

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE PROBATE AND ADMINISTRATION DIVISION I HELD IN ACCRA ON MONDAY 18TH DECEMBER, 2023 BEFORE HER LADYSHIP EUDORA CHRISTINA DADSON, JUSTICE OF THE HIGH COURT

SUIT NO. PA/1232/2022

IN THE MATTER OF THE ESTATE OF THE LATE DAVID OBODAI MENSAH (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION BY LAWRENCE ADJA MENSAH AND PAUL ADJA MENSAH -

PARTIES: 1ST APPLICANT ABSENT
 2ND APPLICANT PRESENT
 CAVEATRIX LAWFUL ATTORNEY EDMOND OBODAI
 MENSAH PRESENT

COUNSEL: CHARLES AMON-KOTEI FOR THE APPLICANTS PRESENT
 ABIGAIL OSEI MENSAH HOLDING BRIEF FOR GABRIEL
 AWUNYO FOR THE CAVEATOR PRESENT -

RULING

[1] Introduction

1 A caveat is a document filed in court to prohibit the grant or representation i.e., probate or letters of administration unless prior notice is given to the caveator. In the

case of letters of administration, the caveator is saying that the applicant is not the person who is by law entitled to the grant. A caveat once filed shall remain in force for three months from the date on which it is filed but may be renewed from time to time¹.

The learned authors of the book, Williams and Mortimer on Executors, Administrators and Probate, at page 275 writing on caveats stated as follows:

“A caveat is a notice in writing that no grant is to be sealed in the estate of the deceased named, without notice to the caveator. No grant can be sealed if the registry is aware of the caveat, but it will not prevent the sealing of a grant on the day the caveat is entered. The main object of a caveat is to enable a person who is considering opposing a grant to obtain evidence or legal advice in the matter. The effect of a caveat is that no grant can issue after its entry until it is removed or ceases to have effect².”

The learned authors of the book, Tristram and Coote’s Probate Practice, 23rd Edition, at page 523 writing on caveats stated as follows:

“A caveat is a notice in writing lodged in the principal probate registry, or in a district probate registry, that no grant is to be sealed in the estate of the deceased named therein without notice to the person who has entered the caveat. No grant can be sealed if the registrar has knowledge of an effective caveat, but a caveat is not effective to prevent the sealing of a grant on the day on which it is entered...The proceedings subsequent to the entry of caveat i.e. the warning or notice to appear, issued against the caveator by the party whose application for a grant has been stopped, and the appearance to such warning by the caveator will disclose the names and addresses of the parties and their respective interests in the estate of the deceased, and with this information it is open to either of them, if the interests conflict, to commence an action against the other for the purpose of establishing his own claim...A caveat is not a notice to a particular person; it is a notice to the court not to allow proceedings to be taken in the matter of the will or estate of the deceased without notice to the caveator. It does not commence litigation, it institutes no proceedings.”

¹ Adu-Gyamfi Derick, Handbook on Probate & Administration Practice in Ghana (with Precedents)

² (J.H. G. Sunnucks, 1970)

The person filing the caveat may be warned in the form contained in the schedule issued by the Registry at the instance of the applicant or by any person interested, stating the nature of his interest and shall require the caveator to file an affidavit giving particulars of any contrary interest which the caveator may have in the estate of the deceased. In the words of Lopes, L.J in **Salter v Salter (1896) P, 291, C.A.**

“A caveat is merely notice to the registrar to do nothing without notice to the solicitor who entered it. The effect of the warning is that the caveat becomes void unless the person who entered it appears within time. If the person warned appears within the time limited, the caveat proceedings are an end. If after this a writ is issued, lis pendes commences, but not till then”

The court will then give directions to the registrar to bring the caveat to the notice of the applicant and his lawyer as in form 25 and not to take any further steps until the applicant has duly warned the caveator³. Letters of administration should not be granted until the caveat is removed.

