness Statement on Oath. He adopted same as his oral testimony.

He said he is the biological son of the late Alhaji Sir Abubakar Tafawa Balewa and was born in Lagos in the year 1957 pursuant to the marriage of his late mother, Mosunmola Modele to his father, late Alhaji Sir Tafawa Balewa.

That he was born during the pendency of the marriage. That he was duly named Abduljahlil Tafawa Balewa by the late Prime Minister according to Islamic injunction. That throughout his childhood till date, his official and personal records have always identified him with the name Abduljahlil Tafawa Balewa even when about 39

years of his academics, career and personal life was spent outside Nigeria.

That he did not participate in the sharing of the estate of his father according to Islamic injunction because he was willfully, deliberately and unlawfully excluded by the Claimants despite knowing that he was a son of late Alhaji Sir Tafawa Balewa. That he was barely 10 years old in 1967 and still in Blecherette Switzerland with his late mother when the estate of his father was distributed and shared without any provision for him.

That he lived in Switzerland with his late mother since he was about 2 years old and was there till 1966. That he was not bound to participate in the sharing of the aforesaid estate.

That upon his relocation to Nigeria in 2006, he paid a visit to the household of his father in Bauchi. That he answered the call of the Nigeria government to transfer his skill and requisite technology in his area of competence as an accomplished consultant in infectious diseases.

That on the visit to relatives, he only met Billy Abubakar and Ajiyan Bauchi. He did not meet the Claimants. That he was received in the Claimants' family house by the three surviving wives of his father.

He explained himself to them and was gladly received. That he had been on e-mail exchange with the 2nd Claimant since 2006 and there was no accusation and imputation by the 2nd Claimant that he was not a child of his father. That 2nd Claimant knew he has always been Abduljalil Tafawa Balewa. He knows and believes that he is the son of the late Tafawa Balewa.

He did not pass off or launder image by presenting himself to the media or anyone. That his achievement in life propelled him to where he is today and not by reason of being the late Prime Minister's son. That he did not ever need to present himself to anyone as the son of the late Prime Minister to attain the height he has attained globally by reason of skill, experience, exposure, education, etc. without benefiting from the name of the

late Prime Minister. It is demeaning and insulting for the Claimants to impute use of the name of the late Alhaji Sir Abubkar Tafawa Balewa to gain undue advantage.

That Claimants had showered encomiums on him and wife for keeping the legacies of his father. That things fell apart between them when he could not cope with their excessive demands which were assuming the dimension of an outright extortion.

That his association with the name of late Prime Minister has indeed been a source of blessing to both his local government council and the nation at large over and above what the Claimant who claim to be true sons have done as contribution to the legacies and name of their father. That his clinics in the United States renders free services to indigent Nigerians and their families while assisting new black doctors to have their loans paid back.

That he was turbaned by his Royal Highness Sarkin Gade as the Sardaunan Kudu. That the Emirate Council in Bauchi and Dass fully appreciated his various efforts aimed at uplifting the people through various community

development efforts and duly accorded him a royal welcome at the Palace of the Emir of Bauchi and Emir of Dass. He was also accorded the title of Dan Maliki and his wife, Gimbiya Tafawa Balewa by the Tafawa Balewa Council of Chiefs.

That in contribution to the overall development of Bauchi State and as son of the late Prime Minister, he donated ten (10) ambulances to the government of Bauchi State to assist in healthcare delivery and same was duly appreciated in a letter dated 9th April 2008.

That since the accusation of the media and the Claimants regarding his paternity, efforts by Youths and Elders of the Local Government to put a stop to the unwarranted attack on his person has yielded no dividend. That they voiced their anger and frustration at the attempts by Claimants to impinge his character and integrity by questioning his paternity.

In opposition to the Claimants' claim and in proof of the Counterclaim, the Defendant tendered the following documents:

Exhibit D - Certificate of Indigeneship from Tafawa Balewa Local Government Council.

Exhibit F - Appointment Letter as Dan Maliki and Gimbiya Tafawa Balewa.

Exhibits G-G6 are pictures, correspondences, letter of acknowledgment, newspaper publication and certifications.

Under Cross-Examination by the Claimants' Counsel, he answered that he has been married for several years under Islamic right. That it was witnessed. That his mother was the only educated wife of his father. That she came back to Nigeria in 1955 as a Gnaecologist. That he is the son of Tafawa Balewa. That he has a political website.

To another question, he answered that he gave ambulance as a citizen of the State. That it is his State of Origin. He is a philanthropist.

