

ADMINISTRATION OF ESTATES AND PROBATES: A CRITICAL ASSESSMENT

Nwoko Adione Mark Anthony
Faculty of Law, University Of Lagos
Vanjaycraves4Christ@yahoo.com

Abstract

Human affairs are never predicable, at least in relation to the payment of the compulsory debt that we owe our maker, to leave this world one day, through death. It is an inevitable appointment that everyone must keep, but the issue is always the time of that appointment, which is known to God Himself alone. Because death could come unexpectedly, the law has made provisions for the mode of distribution of the estate of a person who departs unexpectedly without making adequate provisions for the sharing of his or her assets amongst the survivors. The rancour's that normally attend this matter have made it imperative to consider it as a topic for discussion. Ideally, the rational thing is for everyone to make plans for sharing of his assets in a Will, wherein the mode of distribution of the estate of the deceased is well stated to avoid unnecessary disputes. Even at that, experience has shown that notwithstanding the best of intentions by a testator, people still find reasons to war amongst themselves, so long as money is involved. So, the question is what can be done to prevent the kind of disputes that attend the distribution of the estate of a deceased person? This paper will critically assess the issues and challenges that abound therein as to the administration of estates and probates.

Keywords: Administration of estate, Probate registry, laws, Re-Sealing of Grant of Probate.

Introduction

Probate and Estate Administration in Nigeria is a standard legal process in all states before representative(s) of an estate can administer the assets of a deceased relative. However, each state in Nigeria has different law and process on probate and estate administration. Meanwhile, in Nigeria, almost all the laws applicable to each asset have general and common application. The area of law known as "estate administration" is primarily concerned with legal rights and responsibilities that arise after death. The property of the deceased both real and personal pass to the administrators upon appointment by the court to the extent as it passes to the executors, but in the interval between the death of the deceased and the appointment of the administrators, both real and personal estates of the deceased vests in the court until the administration is granted. The court of Appeal held that where a person dies intestate, his real and personal estate, until administration is granted in respect there of shall vest in the Court who shall have and exercise such powers in relation to the realization, preservation or prevention of waste, of the estate.¹

Nwoko Adione Mark Anthony; Faculty of Law, University of Lagos, Akoka, Lagos State. Email address: Vanjaycraves4Christ@yahoo.com. Phone no: +2348065008991

The management and administration of a deceased's property is regulated by the Administration of Estates Law of various States in Nigeria and the High Court (Civil Procedure) Rules of each State of the Federation.² The Administration of Estates Law and the Rules of Procedure on Probate are made with the intent to forestall the properties left behind by deceased persons from falling into the hands of unscrupulous persons and particularly those the deceased would not ordinarily wish to inherit his or her properties. The essence of administration of Estates and Probate is to ensure the passing of the property of a deceased to the beneficiaries and the proper administration of the remaining property collated as an Estate.

Probate Administration can be broadly defined as the procedure for the granting and revoking of the Instrument of grant of Probate or Letters of Administration in respect of the Estate of a deceased who died testate or intestate. The grant of Probate is the authority that validates the powers and functions of an Executor to the Estate of a deceased, without prejudice to the fact that the authority of an Executor to act is derived from the Will. The Probate grant gives the Executor the moral and legal authority to continue to act in that capacity. The Executor is not expected to perform the functions of an Executor without the grant of Probate.

An Administrator, however, derives powers to act from the grant of the Letters of Administration and where there is no grant, he cannot act as an Administrator.³ By implication, the grant of the Letters of Administration is the source of an Administrator's authority. Thus, while Probate confirms the authority of an Executor, the Letters of Administration confers authority on an Administrator. Consequently, until Probate or Letters of Administration is granted, Executors or Administrators should not deal with the Estate of a Deceased person. Similarly, the power to administer is limited to the property covered by the grant.⁴

The Probate Registry

The Probate Registry is usually a division of the High Court of most states of the Federation and is subject to the supervision of the High Court of a State. The Probate Registry has the exclusive jurisdiction to issue and revoke grants of probate and Letters of Administration of the real and personal estate of a deceased person to his personal representatives and allot her ancillary matters that relate to the administration of the estate. The Rules of the State High Court describes 'Registry' or 'Probate Registry' as the Probate Registry of the Court. The Probate Registry of a State High Court is saddled with