In the case of **Re Hervie (Decd) Addo v Boye [1989-90] 1 GLR 174** per Abakah J: *“Even though the respondents had disclaimed any knowledge of the caveat, for purposes of the effect of a caveat, it was the filed thereof which was pertinent. When the caveat was filed, the court should have, on account of Order 60, r.15 of the High Court (Civil Procedure) Rules, 1954 (L.N. 140A), declined to take any steps until the applicant had duly warned the caveator, i.e. after the court had directed the registrar to notify the applicant. And the court should not have issued a grant until the caveat was removed. Since the caveat in the instant case had not been removed, it was fundamentally irregular for the respondents to have been granted letters of administration by the High Court, Koforidua in respect of the estate of H. Although the grant to the respondents could not be said to have been obtained by fraud, it was vitiated by the irregularity characterising it and must therefore be revoked”.*

In the case of **Agyepong (Decd.); Poku v. Abosi [1982-83] G.L.R. 254**, Court of Appeal posited as follows:

“The purpose of a caveat is to allow the caveator time to make inquiries and decide whether or not to oppose the application. A caveat is notice to the court that no grant should issue without notice to the caveator. Anyone having an interest in the estate may enter a caveat, and the court will not issue a grant until the caveat is removed. The person applying for a grant of letters of administration must issue a warning to the caveators and disclose his interest in the estate. A caveator may decide to withdraw his caveat or enter an appearance - stating in his affidavit his claim if he has one or oppose the applicant on the ground of lack of interest or that he has superior right to letters of administration or that the applicant was not entitled to such a grant”.

A caveat has the effect of staying the grant of probate or administration until the caveat is expired, or until it is warned, and the person warned fails to appear; or, in case of appearance, until the contest is terminated. If by inadvertence such a grant should be made, it would be recalled or revoked.

[2] Brief Facts

The Applicants filed an application for grant of letters of administration on 27th July 2022. The Applicants were the brother and customary successor of the deceased. This Court ordered the application to be served the mother of the infant children of the deceased, Lily Ampah. This Court on 1st December 2022 granted letters of administration to Paul Adjah Mensah (customary successor) and Lily Ampah (mother of deceased infant children). The Caveator had filed a caveat on 13th December 2022. The Caveator was warned in accordance with the rules of court on 23rd June 2023 and filed his affidavit of interest on 4th July 2023.

[3] Caveator’s Affidavit of interest

The Caveator filed his affidavit of interest and the gravamen of his affidavit of interest was that the Applicants were not the rightful people to apply for Letters of Administration and they are not a relation of the deceased. They are not known to

the family of the deceased. The Caveator states that deceased was a bachelor and unmarried at the time of his death.

The Caveator deposed that the 1st Applicant is not known to the deceased or his family as related to the deceased and as such is not the customary successor as he claimed.

The Deponent states that the 2nd Applicant Lily Ampah is likewise not known to the family. However Counsel for Caveator in opposing the removal of the caveat stated that she is not opposed to grant being made to Lily Ampah. In a supplementary affidavit in opposition filed one Bernice Adjei-Kwei of Haynix Law Chambers deposed that the caveator's lawful attorney having seen the 2nd Applicant in Court and also having sighted the birth certificates of the minor children of David Obodai Mensah (deceased) sees it very prudent that the 2nd Applicant Lily Ampah remains a co-administrator with the caveator as the 1st Applicant.

[5] Analysis and Opinion of the Court

I shall therefore examine the rules upon which the present application is granted.