To another question, he answered that his mother informed him of her marriage with his father much later

but he cannot remember the date. He has no idea if he was addressed as Adegboyega Kadiri in the USA. That he was not bearing Ade Kadiri Balewa in Georgia. The above is the case of the Defendant.

The Defendant's Counsel adopted his Written Address dated 7/10/2022 but filed on 11/10/2022. He posited two (2) issues for determination:

- (1) Whether the claims of the Claimants as to paternity of the Defendant is not an issue of Islamic personal law.
- (2) Whether the Claimants discharged the burden of proof placed on them by law so as to be entitled to the reliefs sought.

On Issue 1, Learned Counsel argues that a claim for paternity can be under common law or Islamic law. That Claimants have stated that they are Muslims. That their father also married under Islamic law.

That proof of paternity under Islamic law is different from proof of paternity in civil cases. That by paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15 and 16 of the

averments Claimants have brought in Islamic personal law of succession, marriage and estates contained in Section 277 (2) (a) & (b) of the 1999 Constitution for which only the Sharia Court of Appeal has jurisdiction.

That the entirety of the Statement of Claim is on Islamic personal law and this Court has constituted a barred from entertaining this suit.

On Issue 2, Learned Counsel submits that the Claimants have failed to reach the threshold of proof requiring rebuttal. That the proof required in paternity case is proof beyond reasonable doubt. That under Section 165 of the Evidence Act, any person born during the continuation of a valid marriage between his mother and any man shall be presumed to be a child of the man.

Learned Counsel refers to **IDAHOSA vs. IDAHOSA (2020) 6 NWLR (PT. 1720) 254; UKEJE vs. UKEJE (2014) 11 NWLR (PT. 1418)**. That estate sharing is totally irrelevant to prove paternity. That a legitimate child of the same parents can be illegally excluded from the estate of their parents.

That Exhibits A - A6 are irrelevant for the purpose of proving paternity. That the evidence of a witness who was not present for Cross-Examination or whose evidence was untested under Cross-Examination has no probative value. That it is documentary hearsay.

That Exhibits A7 - A20 are also documents made by persons other than the witness who tendered them. They are documentary hearsay which cannot be ascribed probative value. They do not prove that the Defendant is not a son of a late Prime Minister. They are opinions.

That Claimants have failed to discharge the burden of proof of paternity which is proof beyond reasonable doubt. That the Defendant's averment in his Witness Statement on Oath are not controverted. He finally urges the Court to dismiss the suit.

The Claimants' Counsel also adopted his Final Written Address dated and filed 22/09/2022. He posited only one (1) issue for determination, which is: Whether the

Claimants have proved their case on the balance of probability to be entitled to the reliefs sought.

He contends that Claimants have proved their case on the balance of probability. That there are three ways to prove paternity:

- (i) Paternity by existing marriage.
- (ii) Paternity by subsequent marriage to the mother.
- (iii) Paternity by acknowledgment of father.

Learned Counsel submits that late Alhaji Sir Abubakar Tafawa Balewa was never married to the Defendant's mother. There was no proof of subsequent marriage. There was also no proof of paternity by acknowledgment.

That Exhibits A - A21 are uncontroverted and unchallenged. That the Claimants have discharged their burden of proving that the Defendant was never a son or grandson or blood relation of late Alhaji Sir Abubakar Tafawa Balewa by leading credible evidence through PW1 - PW4. That the Defendant did not dislodge the evidence of the Claimants that he is not a son of Sir Tafawa

Balewa. That the Claimants have proved their case and are entitled to judgment.

The Claimants also adopted his Reply on Points of Law dated 19/10/2022. On the issue of jurisdiction raised by Defendant's Counsel, he submits that it is the Claimants' cause of action that determines jurisdiction. That the cause of action is not based on question of Islamic personal law. He finally urges the Court to give judgment to the Claimants.

The issues posited for determination are:

- (1) Whether the claims of the Claimants as to the paternity of the Defendant is not an issue of Islamic personal law.
- (2) Whether the Claimants discharged the burden of proof placed on him by law so as to be entitled to the reliefs sought.

On the first issue, *whether the claims of the Claimants as to the paternity of the Defendant is not an issue of Islamic personal law*, I shall refer to the records of Court.

The Defendant upon being served with the Originating Processes filed a Notice of Preliminary Objection dated 8/02/2016. It prays for an Order striking out/dismissing the suit for want of jurisdiction. The grounds for the application amongst others is that the Claimants, Defendant and their father the late Alhaji Sir Abubakar Tafawa Balewa are devout Muslims with Islamic laws as their personal law.