¹ Nwiyi & Ors v. Okonkwo (2013) LPELR 21216 (CA) Per AGI M, J. C. A. (Pp.46-47 para. F-A)

² In Lagos State, the relevant laws are the Administration of Estates Law, Administration of Estates (Small Estates Payments Exemption) Law and the Lagos State High Court (Civil Procedure) Rules 2019

³ ARIJE V ARIJE (2010) LPELR-4566(CA)

⁴ See AMOBI V NZEGWU (2014) 2 NWLR 510 (SC); EREWA V IDEHEN (1971) ALL NLR 192.

the responsibility of documentation in respect of the estate affairs of a Deceased. It stands at the core of probate business, whether contentious or non-contentious, because all requisite grants are issued by the Registry. The Chief Registrar of the State High Court is the Probate Registrar of the Probate Registry.⁵

The Administration of Estates Law provides that “an application for the grant or revocation of probate or administration may be made through the probate registry of the court”.⁶ Upon the application by interested parties, relevant forms are issued by the Probate Registry to facilitate the process of issuing the appropriate grant in respect of the estate of the Deceased person.

The Probate Registry is responsible for the following:

- a. Lodgement of Wills and Codicils;
- b. Search of Will;
- c. Reading of Will;
- d. Processing and issuance of grants;
- e. Resealing of Probate or Letters of Administration;
- f. Collection and maintenance of indexed Caveats entered in the Registry;
- g. Double Probate;
- h. Confirmation/Verification of Grants;

Aside from the above, the Probate Registry is saddled with several other responsibilities as spelt out in laws and regulations forming Probate practice in Nigeria. However, the duties of the Probate Registry are subject to review by a Judge, when the proper procedure is not followed and upon an application filed at the High Court by an aggrieved person.⁷

Probate And Administration Of Estate

Probate Administration can be broadly defined as the procedure for the granting and revoking of the Instrument of grant of Probate (in case of testate administration) or Letters of Administration (in case of intestate administration) in respect of the Estate of a deceased. The grant of Probate is the authority that validates the powers and functions of an Executor to the Estate of a deceased, without prejudice to the fact that the authority of an Executor to act is derived from the Will. The Probate grant gives the Executor the moral and legal authority to continue to act in that capacity. The Executor is not expected to perform the functions of an Executor without the grant of Probate. An Administrator, however, derives powers to act from the grant of the Letters of Administration and where

⁵ See Order 64 Rule 23 Lagos State High Court (Civil Procedure) Rules 2019

⁶ Section 17 Administration of Estate Law, Lagos State 2004.

⁷ DAN-JUMBO V DAN-JUMBO (1999) LPELR-SC.71/1993

there is no grant, he cannot act as an Administrator. Similarly, the power to administer is limited to the property covered by the grant.

The law which regulates the Administration of estates of the deceased persons is the Administration of Estates Laws of the States of the Federation of Nigeria, while the procedure for the grant of the right to administer the estate of deceased persons is governed by the High Court (Civil Procedure) Rules of each state of the federation.

The Administration of Estate laws in Nigeria provides a legal system of administration of the estate of the deceased persons, which entails the verification of the claims of persons claiming to be entitled to the estate of deceased persons and subsequently grant the authority or power to administer the estate to the persons who have passed through the verification process at the Probate Registry . The powers and authority of personal representatives (Executors / Administrators) to act and administer the estate of a deceased is derived from a will where the deceased died testate.

Probate

Probate is an official verification of a Will; it is an authority to the executors' name in a Will to carry out the instructions contained in the Will.

Probate is Granted only where:

- a. There is a valid Will and
- b. Executors were appointed in a Will.

NOTE: Where there is a Will but no executors were appointed, the Personal Representatives will apply for *Letters of Administration with Will Annexed*.

Modes of Appointing Executors/Personal Representatives

- 1 Expressly by them been named in the Will.
- 2 Implied or by the tenor of the Will.
- 3 By operation of the Law, e.g when the chain of executorship will not be allowed to be broken when all the executors granted probate are dead. The executor to the last Executor who died will be allowed to apply for Letter of Administration to continue with the execution of the Will left by the dead Executors.⁸
- 4 Appointment by the Courts: The court will appoint Executors in the following circumstances:
 - i. If person entitle to grant of probate is a minor or has a mental or physical infirmity, court can appoint another person.

