

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX, PROBATE AND L/A DIVISION, COURT '1' HELD IN ACCRA ON 18TH OCTOBER 2023, BEFORE HER LADYSHIP EUDORA CHRISTINA DADSON, J.

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SUIT NO: PA 1278/2020

1. REVEREND DANIEL QUIST }
2. AMANDA QUIST OKRONIPA }
3. WINIFRED FREMPONG }

SUING AS BENEFICIARIES OF THE }...PLAINTIFFS
ESTATE OF THEODORA AMERLEY }
LARYEA BOTH OF 22 KONKONTE } STREET,
KOKOMLEMLE, ACCRA }

vs

1. VICTORIA LARYEA } 2.
VIVIAN LARYEA }
BOTH OF 22 KONKONTE }...DEFENDANTS
STREET, KOKOMLEMLE, ACCRA }

PARTIES: PLAINTIFFS PRESENT DEFENDANTS PRESENT

COUNSEL: GEORGE AMOAH FOR PLAINTIFFS PRESENT GODFRED ANIM NYARKO FOR THE DEFENDANTS PRESENT

JUDGMENT

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[1] The Claim

The Plaintiffs issued a Writ of Summons with an accompanying Statement of Claim on 20th July 2020 at the Registry of this Court for the reliefs set out below:

- 1) *“A declaration that Plaintiffs constitute the first priority group to administer the estate of their deceased mother.*
- 2) *An order for the grant of Letters of Administration to the Plaintiffs*
- 3) *A declaration that the deceased Theodora Amerley Laryea was a co-beneficiary of 22 Konkonte Street, Kokomlemle, Accra, with the Defendants having inherited same from their deceased father.*
- 4) *A declaration that the Plaintiffs are entitled to their deceased mother’s share of 22 Konkonte Street, Kokomlemle, Accra as beneficiaries of her estate.*
- 5) *An order for equitable distribution of 22 Konkonte Street, Kokomlemle, Accra between the Plaintiffs and Defendants*
- 6) *Recovery of possession*
- 7) *Perpetual injunction against the Defendants from intermeddling with the estate of the deceased Theodora Amerley Laryea.*
- 8) *Costs.”*

[1.2] The Issues

The Defendants entered appearance and caused a Statement of Defence to be filed on their behalf on 22nd October 2020. Plaintiffs' Counsel filed amended Reply to the Statement of Defence on 11th January 2021 and on 13th December 2021 filed Application for Directions in which about four (4) issues were to be set for trial.

The Defendants also filed additional issues on 20th December 2021 to set out about four (4) issues for trial. The following issues were set down by the Court for determination of the controversy between the parties:

- (1) Whether or not the estate of the late Charles Daniel Laryea should be regulated by PNDCL111.
- (2) Whether or not the estate of the late Charles Daniel Laryea has been distributed.
- (3) Any other issue arising from the pleadings.

Additional Issues

- (4) Whether or not without the grant of Letters of administration, the Defendants could purport to distribute the estate of the deceased, Charles Daniel Laryea?
- (5) Whether or not House No. 22 Konkonte Street, Kokomlemle, Accra, and its abutting land, which was bequeathed to the Defendants and Plaintiffs' late mother, Theodora Amerley Laryea by their late father, Charles Daniel Laryea has been distributed among the beneficiaries.
- (6) Whether or not Plaintiffs are entitled to their deceased mother's share of the estate of her deceased father, Charles Daniel Laryea?

(7) Whether or not the Plaintiffs, being the next priority group by law, in the absence of the surviving spouse are entitled to the grant of letters of administration?

[1.3] After setting down the above issues, the Court ordered the parties to file their respective witness statements and attach all documents they intended to rely on in the trial. The parties duly complied and after Case Management Conference the matter was set down for trial. The Plaintiffs' testified through the 1st Plaintiff and called one witness Emmanuel Kwame Ansong. The Defendants' evidence was proffered by 2nd Defendant and one Thomas Jefferson Dey.

[2] **The case of the Plaintiffs**

The Plaintiffs pleaded that they are the surviving issues of the deceased Theodora Amerley Laryea who died on 13th May 2019 and have sued as beneficiaries of her estate whilst the 1st and 2nd Defendants are siblings of the deceased and therefore maternal aunts of the Plaintiffs.

