

DOMICILE AND THE DETERMINATION OF PERSONAL LAW: A CRITIQUE

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*We must not deny local domicile to a man who has settled in a place without the intention to remain there forever but simply intending to make his life there as long as circumstances allow him to do.'*¹

Abstract

Domicile is one of the foreign concepts of law received into the Nigerian legal system through the colonial nexus that existed with England. This concept has been subjected to various reforms in its country of origin to meet the societal needs and attain its ultimate aims which is justice. The same cannot be said of Nigeria which still sticks to the old concept as holistically received from England. Although, it is not in doubt that the application of the doctrine of domicile has been successful in addressing the personal law issues in Nigeria, it is not clear whether the application has been able to meet the yawning and expectations of the people and ultimately attain social justice. It is on this consideration that this article is premised on examining the applications of the doctrine of domicile under the Nigeria legal system as an instrument of social justice.
Keywords: Domicile, Personal Law, Social Justice and Nigeria

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¹ Graveson, Five Sheffield Jubilee Lecture, 1960

Introduction

The quest for a unified agreement as to what law is to determine question affecting the personal status of human being is not a recent development. As such, it dates back to 19th century² when civilized nations are polarized on whether domicile or nationality should be a deciding factor. Either domicile or nationality, it appears from historical development that the personal law, which ought to be governed by legal and political consideration, has in fact been to influence the various political and economic factors.³

Nigeria and other common law jurisdictions stand by the test of domicile in addressing issues relating to personal law. The application of the doctrine of domicile in addressing this issue is not without its shortcomings and defects considering the fact that the concept is adopted (from England) which has a different sociological background from that of Nigeria. This article therefore, looks at how justice oriented is the concept of domicile in the Nigeria legal system and the need to explore the potential of reforming the concept to meet the concerns / yawning and keep pace with the prevailing local circumstances.

Domicile, nationality and habitual residence as a connecting factor in conflict of laws

There has always been the argument of what law should at all times in all countries determine questions affecting personal status of human being.⁴ The concepts of domicile, nationality and habitual residence readily come to mind. Thus, the poser, is it the law of his domicile, or

²Raymond S. *Conflict of Laws*(Great Britain:Cavendish Publisher Ltd, 1993) p. 23

³ Chelsire and North's *Private International Law*, 12th ed.(London Dublin Edinburg: Butterworth,, 1992) p. 165

⁴ Ibid p. 138

his nationality and, or that of his habitual residence? In this regard, Jurists, Academic writers, Legal Pundits and Philosophers, have offered various discussions without a general consensus on the question. This has, by necessary implication led nations of the world to have given different definitions of personal law and this fact more than any other fact has impeded international agreement on uniform rules of the conflict of laws.⁵

Nationality is the link that an individual has with a state which entitles his claims in international law.⁶ It presupposes the quality of being a subject of a certain state and therefore its citizen. The criteria for obtaining nationality is a matter for domestic jurisdiction but there are practical limitations in so far so other states may be expected to recognized it.⁷ The idea of nationality as a connecting factor was espoused in the famous speech delivered by Mancini in 1851⁸ at the University of Turin. This lecture accelerated the adoption of the concept of nationality in Europe from domicile⁹ and today, it has been adopted by many civil law jurisdictions.¹⁰ By extension, the concept of nationality in Nigeria is an acknowledgement of citizenship which is now provided for under the constitution.¹¹

It is contended that a person's domicile is the country which is

5Ibid p. 139

6Nationality Decree of Tunisia and Morocco (1923) PCIJ Ser B no 4 p. 27

7Art 1 of Hague Convention of 1930 (relating to the conditions of nationality)

8 *Annuaire de l'institut de Droit International* 1877 vol. 1 p 123.

9 The idea was first conceived at the beginning of 19th century in the Code Napoleon (1804) which was as a result of French revolution, and the wave of nationalism which swept across Europe.