⁸ Section 28 of the Administration of Estate Law of Lagos State, 2004.

- ii. Where there is only one executor and, in the Will, there is a minority interest i.e the deceased made provision for minor/child or old mother who has a life interest in a property, where the sole executor is a trust corporation, then no need for court to appoint additional executor.⁹
- iii. Where infant is the sole executor, court will appoint an administrator with Will attached.
- iv. Where there is a Will but no executors were appointed therein.

The maximum of executors to be appointed is 4 (four) and the minimum of 1 (one). The maximum of 4 (four) and minimum of 2 (two) Administrators can be appointed.

NOTE: A Trust Corporations can be appointed to be a Sole Executor of a Will.¹⁰

Types Of Grant Of Authority To Administer The Estate Of Deceased Persons

There are three (3) categories of grant of authority to administer the estate of deceased persons. These are:

- a) Grant of Probate – This grant is issued where a deceased died testate, leaving a valid Will with the executors appointed in the Will to carry out the wishes of the testator.
- b) Grant of Letters of Administration with Will annexed – This grant is issued where a deceased person died testate but without appointing executors; or the appointed executors are late; or the executors are infants; or the executors have renounced probate.
- c) Grant of Letters of Administration without Will – This is issued where a deceased person died intestate (without a Will) and so did not appoint executors.

Probate is the official proof of the validity of a will and is granted by the court on the production by the executors of the necessary documents. In other words, it is the proving of a Will to the satisfaction of the Court. In *NSEFIK V MUNA* ,¹¹ the Supreme Court held that “...unless set aside, the probate of a will is conclusive upon the parties who has notice of them of all questions of testamentary capacity, the absence of fraud or undue influence, and due execution of the Will. However, probate does not preclude inquiry into the validity of the Wills provisions or their proper construction or legal effect.”

Procedure For Grant Of Probate¹²

Procedure For Non-Contentious Grants (Common Form)

⁹ Section 24 of the Administration of Estate Law of Lagos State, 2004

¹⁰ Section 9 & 24 of the Administration of Estate Law of Lagos State, 2004

¹¹ (2014) 2 NWLR (PT 1390) 151

¹² See generally State High Court (Civil Procedure) Rules. Also see *NSEFIK V MUNA* (2014) 2 NWLR (PT 1390) 151

The procedure for grant of non-contentious Will is in the following order:

a. Discovery, Marking and Reading of the Will: the search for the testator's Will begins usually after the burial ceremonies are over. The original copy of the Will is kept at the probate registry. If the Will is in the possession/custody of the testator or any other person, the applicant is to send the Will to the Probate Registry as a Detached Will within three (3) months of the knowledge of the testator's death.¹³

If the will was deposited at the Probate Registry, it will be read at a designated time or day as may be determined by the Probate Registrar. The Will must be read in the Probate Registry or any place within the High Court which the Probate Registrar approves or determines.

Where the Will cannot be found and there is reasonable ground to believe that a person has knowledge of any testamentary document of the testator, the Court may summarily order that such a person be examined or interrogated in respect of the document in court.

b. Application for Probate: In Lagos State, the application for grant of probate commences by submitting an Application Letter. The contents of the application for grant of probate are as follows:

- Particulars of the testator: name, marital status before death, name of spouse(s) and children
- Date and place of death of the testator
- That the testator was resident within jurisdiction shortly before his death
- That the testator was found to have made a Will
- That the applicants are the executors named in the Will.

The documents necessary to obtain a grant of probate and which will accompany the Application Letter for grant of Probate are:

- Application for grant of Probate.
- A copy of the Will
- The Death certificate of the testator
- Proof of identity of the applicant(s) and proof of identity of the testator such as drivers' license, national I.D., international passport etc.

Affidavit stating the place and date of death of the testator and his place of domicile shortly before his death.

- Declaration of all the personal properties of the testator (Inventory).
- Duly completed inventory specifically listing the properties of the testator (Particulars of Freehold/Leasehold Property Left by the Deceased).
- Affidavit of due execution and affidavit as to handwriting, if applicable.

¹³ Order 62, Rule 14 Lagos State High Court Civil Procedure Rules 2019

- Bank certificate.
- Passport photographs of the executors and attesting Witnesses.
- Affidavit of Attesting Witnesses of Will.
- Oath for Executors.

c. Grant of Probate: when the Probate Registrar is satisfied that the Will was duly executed and that the testator made the Will with knowledge of its contents, the Probate Registrar would grant the probate.