It is the case of the Plaintiffs that their grandfather Charles Daniel Laryea (deceased) gave a twelve-room house described as H/No. 22 Kontonte Street, Kokomlemle, Accra to their deceased mother and the Defendants as co-beneficiaries.

It is the further case of the Plaintiffs that during the lifetime of their mother, she and the Defendants expressed their desire to distribute the property among themselves equitably however the distribution of the aforementioned property could not be completed before their mother's demise. The Plaintiffs state that after the demise of their mother they approached the Defendants for their mother's share of the property but the Defendants have persistently refused to do so alleging that with the demise of their mother their interest in the property has been extinguished.

It is the case of the Plaintiffs that on 6th July 2020 they filed an application for grant of Letters of administration to administer their deceased mother's estate among which was the property in dispute but same was caveated by the Defendants who has since failed to prove their interest in same.

It is the further case of the Plaintiffs that with the view to permanently denying them of their inheritance the Defendants have demolished a three-bedroom room adjoining the property which was part of the inheritance and commenced the construction of a commercial building thereat and on the remaining parcel of land on the compound of the property for their sole benefit disregarding Plaintiffs' legitimate interest.

[3] The case of the Defendants

It is the case of Defendants state that they are surviving children of the late Charles Daniel Laryea who died intestate over 35 years ago was survived by the Defendants, the late Theodora Amerley Laryea who is the mother of the Plaintiffs and other siblings from another mother.

It is the further case of the Defendants that when their late father died intestate no member of the family applied for letters of administration because he had died more than 35 years ago. The family of the Deceased together with the Defendants and late mother of the Plaintiffs agreed on a method of sharing the estate of the Deceased. Unfortunately the properties that the deceased left were not completely distributed between his beneficiaries before the demise of the mother of the Plaintiffs. Upon the demise of the mother of the Plaintiffs the head of family appointed one William Daniel Laryea to assist the parties to share the only remaining property of the deceased which is House No. 22 Konkonte Street, Kokomlemle, Accra.

According to the Defendants *"it was agreed between the parties that the land which lie just in front of House No.22 Konkonte Street, Kokomlemle, Accra be divided equitably into three*

equal parts between the Defendants herein and estate of late Theodore Amerley Laryea. That the said land which lie in front of the House No. 22 is about 45 feet in total, was shared 13.5 feet each between the Defendants herein and estate of late Theodora Amerley Laryea (deceased). The land was thus equitably demarcated between the parties. The main house which is made up of 6 rooms on the ground floor and first floors was shared by apportioning two rooms each on the ground floor to the Defendants herein and 2 rooms to the estate of our late sister Theodora Amerley Laryea. The 1st floor was also equally shared."

The Defendants pleaded that without their knowledge and consent the plaintiffs fraudulently sought to administer the estate of the deceased when they included properties belonging to the late Charles Daniel Laryea into the inventory of their application for Letters of Administration to administer the estate of their late mother and they filed a caveat to prevent the issuance of letters of administration because of that.

It is the case of the Defendants that their late father died over 35 years ago before the promulgation of PNDCL111 and the family of the deceased have fairly and equitably distributed the estate of the Deceased.

[4] Standard of proof, burden of proof and persuasion

In all forms of civil litigation and like all civil cases; the standard of proof is one of the balance of probabilities or preponderance of probabilities. The proof prescribed in civil trials is provided under sections 10, 11 and 12 of the Evidence Act, 1975, NRCD

323. These sections on the burden of proof, burden of persuasion and burden of producing evidence provide thus:

“10. (1) For the purpose of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party (a) To raise a reasonable doubt concerning the existence or non- existence of a fact, or (b) To establish the existence or non- existence of a fact by a preponderance of probabilities or by proof beyond reasonable doubt.

11. (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party... 12.

*(1) Except as otherwise provided by law, the burden of persuasion requires proof **by a preponderance of the probabilities.***

*01. **Preponderance of the probabilities'** means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non- existence.*

As held by the Supreme Court per Adinyira, JSC (as she then was) in ACKAH V PERGAH TRANSPORT LTD [2010] SCGLR 728 at page 736

“It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail...”¹

It is essential to establish the burden of proof in this matter. As is trite learning, the Plaintiffs bears the evidential burden to adduce sufficient evidence if they are to secure a ruling on the existence or non-existence of a fact.

