IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: YEBOAH, CJ (PRESIDING)

PWAMANG, JSC

MARFUL-SAU, JSC

OWUSU (MS.), JSC

AMADU, JSC

CIVIL MOTION

NO. J5/31/2021

9TH JUNE, 2021

THE REPUBLIC

VRS

THE HIGH COURT
(PROBATE & ADMINISTRATIVE 2), ACCRA ……. RESPONDENT

EX PARTE: ELIZABETH DARKO ……. APPLICANT

1. TRACY OPOKU DARKO
2. PETER ANDOH ……..... INTERESTED PARTIES
3. CHRISTIANA ANSON
4. MAXWELL ADOMAKO

RULING

AMADU, JSC:-

(1) My Lords, the application before us invokes the supervisory jurisdiction of this court for an order of certiorari to bring up into this Court for purposes of it being quashed and quashing orders made by the Probate and Administration Division of the High Court Number 2, in the suit numbered **PA 520/2020** and intituled **Elizabeth Darko Vs. Tracy Opoku Darko & Others.** Although on the face of the motion paper, the Applicant states that the prayer for certiorari is targeted at the orders made by the High Court, dated Wednesday the 11th day of November 2020, the Applicant has not specified which orders are sought to be quashed.

(2) This observation is made in view of the prayer set out on the face of the motion paper. It is clearly stated therein that the application for certiorari is prayed for, to quash the "***orders***" of the High Court. This Court has time without number, pointed out that applications invoking the supervisory jurisdiction of the Court are technical in nature. For this reason, it is important that parties who invoke the jurisdiction of the Court be precise in their applications. It is not sufficient to just throw a general prayer at the Court without being specific as to the nature of the order sought to be quashed especially in this instance that the application seems to suggest on the face of her motion paper that the orders sought to be quashed are several.

(3) To the extent that the orders sought to be quashed being several as suggested in the Applicant's motion paper, the position of the court is that, it may be appropriate to make a distinct application targeted at each of those orders. This

is the effect of the decision of this court in the case of **Republic Vs. High Court (Commercial Division) Accra Ex-parte Attorney General (NML Capital and Republic of Argentina-Interested Parties) [2013-2014] SCGLR 990.** In that case Gbadegbe JSC as reported in page 1030 held and it is reproduced in *extenso* as follows:-

". . . the opinion that I am about to read relates only to a point of procedure, which in my thinking is of some importance to civil procedural law. It is an extremely short one that is intended for future guidance only. We have recently observed that several applications for judicial review in the nature of certiorari that are filed before us relate not only to a single order, ruling or judgment but to multiple such orders, rulings or judgments.... by the very formulation of rule 61 (1) (b) of C.I 16, the Supreme Court Rules, the applications to be good must relate to an order and not to orders. To suggest to the contrary would mean that such processes bear the description applications and not application. The reason for the rule is that every order, which falls from the lips of a judge is either appealable or might be the subject matter of some other judicial correction such as certiorari or prohibition. Although in practice, applications for certiorari might be coupled with other orders- injunction and or prohibition for example, that part of the application which seeks judicial review in the nature of certiorari is limited to a single order of the court whose order is the subject matter of the application for judicial review.

In my opinion as every such order is a competent ground for an application for certiorari better practice requires that each such order, from which an appeal might be filed creates a separate and distinct right in a party to apply. I am of the view that for this purpose the requirements of practice and procedure by which appeals are filed from single orders only, applies with equal force to applications for certiorari. It is observed that although in appropriate situations

several applications pending before a court may be consolidated by the court on its own or upon the application of a party to the proceedings, the right to bring an application for certiorari in respect of more than a single order has never been left to the parties but appears from the practice of the court to be consequent upon the exercise of judicial discretion that is the sole preserve of a single judge or a panel of judges. When one goes through reported cases in this jurisdiction and elsewhere, they turn on an order made by a court and or other tribunal in the course of adjudication. While a single order might suffer from several grounds that render it amenable to certiorari, applications for certiorari are made in respect of an order and not orders."