Procedure For Contentious Probates (Solemn Form Probate)

An application for probate is contentious when:

- a) The validity of the Will is contested;
- b) The appointment of an executor is challenged;
- c) Probate is sought to be revoked or denied.

The procedure is as follows:

- Discovery, marking and reading of the Will
- Application for probate by executors
- Caveat - Citation - Appearance to Citation
- Probate action (full trial)
- Grant or refusal of grant depending on the outcome of the probate action in Court (Judgment of Court).

All the other details are basically the same with the procedure in Noncontentious grant (Common Form) except for the few additions.

The documents needed to obtain a grant of probate in solemn form (contentious) and which will accompany the application for grant of probate are:

- Application for grant of probate.
- A copy of the Will
- The Death certificate of the testator
- Proof of identity of the applicant(s) and proof of identity of the testator such as drivers' license, national I.D., international passport etc.
- Affidavit stating the place and date of death of the testator and his place of domicile shortly before his death
- Declaration of all the personal properties of the testator (Inventory)
- Duly completed inventory specifically listing the properties of the testator (Particulars of Freehold/Leasehold Property Left by the Deceased)
- Affidavit of due execution and affidavit as to handwriting, if applicable.
- Bank certificate
- Passport photographs of the executors and attesting Witnesses.

- Affidavit of Attesting Witness of Will
- Oath for Executor
- Caveat Form • Citation/Warning
- Writ of summons/Statement of Claim
- Notice of appearance/Statement of Defence

Intestate Administration

Intestate Administration is one of the major functions of the Probate Registry. It comprises of the procedure involved for Personal Representatives of a Deceased person who died without a Will to apply for a grant of Letters of Administration and to administer the Deceased's Estate.

Letters of Administration is the Legal Instrument issued by a Probate Registrar, which confers legal powers on the Administrators of a Deceased's Estate.¹⁴

Letters of Administration are granted in respect of both real and personal properties of a Deceased. Letters of Administration in respect of only personal estate cannot cover the real estate of a Deceased, hence the Administrators can only deal with properties listed in the inventory.¹⁵

An Administrator can simply be defined as a person to whom Letters of Administration is granted. It should be noted that "...Letters of Administration is not transferable or inheritable. It conveys no title in the estate on the Administrator, although he may deal in the property legally. An Administrator administers for the benefit of the beneficiaries, not for himself (as an Administrator)".¹⁶

Order 61 Rule 1 of the Lagos State High Court (Civil Procedure) Rules 2019 provides that "*Subject to the provisions of Orders 61 to 63 when any person subject to the jurisdiction of the Court dies, all petitions for the grant of Letters of Administration of the Estate of the Deceased person, with or without a will attached, and all applications on matters relating to the Administration of the Deceased Estate shall be made to the Probate Registrar of the Court.*" This provision is similar to the State High Court Civil Procedure Rules of other jurisdictions.¹⁷

As earlier noted, there are two types of Letters of Administration:

a. Letters of Administration (without Will)

¹⁴ OLOWU V OLOWU (1994) LPELR-14545(CA)

¹⁵ UGU V TOBI (1997) LPELR-SC.241/1992

¹⁶ DUKE V ADMIN-GENERAL CROSS RIVERS STATE (2010) 15 NWLR (PT. 1217) P 442

¹⁷ See relevant provisions in High Court of Delta State (Civil Procedure) Rules 2009; High Court of Abuja (Civil Procedure) Rules 2004; High Court of Edo State (Civil Procedure) Rules 2012; High Court of Anambra State (Civil Procedure) Rules 2006.

b. Letters of Administration (with Will annexed)¹⁸

Time for Grant: In Lagos State, no grant of administration with the Will annexed shall issue within fourteen (14) days of the death of the deceased, and no grant of administration, without the Will annexed, shall issue within twenty-one (21) days of such death.¹⁹

Number of Administrators: Probate or Administration shall not be granted to more than four persons in respect of the estate. In the same vein, it may not be granted to less than two persons.²⁰

Procedure For Obtaining Letters Of Administration Without Will At The Probate Registry