¹ See also the case of ARYEE v SHELL GHANA LTD & FRAGA OIL LTD [2017-2020] SCGLR 721 at 733 where the Supreme Court speaking through Benin JSC had this to say: *“It must be pointed out that in every civil trial all what the law required is proof by preponderance of probabilities: See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved”.*

posits as follows:

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“ In the normal run of affairs, since the plaintiff is the one asking for something from the defendant, he should be the one who will start the proceedings by giving his testimony. That testimony will show what he wants from the defendant and why he wants the court to order the defendant to give it to him. If he drags the defendant to the court but he fails to lead evidence to establish his claim and the basis of the claim, he cannot have the assistance of the court to get what he wants. In life, one gets nothing from nothing. So it is in law. If the party does not lead evidence to establish the claim or its basis, the court will have no grounds or reason or basis for making any order in his favour. If he leads no evidence...”.

In the case of DUAH v YORKWA [1993-94]1 GLR 217, Brobbey JA (as he then was) held as follows:

“ Part II of NRCD 323 which deals with the burden of proof covers on the one hand, the burden of persuasion under sections 10, 14 and 15 of NRCD 323 and on the other hand, the burden of producing evidence under sections 11, 12 and 13 of NRCD 323. Considering the wording of section 10 (1) of NRCD 323 in the light of the Commentary on the Evidence Decree at pp 1416, I am of the view that the expression “burden of persuasion” should be interpreted to mean the quantity, quantum, amount, degree or extent of evidence which a litigant is obligated to adduce in order to satisfy the requirement of proving a situation or a fact. The burden of persuasion differs from the burden of producing evidence. Under sections 11, 12 and 13, particularly section 11 (1) of NRCD 323 the burden of producing evidence “means the duty or obligation lying on a litigant to lead evidence.” In other words, these latter actions cover which of the

litigating parties should be the first to lead evidence before the other's evidence is led. In our jurisprudence, if two parties go to court to seek redress to a dispute, it is the plaintiff who initiates the litigation and literally drags the defendant into court. If both parties decide to lead no evidence, the order which will be given will necessarily go against the plaintiff. Therefore, it is the plaintiff who will lose first, who has the duty or obligation to lead evidence in order to forestall a ruling being made against him. This is clearly amplified in section 11 (1) of NRCD 323 which provides that:

"11. (1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue²."

In the case of CONTINENTAL PLASTICS ENGINEERING CO LTD v IMC INDUSTRIES – TECHNIK GMBH [2009] SCGLR 298 at 306-307 Wood CJ as she then was stated as follows:

"The learned Justices of the Court of Appeal in Zabrama case explained the burden that rests on a party who makes an averment, particularly, an averment on a substantial fact, which is denied by his or her opponent, and is therefore under a legal obligation to prove the fact alleged. In explaining what is meant by proof in law, the learned justices of the Court of Appeal (per Kpegah JA (as he then was) stated (at page 246 of the Report) as follows:

"I will therefore venture to state the position to be; a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden".

² Duah v Yorkwa [1993-994]1 GLR 217

In the case of SARKODIE V. FKA CO LTD (2009) SCGLR page 65 the Court per Wood CJ (as she then was) held as follows:

“that on the preponderance of the probabilities, the plaintiff-company’s evidence on the acquisition of the disputed land, is more probable than not in terms of sections 11(4) and 12 of

the Evidence Act, 1975 (NRCD 323). It is therefore not surprising that the trial High Court found for the plaintiff company”.

In all civil suits, the court is enjoined by section 12 of the Evidence Act, (NRCD 323) to evaluate and weigh the evidence adduced by the parties on the balance of probabilities. This requires a careful analysis of the entire evidence on record as held by Ansah JSC (as he then was) in the case of TAKORADI FLOUR MILLS v SAMIR FARIS (2005-2006) SCGLR 882 at 884 holding 5 as follows:

“it is sufficient to state that this being a civil suit, the rules of evidence require that the Plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of the Evidence Act, 1975 (NRCD 323). In assessing the balance of probabilities, all the evidence, be it that of the plaintiff or the defendant must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict”.

It is obvious that if the evidence adduced is such that the scales are evenly balanced, the burden of proof on the plaintiff would not have been satisfied. In that event, the case of the plaintiff should fail³.

³ S. A. Brobbey, Essentials of the Ghana Law of Evidence (2014) page 42

[5] The Court's Evaluation of the Evidence

The law is trite and same supported by statute that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. This position is supported by various provisions of the Evidence Act 1975 (NRCD 323). Section 14 of NRCD 323 provides as follows:

“(14). Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting”.

