African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

ISSUES AND CHALLENGES IN THE GRANT OF PROBATE IN NIGERIA

S. T. James

Nigerian Law School Lagos Campus, Ozumba Mbadiwe Street, Victoria Island, Lagos, Nigeria.

Email: james@lawschoollagos.org

Cite this article:

S. T. James (2024), Issues and Challenges in the Grant of Probate in Nigeria. African Journal of Law, Political Research and Administration 7(3), 36-53. DOI: 10.52589/AJLPRA-Y38XQSN2

Manuscript History

Received: 12 Jul 2024

Accepted: 13 Sep 2024

Published: 20 Sep 2024

Copyright © 2024 The Author(s). This is an Open Access article distributed under the terms of Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International (CC BY-NC-ND 4.0), which permits anyone to share, use, reproduce and redistribute in any medium, provided the original author and source are credited.

ABSTRACT: *The reality of death and the inevitability of retirement due to old age makes it is essential to establish a comprehensive estate plan to avoid the potential for disputes and financial uncertainty that can result from poor planning. The main objectives of estate planning entails clarifying one's financial and personal affairs, ensuring the well-being of loved ones, and reducing the burden of estate taxes. The ultimate goal is to create a comprehensive plan that outlines how one's assets will be managed, distributed, and passed down to beneficiaries, both during life and after death. This involves anticipating future challenges, such as illness, disability, or retirement, and taking steps to mitigate their impact. It also means ensuring that property is transferred to the intended individuals, rather than unintended ones, both before and after death. Additionally, estate planning allows for the appointment of guardians for minor children in the event of death or incapacitation, providing peace of mind for families. By doing so, individuals can achieve a range of benefits, including greater control over their legacy, financial security and emotional peace. Everyone desires to exit this world peacefully. It is also everyone's desire that there will be peace after their death especially as regards the devolution of their estate. As death is a certainty, what becomes of the property and assets of the deceased individual after they pass away? Are there complexities in the administration of the estate of the deceased? These will be closely examined in this paper.*

KEYWORDS: Probate Practice, Wills, Testate, Intestate.

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

INTRODUCTION

The probate process is typically arduous and time-consuming. Upon issuance of the probate, the appointed executor or administrator (in cases of letters of administration) acquires the authority to manage the deceased's estate. The comprehensive process involves multiple stages, including the appointment of executors or administrators, verification of the will's authenticity and validity, issuance of probate or letters of administration, and inventorying and valuing the deceased's assets. The final step is the distribution of assets according to priority. Notably, all debts must be settled before distribution to beneficiaries can occur. Any snag or hiccup in this process can cause delays, resulting in frustration for those involved in the estate administration.

OBSTACLES IN THE PROBATE PROCESS

The challenges in the grant of probate in Nigeria are stipulated below.

FRAUD AND FORGERY

During the probate process, fraudulent or counterfeit activities could potentially emerge at various points. In such cases, it is essential that these matters are initially addressed and resolved by a court with the necessary authority and jurisdiction. The probate process commences after the passing of an individual, and in such cases, the deceased's estate is vulnerable to fraudulent activities, as the person is no longer able to articulate their intentions or make further decisions, having already expressed their wishes prior to their demise. The criminal code pays attention to acts of fraud and forgery and provides for them. Fraud and forgery under Nigerian laws may be considered a criminal offense and can be dealt with accordingly. According to Section 465 of the Criminal Code: *"a person who makes a false document or writing knowing it to be false, and with intent that it may in any way be used or acted upon as genuine, whether in the State or elsewhere, to the prejudice of any person, or with intent that any person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in the State or elsewhere, is said to forge the document or writing"*[i]. Section 467 then states that: *"Any person who forges any document, writing, or seal, is guilty of an offense which, unless otherwise stated, is a felony, and he is liable if no other punishment is provided, to imprisonment for three years".* Subsection 2 further states that: *"If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as*

a testamentary instrument, whether the testator is living or dead, or probate or letters of administration, whether with or without a will annexed;

the signature of a witness to any of the documents mentioned in this section to which attestation is by law required;

a seal by a registrar appointed to keep any such register as is hereinbefore mentioned, or the impression of any such seal, or the signature of any such registrar,

the offender is liable to imprisonment for fourteen years".[ii]

Upon reviewing the preceding provisions, it is evident that fraudulent activities in the probate process can manifest in various forms, including the creation of a falsified will, the fabrication of a grant of probate, or the production of fake letters of administration.

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

A will is a sensitive document that must not be tampered with or even faked. The will contains the last wishes of a deceased and so the drafting of a will must be carried out by a mentally fit person who understands the process and reason of writing the will and is under no form of duress or undue influence. The inaugural and arguably most crucial phase in the probate process is establishing the legitimacy and genuineness of a will. Following the testator's passing, the original document is stored at the Probate Registry. If the Will is in the possession of the testator or any other individual, the applicant must dispatch the Will to the Probate Registry as a detached document within a three-month period from the date of knowledge of the testator's demise[iii]. The Probate Registrar is to set a date for the reading of the will and communicate the date to the family members of the deceased. At the time of the Will-reading exercise, the Probate Registrar or authorized officer shall ensure that, in the presence of all invited and attending family members, an envelope containing the deceased person's Last Will and Testament is carefully unsealed and opened, which had been sealed at the time of its original submission[iv]. Following the public disclosure of the Will, the Probate Registrar or a designated official will conduct the reading of the Will. Only after the Will has been publicly read will the appointed executors be authorized to request and obtain the necessary application forms to apply for probate of the Will, unless there is a challenge to the validity of the Will[v]. However, where there is an opposition, it should be stated and the parties are to seek refuge in court. A fraudulent or forged Will is a suitable ground for contesting a Will. A forged Will is a document that is not genuine, however, a fraudulent Will is genuine, but one which does not truly reflect the expressed wishes of the testator.[vi] Examples of a fraudulent Will includes:[vii]

Where the Will was not signed in the presence of two or more witnesses – either in person or online via a vehicle such as 'Zoom' or 'Microsoft Teams.'