The procedure for obtaining Letters of Administration without Will at the Probate Registry may be summarised as follows:

1. An Application for Letters of Administration will be made by the Applicant or by his/her Solicitor to the Probate Registry.
2. The following documents are attached to the Application Form
 - a. Payment Form
 - b. Affidavit of no previous Application/Record
 - c. Deceased's death certificate
 - d. Declaration as to Next of Kin
 - e. Inventory
 - f. Particulars of Freehold/Leasehold Property left by the Deceased
 - g. Bank Certificate (when applicable)
 - h. Oath for Administration (without Will)
 - i. Administration Bond
 - j. Justification of Sureties
 - k. Surety's Guarantee Form
3. The Application is screened and approved formally by the Probate Registry.
4. A Legal Notice of the application and claim is published in a National Newspaper or Government Gazette. A period of 21 days is given for any person objecting to the grant to enter a Caveat at the Probate Registry.

At the expiration of the 21 days and in the absence of lodgement of Caveat, Minutes and Order will be generated and sent to the Probate Judge for approval.

¹⁸ Ibid.

¹⁹ Order 61 Rule 1(2) Lagos State High Court (Civil Procedure) Rules 2019

²⁰ Section 21 Administration of Estates Law of Lagos State.

5. Upon approval of the Probate Judge, Letters of Administration will be issued and duly signed by the Probate Registrar.

Requirements Of Grant Of Letters Of Administration (With Will Annexed).

A grant of Administration with will annexed is made where the Deceased died leaving a Will but one of the following situations occur:

- a. The Will does not appoint an Executor;
- b. The Executor appointed predeceases the testator;
- c. The Executor appointed validly renounces probate;
- d. The Executor appointed has been cited but has not taken out a grant of probate;
- e. Where the Court under its discretionary powers passes over the Executor and appoints another person;
- f. Where the Executor is incompetent to take probate for reason of infancy or mental or physical incapacity;
- g. When the Executor is out of jurisdiction and applies that the grant be made to his Attorney.

The procedure for applying for Letters of Administration with Will annexed is the same with the procedure for obtaining Letters of Administration without Will.

Process Of Challenging Grant Of Letters Of Administration

The procedure for challenging the grant of Letters of Administration is similar with that of challenging the grant of probate discussed earlier. In the case of *OTUN V. OTUN*,²¹ per Hon Justice Nikki Tobi, JSC it was held that, it is the law that upon a notice that Letters of Administration will be issued to a person, a party is free to raise objection by way of caveat. However, the failure to enter a caveat cannot be justification for obtaining Letters of Administration by fraud.²²

Administartion Of Estates (Small Estate Payments Exemption) Law

There is an existing Administration of Estates (Small Estates Payments Exemption) Law of Lagos State 2005,²³ that excludes estates worth N100,000.00 and below from undergoing the publication process and payment of probate fees. These estates are usually assessed at a flat rate of N500.00 for the issuance of the letters of administration or a grant of probate. It has been recommended that the limit of N100,000.00 be increased to a limit of between N1,500,000.00 to N2,000,000.00 to encourage the processing of more applications for letters of administration/grant of probate at the registry in a speedy and cost-effective manner. There should also be a situation where letters of administration or

²¹ (2004) 12 MJSC 53 at 75, paras C-D

²² OTUN V. OTUN (2004) 12 MJSC 53

²³ A Law to provide for the grant of certificates to small estates, exempt such from payment of estate duty and grant of full letters of administration and for connected purposes.

grant of probate will not be required by financial institutions to access deceased persons' funds and shares where it is below a certain threshold. Financial institutions must be empowered to carry out their due diligence in ensuring that the funds and other liquid assets are being released to the proper beneficiaries of the deceased person.

Where a deceased die in Lagos State, leaving personal Estate comprising money not exceeding the value of N100,000.00 (One Hundred Thousand Naira), such estate is regarded as a small estate and regulated by the Administration of Estates (Small Estate Payments Exemption) Law. The law expressly excludes the application of other laws or rules.

An applicant may apply for the Grant of certificate to the small estate of a deceased. Upon receipt of a Statutory declaration and satisfactory evidence of the death of a deceased by the Probate Registry, a certificate may be issued to the applicant as the person who appears to the Probate Registry as being entitled to receive the grant. The procedure for the processing and issuance of Grant of Certificate to small Estates is simplified. It does not require publication and applicants are exempted from paying the actual estate duty. They pay a minimal amount as flat rate. However, it should be noted that the law does not apply to estate which comprises real property.