10 See the National Code of France, Italy, Switzerland e.t.c.

11 Sections 25 – 32 CFRN 1999, *Ogbeide v Osula* (2004) 12 NWLR (part 886) 86-138. During the British colonial rule in Nigeria, the concept of Nigeria citizenship did not exist. The various territories now comprising Nigeria, being possession of the British crown, were under suzerainty of the United Kingdom. The inhabitants of these territories were therefore either British subject simpliciter in the colony of Lagos or British protected person in any other part of the territories that made up the protectorate of Nigeria. Implicit in this political arrangement was the jurisdiction of the British crown to legislate for Nigeria. In 1948, the legal status of the inhabitants of all British colonial territories gained statutory recognition with the enactment of the British Nationality Act. For a detailed discussion on nationality in Nigeria, see Nwabueze B.O, *Constitutional History of Nigeria*, (Lagos: C. Hurst & Co Publisher, 1982) pp. 29-35. And Nwogugu E.I, 'Recent Changes in Nigeria Nationality and Citizenship Law' (1976) 25 I.C.L.Qpp 431-439.

considered by law to be the centre of his life.¹² In clear term it is the 'permanent home' which denotes a social, not a political, attachment to a particular country while habitual residence denotes a regular physical presence enduring for sometimes.¹³

However, legal system adopts one or two of the concept to solve various issues relating to personal law arising in their jurisdiction. Nigeria and other commonwealth jurisdictions adopts domicile in this respect. It is worthy of emphasis that, any concept adopted by any legal system attempts to solve or address shortcomings or inconsistencies seen in other concepts¹⁴

Application of the law of domicile: the nigerian perspective

In addressing issues of personal law, Nigeria legal system adopts the law of domicile of the propositus.¹⁵

This is attributed to the sociological and colonial connection with Britain. To this extent, the extant rules of domicile under the English private international law operate in like manner as under the Nigerian private international law, but it must beshown that the applications and operations of the concept in Nigeria need clarification considering the prevailing local circumstances.

¹²*Frederick D. Reisen & Anors v Commissioner of Revenue* 26 Mass App ct 124, see also *Fonseca v. Passmen* (1958) WRNLR 41 at 42.

¹³*Cruise v Chittum* (1974) 2 All ER 940. It does not require continual physical presence and can continue despite considerable period of absence. The possibility of its adoption was a compromise between nationality and domicile as a basis of personal law, first appeared in the convention to regulate conflict between law of domicile and law of nationality concluded at The Hague in 1955, for the convention defined domicile as a place where a person habitually resided.

¹⁴ Nadelmann K.H, 'Nationality versus Domicile' (1969) 17 American Journal of Comparative Law 418

¹⁵ Orojo J.O, *Company Law and Practice in Nigeria*, 5th ed. (South Africa: LexisNexis, Butterworths, 2008) p 87.

This is imperative because domicile was first conceived as a home¹⁶ of the propositus but with time, it began to acquire jurisprudential analyses, writers' opinion and judicial intervention. As a result of this, variation began to surface on the meaning of the word in connection with the sentiment of various legal systems. The preliminary view on domicile in the commonwealth has expressed by Graveson¹⁷ is a connecting factor to determine the personal law to be acquired by the concurrence of *factum* and *animus manendi* except in the case of domicile of origin and dependence as it was in the Victorian era. Besides, the concept of domicile operates through five different rules which are; no person can be without a domicile,¹⁸ no person can at the same time have more than one domicile (at least no more than one domicile for the same purpose),¹⁹ an existing domicile is presumed to continue until it is proved that a new one has been acquire,²⁰ the question of where a person is domicile is determine solely in accordance with the domestic law²¹ and the relevant standard of proof is the civil standard of proof.²² The forms of domicile are briefly discussed sequel to further discussion.

¹⁶ Jonathan Shwartz 'Domicile' <<http://www.ipandit.practical law.com/books/978184>> accessed on 21/3/2012. The word domicile is derived from Latin word 'domus' meaning home or dwelling house.

Re Schultz Estate 316 iii App.

¹⁷ Graveson R.H, *Conflict of laws*, 6th ed. (London: Sweet&Maxwell, 1969) p. 20

¹⁸ *Bell v kenedy* (1868) LR 1 SC & Div 307, see also *Fonseca v. Passsmen* (1958) WRNLR 41 at 42.