The law is thus clear that in circumstances such as the instant one, the Plaintiffs are under obligation to introduce and lead credible evidence in proof of their claim. The degree of proof required is proof on the preponderance of probabilities.

[5.1] I now proceed to determine the main issues – as stated above. In dealing with the issues set down, I wish to start with issue **1 and 4** and then consider issues **“2” “3”, and “5”** set out above in my analysis.

Issue one: Whether or not the estate of the late Charles Daniel Laryea should be regulated by PNDCL111

Issue four: Whether without the grant of Letters of administration, the Defendants could purport to distribute the estate of the deceased, Charles Daniel Laryea?

Section 1 of the Intestate Succession Act, 1985, PNDCL 111 provides as follows:

“1. Application of Act

(1) On the commencement of this Act, the devolution of the estate of a person who dies intestate on or after the commencement shall be determined in accordance with this Act subject to subsection (2) and the rules of private international law.”

PNDCL 111 was made on 14th June 1985 and notified in the Gazette on 5th July 1985. The law is unambiguous that after the passage of PNDCL 111 the administration of a deceased who died intestate on or after same shall distributed in accordance with the law.

The Defendants state that their late father died over 35 years. According to the Defendants no letters of administration was obtained in respect of his estate. The Defendants further state that the family of the Defendants and Plaintiffs’ late mother agreed on a method of sharing the estate of the Deceased. The 2nd Defendant testifying under oath per her adopted witness statement stated that the late Charles Daniel Laryea (deceased) died over 35 years ago before the promulgation of PNDCL 111.

From the pleadings and the evidence elicited under oath there has been no grant of letters of administration in respect of the estate of the late Charles Daniel Laryea and yet there has been attempts to distribute his estate. The evidence led does not state the specific date the deceased died however the reference point for both parties is over 35 years ago. PNDCL 111 was passed in 1985 and provided that *“the devolution of the estate of a person who dies intestate on or after the commencement shall be determined in accordance with this Act subject to subsection (2) and the rules of private international law.*

This Court is on unable to resolve issue one because the date that the deceased Charles Daniel Laryea died was not proffered the Court. Therefore whether PNDCL11 is

applicable to the estate of the deceased or the pre PNDCL 111 position is applicable to the estate the Court unable to make that determination.

- Necessity to apply for Letters of Administration

An Administrator is a person appointed by a Court of competent jurisdiction to administer the property of a deceased person and are accountable to the Court in the exercise of their duties. The office of the Administrator is said to be dative because it derives from such grant. The Administrator derives his title entirely from the grant of letters of administration and the deceased's property does not vest in him until the grant, so he cannot make a lease or other disposition before the grant⁴. See the case of Republic vs High Court, Sekondi, Ex parte Mensah [1994-95] GBR 491.

Section 79 of the Administration of Estate Act, 1961, Act 63 reads as follows:

“Discretion as to grant of administration

- (1) *Subject to this section, the selection of a personal representative is within the discretion of the Court.*
- (2) *In granting administration the Court shall consider the rights of the persons interested in the estate, and, in particular, administration with the will annexed may be granted to a devisee or legatee and the administration may be limited in the way that the Court thinks fit.*
- (3) *The Court may,*
 - (a) *where the deceased person died wholly intestate, grant administration to one or more persons interested in the residuary estate of the deceased person, if they make an application*

⁴ D. Adu-Gyamfi, *Handbook on Probate & Administration Practice in Ghana (with Precedents)* page 90
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for the purpose; and

(b) if by reason of the insolvency of the estate of the deceased person, or of any other special circumstances, it appears to the Court that it is necessary or expedient to appoint as administrator a person other than the person who, but for this provision, would by law have been entitled to the grant of administration, despite anything in this Act, appoint as

administrator the person who the Court thinks expedient, and an administration granted under this provision may be limited in the way that the Court thinks fit.

(4) Where it appears to the Court that an estate vested in the successor of the deceased person under customary law is being duly dealt with, the Court may refuse to grant an application for administration not made by or with the concurrence of the successor". The Court had jurisdiction under Section 79 to make a grant of letters of administration to those entitled. Letters of administration of the estate of a deceased person are granted where the deceased died wholly intestate. The grant is usually required to enable the estate of the deceased to be realized and administered, but a grant may also be made where the deceased left no estate⁵.