Where the testator was tricked into signing a document not knowing or understanding that it was a Will.

Where false representation(s) was/were made to the testator to persuade the testator to make a Will in certain terms.

Where the last Will was deliberately destroyed.

Section 9 of the Wills Act 1837 outlines the requirements for the execution and authentication of wills. *"It states that no will shall be valid unless—*

It is in writing, and signed by the testator, or by some other person in his presence and by his direction; and

It appears that the testator intended by his signature to give effect to the Will; and

the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

Each witness either—

attests and signs the Will; or

acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness)[viii]

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

But no form of attestation shall be necessary".

Furthermore, in the case of *Ize-Iyamu .v. Alonge*,[ix] *"the court held that for a Will to be valid as to form –*

It must be in writing;

It must be signed by the testator or his representative, and dated;

The signature of the testator must be witnessed by at least two witnesses;

The witnesses must attest and subscribe to the Will in the presence of the testator; and

The signature of the testator shall be at the foot or end of the Will".

In a civil litigation, the burden of proof is typically satisfied by demonstrating a likelihood or probability that a particular event or fact occurred. In contrast, criminal proceedings demand a higher standard of proof, requiring that the evidence prove an allegation beyond a reasonable doubt. Although this distinction is in place, it is crucial to note that a high level of evidence is still required to establish fraud, as it is a serious offense that carries criminal consequences. The evidential burden is high because claimants usually need to consult a handwriting expert for an expert opinion on whether the signature on the will is genuine or if it has been copied. A handwriting expert will need to look at around 15 examples of previous signatures of the testator to compare them with the signature on the will and decide whether the signature is genuine[x]. In the majority of situations, even the testimony of a handwriting expert will not be sufficient to shed light on the matter. To gain a more comprehensive understanding of the individual, it is essential to reconnect with those who were intimately connected with the deceased. As a result of the high burden of proof associated with fraud and forgery, some legal practitioners take a different approach when attempting to invalidate a forged or fraudulent Will. The suspicious circumstances that give rise to Will'sfraud claims can also lead to other claims that are easier to prove.[xi]

For example, a claim for lack of knowledge and approval can be made if there is evidence that the testator did not know or approve of the will, which would likely be the case if the Will has been made fraudulently. A claim of lack of testamentary capacity can be made if the testator did not meet the requirements for capacity to make a valid Will, which may be the case if someone has been able to take advantage of them. If one of these other grounds for a dispute succeeds, the Will shall be declared invalidand the claim will have the same result as a successful fraud case, but with a lower burden of proof. If either will fraud or forgery is successfully proven, the fraudulent Will is revoked for invalidity, the estate will be divided according to the most recent previous valid Will. . On the other hand, if there is no previous will, the estate will be divided according to the intestacy rules.

The probate process could be stalled or completely altered where forgery or fraud is present. Parties involved suffer in the sense that they incur more costs during the forgery or fraud trial, the trial would consume time as the judge must be presented with adequate evidence, and where the fraud or forgery is proven the Will could be revoked therefore setting the probate process miles back.

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

DETERMINATION OF NEXT OF KIN AND BENEFICIARIES

Before we dive into the determination of next of kin and beneficiaries for the estate of a deceasedwe must understand what the two terms mean.

Who is the person responsible for making decisions on behalf of a deceased person (Next of Kin)?

The next of kin is usually the closest living relative of a person. *"The Black's Law Dictionary defines the words 'next of kin' as the person or persons most closely related to a descendant by blood or affinity"*.[xii] The next of kin is usually the first point of contact in cases of emergencies or eventualities. A person designated as next of kin holds the authority to make decisions when the person who appointed them is unavailable or incapacitated. In the case of *Joseph v Fajemilehim O. I &anor*[xiii] *"it was stated that a next of kin isthe person declared to be the nearest kindred to the declarant"*.

Who is a beneficiary?

The Black's Law Dictionary describes a beneficiary as one designated to receive something as a result of a legal arrangement or instrument.[xiv] The court in the case of *Edem v. Etubom*[xv] described a beneficiary in the following manner:

"*The essence of spending precious time to write a Will is to indicate in very clear terms those who should benefit from the will. For a person to qualify as a beneficiary in a will or codicil, his name must be spelled out."*

In its most fundamental sense, a beneficiary is designated to receive the advantages or rewards of a particular action, agreement, or legal instrument, as authorized by the original creator or a court of jurisdiction. This individual is poised to inherit assets from an estate upon the passing of another person, such as financial assets, tangible possessions, real estate, securities, or equity shares.

The determination of beneficiaries of estate administration has proved challenging in the probate process. In Nigeria, the laws of succession and inheritance are codified, but the specifics of estate administration differ from state to state, reflecting the unique character of each jurisdiction's legal framework. Where a person dies testate, he leaves a will behind which is expected to be lawfully executed by the Wills law, and in most cases, he names specific persons to be beneficiaries of his estate. So the question of determination of beneficiaries is usually not a problem unless a person is challenging the testamentary capacity of the testator. In essence, a Will is a testamentary instrument that is ambulatory in nature. As soon as the testator passes away, the Will becomes effective and enforceable, thereby governing the distribution of the testator's assets. Notably, the property of the testator can only be transferred or allocated according to the specific provisions outlined in the Will, rather than being determined by whether or not an individual is designated as a beneficiary or next of kin by the testator[xvi]. The appointment of a 'next of kin' will not operate as a substitute for making a Will, this is because where a man dies testate, the position of next of kin becomes irrelevant as the testator must have given instructions on who the executors and beneficiaries are under the Will.[xvii] For a next of kin to benefit under a Will, there must be an express provision by the testator to that effect. In *Onukogu V Nwokolo &Anor*,[xviii] the Court

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration

ISSN: 2689-5102

Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

affirmed that a beneficiary of a deceased estate need not be a next of kin but a legitimate inheritor of the deceased estate.