Re-Sealing Of Grant Of Probate

Probate is the legal authority granted to an executor or executrix of a Will to administer the authentic Will of the testator. Ordinarily, probates or letters of administration are granted in respect of properties within a state jurisdiction. The probate granted by a probate court confers on the executor or executrix the power to administer or deal with only the assets or estates within the jurisdiction of the probate court. It does not cover other asset mentioned in the Will that are outside the territorial Jurisdiction of the court. Therefore, in order to make a probate granted outside Nigeria to be effective and enforceable, it has to be resealed in Nigeria in the State where the property in Nigeria is located. Likewise, in order to make a probate granted in one State in Nigeria to be effective in another State in Nigeria, it must be re-sealed in the probate registry of that other State. In reality however, the testator might have had properties in other places outside the jurisdiction which issued the probate or letters or in many jurisdictions, the executors or administrators are not obliged or required to apply for probate in each of the jurisdictions where the testator's properties are located. Once probate is granted, what the executors need to do is to reseat the grants in those other jurisdictions.

What is Resealing of Grant of Probate?

Resealing of grant or letters of administration is an acknowledgement that a probate granted by the High Court of a particular State is valid in another State where the deceased had properties. Thus, if the executors intend to deal with other properties the

deceased had outside that State, they have to apply for the resealing of the probate in the High Court of the State where the property is situated as provided for in the Probate Resealing Act. Resealing of probate is regulated by the High Court (Civil Procedure) Rules,²⁴ and an application is to be made to the Probate Registrar where the property is located accompanied by Certified True Copies of the first grant of probate, copy of the Will, sworn statement by the applicants and evidence of payment of prescribed fees. After resealing, the registrar shall send the notice of the resealing to the court where the original grant was made, and the registrar of that court is under an obligation to send notice of any amendment or revocation of the grant to the registrar re-sealing the grant.

Procedure for Resealing of Letters of Administration

The procedure for resealing is statutorily provided for in the probate (Resealing) Act,²⁵ which provides thus:

“Where the High Court of a state has, either before or after the commencement of this Act, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters of Administration so granted may, subject to the provisions of this Act, on being produced to, and a copy thereof deposited with, the High Court of any other state, be re-sealed with the seal of that court”²⁶

Who Can Apply for Resealing Grants of Probate?

1. A person entrusted with the administration by the court of the place of domicile.
2. A person beneficially entitled to the estate by the law of the place of domicile.
3. The executor named in the Will.

Effect of Re-Sealing

The effect of the resealing of a probate grant or letters of administration has the force and effect and the same operation in the state where it was re-sealed as if it was granted by the High Court of that State.²⁷ In essence, where probate has been successfully re-sealed, it has the same effect as if a fresh grant of probate or letter of administration has been granted in respect of the estate, and the administrators or executors are entitled to exercise authorities on any properties in the jurisdiction.

Conditions for Resealing

The High Court of a State shall, before resealing a probate or letters of administration under this Act, be satisfied that:

1. That probate duty has been paid in respect of so much, if any, of the estate as is liable to probate duty in that State.

²⁴ Order 62 Rule 25 of Lagos State Civil Procedure Rule 2019.

²⁵ Section 2 of Probate (Re-sealing) Act Cap p31 Laws of the Federation of Nigeria 2004.

²⁶ *Nyianaka v. Anyika* (2021) LPELR-52817 CA.

²⁷ Section 6 of Probate (Re-sealing) Act Cap p31 Laws of the Federation on Nigeria 2004

2. In the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in that State to which the letters of administration relate, and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.²⁸

It is worthy to note that, an application for probate can only be made after seven (7) days in Abuja and fourteen 14 days in Lagos from the date the testator died, however, the application must be made within three (3) months (Lagos) or six (6) months (Abuja) from the death of the deceased as failure to apply for probate within these prescribed periods will result to the executors losing their right to apply except there are special circumstances.²⁹

Therefore, in order to make a probate granted outside Nigeria to be effective or enforceable in

Nigeria it has to be re-sealed in Nigeria in the State where the property is located.