(4) It is further observed that the Applicant's grounds of application are quite argumentative. Apart from the first ground which states clearly that the ground of the application is mounted on an error of law apparent on the face of the record, the other grounds appear argumentative. It is necessary for Counsel in such application to avoid argumentation in the formulation of grounds. For instance, the second ground of the application is couched thus;

"ii. By virtue of the fact that Probate though granted had not been issued to the Executors (2nd and 3rd Interested parties), the learned Justice made a substantial error of law apparent on the face of the record when she struck out the entire suit and counterclaim on the basis that plaintiff failed to file Notice to Lodge Probate prior to the commencement of the suit."

This is effectively a submission. In any event, as already pointed out, a consolidated application for certiorari which attacks several orders of the Court must set out specifically the particular orders sought to be quashed. For, it may

well be that some orders are properly made the subject of a certiorari application while others are not. Given this Court's inclination to do justice and not to allow technicalities to defeat a genuine cause of action, we shall treat this procedural glitch lightly especially in the light of the authorities which say that in all applications, the Court should pay more attention to the substance of the application regardless of the manner in which it is couched. (See **Abu Ramadan & Nimako Vs. Electoral Commission & Attorney General [2015-2016]1 SCGLR, 77** at **88 & Okofoh Estates Vs. Modern Signs Limited [1996-1997] SCGLR 224**).

(5) A careful reading of the motion paper leaves the Court in no doubt whatsoever that although the Applicant prays the Court for an order of the Court to quash the *"**orders**"* of the High Court, the Applicant's concern relates to one main order. This order is the one striking out the Applicant's writ of summons and statement of claim on the ground that it is a nullity. This is the subject matter of the first ground of the application which prays this Court to quash the said order on the ground that the order is erroneous on the face of the record.

(6) The basic point of controversy on which the instant application revolves is the legal effect of non-compliance with the provisions of Order 66 rules 33(3) and 37(1) of the High Court (Civil Procedure) Rules C.I.47 in particular. They provide as follows:-

"33. (3) Before a writ for the revocation of the grant of probate of a will or letters of administration of the estate of a deceased person is issued out, notice shall be given under rule 37, unless the probate or letters of administration has or have been lodged in the registry of the Court.

37. Notice to bring in grant (1) Where an action is brought for the revocation of a grant of probate or letters of administration of the estate of a ceased person, the plaintiff shall serve a notice on the person to

whom the probate or letters of administration is granted requiring the person to bring and leave at the registry of the Court the probate or letters of administration."

(7) In the proceedings before the High Court, there is no doubt the one of the reliefs the applicant seeks is for an ***"order for the revocation of the Probate granted by the Court on 23rd October 2019 respecting the purported Will of the Late Nana Owusu Darko.***" The suit before the High Court is therefore one undoubtedly regulated by the provisions of Order 66 rules 33(3) and 37(1) of C.I. 47. The combined effect of the provisions of Order 66 rules 33(3) and 37(1) of C.I. 47 quoted above is that before a writ for the revocation of the grant of probate of a Will is issued out, notice be given under rule 37, to the person to whom the probate is granted requiring the person to bring and deposit at the registry of the Court the probate.

(8) We are aware that similar provisions of these rules were enforced in the case of **Heward Mills Vs. Heward-Mills & Others [1992-1993] Part 1 Ghana Bar Reports 239 CA.** In that case, the Court of Appeal held in relation to the analogous provisions in Order 6 rules 2(3) and 6(1) of LI 1515 that the failure by the Plaintiff to comply with the said provisions is fatal to this action. The reason, the Court held is that: "***where a statutory condition must be complied with before a court can have jurisdiction to make an order, failure to comply with such a condition will leave the court with no discretion to make any order or orders in the matter***" per Adjabeng JA *(as he then was)* at pages 246. The application before us therefore at first glance would have required a direct application of the **Heward-Mills Vs. Heward Mills** position simpliciter.

(9) However, the facts of the **Heward-Mills case** are quite distinguishable from the instant case, in that case Probate of the Will and Codicil of the late Albert Gillies Heward-Mills, Barrister-at-Law, of James Town, Accra was granted to the executors. In the instant case, the key issue for determination is the question whether or not Probate was granted and issued. A search report which has been attached to the affidavit in support of the application before us confirms that although an application for the grant of Probate was granted. Probate itself was not yet delivered to the executors and who not in possession of any such papers. In this regard, it is apparent from the rival contentions of the parties that there is disagreement on the question when Probate is deemed to have been granted. The submissions disclose that the parties disagree on the timing in terms of when Probate is deemed granted. The question which arises is simple. Is Probate deemed granted only because the application for the grant of Probate has been granted? If the question had been properly interrogated, the answer to this question should not have generated any dispute.