It is not in dispute that letters of administration has not been granted in respect of the estate of the late Charles Daniel Laryea however the Defendants purport to have distributed the estate of the late Charles Daniel Laryea.

I shall now proceed to discuss the issues 2 and 5 because they are interrelated:

⁵ Tristram and Coote's Probate Practice, 23rd Edition, J.E.N Russell, W.J Pickering & G. F Dawe, page 179
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Issue 2: Whether or not the estate of the late Charles Daniel Laryea has been distributed

Issue 5: Whether or not House No. 22 Konkonte Street, Kokomlemle, Accra, and its abutting land, which was bequeathed to the Defendants and Plaintiffs' late mother, Theodora Amerley Laryea by their late father, Charles Daniel Laryea has been distributed among the beneficiaries.

How did the Plaintiffs prove this issue?

Giving evidence on oath in support of the claim of the Plaintiffs', the 1st Plaintiff testifying per his adopted witness statement testified as follows:

“our late grandfather Charles Daniel Laryea, who died over thirty years ago was married to three women at the time of his demise; during his lifetime, the late LARYEA acquired three (3) immovable properties: two in Kokomlemle and one in Odorkor, all in Accra. After the demise of our grandfather, our mother and the defendants met the children of the other two wives and together with the family, met to distribute our grandfather’s estate in accordance with customary law. As a result of the distribution, our late mother, THEODORA AMERLEY LARYEA (who was one of the surviving spouses (sic) and her maternal siblings, the defendants herein, were beneficiaries of one of the buildings located at Kokomlemle and described as H/No. 22 Konkonte Street, Kokomlemle, Accra.”

It is the case of the Plaintiffs that the said property consisted of a one-storey building of twelve (12) rooms with three stores and three single rooms adjoining it, as well as an undeveloped parcel of land at the frontage of the said property. During the lifetime of their mother, she and the Defendants as beneficiaries of the said H/No. 22 Konkonte Street, Kokomlemle, Accra decided to share the property equally amongst themselves. Therefore, Plaintiffs’ mother like the Defendants had four rooms each in the onestorey building, one store and one single room each.

It is the further case of the Plaintiffs that the undeveloped parcel of land at the frontage of the building remains undistributed and efforts to the Defendants to distribute same has proved futile and the Defendants have even commenced construction of shops thereat.

What is the Defendants side of the narrative?

The 2nd Defendant testifying per her adopted witness statement stated that the properties of their deceased father which was assigned to Defendants and their siblings were equitably shared and distributed to the understanding of everyone but

not vested in the parties before the demise of the mother of the Plaintiffs. The 2nd Defendant testified that *it was agreed between the parties that the land which lie just in front of House No.22 Konkonte Street, Kokomlemle, Accra be divided equitably into three equal parts between the Defendants herein and estate of late Theodore Amerley Laryea. That the said land which lie in front of the House No. 22 is about 45 feet in total, was shared 13.5 feet each between the Defendants herein and estate of late Theodora Amerley Laryea (deceased). The land was thus equitably demarcated between the parties. The main house which is made up of 6 rooms on the ground floor and first floors was shared by apportioning two rooms each on the ground floor to the Defendants herein and 2 rooms to the estate of our late sister Theodora Amerley Laryea. The 1st floor was also equally shared.*

The Defendant's witness also testified that the land in dispute which lie in front of the house No. 22 is about 45 feet in total was shared 13.5 feet each between the Defendants herein and estate of late Theodora Amerley Laryea (deceased). DW1 states that he was personally involved in the demarcation of the land and therefore the land was equitably demarcated between the parties.

The general position of the law is that he who alleges must prove same. In the case of **Ababio v Akwasi III [1994-95] GBR 774 at 777** Aikins JSC (as he then was) expounded the position as follows:

"The general principle of law is that it is the duty of a plaintiff to prove his case, i.e., he must prove what he alleges. In order words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins; if not, he loses on that particular size."

Kpegah JA (as he then was) in the case of **Zabrama v Segbedzi [1991]2 GLR 221 at page 246** stated as follows:

“ a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averments or assertion is true. And, he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden.”