That the subject matter of the suit bothers on questions regarding family relationship of Muslims which cannot be determined by this Court. That the Court lacks jurisdiction.

The Claimants filed a Counter Affidavit. The application was moved on 16/05/2016. The Court delivered a considered Ruling on the said application on 19/05/2016 assuming jurisdiction holding *inter alia* that the suit does not relate to infants, prodigal son or persons of unsound mind. That the claim before the Court is simple and straightforward. That the cause of action is not based on Islamic personal law.

The Defendant agreed with the Ruling as he did not file any appeal against the said Ruling. It is therefore surprising that Defendant's Counsel is raising that same issue in his Final Address. I shall do no more than ignore the issue.

The second issue for determination is *whether the Claimants discharged the burden of proof placed on them by law so as to be entitled to the reliefs sought.*

In **OKOLONWAMU & ANOR. vs. OKOLONWAMU & ORS (2014) LPELR-22631 (CA)**, the Court held on how paternity can be proved:

“Paternity of a child can be determined by three major ways which are akin to the ways of proving legitimacy of a child. They are: (1) Paternity by existing marriage (2) Paternity by subsequent marriage to the mother. This occurs when a child is born at a time when the mother was not married to the father and after whose birth the mother and father entered into a valid marriage. (3) Paternity by

acknowledgment by the father accepting paternity of the child. This includes paying for the hospital bills and upkeep of the child introducing the child to his family as his child, etc.

The Appellants in this case are obviously relying on paternity by existing marriage of the Appellants' mother and testator. The marriage of the said parents must first be proved before paternity can be presumed.”

The Claimants' case is that the Defendant is not a son of the late Alhaji Sir Abubakar Tafawa Balewa, the late Prime Minister of the Federal Republic of Nigeria. That the Defendant is an imposter. That the said Prime Minister had only four wives excluding the Defendant's mother. That he did not marry a Yoruba woman.

The Claimants called five (5) witnesses in proof of their assertions.

I have earlier in this judgment summarized their evidence. PW1 of Muktar Abubakar Tafawa Balewa. He described himself as the 3rd male child of Alhaji Sir

Abubakar Tafawa Balewa, a Consultant, a retired public servant, a Senior Special Assistant to President Goodluck Jonathan on Poverty Eradication and Special Assistant to Obasanjo on Small and Medium Scale Enterprises.

The 2nd Claimant's witness is Sadiq Tafawa Balewa, a Senior Lecturer in Ahmadu Bello University. He also runs a media production company called Jakadiya Picture Company. From the evidence before this Court he is the 4th male child.

The 3rd Claimant's witness is Aishatu Jumai Tafawa Balewa. She was a wife of the late Alhaji Sir Abubakar Tafawa Balewa. She got married to him in 1945 and was with him in Lagos till 1966 when he was assassinated. She stated in evidence that her late husband was married to Hajiya Zainab his senior wife, Hajiya Laraba and Hajiya Umman, all of blessed memory and herself. She is the only surviving wife.

Her evidence is that the late Prime Minister never had a Yoruba wife or child out of wedlock. That he never had a son called Dr. Abduljahlil Tafawa Balewa.

The 4th Claimant's witness is Mallam Adamu Bello Nufawa Bauchi. He is the son of Mallam Bello, a bossom friend of Alhaji Sir Abubakar Tafawa Balewa. He was the Quoranic Tutor for the children of Sir Abubakar Tafawa Balewa. He was very close to him. He was with him in Lagos up till the time of his death in 1966. He corroborated the evidence of PW1, PW2 and PW3, the only surviving wife.

The PW5 is Jummai Bulus, the Principal Librarian with the National Library, FCT.

Exhibit A is titled Estate Sharing of Late Sir Abubakar Tafawa Balewa in Suit 52/66 dated 30/05/66. On the said document is listed the following:

- (1) He is survived by his mother Alhajiya and she inherited 1/6 of the estate, that is £1350=2=0.
- (2) He survived by his four wives - Alhajiya Lami, Jummai, Laraba and Umma, etc.
- (3) He also survived by 9 sons - Yakubu Baba, Balarabe Abubakar, Mukhtar, Saddik, Umaru, Ahmadu, Usman, Ali and Haruna..., etc.

(4) He is also survived by 11 daughters - Binta, Talle, Saude, Amina, Hadiza, Hafsatu, Rabi, Yalwa, Uwani, Zainab and Fatima.”