The major issue however lies in determining the beneficiaries of an estate where a person dies intestate. Now it is important to note that there is a serious misconception about the position of a next of kin where the person who names him or her as such passes away. A lot of persons are of the view that such next of kin automatically inherits all the assets of the deceased, but this is a false view under the Nigerian legal system. The next of kin is only considered when a person dies intestate and leaves behind no surviving spouse or children. In *Mohammed v Tijani*[xix] the court stated that a person's next of kin often takes precedence over others in inheritance matters, especially where a person dies intestate. Inheritance rights use the next of kin relationship for anyone who dies without a Will, leaving no spouse or children. Surviving individuals may also have responsibilities, during and after their relative's life. For example, the next of kin may need to make medical decisions if the person becomes incapacitated or takes responsibility for his/her funeral arrangements and financial affairs after their relative dies.

The question as to who to inherit is determined by law, that is, underCustomary Law, Islamic law, English Law, or the Administration of Estates law (or equivalent legislation). The law to be applied in distributing the estate of a deceased shall be determined by the incidence**(?)** of the marriage of the deceased. It follows therefore that where a deceased contracted marriage under the Marriage Act, customary law is excluded, and succession to the spouse'swealth will be affected by either the English law or the Administration of EstatesLaw (or equivalent legislation), depending on the jurisdiction.[xx]

In *Williams V Ogudipe*,[xxi] the court PER OGUNBIYI JCA that: "*The concept of succession in this respect is not mythical but legal and provided by law"*

Section 49 (5) of the Administration of Estates Law of Lagos State states that "*Where any person who is subject to customary law contracts a marriage by the provisions of the marriage act and such person dies intestate after the commencement of this law leaving a widow or husband or an issue of such marriage, any property of which the said intestate might have disposed of by will be distributed by the provisions of this law, any customary law to the contrary notwithstanding."* In *Onukogu V Nwokolo & Anor*,[xxii] the Court affirmed that a beneficiary of the deceased estate need not be a next of kin, but a legitimate inheritor of the deceased estate.

Under English Law and Administration of Estates Law of various States, the surviving spouse together with the children of the deceased inherit the estate to the exclusion of all others. The parents of the deceased come next in the judicial hierarchy after the surviving spouse and children, followed by brothers and sisters of full blood, brothers and sisters of half-blood, grandparents, uncles and aunts of full blood, uncles, and aunts of half-blood, this is subject however, to contrary provisions under the Administration of Estate Laws of various States.[xxiii]

In the case of *Salubi v Nwariaku*,[xxiv] the deceased died intestate survived by his wife whom he married under the Marriage Act and left behind substantial property. There were two children born by said wife and two other children born out of wedlock. On the death of the deceased intestate letters of administration were granted to his wife and the first son but she declined to be an administrator. The eldest surviving child of the deceased, unhappy with the

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

management of the estate by the first son, commenced legal proceedings to set aside the letters of administration. She also sought an order that the estate of the deceased be distributed to all the beneficiaries by the Administration of Estates Law which governs the estate of a deceased person who married under the Marriage Act. Section 49(5) of the Administration of Estate Law, states that any property, which the deceased, who died intestate, might have disposed of by a will shall be distributed by the provisions of that Law notwithstanding any customary law to the contrary. The case of the first son was that the deceased being an Urhobo Chief and having died intestate, his property should be distributed by Urhobo customary law which entitled the eldest son to inherit the entire estate and distribute at his discretion. The trial court set aside the letters of administration and held that the estate should be administered bySection 36(1) of the Marriage Act because the deceased had married under the Act and was no longer a person to whom customary law was applicable. Therefore, the applicable law was English Law and not Customary Law. The trial court therefore held that the widow was entitled to one-third of the estate and the remaining two-thirds to children. Both parties were unhappy with the judgment and on appeal, the Court of Appeal held that the applicable law to the succession of the deceased's estate was English Law as stated in Section 36(1) of the Marriage Act. The Court of Appeal also acknowledged the right of the widow to one-third of the total value of the estate. The first son further appealed to the Supreme Court which held that the applicable law to the succession and distribution of the estate was the Administration of Estates Law and not the Marriage Act. However, both laws have similar provisions and apply the English Law on the subject.

Obusez v Obusez[xxv] further affirmed the earlier decision of the Supreme Court in Salubi v Nwariaku. In this case the deceased was married under the Marriage Act and died intestate leaving a wife and five children of the marriage. A conflict arose over the succession to his estate and the wife instituted legal proceedings against the deceased's brothers who contended that the succession was subject to the Customary Law of Agbor in Delta State. She claimed a declaration that the widow and her five children were the only persons entitled to the estate of the deceased and therefore entitled to the grant of letters of administration. The trial court held that under law of succession in Nigeria, where a person contracts a marriage under the Marriage Act, the lawful wife and her children were the only persons entitled to the estate of the deceased and that as beneficiaries of the estate they were entitled to the grant of letters of administration. In effect, the applicable law was English law and not Customary Law. The brothers of the deceased then appealed to the Court of Appeal which affirmed the judgment of trial court. On further appeal the Supreme Court followed the decision in Salubi v Nwariaku and upheld the decision of the lower court. The court held that

By virtue of Section 49(5) of the Administration of Estates Law of Lagos State, where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Act and such person dies intestate leaving a widow or husband or any issue of the marriage, any property which the intestate might have disposed by will shall be distributed in accordance with the provisions of the Law , notwithstanding any customary law to the contrary.