¹⁹ *Lawrence v Lawrence* (1985) Fam 106

²⁰ *Ramsay v Liverpool Royal Infirmary* (1930) AC 588

²¹ *Re Annesley* (1926) Ch. 629

²² *Buswell v IRC* (1974) 1WLR 1631

Notable types of domicile and the nigerian reality

It is worthy to note that there are three forms of domicile under the English private international law to wit; domicile of origin, which is the domicile attributed at the time of birth; domicile of choice, the domicile a competent person may acquire during his lifetime and domicile of dependency, which means that the domicile of the dependent person is dependent on the conduct of another.

In Nigeria, the various judicial decisions have shown that there are only two forms of domicile, in *Bhojwani v Bhojwanithe*²³ Court held in the words of per Uwaifo JCA (as he then was);

...there are strictly two types of domicile. One is domicile of origin and the other, domicile of choice. There is no separate domicile known as domicile of dependence.

This goes to show that are two forms of domicile recognized under the Nigeria private international law. However, in *Omotunde v Omotunde*²⁴ the court made reference to 'matrimonial domicile' as the third type of domicile but this has always been down played by most judicial decisions on the subject, though the law is that the woman acquire the domicile of her husband on valid marriage.²⁵

²³(1995) 7 NWLR (Pt.407) 349 at 352, also *Osibamowo v Osibamowo* (1991) 3 NWLR (Pt.177) at 85

²⁴(2001) 9 NWLR (pt. 718) at 286

²⁵ See Nwogugu E.I *Family Law in Nigeria* (revised edition, Nigeria: Heinemann, 2001) pp. 108-113. See also the case of Hon. Jombo-Ofo in which this position has been tampered with by the act of her denial of being sworn in as a Court of Appeal Justice on the basis of marriage / indigene-ship, see <http://ambroseehirim.blogspot.com/2012/11/state-of-origin-denies-justice-ifeoma.html> accessed on 4th October, 2013.

The perfect idea of domicile under the Nigeria private international law was captured by Adekeye JCA in *Omotunde v Omotunde* thus:²⁶

...everybody at birth becomes a member of both a political and of a civil society, the former determines his political status and nationality, and the latter determines his civil status. The law which governs the civil society into which he is born is the law of his country of domicile.

Putting the above analyses and the sociological background²⁷ of the country in mind, it is pertinent to state that the applications of the doctrine of domicile in areas of personal law have various controversies ranging from the definition²⁸ adopted by the court to the excessive adherence to the ever changing concept of domicile rules as obtained in (the old) England. This tends to ignore the warning of Beale²⁹ when he states:

The circumstances of life in a country must have great weight with the judge in determining the meaning of domicile.

He comments further:

In U.S.A, there is a habit of moving from place to place; in England the habit is to remain indefinitely in one place. The rule of England will leave many Americans without a domicile

²⁶ As above

²⁷ Nigeria Travel: Exploring 250 Ethnic Groups in Nigeria, <<http://www.nigeriatravels.blogspot.com/2010/08/exploring-250-ethnic-groups-in-Nigeria.html?m=1>> accessed on 25th March, 2012

²⁸ The court still defines domicile in terms of residence and permanent intention to remain in the particular locality before one can acquire the domicile. See *Bhojwani v Bhojwani* (above), *Udom v Udom* (1962) LLR 112 at 117.

²⁹ Beale J.H.A, *Treatise on the Conflict of Laws* (Baker Voorhis & Co, New York 1935) 106

of choice.

In fact, the American judges are aware of the inconsistency and inconveniences that might arise as a result of the adoption of the definition as given under the English law. Hence, the court in *Putman v. Johnson* held:³⁰

In this new and enterprising country, it is doubtful whether one half of the young men, at the time of their emancipation fix themselves in any town with the intention of always staying there...

As Agbede has observed,³¹ in a federation like Nigeria, where inter-state movements are unrestricted, it will be difficult if not impossible, to find people who will wish to reside in a particular state for better for worse. This is even not possible in the present time where insecurity has been everybody's concern and socio-economic indices are not favorable in the country. The corollary of defining domicile in line with English common law is that it will tend to deny appropriate domicile to a Nigerian considering his situation. It is thus, rational not to deny local domicile to a man who has settled in a place without the intention to remain there forever but only with the intention to make a living there as long as circumstances permits.