Exhibit A in paragraph 3 lists out the name of all the sons of Late Alhaji Sir Tafawa Balewa. It is an extract of a case of inheritance decided in 1966. The name of the Defendant is conspicuously missing.

Exhibit A is consistent with the evidence of PW1, PW2, PW3 and PW4. Exhibit A1 is also affirming Exhibit A that Alhaji Sir Abubakar Tafawa Balewa had nine sons who were mentioned in Exhibit A.

Exhibit A2 is a document in respect of Case No. 95/1967. It corroborates Exhibits A & A1. Exhibits A3, A4, A5, A6, A8, A9, A10, A11, A12, A13, A14, A15, A16 - A20 are publications asserting and denying that the Defendant is a son of the late Prime Minister, Alhaji Sir Abubakar Tafawa Balewa.

Exhibits A - A3 are CTC of proceedings of a Sharia Court. They are not documentary hearsay while Exhibits A4 -

A20 are publications by the Defendant and his agents asserting he is a son of Tafawa Balewa. The Defendant did not deny the contents.

Exhibit B is Compact Disc titled - Political Platform. It also confirms the insinuation that the Defendant is the son of the late Prime Minister.

Exhibit F is a written Statement on Oath of Ambassador Yusuf Maitama Sule, Dan Masanin Kano, he denies that Defendant is a son of Abubakar Tafawa Balewa.

On 21/10/2020, the Court granted leave to the Claimants to tender the Witness Statement on Oath of late Ambassador Umaru Dikko as a documentary exhibit. By Section 107 of the Evidence Act, the Court can allow such Affidavit without the attendance of the deponent having died during proceedings. It is an original Court process duly sworn before a person authorized to take Affidavit. It complied with Section 117 of the Evidence Act. In my view, the Affidavit has probative value.

The Defendant gave evidence for himself and called no other witness. He stated he is a Medical Doctor. He has PHD in Nuclear Chemistry with a Masters in Ezimology. He is Dr. Abduljalil Tafawa Balewa.

He stated he was born in Lagos in 1957 pursuant to the marriage of his late mother, Mosunmola Modele to his father, late Alhaji Sir Abubakar Tafawa Balewa. That he was duly named Abduljalil Tafawa Balewa by the late Prime Minister. That throughout his childhood till date, his official and personal records have always identified him with the said name.

Exhibit D tendered by Defendant is Certificate of Indigeneship. It is undated and titled "To Whom It May Concern". Being an indigene does not confer paternity. It is wide. It shows that you are a native so to speak of that locality. It does not make a person a son. Exhibit D did not make that attempt. Exhibit E is Defendant's Appointment Letter dated October 2010 of Defendant's wife as Gimbiyan Tafawa Balewa.

I have read Exhibit G2 - Emails. It is an exchange of banter between Defendant and 2nd Claimant. It does not show that 2nd Defendant accepted him as son of late Alhaji Sir Abubakar Tafawa Balewa. Exhibit G3 is a letter dated January 17, 2009 addressed to the President of the Federal Republic of Nigeria.

I have read the letter. The letter essentially says the Defendant is our son in Tafawa Balewa. I wish to quote, “We the people of Tafawa Balewa Local Government Area of Bauchi State wish to let all Nigerians know that he is our son and we are proud of him.”

The document which is Exhibit G3 does not confirm or affirm that Defendant is the son of late Alhaji Sir Tafawa Balewa. Exhibit G4 also tendered by the Defendant in proof of his cases is dated 9/04/2008. It is titled - Donations of 10 Ambulances and Training of Paramedics. It is a letter of appreciation by the Bauchi State Government. It does not have anything to do with paternity of the Defendant.

Exhibit G5 is a Newspaper publication of the reception accorded Defendant. The publication is dated Wednesday, July 10, 2011. The Defendant was called an illustrious son of Bauchi State commending him for all he has done for the State. This document also did not help matters.

Exhibit G6 is dated 28/10/2018. It is a Certificate of Traditional title wherein Defendant was conferred with the title Sarduanan Kudu of Giade as a result of his capability, dedication and interest. All the documents are recent documents.

The Defendant's evidence is that throughout his childhood till date, his official and personal records have always identified him with the name Abduljalil Tafawa Balewa, but he failed, refused and or neglected to tender any such document.

From the evidence, he is well read. His Birth Certificate, Primary, Secondary, University Certificates, Degrees and activities showing his name would have sufficed.

There is scarcity or no evidence of his mother's maiden name, where the marriage between his father or mother was conducted. There is no evidence of eye-witnesses. No evidence of any member of the mother's family and where they are from and the year the marriage took place and where the mother was at the time of marriage. Where he was born and where he grew up before he travelled abroad.