The clear intention of the law maker is that customary law should be excluded in relation to the estates of the person to whom the provisions of this law apply.

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

Onnoghen JSC said,

"*It is not disputed that the deceased and the 1st respondent were married under the Marriage Act in 1972 but that prior to that marriage both parties were subject to customary law with the deceased being particularly subject to Agbor Customary Law. It follows, therefore, that by virtue of the said marriage and upon the death of the deceased intestate the provisions of the Administration of Estate Law of Lagos State becomes applicable particularly as the deceased and 1st respondent together with the children of the marriage resided in Lagos State at the time of the death of the deceased intestate."*

Tabai JSC quoted the Court of Appeal with approval when he said:

On page 165 of the record, the court below restated the purport of section 42(8) of the Administration of Estate Law when it said: I am satisfied that the clear intention of the lawmaker as manifested in the passage underlined above (quoting section 49(5) of the Administration of Estate Law, Lagos State) is that customary law should be excluded about the estate of persons who married under the Marriage Act." The court after restating a portion of the judgment of the trial court, and Salubi v. Nwariaju said: It would have sufficed to appreciate that the Bendel State Legislature meant to and did legislate to exclude the applicability of customary law on the intestacy of a person who married under the Marriage Act.

I agreewith the reasoning of the court below on the non-applicability of the Agbor native law and custom in the administration of the estate of the deceased.

Niki Tobi, JSC said.

I should now consider whether section 36(a) (referring to the Marriage Act) anticipates the appellants. It does not. The subsection provides for the application of English law and that was the decision in Cole v. Cole (1898) I NLR 15 which the Court of Appeal correctly referred to. The second part is whether customary law applies in the distribution of the estate of Obusez. The answer is, no. By contracting the marriage under the Marriage Act, the deceased intended the succession to his estate under English law and not under customary law. I realize that two of the appellants' claims of succession to the estate were based on the fact that the deceased was buried in the personal residence of the 1st appellant and the life policy of the deceased where he made his first and second children and the 1st appellant as beneficiaries.

1 know of no law, which says that succession to property is determined by the place of burial of the deceased intestate or by a life policy made interviews. The fact that the deceased did not make 1st respondent a beneficiary of his life policy does not mean that she cannot benefit under section 36(1) of the Act. Conversely, the fact that the appellant is a benefiary of the life policy does not ipso facto make him a beneficiary of the estate of his twin brother.

The court appears to rely hearty in its decision, on Section 36 of the old Marriage Act, which made English Law of intestate succession applicable to the estate of spouses married under the Marriage Act. It is humbly submitted that Section 36 of the Marriage Act to the extent that it deals with succession invalid. Succession is not provided for both under the exclusive legislative list or concurrent legislative list in the Constitution of the Federal Republic of Nigeria 1979-1999, it, therefore, must be treated as a matter under the residuary list which

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

can be legislated upon only by the House of Assembly of the State. To the extent that it is legislated upon by the National Assembly which has no such constitutional competence, the Section should be null and void. If that is taken, the applicable law is the Administration of Estates Law, Lagos State.

However, the court would still have come to the same conclusion as it did even if it had limited itself to the primary issue submitted for determination and applied the appropriate law. The appellants had no interest in the estate of the deceased other than the life policy given *intervivos* Underthe Administration of Estate Law, where the deceased who was married under the Act dies intestate and is survived by a spouse and children, his estate shall be distributed amongst the surviving spouse and the children to the exclusion of any other person.

It is also settled under the law that the surviving children including the illegitimate children (provided the deceased acknowledged the paternity of the children) take the estate in equal shares, irrespective of their gender.[xxvi] This position is predicated on the provisions of Section 42(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which prohibits discrimination in its entirety based on the circumstance of one's birth, gender, or religion.[xxvii]

ADEQUACY OR OTHERWISE OF NIGERIA'S WILL AND PROBATE LEGAL FRAMEWORK

Probate and Estate Administration in Nigeria is a standard legal process in all States before the representative(s) of an estate can administer the assets of a deceased relative. However, each State in Nigeria has different laws and processes on probate and wills.

The Wills Act 1837 and the Will (Amendment) Act 1852 are enacted in the North and Eastern parts of Nigeria. Some states in the South-West and some in the South-South in Nigeria have amended these statutes to fit their local circumstances and peculiarities. Also, specific States in the North decided not to adopt the English Wills Act such as Kwara State and Plateau State among others.[xxviii] The members of the Armed Forces are captured under Armed Forces Decree No. 105 of 1993 which regulates the Nigerian military personnel's willby the Nigeria Armed Forces Decree No. 105 of 1993. A Will can also be made under the Islamic law and Customary law of different ethnic groups in Nigeria.[xxix] In some parts of Nigeria, a Will cannot be made to oust customary, native law and custom on inheritance because of the duality of the Wills system in Nigeria.[xxx] This implies that two outcomes may occur depending on the part of Nigeria where the testator is from. In the Northern part of Nigeria, the major law that governs the making and validity of a Will is the Wills Act of 1837 which is a statute of general application. In some other parts of Nigeria, for example, the South West, it is the Wills Law of their respective States that is applicable. In the case of *Adesubokun v. Yunusa*[xxxi] the validity of the testator's Will was challenged on the ground that as a Moslem, who was subject to Moslem law, the testator was not capable of making a Will by the Wills Act, contrary to Moslem law and doctrine. The Supreme Court held that a Moslem may by his Will made by the Wills Act, of 1837 dispose of his properties as he wishes. That the Moslem law which provides for equal distribution of a testator's properties in the face of the existence of a valid Will is in breach of Section 3 of the Wills Act 1837 by which a testator can dispose of his properties as he wishes.