The Plaintiffs have asserted that the House No. 22 Kontonte Street, Kokomlemle has not been completely distributed between the estate of the late Theodora Amerley Laryea and the Defendants. There is no dispute that the main house has been shared among the three siblings. The point of departure between the Plaintiffs evidence and the Defendants evidence is about the vacant land surrounding the house. Whilst the Plaintiffs assert that same has not been demarcated between the three siblings, the Defendants and their witness insist that the demarcation has been done and the portion reserved for the estate of the late Theodora Amerley Laryea is there.

The 2nd Defendant and her witness Thomas Jefferson Dey were emphatic that the land in dispute which lies in front of House No. 22 is about 45 feet in total and was shared 13.5 feet between the Defendants and estate of late Theodora Amerley Laryea. DW 1 is emphatic that he was personally involved in the demarcation of the land.

The following are extracts from the cross-examination of DW1 on 27th July 2022 by Counsel for Plaintiff:

Q. *“So you did not physically witnessed the alleged distribution.*

A. *Before the coming together of the family myself and one friend were task to do the demarcation and report same to the family*

Q. *Is that friend available?*

A. *Yes he is available.*

Q. I suggest to you that you and your alleged friend were never tasked to do any demarcation.

A. We were tasked to do the demarcation.

Q. The estate which was given to the Defendant and the late sister as their share of their father's estate comprised a 12 unit block, not so.

A. The addition of half unit that make the 12 unit block so it is three and half and three and half.

Q. What is the meaning of three and half?

A. the three and half in the entire building, some of the rooms is not as big as measured to the old size but in counting the half is considered one making the 12. Q.

The estate also consisted of three stores, not so.

A. there is an explanation to it because one of the store has been sealed with other two making three."

The following are extracts from the cross-examination of DW1 on 28th July 2022 by Counsel for Plaintiff:

"Q. I also suggest to you that each of the Defendants and their late sister had a room each. A. No My Lord. There wasn't any sharing.

Q. I am further suggesting to you that the Defendants have demolished the three structures and in its place they have constructed two rooms.

A. No My Lord. The rooms in question happens to share a common wall which is even in a verge of collapsing. The two structures put together are structures purposely built to take care of maintenance purposes.

Q. So under whose instructions are they being constructed?

A. *The family's instructions.*

Q. *You concede that the Plaintiffs are part of the family you are referring to, is that so.*

A. *Yes My Lord.*

Q. *Is there any reason why the Plaintiffs were not consulted on this development?*

A. *They were reliably informed.*

Q. *They were informed by who and when.*

A. *By the Plaintiffs.*

Q. *I suggest to you that the Plaintiffs were never informed on the ongoing development on the premises.*

A. *They were informed.*

Q. *How were they informed?*

A. *In a meeting with the Defendants".*

The nagging questions are, what is the name of the alleged friend and why was he not called to give evidence, is the witness DW1 a licensed surveyor, was a site plan showing the alleged demarcation of the abutting land for the estate of the late Theodora Amerley Laryea and the Defendants prepared? The gaps in the 2nd Defendant evidence and that of DW1 is screaming for attention. From the evidence elicited from DW1 during cross-examination on 28th July 2022 by Counsel for Plaintiffs, the Plaintiffs who have an expectant beneficial interest in the Estate of the late Theodora Amerley Laryea were not consulted when the Defendants start fresh developments on the land abutting the property in dispute.

Date-Bah JSC as he then was held in the case of **T. K. Serbeh & Co Ltd v Mensah [2005-2006] SCGLR 341 at 360-361** that for, however credible a witness may be her bare affirmation on oath or the repetition of her averments in the witness box cannot

constitute proof. The Defendants' merely mounting the witness box repeating their averments under oath does not amount to proof in law.

From the evidence adduced including the locus inspection report which is Exhibit CE, the land abutting the house has not been shared equally among the estate of the Late Theodora Amerley Laryea and the Defendants.

I therefore find that the estate of the late Charles Daniel Laryea has not been completely distributed. I find that the land abutting House No. 22 Konkonte Street, Kokomlemlle has not been distributed among the beneficiaries. I therefore resolve issues 2 and 5 in favour of the Plaintiffs.

I shall now proceed to resolve issues 6 and 7:

Issue 6: Whether or not Plaintiffs are entitled to their deceased mother's share of the estate of her deceased father, Charles Daniel Laryea?

Issue 7: Whether or not the Plaintiffs, being the next priority group by law, in the absence of the surviving spouse are entitled to the grant of letters of administration?