In **MEGAWALU vs. MEGAWALU (1994) 7 NWLR (PT. 359) 718**, the Supreme Court held:

“The factors that a Court must consider in assessing the credibility of evidence of witness where paternity of a child is in dispute are:

- (1) The opportunity of access for sexual intercourse between husband and wife at the material time.*
- (2) The physical condition of the husband at the material time.*
- (3) Opportunity of access for sexual intercourse between the wife and the third party.*

- (4) *The time of birth and time of sexual act.*
- (5) *Sometimes blood ties of the parties.”*

There is no evidence whether his mother was cohabiting with his alleged father. The late Alhaji Sir Abubakar Tafawa Balewa was a Prime Minister. He was apparently in government house. There is no evidence of the place of work or residence of the mother of the Defendant.

In the circumstance, I do not believe the evidence of the Defendant that there was a marriage between his mother and the late Alhaji Sir Abubakar Tafawa Balewa. The law is that any person born during the continuance of a valid marriage shall be presumed to be a child of the man. The burden of proving otherwise rests with the party alleging the contrary.

See UKEJE vs. UKEJE (2014) All FWLR (PT. 730) 1323 SC.

I am aware that under our law, evidence to dislodge paternity requires proof beyond reasonable doubt. However, in the instant case, no valid marriage has been

proven to exist between the mother of the Defendant, Mosunmola Modele and late Prime Minister, Alhaji Sir Abubakar Tafawa Balewa.

The Defendant, DW1 failed to avail this Court, the family name (maiden) of his mother. In the circumstance, the Claimants do not have any burden to prove otherwise. The presumption that the Defendant is a son to the said Prime Minister cannot be made.

I had earlier in this Judgment referred to the case of **OKOLONWAMU vs. OKOLONWAMU (supra)**. From the evidence, the Defendant was not born during an existing marriage neither was the Defendant said to have been born by subsequent marriage to the mother.

There is also no evidence that the Alhaji Sir Abubakar Tafawa Balewa acknowledged the Defendant as his son. The Defendant said he was named Abduljalil by the late Prime Minister. There is no proof of same. No eye-witness, photographs, etc. No evidence of who paid the hospital bills or his upkeep and education in the United

States of America or Switzerland. There is no evidence to suggest that Defendant was introduced to his family by his alleged father.

The evidence is that the Defendant surfaced about 40 years after the death of Alhaji Sir Abubakar Tafawa Balewa. In civil cases such as this, the burden of proof is on the party who asserts a fact to prove same, for he who asserts must prove. The standard of proof required is on a preponderance of evidence and balance of probability.

See DAODU vs. NNPC (1998) 2 NWLR (PT. 538) 355 SC.

See Section 131 (1), 132, 133 and 134 of the Evidence Act.

The burden of proof on the pleadings rests on any party (whether Claimant or the Defendant) who substantially asserts the affirmative of the issue. In other words, a party who makes a positive assertion bears the burden of proving that assertion.

See Section 136 (1) & (2) of the Evidence Act.

See Ogbaru vs. UDUAGHAN (2011) 2 NWLR (PT. 1232) 538.

It is my view and I so hold that the Claimants have proved their case on the preponderance of evidence and balance of probability. There is scarcity or no credible evidence to sustain the assertion of the Defendant.

In the circumstance, the claim succeeds. Judgment is hereby entered in favour of the Claimants against the Defendant as follows:

1. It is hereby declared that the Defendant was never a son or grandson or blood relation of the late Prime Minister of Nigeria, Alhaji Sir Abubakar Tafawa Balewa.
2. The Defendant is hereby perpetually restrained by himself, agents, servants or privies, howsoever from referring to himself as a son or grandson or blood relation of the late Prime Minister of Nigeria, Alhaji Sir Abubakar Tafawa Balewa.

3. The Defendant shall render a public apology and retract all previous claims in print and electronic media that he is the son or grandson of the late Prime Minister of Nigeria, Alhaji Sir Abubakar Tafawa Balewa.

4. ₦250,000.00 (Two Hundred and Fifty Thousand Naira) as cost of the action.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
16/01/2023

1st and 2nd Claimants present.

3rd Claimant absent.

Defendant absent.

Sir P. O. I. Ahiokhai, Esq. with E. C. Uke, Esq. and G.

Ofodile Okafor, Esq. for the Claimants.

Ayodele Akinsanya, Esq. for the Defendant.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

16/01/2023