Likewise, in

order to make a probate granted in one state in Nigeria to be effective in another state in Nigeria,

it must be re-sealed in the probate registry of that other state. An application for the resealing of

Probate or Administration with Will attached granted by a court outside Lagos state shall be made

by the person to whom the grant was made or by any person authorized in writing to apply on

grantee's behalf. On any such application:

1. A Tax Clearance Certificate shall be lodged as if the application were one for a grant in the State.
2. The application shall be advertised in such manner as the Judge may direct and shall be supported by an oath sworn by the person making the application.
3. Sureties will be required, where there are special circumstances making it desirable to require sureties.
4. No limited or temporary grant shall be resealed except by leave of the Judge.
5. Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy certified as correct by or under the authority of the Court by which the grant was made.
6. The Registrar shall send notice of the resealing to the Court which made the grant.

²⁸ Section 3 of Probate (Re-sealing) Act Cap p31 Laws of the Federation on Nigeria 2004

²⁹ Order 62 Rule 25 Lagos State High Court and (Civil Procedure Rule) 2019; Order 64 Rule 45 FCT High Court (Civil Procedure) Rule, 2018.

7. Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the Court by which it was resealed.

Multiple Grantees and Applicants for Resealing

Where the original grant is made to two or more persons, all the grantees must join in the application for re-sealing. The re-sealing would not be made where there is no agreement among the personal representatives unless the court makes an order excluding any of the personal representatives. In *Eyibo v Mujaddadi & ors*,³⁰ the issue for determination was whether joint Administrators of the Estates have the capacity to act and enter into a contract without the concurrence of all the representatives. The court held that “where more than one executor or administrator is appointed, the joint office is treated as that of an individual. Administrators of the estate must act jointly and not separately including applying for re-sealing of the original grant of probates. They must act in one accord as one or others cannot act without any other or others, each executor represents the estate for all purposes, subject only to the statutory exceptions.

Re-sealing of Probates and Letters of Administration Granted in Commonwealth Countries

Where a court having jurisdiction in matters of probate in a Commonwealth country has, either before or after the commencement of this Act, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, subject to the provisions of this Act, on being produced to, and a copy thereof deposited with, the High Court of a State, be re-sealed with the seal of that Court.³¹ In Nigeria, Probates(Re-sealing) Act, Cap 161 enables probate granted in any part of the commonwealth to be resealed in the High Court of states. This was also upheld in the case of *Ogbuehi v. Nnaji & Ors*.³²

Challenges Facing Administration Of Estates, Probate.

The process of administration of Estates and Probate by the Probate Registry is fraught with challenges. Some of the challenges are also applicable, even to E-Probate system.

1. Classification of Small Estates as contained in Administration of Estates (Small Estates Payments Exemption) Law: As earlier noted, there is an existing Administration of Estates (Small Estates Payment Exemption) Law in Lagos State that excludes estates worth N100,000.00 and below from undergoing the publication process and payment of 10% probate duty. These estates are usually assessed at a flat rate of N1,650.00 for the issuance of the Grant of Certificates to Small Estates in Lagos State.

³⁰ (2021) LPELR-57110(SC)

³¹ Section 2 of Probate (Re-sealing Act) Cap p13 Laws of the Federation of Nigeria, 2004.

³² (2015) LPELR-25992(CA)

The essence of the law is to reduce the cost associated with obtaining grant for Estate worth N100,000.00 and below. However, the rate of inflation and devaluation of Nigeria's currency has essentially affected the intention of the drafters of the law, which was to enable the family of deceased persons with small Estate to benefit from the low cost of obtaining grants.

2. Cost associated with processing Letters of Administration and Probate Grant: On the demise of a Deceased, the beneficiaries and representatives are immediately faced with the challenge of applying for and obtaining the relevant grant to administer the Estate. Upon applying for the necessary forms, they are inundated with fees to pay through the process. Some of the mandatory fees include application fees, publication fees and other ancillary costs.

However, the dreaded fee by applicants in applying for probate or grant of Letters of Administration is the Probate duty on the estate of the Deceased. This fee is payable before the grant of Letters of Administration or Probate is made. Many applicants who lack finance are unable to proceed further at this stage. The High Court of Lagos State has received many appeals for a kind consideration or review of the assessment of the deceased estate and charge, from applicants. A grant of review of the assessment is solely within the discretion of the Chief Judge of the State.

