was not an action but an application for *habeas corpus*, to which special rules and practice apply. A writ of *habeas corpus*, though sometimes issued to a named individual, is more usually issued to the keeper of the prison and the name of the particular keeper is not required to be stated. Though no objection seems to have been taken in the *Eleko* case that the Officer Administering the Government ought to have been cited in his personal name, this does not appear to be a precedent which I should follow in this case, and as it was a *habeas corpus* proceeding is clearly distinguishable from an ordinary action.

I hold therefore that the defendant is sued in the wrong name and I dismiss the action against him, but without prejudice to any claims which the plaintiff may have against the defendant in his own individual name. There will be no order for costs.

Suit dismissed.

ALLIE and OTHERS *v.* ALHADI (OFFICIAL ADMINISTRATOR)

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (Lord Porter, Lord Normand and Lord Cohen): November 27th, 1952
(P.C. App. No. 22 of 1951)

[1] **Civil Procedure—appeals—matters of fact—appellate court will not set aside concurrent findings:** Concurrent findings of fact by two courts will not be set aside by an appeal court (page 264, lines 18–21).

The appellants brought an action against the respondent in the Supreme Court for the revocation of a will.

A dispute arose as to the genuineness of one of a series of wills allegedly left by the same testator. The appellants, who were named as executors in one of the wills, instituted the present proceedings against the Official Administrator, who had undertaken the administration of the estate, on the ground that one of the beneficiaries had suppressed the will as originally drafted and substituted a forged one in its place.

The Supreme Court (Beoku-Betts, Ag.C.J.), after hearing the evidence adduced by the appellants, adjourned the proceedings and directed the record to be forwarded to the Attorney-General to consider whether a *prima facie* case existed for a prosecution for forgery. The Attorney-General decided not to prosecute; and the Supreme Court dismissed the action for revocation of the will.

On appeal, the West African Court of Appeal held that the trial judge had been in no way influenced in reaching his decision by the opinion of the Attorney-General and dismissed the appeal. The proceedings before the West African Court of Appeal are reported in 1950–56 ALR S.L. 72.

On further appeal, the Privy Council, having assumed for the purposes of its decision that it was neither necessary nor proper for the trial judge to have sent the record of the case to the Attorney-General, considered whether it should interfere with the trial judge's findings of fact and whether there was any evidence of his decision having been influenced by the opinion of the Attorney-General.

R.O. Wilberforce (of the English bar) for the appellants;
G.G. Sharp, Q.C., and *Foot* (both of the English bar) for the respondent.

LORD PORTER, delivering the judgment of the Board:

This action was brought by the executors of a will executed in 1939 against the Official Administrator, and it arose in the following way. The testator, who was the owner of a considerable amount of property, amounting to some £60,000, had died in 1948. When he died there were known to be in existence two wills, one being a will made in 1939 and another being a will made in 1946.

There was, then unknown to the parties, so far as their Lordships are able to ascertain, a third will which had been made in 1942, but their Lordships are not concerned with that will. If they were minded to accede to the argument which Mr. Wilberforce has so forcibly placed before them, they might have to send the case back to the Court of Appeal to have ascertained what the rights of the parties were, having regard to the existence of both the will of 1939 and an admittedly genuine will of 1942.

The testator died on January 22nd, 1948, and there being this question of the two known wills a dispute arose as to the genuineness of the second. Apparently in Sierra Leone there is a regulation under which a will may be deposited with the registrar. In fact, in this case, the will of 1946 was so deposited. Their Lordships understand that the 1939 will was also deposited with the registrar, but that has not been clearly established. What has been established is that the will of 1946 and a codicil of 1947 were deposited with the registrar. The codicil is admitted to be a genuine document and therefore their Lordships will say nothing further about it. The only question which arises is with regard to the 1946 will.

The circumstances which happened after the death of the testator were that a gentleman called Wurie, who was probably a friend of both parties and presumably disinterested, was given authority to recover the will and the codicil so deposited, and bring them back to the parties concerned; and he did recover them. Though there is a regulation, their Lordships are not sure whether this is essential or not, probably not, which makes it proper that the registrar should peruse the will before giving it back, in fact nothing of that kind was done in this case; it was given to Mr. Wurie and returned by him to the younger widow of the deceased man.

The deceased man had two wives and—it is not material to be exact about this—the elder wife had had a number of children, but their Lordships have no knowledge of what the family of the younger wife may have been.