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

Furthermore, in the case of *Apatira and Anor v. Akanke and Anor*,[xxxii] it was contended that the validity of a Will in English form by a Nigerian Moslem should be governed by a Moslem law. This contention was rejected by the court which held that the fact that the deceased was a Nigerian and a Muslim cannot make any difference to the requirements of the Wills Act. The mode of sharing the testator's property who is a Moslem is equal distribution amongst all male children; one eight (1/8) to the wife or wives and not more than one-third (1/3) to outsiders.

However, in some States especially in the South West, Nigeria which have enacted their legal frameworks regulating testamentary matters, there is a provision prohibiting a testator from disposing of his properties in a Will in a manner that is contrary to native law and custom on inheritance. Section 1(1) of the Wills Law of Lagos State is instructive in this regard. In the case of *Idehen v. Idehen*[xxxiii] The testator, a Bini man, bequeathed his ancestral home, known as Igiogbe, to his eldest son, a medical professional, through his will. However, when the patriarch passed away, his eldest son, Dr. Idehen, had already met his demise, predeceasing his father. The remaining eldest son claimed that since the original beneficiary of the Igiogbe, who was the testator's eldest son, had died before him, he was entitled to inherit the property as the surviving eldest son. This argument was supported by the court's ruling.

The general purpose of the laws guiding wills and probate in Nigeria is to ensure that the properties of the deceased seamlessly go to his preferred beneficiaries or are properly administered to persons deemed to be entitled by law. However, the enforcement and realization of the laws guiding Wills and probate have proven to be challenging in the probate process. And so the question as to whether the laws are adequate therefore arises.

One of the major inadequacies of the Law lies in the issue of Jurisdiction. As stated earlier, different States have different laws guiding the wills and probate process and that leaves room for uncertainties on the issue of jurisdiction especially where the deceased has real estate in other States. In the case of *Sarki v Sarki & Ors*[xxxiv] The plaintiffs' opponents, being the parents of the deceased individual, were pitted against the defendant, who was the wife of the deceased person. The defendant, along with her late spouse, had been residing in Kano State until his untimely demise. The deceased was intestate, childless, and left inter alia immovable properties in some States within Nigeria – Bauchi State, Gombe State, Plateau State, Kano State, Jigawa State, and the Federal Capital Territory, Abuja. The deceased's family purported to distribute his property by Awak custom (the deceased's law) with an appreciable proportion to the defendant/appellant. The defendant/appellant was not pleased with the distribution and did not cooperate with the deceased's family, who tried to gain access to the deceased's properties. The claimants/respondents brought an action against the defendant/appellant before the Gombe State High Court. The claimants/respondents claimed inter alia that under Awak custom, which was the personal law of the deceased person, they are legitimate heirs of his property, who died childless and intestate; a declaration that the distribution made on 22 August 2015 by the deceased's family by Awak custom, giving an appreciable sum of the property to the defendant/appellant is fair and just; an order compelling the defendant/appellant to produce and hand over all the original title documents of the landed properties and boxer**(?)** bus distributed by the deceased family on 22 August 2015; and to bear the cost of the action. In response, the defendant/appellant made a statement of defense and counter-claim to the effect that she and the deceased are joint owners of all assets and properties acquired during their marriage; a declaration that the estate of the deceased is subject to rules of inheritance as envisaged by marriage under the Marriage

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53) www.abjournals.org

Act and not native law and custom; a declaration that as a court-appointed Administratrix, she is entitled to administer the estate of the deceased person; an order of injunction restraining the claimants/respondents to any or all of the assets forming part of the estate of the deceased person based on custom and tradition; and costs of the action.

The Gombe State High Court held that the Marriage Act was applicable in distributing the estate of the deceased person and not native law and custom. However, the Court distributed the property evenly between the claimants/respondents and defendant/appellants on the basis that it would be unfair for the claimants/respondents as parents of the deceased not to have access to the deceased's property. The defendant/appellant successfully appealed this ruling **(judgment)** and won on the substantive aspect of the case. The private international law issue was whether the Gombe State High Court had territorial jurisdiction in this case, rather than the Kano State High Court where the defendant/appellant alleged the cause of action arose.The defendant/appellant argued that the cause of action arose exclusively in Kano State because that is where the deceased lived and died, and the defendant/appellant had obtained letters of administration issued by the Kano State High Court. The defendant/appellant lost on this private international law issue.

The Court of Appeal began on the premise that the issue of whether Gombe State or Kano State had jurisdiction was a matter of private international law and not an issue that was governed by a State's civil procedure rules that governdispute within a judicial division. It also held that it is the plaintiff's statement of claim that determines jurisdiction. The Court of Appeal then approved its previous decisions that in inter-state matters of a private international law matter, a State High Court is confined to the location of the cause of action. In this connection, the Court of Appeal rejected the argument of counsel for the defendant/appellant and held that the cause of action arose both in Kano and Gombe State – the latter State being the place where the dispute arose with the deceased's family on the distribution of the deceased's estate. Thus, both the Kano State High Court and Gombe State High Court could assume jurisdiction over the matter. The Court of Appeal further held that other States such as Kano, Bauchi, and Plateau could also assume jurisdiction because letters of administration were granted by the State High Courts of these jurisdictions. In the final analysis, the Court of Appeal held that the claimants/respondents could institute their action in either Gombe, Kano, Bauchi,or Plateau – being the place where the cause of action arose, but procedural economy (which leads to convenience, saving time, saving costs, and obviates the risk of conflicting orders) encouraged the claimants/respondents to concentrate its proceedings in one of these courts – Gombe State High Court in this case. Accordingly, this private international law issue was resolved in favor of the claimants/respondents.

Some individuals believe that it is inefficient and a frivolous use of resources for each state to maintain its own distinct regulations and procedures for probate and estate administration, rather than adopting a more unified approach.