Order 66 Rule 11 of High Court (Civil Procedure) Rules, 2004, CI 47 provides as follows:

"11. Caveat

(1) *Any person who has or claims to have an interest in the estate of a deceased and who wishes to ensure that no grant of probate or letters of administration is issued without notice to the person, may file a caveat as in Form 24 specified in the Schedule.*

(2) *The caveat may be filed either before or after an application has been made for probate or letters of administration, but before grant.*

(3) *A caveat filed before an application for probate or letters of administration shall be brought to the notice of the Court by the Registrar as soon as the application is filed.*

(4) *A caveat filed after an application for probate or letters of administration shall be brought immediately to the notice of the Court by the Registrar.*

(5) *On being given notice of a caveat, the Court shall direct the Registrar to bring it to the notice of the applicant or the lawyer of the applicant as in Form 25 in the Schedule and shall decline to take any further steps until the applicant duly warns the caveator.*

(6) *A caveat shall remain in force for three months from the date on which it is filed, but may be renewed from time to time.*

(7) *The Registrar shall not allow any grant of probate or letters of administration to be sealed if the Registrar has knowledge of an effective caveat in respect of it, except that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is filed or on which a copy of it is received.*

(8) *A person who files a caveat shall be warned as in Form 26 in the Schedule, issued by the Registrar at the instance of the applicant or by any person interested, to file an affidavit, stating the nature and particulars of any interest that person may have in the estate of the deceased.*

(9) *If the warning is not duly obeyed, the applicant shall move the Court in respect of the applicant's original motion for the grant of probate or letters of administration and where the Court considers it fit it shall direct that notice be served on the caveator.*

(10) *If the warning is obeyed, a copy of the affidavit filed shall be served on the applicant by the Registrar.*

(11) *The applicant shall then move the Court to grant probate or letters of administration on notice to the caveator who shall at the expense of the applicant, be served with copies of any affidavits on which the applicant intends to rely.*

(12) *When the motion comes on for hearing, if the parties agree among themselves as to the person to whom a grant of probate or letters of administration shall be made, the Court may order that the caveat be removed from the file and a grant be made to that person.*

(13) *Failing such agreement between the parties the Court shall determine who is entitled to a grant of probate or letters of administration summarily or may order that the applicant issue a writ against the caveator within fourteen days from the*

date of the order, to determine who is entitled to grant of probate or letters of administration, if in the opinion of the Court it is necessary to do so”.

This caveat is about who is entitled to a grant of Letters of Administration. The Caveator main plaint is that the 1st Applicant is not the customary successor of the deceased and therefore not entitled to a grant of Letters of Administration.

Order 66 rule 11 (12) and (13) of CI 47 provides as follows:

(12) *When the motion comes on for hearing, if the parties agree among themselves as to the person to whom a grant of probate or letters of administration shall be made, the Court may order that the caveat be removed from the file and a grant be made to that person.*

(13) *Failing such agreement between the parties the Court shall determine who is entitled to a grant of probate or letters of administration summarily or may order that the applicant issue a writ against the caveator within fourteen days from the date of the order, to determine who is entitled to grant of probate or letters of administration, if in the opinion of the Court it is necessary to do so”.*

Clearly with issues of capacity of the 1st Applicant raised and the contending view by the Caveator that 1st Applicant is not entitled to the grant of letters of administration in respect of the estate of the deceased, the parties have failed to agree amongst themselves as to who is entitled to the grant. It is the considered view of the Court that it is necessary to determine who is entitled to the grant.

[5.1] Conclusion

There is no doubt per the record before the Court that the Applicant is the mother of the two infant children of the deceased and equally entitled to a grant of Letters of Administration as their guardian in terms of Order 66 rule 50(2) of CI 47.

The Caveator prayer is that he is joined to the grant, however the capacity of the 1st Applicant is in question. The parties have not been able to agree who is entitled to the grant of Letters of Administration.

For the above reasons, the application filed on 1st November 2023 for the removal of caveat is refused and accordingly dismissed and in accordance with Order 66 Rule 11(13) of CI 47 and I make the following Orders:

The Applicants shall issue a Writ for a determination of who is entitled to the grant of letters of administration in respect of the estate of the deceased within 14 days from the date of this order.

No order as to costs.

(SGD.) H/L EUDORA CHRISTINA DADSON (MRS.) JUSTICE OF THE HIGH COURT