This will also help in fostering the integration policies of the federal and state governments. A major concern, particularly to this writer is the attitude of the Court in the ascertainment of intention of the propositus taking into consideration that nothing is elusive as a man's intention, even it is argued that the devil himself cannot ascertain

30 (1813) 10 mass 488, 501

31 Agbede I.O, *Themes on Conflict of Laws* (Ibadan: Shaneson, 1989) p.52

man's intention.³² Under the English Private International Law, some imponderable things³³ have been considered at various times. The Court observes in *AG v Pottinger*:³⁴

There is not a man who has not contingent intention to do something that would be very much to his benefit if the occasion arises. But if every such intention prevented a man from having a fixed domicile no man would ever have a domicile at all, except his domicile of origin.

For the purpose of determining the propositus' intention, the court per Kindersley V.C³⁵ has given the nature of the requisite intention as;

...the present intention of making it his permanent home, unless and until something (which is unexpected on the happening of which is uncertain) shall occur to induce him to adopt some other permanent home.

It will be more convenient and justice oriented if the Nigerian judges' approach the issue of propositus intention from this angle rather than relying heavily on a permanent and absolute intention of remaining in a place for better for worse in this migratory age.

32 *DPP v Smith* (1961) AC 290.

33 A person's 'tastes, conduct, actions, ambitions, health, hopes, projects.' Lord Turner commented; 'even his movements, his acts, his motives, his family, his fortune, and his health must also be examined.' At one time or other, the followings have been regarded as relevant criteria for intention; 'purchase of a house, voter's registration, place of registration of motor vehicle and establishment of children in business.' See *Foskin v Mathew* (1856) 8 De G.M 8G 13,6, Per Lord Atkinson in *Casdagli v Casdagli* (1949) AC145 at 178.

34 (1861) 30 LJ Ex 284 at 292.

35 *Lord v Colvin* (1859) 4 Drew 366 at 376

It is pertinent to note that in the doctrine of domicile is the idea that, a person must be connected to a legal district gave rise to the common law concept of 'unity of domicile'. The rule connotes that a person cannot have more than one domicile at the same time. If the rule provides otherwise, the concept of domicile would probably not be adequate for selecting a particular legal system for the determination of personal law. Thus, a person can only be domiciled in Nigeria or Ghana, not both.

The dynamism of the concept under federalism

However, this concept has been proved to be untenable given modern situations.³⁶ In *Okoroma v Uba*³⁷ the Court held in the words of Salami JCA;

....It seems to be characteristic of federalism. A similar situation arises while determining the domicile of a federal state in a federal structure. According to rules of private international law, a citizen in a federation has two domiciles, one for federal laws while the other is for state or regional legislations.

The position of this decision seems to contradict the rules that a person shall not have more than one domicile. This position of law reflect the fact that Nigeria is a federal entity comprising of federating states with different laws governing a particular subject except at the federal level, and the unity of domicile rule might not be of effective application.

See also Nwogugu E.I. Family law in Nigeria...p. 112.
CA/E/58/97; (1999) 1 NWLR (pt 587) 359 at 388

Domicile is a relative term varying in meaning according to the problem presented; taxation, divorce, interstate succession e.t.c. On this premise, adhering to one contextual meaning of domicile for all purposes is likely to result in injustice on certain occasions. For example, the application of this rule in Nigeria has provoked a great deal of controversy which found expression in a number of irreconcilable decisions.³⁸ The query of Atilade supports this assertion while commenting on the situation:

*Is there one Nigeria domicile or different regional domicile in regard to divorce cases?*³⁹

This difference arises from the failure on the part of some Nigerian judges and lawyers to acknowledge and appreciate that the English rule of unity of domicile was developed under a situation different from ours and that it would require substantial modifications to make them work justice under the prevailing Nigerian circumstances.⁴⁰

As domicile is the only means of ascertaining a person's personal law under English private international law as well as in Nigeria⁴¹, it is inevitable that English private international law as well as Nigeria private international law should require that everybody must have a domicile. At birth, the law attributes domicile of origin on the child.⁴² In the words of Adekeye JCA in *Omotunde v Omotunde*:⁴³

38 Udom v. Udom (supra), Adedeyi v. Adeyemi (1962) LLR 70 and Odiase v. Odiase (1965) NMLR 196

39 Atilade P.A' Is there one Nigeria Domicile or Different Regional Domicile in Regard to Divorce Cases?' (1964) 5 Nigeria Bar Journal, 56.