The absence of uniformity of probate and estate administration laws gives room for widespread confusion on certain issues and this could cause a great delay in the probate process and therefore be frustrating for the parties involved. There is a great need to enact a uniform legal framework for all States in Nigeria. This could lead to clearing up a great deal of grey areas and also could ensure uniform growth in the will and private sectors of the country. In summary, a standardized probate and estate administration process would be judicious, streamlined, and productive.

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

BUREAUCRACY

The estate administration does not move as quickly as beneficiaries and interested parties would want it to. The process of handling death seems to be hindered by an excessive amount of administrative red tape. From the moment of passing, a series of complex procedures must be followed in order to finally transfer assets to heirs or designated parties. This multiplicity of steps has led to a significant waste of time and resources. The administration process can be hindered by a multitude of obstacles, including:

Disputes over the decedent's estate distribution

Delays in appointing an administrator

Creditor disputes and claims

Beneficiary disagreements and demands

Complex accounting and financial discrepancies[xxxv]

These processes could take months to be legally settled and these sums up to show bureaucracy that is affecting the probate process and therefore frustrating parties involved.

The intricacies of the estate can necessitate that the personal representative adhere to a meticulous sequence of steps before distributing assets to beneficiaries. Unfortunately, some court delays can occur due to disputes and controversies between the beneficiaries or other stakeholders. Typically, the most effective approach for overcoming these procedural obstacles is through skilled negotiation and accommodation. In contrast, delays in the probate estate administration process can also arise from an administrator's failure to fulfil their responsibilities, prompting the possibility of legal action being taken against them in such cases.

PARAMETERS FOR ISSUING LETTERS OF ADMINISTRATION

The grant of letters of administration is the official permission issued by the probate court to an individual, designated as the administrator or administratrix, to manage the estate of a deceased person who died without a will[xxxvi]. A letter of administration may be issued with specific conditions, which can restrict the scope of the property that can be managed by the administrator, the reasons for which the administrator is acting, or the duration of the administration. The terms of the letter of administration can be tailored to suit the unique circumstances of the case, thereby allowing for flexibility and adaptability in the management of the estate[xxxvii].

LIMITED AS TO PROPERTY

A grant may be restricted to a specific portion of the estate, particularly when there are settled lands involved. In such cases, the court may review the situation and restrict the administrator's authority regarding the settled lands. The administrator would then be required to adhere to the court's instructions and not take any actions that contradict them. This scenario highlights the distinction between a general executor and a limited executor. If the general executor obtains probate first, it is referred to as 'save and except,' implying that

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

the limited executor's powers are superseded in certain respects. However, if the limited executor takes probate before the general executor, it is grant castoreum (**?**)

The grant could also be limited to personality or reality. When a grant is restricted to personality, the administrator's authority is confined to the individual's personal traits and characteristics, unless a relevant law explicitly permits otherwise. In *Ugu .v. Tabi*[xxxviii] it was pointed out that an application for Letters of Administration can be made for a restricted grant or a comprehensive grant, and the restricted grant can be limited to either the real estate or personal estate of the deceased individual. Consequently, it is unlawful for the administrator, as in this case, to interfere with the deceased's real estate when the grant is restricted to only their personal estate. BELGORE, J.S.C. stated

"I therefore hold that a grant of letters of administration in respect of personal estate does not cover the administration of the real property of the intestate. It is too late in the face of the decision in Ademola, Ejiwumi, and Williams v. Probate Registrar (1971) 1 All NLR 155, 162 to resort to classification obtained in English law regarding real property, the situation in this country is not analogous to that. In English law, classification is not limited to real property and personal property, there is another category known as "chattels real", which is difficult to explain in our limited classification but is defined in S. 5 Administration of Estate Law (supra) as follows: 5(1)(i) Chattels real, and land in possession, remainder, or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death".

In *Shobagun v. Sanni*,[xxxix] the respondent, the deceased's brother petitioned and received letters of administration regarding the deceased's personal estate. As the appointed administrator, he subsequently leased out the deceased's properties to renters, purportedly exercising the authority granted to him. The appellant, the widow of the deceased, evicted the tenants of the respondent and put her tenants in the property. The widow was charged court for sundry criminal offenses including breaking, wilful damage to the property, removal of window louvers, and stealing. She was convicted and sentenced to imprisonment with an option of fine. The respondent who was initially involved in the dispute subsequently launched a civil lawsuit against herself. The trial court delivered a verdict against her, which was subsequently upheld by the Court of Appeal. The matter was then appealed to the Supreme Court, where the question of whether the individual had the authority to bring the lawsuit was put to the test. The court ultimately ruled that the individual, who had been granted letters of administration in respect of personal assets, lacked the power to manage the real estate of the deceased person.

2) LIMITED AS TO PURPOSE

This could be either:

grant *pendente lite*

grant *ad litem* or

grant *ad colligenda bona.*

This will now be discussed *seriatim*

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

African Journal of Law, Political Research and Administration
ISSN: 2689-5102
Volume 7, Issue 3, 2024 (pp. 36-53)

www.abjournals.org

Grant *pendente lite*: this is granted by the court granted to enable the estate's administration to proceed while a pending litigation claim is being addressed, and the application for letters of administration is pending full grant. Section 27 Administration of Estate Law of Lagos State states that "*Where any legal proceedings testing the validity of the will of a deceased person, or for obtaining, recalling, or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the rights of distributing the residue of the estate and every such administrator shall be subject to the immediate control of the court and not under its direction"*[xl].