Section 79 of the Administration of Estates Act 1961 (Act 63) gives the Court the discretion to appoint personal representatives taking into account those with an interest in the estate of the deceased. Order 66 rule 13 of the High Court (Civil Procedure) Rules, 2004 (CI 47) which sets out the order of priority in respect of the estate of persons who die intestate provides as follows:

Where a person dies intestate on or after the 14th June, 1985, the persons who have beneficial interest in the estate of the deceased shall be entitled to a grant of letters of administration in the following order of priority:

- (a) *any surviving spouse;*
- (b) *any surviving children;*

(c) *any surviving parents; and*

(d) *the customary successor of the deceased”.*

In the instant case the Plaintiffs being children of the Late Theodora Amerley Laryea, they do not only have a beneficial interest in the estate of the deceased, they also rank above any other person with a beneficial interest in the estate of the deceased.

I therefore find that in respect of the estate of the Late Theodora Amerley Laryea, the Plaintiffs have the priority and they are entitled to the grant of letters of administration in respect of the estate of the deceased. I therefore resolve issue 7 in favour of the Plaintiffs.

From the evidence adduced before this Court the Late Theodora Amerley Laryea died after the passage of the Intestate Succession Act, 1985, PNDCL 111 and therefore the devolution of her estate shall be in accordance with PNDCL 111. It is also not in dispute that the estate of Late Theodora Amerley Laryea is entitled to a share of the estate her late father Charles Daniel Laryea, specifically a share of H/No. 22 Konkonte Street, Kokomlemle, Accra. I therefore find that the part of the estate of Charles Daniel Laryea which devolves on the late Theodora Amerley Laryea also devolves unto the Plaintiffs herein. I therefore resolve issue 6 in favour of the Plaintiffs.

[6] Conclusion & Disposition:

Based on the law and the evidence heard and my analysis above, I hereby resolve **Issues 1, 2, 5, 6 & 7)** set out above in favour of the Plaintiffs against the Defendants. Furthermore, based on the above analysis and my resolution of the issues, I answer the issue 4 in the negative, and state that the Defendants cannot by law administer or distribute the estate of the late Charles Daniel Laryea without obtaining the grant of letters of administration.

From the evidence adduced before the Court by consent and conduct the Defendants decided to share the house equally and the adjoining land shall also be shared equally.

In the final analysis I hold that, on the balance of probabilities, the Plaintiffs have proved their claim to the satisfaction of the court and are entitled to judgment. I therefore enter judgment for the Plaintiffs as follows:

- a. Declaratory relief **(1)** is granted as follows- the Plaintiffs qualify in order of priority in terms of Order 66 rule 13 (b) to the grant of letters of administration to administer the estate of their deceased mother Theodora Amerley Laryea.
- b. Relief **(2)** is dismissed as there is already a pending application for the grant of Letters of Administration in respect of the estate of the Late Theodora Amerley Laryea before a Court of competent jurisdiction.

The Plaintiffs may apply for the removal of caveat in respect of their application for grant of letters of administration of the Estate of Theodora Amerley Laryea.

- c. Declaratory relief **(3)** is granted as follows:-I declare that the late Theodora Amerley Laryea was a co-beneficiary of H/No. 22 Konkonte Street, Kokomlemle, Accra with the Defendants, the property having devolved on the three children of the late Charles Daniel Laryea upon his death.
- d. Relief **(5)** is granted as follows:- The parties shall either agree to appoint a common licensed surveyor or Surveyor from the Survey and Mapping Division of the Lands Commission or in the alternative the parties may individually appoint their respective Surveyors to ensure fairness and transparency, and the two surveyors shall work together, to take precise measurements of H/No. 22 Konkonte Street, Kokomlemle, Accra with all land surrounding/abutting it, for the equal sharing of the surrounding/abutting land between the Estate of the late Theodora Amerley Laryea and the Defendants.

- e. Relief (6) is granted as follows: Recovery of possession of the equal portion of H/No. 22 Konkonte Street, Kokomlemle, Accra with all land surrounding/abutting it for the Estate of the late Theodora Amerley Laryea.
- f. Relief (7) is granted as follows: Perpetual injunction restraining the Defendants from interfering with the Plaintiffs enjoyment of their share of the property.

Nominal cost of GH¢5,000 awarded in favour of plaintiff.

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