40 Agbede I.O, Themes on Conflict of Laws p 66.

41 Orojo J.O Company Law and Practice in Nigeria, 5th ed., (South Africa: Lexis Nexis Butterworths, 2008) p. 87.

42 Morris J.H, Conflict of Laws, 6th ed., (United Kingdom: Sweet & Maxwell, 1993) p. 13

43 (2001) 9 NWLR pt. 718 at 286

This is the first type of domicile everybody acquires. It is the domicile of a person at birth derived from the custodial parents or imposed by law.

It is a legal tie which binds a person at the moment of his birth to a given system of law and continue to operate throughout his lifetime in the absence of any other domicile that he may acquire, either of choice as an independent person of a full age or as a domicile of dependency. According to this rule, a legitimate child takes the domicile of its father while an illegitimate child or post humous child takes the domicile of its mother. A foundling takes the domicile of the country where it is found.⁴⁴ The legal imposition of a domicile of origin bears one important relation to the individual facts in that it is conferred, in all cases except one, on a basis of parentage i.e. only adopted child adopts the domicile of origin of the adopted parents and not of his natural parents. The country of the child's birth is immaterial, the parents' domicile is the only consideration. Hence, the determination of a child's domicile of origin will in cases of doubt involves an inquiry into the subsidiary question of the domicile of the appropriate parents at the time of the child's birth.⁴⁵

The outstanding advantage of the domicile of origin is that it relates every person at the moment of birth to a system of personal law by which his civil affairs may be governed. Its equally outstanding defect is that its automatic returns to operation in any interval that may occur between the abandonment of one domicile of choice and the acquisition of another may have consequences unforeseen and even absurd.⁴⁶

44 Dicey A.V and Morris J.H, *The Conflict of Law*, 8th ed., (London: Stevens & Sons Ltd, 1967) Rule 6(3); see also *Enwonwu v Spira* (1965) All NLR 233.

45 *Re Flynn* (1968) 1 WLR 103 at 107

46 *Re O'Keefe* (1940) Ch 124

Notwithstanding the attribution of the domicile of a legitimate child to that of the father, attributing the domicile of the mother to an illegitimate child, and post humous child under the English private international law, the application of the above rules of domicile of origin is of doubtful validity in the country, considering the local circumstances. Under the customary law, a child is not necessary illegitimate because the parents are not married to each other at the time of birth or conception. The overriding determination of legitimacy is the acknowledgement of the child's paternity. In *Re Sarah Adadevoh v In the Estate of Macaulay*⁴⁷ the Court held:

Legitimate is to be determined by the native law and custom applicable to the deceased and not the English law.

The pronouncement of the Supreme Court in *Adeyemi v Bamidele*;⁴⁸ further supports, as it was held, Legitimacy in England is a different concept to legitimacy in Nigeria.

However, the dictum of Ademola CJN (as he then was) in *Lawal v Yunan*⁴⁹ is unequivocal when he held:

Legitimate children in Nigeria are not confined to children born in wedlock or children legitimated by subsequent marriage of the parents. In Nigeria...issue born without marriage can also be regarded as legitimate children for certain purpose, if paternity has been acknowledge by the putative father....

47(1950-51)13 WACA304.

48(1968)1 All NLR 31 at 37.

49(1961)1 All NLR 145.

In essence, the strict adherence to the legitimacy rule under the English private international law will amount to great injustice on those children that will be denied domicile of their father due to the fact that their parents are not married at the time of birth or conception and by necessary implication the operation of the rule will be in conflict with the prevailing local circumstances in the country to negative the settled principle that the safety of the people is the supreme law..

Furthermore, the rule that a posthumous child takes the mother's domicile ought not to be accepted as a valid rule under the Nigeria private international law in all circumstances. In most cases from the moment of the father's demise, a member of his family either the father's brother or male relation steps into his shoes, and he is ready to satisfy all his outstanding obligations and take care of the deceased wife including the unborn child.⁵⁰ It will be absurd and out of reasoning, if nothing else, if the responsibilities for the maintenance of the child rest on the deceased family whilst his personal law depends on that of the mother. It is opined therefore, that such a posthumous child should be presumed to take the domicile of the head of the father's family where it could be shown that the deceased's family takes up the responsibilities of taking care of the child. This could not have been less especially considering the fact that in most rural areas where the application of customary law is high as regards the legitimacy rule, the concept of '*omoale*' (bastard) is not a function of being born outside wedlock.