The grant of letters of administration *pendente lite* may be necessary where there are legal proceedings about the validity of a will or where revocation of a grant of legal representation is pending.[xli] Litigation usually prevents the estate from being administered but when the courts grants letters of administration *pendente lite*, administrators are permitted to call in and liquidate estate assets and preserve them until the proceedings have been resolved.[xlii] it is important to note that this grant is only in effect for the period of the litigation and it ceases to have effect when the litigation has ended. Administrator *Pendente Lite* possesses the same authority as any other administrator, but is restricted from allocating the remaining assets of the estate. He is essentially appointed to preserve the estate and he need not have any interest in the estate of the deceased. For his service, the court can fix reasonable money as remuneration. He is under the court's jurisdiction as a result of his appointment. In the case of *Ladejobi v Odutola Holdings*[xliii], The first defendant was designated as Administrator *pendent lite* of the estate of the late Chief T.A. Odutola by an order issued by the Ogun State High Court. The court decreed that all assets of the late Chief T.A. Odutola were immediately transferred to the first defendant upon his appointment, eliminating the need for him to obtain formal authorization. The Court of Appeal further ruled that when disagreements arise among executors or between executors and beneficiaries, posing a risk of asset depletion or dissipation, the court can lawfully grant temporary administration pending the resolution of the dispute and the administrator *pendente* lite does not require additional letters of Administration. Aderemi, JCA (as he then was) had this to say:

"his appointment by the court, to my mind, carries the force of Law. My understanding of the contention of the cross-appellant is that because the administrator pendente lite-Kunle Ladejobi has not formally applied for and obtained letter of administration, he lacked the legal capacity to perform the functions appurtenant to his office with relation to the estate of the deceased. With due respect, I cannot conceive any other force of law which is higher than that given by the court in the course of the appointment. That order of appointment made by the Chief Judge of Ogun State on the 1st of August 1997 was made pursuant to the exercise of his judicial powers under the law and until it is revoked, judicial notice of its sanctity must always be taken by any court of law. To demand that the administrator should still obtain letters of administration after the order of 11/8/97 is to engage the verification of what is obvious to the court...And whatever the administrator pendente lite (Kunke Ladejobi) does with the estate of the deceased, for as long as the litigation lasts, is done under the cover of the law"

Walter Onnoghen JSC stated "*It must be realised that the appointment of Kunle Ladejobi as Administrator pendente lite is just to last the period the litigation would take. And whatever the Administrator pendente lite (Kunle Ladejobi) does with this estate of the deceased for as long as litigation lasts, is done under the cover of law"*

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

Grant *ad litem:* this is granted to provide authority to a person to represent an estate in litigation. It allows a grantee commence or continue proceedings involving the estate. If granted, the grant lasts for the duration of the legal proceedings. A need for such limited grant may arise where a proceeding is already on foot and there is not enough time to obtain a general grant.[xliv]

Grant *ad Colligenda bona:* this is granted for the protection and preservation of an estate's assets pending delay in obtaining a general grant especially where the person entitled to the general grant is not in a position to obtain grant immediately. Letters of administration *adcolligenda bona* simply allows a person to collect, preserve and protect assets of precarious or perishable nature where there is an unavoidable in the court making a general grant of representation.[xlv] The purpose of this grant is to give authority to a person to take steps to protect the risks of assets of the estate.

LIMITED AS TO TIME:

These letters of administration have been issued with a specific time frame and are conditional upon the following circumstances, which necessitate the granting of such authority:

O(**?**)Letters of Administration *de bonis non:* granted where an executor or administrator dies or goes missing before administering an estate and a replacement is required

O(**?**) Letter of administration *durante* absentia: this is granted where an administrator resides outside the jurisdiction of the estate. It is a special grant made where at the expiration of twelve months from the death of a person, any personal representative of the deceased to whom a grant has been made is residing outside the country. The application for this grant can be made by a creditor or any other person interested in the estate of the deceased.

O(**?**) Letters of administration *durante* dementia: this is granted where an administrator cannot carry out the administration of the estate as a result of mental disorderliness.

Some other limited grants include:

Administration pending the grant of letters administration: Between death and grant of administration, the Chief Judge is statutorily empowered to administer the estate. He can appoint an officer of the court to take possession of the properties of the deceased person pending when they can be dealt with according to law. This is merely granted for the preservation of the estate to avoid unauthorized intermeddling with the estate.

Administration by Administration-General- Under the Administration-General Law, where any estate of a deceased is:

Unrepresented. An estate will be said to be unrepresented when:

A person dies intestate and hisnext-of-kin is unknown or is absent from Nigeria without having an attorney; or

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

A person dies testate but administrator who is to be appointed in instances of a will annexed or *De Bonis non* is unknown or refuses or neglects for more than one month after death or is absent from Nigeria without having an attorney; or

Executors or administrators absent from Nigeria without having an attorney therein; or

The testator appoints Administrator-General as sole executor or

The estate is open to danger of being misappropriated or wasted or deteriorated; or

The agent in charge of the assets of a person not residing in Nigeria or a company not incorporated in Nigeria dies or winds up without leaving a responsible person in charge of the asset.[xlvi]

Administration by attorney- Where a person who is entitled to the grant resides outside the country appoints an attorney, the grant can be made to the attorney for his use and benefit.[xlvii]

Grant *Durante Minore aetate* - Grant made to another person where the person so entitled is a minor. Upon the attainment of a majority, the grant to that other person will be revoked and a fresh grant made to the minor now adult.

Incomplete administrations: Grants made before the completion of the administration of the estate. This could arise in grant *de bonis non* administrates or *cessate grant* or in double probate.

Grant *de bonis*non administrates would be issued when a prior grant has been made and either the original beneficiaries have passed away, or there is a discontinuity in the line of succession, before the completion of the administrative process.

A cessate grant would be made where a limited grant as to time is made which has expired before the completion of administration.

The minor on attaining majority can apply for probate or administration depending on the circumstances of the case. Upon the recovery of the person mentally incapacitated, grant could be made to him.