3. Cumbersome process of Applying for the grant of Probate or Letters of Administration: The High Court Civil Procedure Rules of all States allow persons applying for grant of Probate or Letters of Administration to personally apply for a grant, but many applicants find the process involved in non-contentious application cumbersome. While some applicants commence the process of personal application, only a few are able to conclude the process without professional assistance.

Several Applicants do not know how to fill the relevant Probate forms correctly. In certain instances, Court officials intentionally contribute to making the process cumbersome for applicants and Solicitors with the aim of inducing them to pay for their assistance.

Consequently, applicants prefer to retain the services of a Legal Practitioner to process the relevant grant. As noted with the first challenge, legal fees become an added fee, which some beneficiaries and representatives may be unable to afford.

4. Time involved in the Process of grant of Probate/Letters of Administration: This is also a major challenge faced in most jurisdictions.

- Several Court officials do not adhere to the time frame allotted for certain stages, thereby causing delay in the process. With the E-Probate, Probate Officers are compelled to adhere to time frames and the system will always send a query once the time frame is not adhered to. The Probate Registrar and the Head of Probate can also from their system see queries and summon the Officer involved in the delay.
- There is also sometimes delay in the interview of Sureties. Lagos State is working towards ensuring that Sureties are interviewed promptly.
- Delay in the return of Bank Certificate by Applicants. Sometimes, Applicants take a long time in returning Bank Certificates because they are unable to obtain the balance on the Accounts of the deceased on time.
- The waiting period after the publication of Notice. After the publication of Notice, the Probate Registry will ensure that no action is carried out until after 21 days.
- Where a Caveat is lodged during this period, the Registry must wait for a period of 3 months before taking further steps.
- Where a suit is filed to challenge the issuance of a grant no further action may be taken by the Registry until the conclusion of the action.

5. Corrupt/Incompetent Probate Staff: While these two issues may be treated as different challenges, it is merged as a challenge here as they relate to the Staff of the Probate Registry. However, it is important to note that the effect they have is similar in some instances and different in others.

An Incompetent Staff can easily be defined as a Staff occupying a particular position in an organisation who lacks the technical, education or experience to effectively carry out the duties or responsibilities assigned to his office. Where a sensitive position in a Probate Registry is occupied by an incompetent staff, many applicants will suffer delay in their applications. While in some other instances, their applications will be denied by the Probate Registrar, owing to the failure of the Probate Staff to ensure that due process was followed.

A grant obtained by an applicant, where due procedure was not followed, can easily be set aside on this sole ground.³³

A Corrupt official, on the other hand, is a Staff who for all intent and purpose employs the use of his position to perform immoral or illegal acts for personal gain. A corrupt Probate Staff will ensure that Probate files are kept on his table and will refuse to act on it until he receives gratification in one form or another. Such officials are responsible for several other challenges already enumerated above. Their action causes delay in obtaining grant. They make personal application for grant practically impossible thereby

³³ See DAN-JUMBO V DAN-JUMBO (1999) LPELR-SC.71/1993

discouraging such applicants. They also make the cost of obtaining grant unbearable for applicants.

While it is possible to cure the defect of an Incompetent Staff through trainings, it is very pertinent for a Probate Registry to identify and uproot corrupt officials as the damage caused by the latter can be very enormous to the image of the Probate Registry and consequently, the State Judiciary.

Conclusion

It is worthy of note that the efficiency of the Probate Registry has great potential for immense revenue generation for the Government in the form of probate duty. It also has a great impact on the life of Nigerian citizens, Nigerians in diaspora and foreigners with assets in Nigeria.

It is true that concerned members of the public experience delay with probate applications in some jurisdictions and also face documentary challenges such as loss of official files while others have fallen victims to “touts” in their pursuits at the Probate Registry. This has led to the realisation that it is important to create an improved and efficient Probate Registry which facilitates a timely and effective delivery of Probate services.

The introduction of Information technology has radically changed the affairs of man. Similarly, E-Probate will greatly impact Probate Administration generally. It will solve many of the challenges faced by Probate Registries that have adopted it. This will also bring services rendered by such Registries at par with International best practices.

Permit me to conclude by stating that the creation of an efficient, effective and user-friendly Probate Registry will ultimately promote the development of Succession Law, Practice and Administration of Probate in Nigeria.