One of the underlying fundamental principles of domicile of origin is his revivalship doctrine and tenacity character which has its basis in the *udny v. udny*⁵¹ case. The underlying principle of doctrine is that domicile of origin will be attributed to the propositus, if it cannot be

⁵⁰ Agbede I.O, Themes on Conflicts of Laws.p. 57

⁵¹ *Udny v Udny* (1869) LR1 SC Div

certain that a domicile of choice has been acquired or equally if the domicile of choice having been acquired has been abandoned. In the latter situation, following the principle that no man can be without a domicile, it follows that the domicile of origin revives. In essence, if the domicile of origin is dispensed with as a result of the acquisition of a domicile of choice, the rule under the English private international law as well as in Nigeria is that the domicile of origin is merely placed in abeyance for the time being, it remains in the background ever ready to revive and to fasten upon the propositus immediately he abandons his domicile of choice. This is vivid in the words of Lord Westbury:⁵²

..the domicile of origin is the creature of the 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 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.

The combination of the enduring nature of the domicile of origin and the possibility of its revival does mean that in many cases the propositus will be deemed not to have lost his domicile of origin notwithstanding the fact that he may have had little recent contact with the country in question.

52 *Udny v Udny* (as above) LR1 SC Div

Rationale behind its adherence in England

The principle was a product of an era when England was losing her citizens to overseas territories. It thus rests on the assumption that a man belongs to his country of origin much more than to the country of his choice. The purpose was to ensure that wherever these citizens were, their affairs were governed by English law. This picture was captured in *Re Estate of Jones*:⁵³

Men left their native land knowing that they would be gone for long period of time, and that means of communication with their homeland were infrequent, difficult and slow. The traditions of their native country were strong with these men in the event of death, while absent, they desired that their property should descend in accordance with the laws of the land of their birth.

Cheshire⁵⁴ comments that the rule evolved in the nineteenth century when England was a nation of enterprising pioneer adventurer, most of whom regarded their ultimate return home a foregone conclusion. However, the question arises as to whether the chains of laws which is imposed upon a man at birth independent of his own wishes and wills is superior to that which he has voluntarily chosen and long retained. In most cases, the country that determines one's personal law is one that he has never physically visited or where he feels repulsive. Evidence abounds to provoke the view that the virtues of the doctrine of revivalship of domicile of origin are not as obvious as appeared to the Mid-Victorian age judges that conceived the idea. But, it is more evident that the English doctrine of revivalship of domicile of origin

⁵³ (1921) 192 IOWA 98, 182 NW227

⁵⁴ Cheshire G.C., *Private International Law*, 7th ed., (Butterworth, Boston and London) p. 164.

is more akin to nationality than to domicile in the continental sense.⁵⁵ In fact, it transcends even nationality in stability and permanence for though it may be placed in abeyance, it can never be destroyed.

In Nigeria, in most instances people regulate their affairs without necessary considering their domicile of origin. To subject such persons to the law of their domicile of origin is not encouraging and it might even destroy the federal character of the country which has national integration as one of its hallmarks after such a person has traveled to other parts of the country for a long time without been domicile there but has associated and assimilated himself to the culture of the host community.⁵⁶ It is argued that adhering wholeheartedly to the revival doctrine and the tenacity character of domicile of origin in all circumstances will further widen the line of division between the people of this country.⁵⁷

The Supreme Court's decision in the case of *Olowu v Olowu*⁵⁸ should be commended. The case deals with residence outside one's state or tribe of origin. In the case, the deceased, Adeyinka Ayinde Olowu was a Yoruba man by birth and belonging to the Ijesha cultural group. He had lived most of his life in Benin City. He married Benin woman who begot for him all his children who are plaintiffs and defendants in the case. In 1942, the deceased applied to the Omo N'oba of Benin to be naturalized as a Benin man. His application was granted. As a result of his status as a Benin man he was able to acquire a lot of landed property both in Benin City and elsewhere in Bendel state. The deceased died in 1960 intestate. The defendants, two of his children were granted Letters of Administration to administer the

55 Rabel E, *The conflict of Laws: A Comparative Study*, 2nd ed., (Michigan: University of Michigan, 1958) Vol. 1, p. 171.