CONCLUSION AND RECOMMENDATION

Probate is a complex legal process that can present several challenges. Executors must navigate locating and valuing assets, settling debts and taxes, managing beneficiary expectations, and addressing disputes and contested wills. Additionally, probate involves navigating complex estate laws, ensuring proper documentation, and addressing claims against the estate. Finally, probate can be emotionally challenging, requiring executors to balance grieving while managing the estate, balancing family dynamics, and coping with stress and decision-making. By understanding these challenges and seeking professional help where necessary, executors can help ensure a smooth probate process.

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

[i] Nigerian Criminal Code 1916
[ii] Ibid
[iii]Order 62, Rule 14 Lagos State High Court Civil Procedure Rules 2019.
[iv] Nkechi Ugwu, 'Probate Registry and Administration of Estates in Nigeria' (2021) 9 NJI <https://nji.gov.ng/wp-content/uploads/2021/12/Probate-Registry-and-Administration-of-Estates-in-Nigeria-by-Nkechi-E.-Ngwu-Esq.pdf> accessed 2 July 2023
[v] Ibid
[vi]Dunham McCarthy, 'Contesting a Will you Believe to be Fraudulent or Forged' (DM-legal 26 May 2021) < https://dm-legal.co.uk/2021/05/26/contesting-a-will-you-believe-to-be-fraudulent-or-a-forgery/> accessed 3 July 2023.
[vii] Ibid
[viii]Wills Act 1837
[ix](2007) All FWLR (Pt. 371) 1570
[x]Willclaim Solicitors, 'Forged Wills and Wills Fraud' (*Willclaim* 23 July 2018) < https://www.willclaim.com/forged-wills-will-fraud/> accessed 3 July 2023
[xi] Ibid
[xii]Black's Law Dictionary (9th edn 2009)
[xiii][2012] LPELR 9847 (CA)
[xiv]Black's Law Dictionary (9th edn 2009)
[xv](2016) LPELR-41252 (CA)
[xvi]Adesola Olaweranju, 'Can a Next of Kin Automatically Benefit from an Estate Under the Law of succession?' (Mondaq 19 April 2022)www.mondaq.com/nigeria/wills-intestacy-estate-planning/1184408/can-a-next-of-kin-automatically-benefit-from-an-estate-under-the-law-of-succession > accessed 3 July 2023
[xvii] Ibid
[xviii](2021) LPELR-55185 (CA)
[xix][2021] LPELR 54215 (CA)
[xx]SilverNwokoro, 'Next of Kin: Implication on Beneficiaries of Estate in Relation to Laws of Succession' (The Guardian 28 December 2021) < https://guardian.ng/features/next-of-kin-implication-on-beneficiaries-of-estates-in-relation-to-laws-of-succession/> accessed 4 July 2023
[xxi](2006)11 NWLR (PT. 990)157
[xxii](2021) LPELR-55185 (CA)
[xxiii]Kekereogun&Ors v. Oshodi (1971) LPELR-1686 (SC)
[xxiv](2003) JELR 44851 (SC
[xxv](2007) 10 NWLR (Pt. 1043) 430
[xxvi]Adesola Olaweranju, 'Can a Next of Kin Automatically Benefit from an Estate Under the Law of succession?' (Mondaq 19 April 2022)www.mondaq.com/nigeria/wills-intestacy-estate-planning/1184408/can-a-next-of-kin-automatically-benefit-from-an-estate-under-the-law-of-succession > accessed 4 July 2023
[xxvii] CFRN 1999 as amended
[xxviii]Itua, P.O. 2012. Legitimacy, Legitimation and Succession in Nigeria: An appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on the rights of Inheritance, Journal of Law and Conflict Resolution, 4(3): 31 – 44
[xxix]Olusola Olujobi' 'Analysis of Legal and Ethical Regulation of Testamentary Matters in Nigeria: Has it Halted Inheritance Disputes?' (2018) JARLE 6 36)
[xxx] Ibid

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2

[xxxi](1971) LCN/1163(SC)
[xxxii] (1944) 17 NLR 149
[xxxiii](1991)6 NWLR (Pt. 198) 382
[xxxiv](2021) LPELR – 52659 (CA)
[xxxv] Scott Schomer, 'What can you do with Bureaucracy Holdup' (Schomer Law Group, 14 December 2015) < https://www.schomerlawgroup.com/article/la-probate-law-bureaucracy-hold/ >accessed 5 July 2023
[xxxvi]Chaman law firm team, 'How to Obtain a Letter of administration in Nigeria' (Chaman Law Firm law, 27 June 2022) <chamanlawfirm.com> accessed on 5 July 2023.
[xxxvii] Chaman Law Firm Team, 'Overview of grant of Probate and Letters of Administration in Nigeria' (Chaman 19 July 2021) < https://www.chamanlawfirm.com/overview-of-grant-of-probate-and-letters-of-administration-in-nigeria > accessed 5 July 2023

[xxxviii](1997) (PT 513) 368
[xxxix](1974) 9 NSCC 534
[xl]Administration of Estate Law of Lagos State 2015
[xli]Hartwell Legal, 'Limited and Unusual Grants of Representation' (HartwellLegal 23 June 2021) < https://www.hartwell-legal.com.au/types-of-letters-of-administration > accessed 5 July 2023
[xlii] Ibid
[xliii] [2006] 12 NWLR (Pt. 994) 321
[xliv] Ibid
[xlv] Ibid
[xlvi] Section 2 Administrator-General Law Lagos
[xlvii] Order 62 rule 15 Lagos State Civil Procedure High Court Rules

Article DOI: 10.52589/AJLPRA-Y38XQSN2
DOI URL: https://doi.org/10.52589/AJLPRA-Y38XQSN2