Before handing over the will Mr. Wurie, in the presence of one Ibrahim, who was a son of the elder widow, read the document to the younger widow. The latter kept the document and went into mourning for 40 days. During that period she and the elder widow lived together in the same house and in the same room, so that there was ample opportunity of communication between them, but the younger widow did not communicate the contents of the will or have the will read to the elder or to any of the family.

At a later stage it was discovered that the will, when produced, was very favourable to the younger widow; it cut out, as far as their Lordships are able to understand, the elder widow altogether, and finally left the residue to the younger widow.

In those circumstances, perhaps not unnaturally, the elder widow contested the will. The son, Ibrahim, who was called as a witness, also alleged that he had been, or ought to have been, left a larger portion of the property. Though the claim was not originally very artistically framed, eventually it was claimed that somebody had suppressed the 1946 will as originally drafted, and had substituted for it another will.

If their Lordships were minded to send the case back, they are not sure what the result of that would be, because it might be possible to say that the 1942 will was still in existence; at any rate it does not get rid of the difficulty to say that the 1946 will has been suppressed and that therefore the 1939 will comes into force, because there was the intermediary will in 1942 which, even if the 1946 will was suppressed, might quite well supersede the 1939 will. However that may be, it was alleged that somebody had substituted a will

which was not the will of the testator for the will which he had executed.

The parties who were called to deal with this matter were, first of all, the two witnesses to the 1946 will and, secondly, the two persons to whom the will was read over. Substantially there were the two groups, and there was one witness with regard to handwriting.

Their Lordships do not propose to go through the evidence at length, or indeed to say more about it than that there was ample evidence upon which the judge could find that the will of 1946 was the will which had been made by the testator. It is quite true that there was ample evidence upon which he could have found the other way. It may be, and their Lordships are prepared to assume without deciding, that the evidence in favour of the rejection of the will was supported by a larger body of evidence than the evidence asserting that the will produced was the document originally signed.

However that may be, it is not a matter in which their Lordships could, or ever do, interfere, when the matter has been not only to the court of first instance but also to the Court of Appeal in the Colony itself. It comes under the rule that concurrent findings of fact are not set aside, and indeed the learned judges' decisions in the present case are much less open to attack than were those of the judges in the latest case decided by their Lordships with regard to the Indian Rajah, in which a great deal more could have been said than can be said in this case in derogation of the findings of the Court of Appeal.

It is admitted by Mr. Wilberforce on behalf of the appellants that the concurrent findings of the two courts would finally establish his opponent's case were it not for an unfortunate incident which occurred in the course of the hearing. Their Lordships do not propose to determine anything with regard to the principle under which, in England, it is essential that a prosecution should take place before property can be recovered in a civil action. They will assume for the purposes of their decision that it is in no sense necessary, or even proper, that this case should be first of all sent to the Attorney-General to discover whether a prosecution should take place or not. Though that assumption be made, the question still arises whether the conclusion arrived at by the Attorney-General had any influence on the learned judge's mind in the decision to which he came.

Their Lordships have read, and had read to them, the whole of the careful, learned and accurate judgment of the learned judge dealing with the law in the matter. It is quite true, if any question of onus arose, one might spell out of his judgment a tendency to regard the onus as being on the side of the respondent rather than of the appellant. In their Lordships' view, however, onus does not arise at all in a case of this kind, where the whole matter has been gone into and the court is satisfied on the balance of evidence, even though it may not be that the balance of evidence is to a considerable degree more favourable to the one side rather than to the other.

These being the facts, one goes to the learned judge's judgment to find out whether he formed his own view of the truthfulness of the witnesses or whether he felt himself guided, influenced or affected by the decision of the Attorney-General not to prosecute.

Their Lordships think it is abundantly clear that the learned judge with great care drove from his mind any suggestions that the Attorney-General's determination had influenced him. He quotes correctly the cases bearing upon the point, and therefore in their Lordships' view it cannot be said that he in any way departed from the principles upon which his decision ought to be made.

The Court of Appeal in the same way, seeing that the learned judge had had an opportunity of hearing the witnesses, and that his must be the deciding voice in the matter, accepted the same view, though at the same time they expressed the view that he was wrong in sending the papers to the Public Prosecutor before the case was determined.

In those circustances, having regard to the fact that there are concurrent findings of fact, that there was ample evidence to justify them, and that in their Lordships' view the learned judge was in no way influenced by the decision of the Attorney-General, it only remains for them to say that they will humbly advise Her Majesty that the appeal should be dismissed.

In their Lordships' opinion, the respondent is entitled to his costs.

Appeal dismissed.