56 *Adeyemi v Adeyemi* (1962) LLR P 270

57 Agbede I.O, *Themes on Conflicts of Laws*. p. 59

58 (1985) 3 NWLR (Pt. 13) at 372

deceased's estate and distributed the estate according to Benin customary law. The plaintiffs, also children, dissatisfied with the distribution according to the Benin customary law applied to the court on the ground that the estate ought to be distributed according to Ijesha customary law being the deceased's personal law. The court held that a person may change his personal law from one cultural group to other and also, that a person may change his status under customary law and consequently, his personal law changes either by process of choice or assimilation.

The combination of the enduring nature of the domicile of origin and the possibility of its revival does mean that in many cases the *propositus* will be deemed not to have lost his domicile of origin notwithstanding the fact that he may have had little recent contact with the country in question..

However, the question arises as to whether the chains of law which is imposed upon a man at birth independent of his own wishes and wills is superior to that which he has voluntarily chosen and long retained. Often times, the country that determines one's personal law is one that he has never physically visited or where he feels repulsive. Illustrations abound to provoke the view that the virtues of the doctrine of revivalship of domicile of origin are not as obvious as appeared to the Mid-Victorian age judges that conceived the idea. However, it is more evident that the English doctrine of revivalship of domicile of origin is more akin to nationality than to domicile in the continental sense.⁵⁹ In fact, it transcends even nationality in stability and permanence for though it may be placed in abeyance, it can never be destroyed.

⁵⁹ Rabel E, *The Conflict of Laws: A Comparative Study*, p 171.

The relevance of the enduring character and revivalship doctrine of domicile of origin has been criticized and antagonized on the ground that it is archaic and meaningless in this current age of migratory population where the world is seen as a global community.⁶⁰ And the fact that the *propositus* may be attached to a domicile with which he has little, if any, recent connection. For instance, a person born in England of a Nigeria domicile parents would acquire a Nigerian 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 Nigeria domicile of origin would revive and his movable estate would be distributed according to Nigerian law, though he had never been there.

Undoubtedly, the 'revival' doctrine of domicile of origin runs counter to the fundamental principle of domicile as it may violate a person's domicile in a country which cannot be regarded as his home by any stretch of imagination. The rule of domicile of origin might have been good law in the medieval period in England, but under the present political arrangement in Nigeria where state boundaries bear little relation to ethnic grouping and where the state policy is to encourage national integration and discourage ethnic loyalty, to adhere wholly to the doctrine of revivalship of doctrine of origin will be socially undesirable, if not legally inconvenient. Moreover, the mobility of modern society generally has provoked, even in England, an almost unanimous criticism of the rule and recommendation for change by the law commission.⁶¹

Indeed, the English rule of revival doctrine of domicile of origin has found no place in American law. As Beale⁶² has rightly pointed out:

⁶⁰ Wolff M, *Private International Law*, 2nd ed., (Oxford: Clarendon Press, 1950) p 109.

⁶¹ *Commonwealth Law Bulletin*, Jan 1988 p341; also July 1985 pp.951-952

⁶² Beale J.H.A, *Treatise on the Conflict of Law* (New York: Baker Voorhis & Co, 1935) pp.184-185.

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 identified 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 or a forgotten or half forgotten domicile of origin would be absurdly unreal.

The rejection of the rule is found in the American case of *Re Jones Estate*⁶³ in that case, Jones had an English domicile of origin. In order to escape the responsibility for an illegitimate daughter he had, he went to the United States in 1883. He married there, and prospered financially and became an American citizen. His wife died in 1914 and he decided to return to Wales, where he was born, to live with his sister. On the first day of May 1915 he sailed in to Lusitania from New York but was sunk by a German sub-marine in the seas, off the Irish coast. Under the Iowa law, his legitimate daughter succeeded to his estate, but by the English law, his brothers and sisters were entitled. The supreme court of the Iowa held that since his Iowa domicile of choice has continued until he acquired another he was still domicile in Iowa at the time of his death since he has not reached England. Reacting to this decision Collier⁶⁴ declares:

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

63 (1921)192 IOWA98,182 NW 227.

64 Collier J.G, Conflict of Laws, 2nd ed.,(Cambridge: Cambridge University Press, 1994)p.57.

makes the revolution of a person's estate depends on the law of a country which he had left, wishing never to return to it.

In essence the above analyses showed that decisions given by courts are been dictated by the prevailing circumstances in their environment and not strictly in accordance with the rules of domicile has obtained in England and it is hoped that the Nigerian judges will follow suite in deciding cases according to social circumstance to attain the required result which is justice in each individual cases.

Conclusion

This article has brought to the fore the fact that nationality represents man's political status; and thus, it is the link which an individual has with a nation state. Many nations of the world especially civil law jurisdiction have espoused and adopted nationality as their determinant for personal law, adhering with the view of Mancini that a man is more associated with his nation than to his local community. Although on a wider perspective, nationality as a test for personal law yields a predictable but frequently inappropriate law when the fact that nationality breaks down when there is no unity of laws within a nation.

Nigeria, being a federal entity with 36 states and FCT and as well as over 250 cultural groups⁶⁵ espouses and adopts the idea of domicile as a determinant for personal law on two grounds, the colonial nexus with England and the heterogeneous nature (multi ethnics society). It is a settled fact that the idea of domicile was developed in the

65 Nigeria Travel: Exploring 250 Ethnic Groups in Nigeria, <[http://www.nigeriatravel.blogspot.com/2010/08/exploring-250-ethnic-groups-in Nigeria.htm](http://www.nigeriatravel.blogspot.com/2010/08/exploring-250-ethnic-groups-in-Nigeria.htm)> accessed on 25th March, 2013.

Victorian age in England and though it may have been quite satisfactorily reflecting the social factors in existence then, they are nowadays artificial and inadequate and in need of a desirable change to effect the prevailing social circumstances. The once simple concept has been so overloaded by a multitude of cases that it has been transmuted into something outside the practical reality of contemporary circumstances.⁶⁶ And in addressing the inadequacies that come with the domicile rules, many of the European countries who are the forerunners(at the vanguard) in the adoption of domicile have either modify their law or adopt habitual residence as a connecting factor in answering questions of personal law.⁶⁷

It is obvious that the idea of domicile needs radical modifications especially in view of the Nigeria situations. As in Omotunde's case (supra) where the court made reference to matrimonial domicile to the effect that a woman acquires the domicile of her husband on valid marriage. Thus, could this be said to be a valid position of the law when event in recent time stands to negate the position of the court in the said case. The reference point is the recent denial of Hon. Justice Ifeoma Jombo-Ofo from been sworn in as Justice of the Court of Appeal in view of her state of origin. By birth, from Anambra State but married to a man from Abia State, as a result some indigene of Abia State were aggrieved that she was not from Abia State notwithstanding the position of the law and the fact that she had served at the Abia State Judiciary as High Court Judge for 14 years

66 Anton A.E, *Private International Law: A Treatise from The Point of Views of Scots Law*, 2nd ed.,(Edinburg,: Unilaw Institute, 1990) 125.

67 Karen S. 'Law Applicable to Persons Pursuant to Draft Private International Law Act' on 14th May, 2013.

and other like precedent appointments in the past.⁶⁸ However, to adhere to indigene-ship to determine domicile may well be detrimental to the interest of a married person. It is in this regard that the Senate resolved and urged all employing agencies that a married woman shall lay claims to her state of origin and that of her husband in relation to federal character regulations.⁶⁹ Thus, law being an instrument of social engineering, any concept of it must accord with prevailing local circumstances in order to effect the desired changes and affect people's life positively with the ultimate aim of attaining social justice.

68 See <http://ambrosehirim.blogspot.com/2012/11/state-of-origin-denies-justice-ifeoma.html> accessed on 4th October, 2013

69 See <http://www.thenigerianvoice.com/nvnews/101883/1/swear-in-justice-jombo-ofo-judicial-council-direct.html> accessed on 4th October, 2013