(10) A plain reading of the rules of the High Court under consideration will confirm that the notice is to lodge the probate in the registry of the Probate Court is not required to be given where the probate has already been lodged in the registry of the Court. This is because the process of the grant of probate is only complete after the probate is sealed by the Registrar of the Court. The Registrar of the Court is precluded by the provisions of Order 66 rule 11(7) from allowing: ***"any grant of probate for letters of administration to be sealed if the Registrar has knowledge of an effective caveat in respect of it..."***. The Applicant's contention in the application before this Court is that although the application for probate had been granted, same had not been issued to the

executors who are the second and third interested parties in this application. The fact that probate had not yet been sealed and delivered to the executors of the Will is not disputed. The Applicant put this fact beyond dispute by exhibiting a search report from the registry of the High Court which established the Applicant's contention. The effect is that at all times material to the proceedings before the High Court, the executors of the Will were not in possession of the probate. The notice to bring and lodge in the registry of the lower court the probate cannot be required where as in this case, the person required to deposit the probate has no possession of same. The rhetorical question which makes any argument on this matter unnecessary is this; what would be the point in calling a person to deposit in the registry of the court a document the person does not have? It will therefore not be correct to require the notice in the circumstances of the case. There is therefore no doubt that the High Court committed an error by purportedly enforcing rules 33(3) and 37(1) of Order 66 of the rules. These rules do not require a person who has no custody of probate to deposit same at the registry when the said probate which has not been delivered to him.

(11) The law governing the supervisory jurisdiction of this Court has been stated in a deluge of decisions of the Court. The oft cited case on this point however, is the case of **Republic Vs. High Court**, **Accra**, **Ex-parte Commission on Human Rights & Administrative Justice (Addo Interested Party) [2003-2004] 1 SCGLR, 312.** In that case, Dr. Date Bah JSC by way of restatement of the law held *inter alia* as follows:-

". . .where the High Court (or for that matter the Court of Appeal) makes a non-jurisdictional error of law which is not patent on the face of the record..., the venue for redress open to an aggrieved party is an appeal, not judicial review. In

this regard, the error of law made by the High Court or the Court of Appeal is not to be regarded as taking the judge outside the court's jurisdiction, unless the court has acted ultra vires the Constitution or an express statutory restriction validly imposed on it."

For the avoidance of doubt, this Court subsequently held in the case of **Republic Vs. Court of Appeal, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR, 612** that:- ***"The clear thinking of this court is that our supervisory jurisdiction under Article 132 of the 1992 Constitution, should be exercised only in those manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which errors go to the jurisdiction or are so plain as to make the impugned decision a nullity.***" *(Emphasis).*

(12) In the case of **Republic Vs. High Court, Accra Ex-parte; Ghana Medical Association, (Chris Arcman-Akummey, Interested Party) [2012] 2 SCGLR, 768** this Court summarized the principles *"upon which this court proceeds to exercise its supervisory jurisdiction thus:*

1. Want or excess of jurisdiction,

2. Where there is an error of law on the face of the record,

3. Failure to comply with the rules of natural justice, and

4. The Wednesbury principle".

The cases just cited established error of law on the face of the record as one of the grounds upon which this Court's supervisory jurisdiction may legitimately be invoked. This Court has however pointed out that the error of law that necessitates the application invoking the supervisory jurisdiction of this Court must be a serious one. This was made clear by this Court in the case of **Republic Vs. Court of Appeal; Ex-Parte Tsatsu Tsikata** (supra). In that case Wood JSC *(as she then was)* held as reported in page 619 of the report that:

". . . It stands to reason then that the error(s) of law as alleged must be fundamental, substantial, material, grave or so serious as to go to the root of the matter. A minor, trifling, inconsequential or unimportant error which does not go to the core or root of the decision complained of; or, stated differently, on which the decision does not turn would not attract the courts supervisory jurisdiction."

(13) Reference is also made to the case of **Republic Vs. High Court, Accra; Ex-parte Industrialization Fund for Developing Countries and another [2003-2004] SCGLR 348.**

In that case this Court held that certiorari *(or prohibition)* was a discretionary remedy which would issue to correct a clear error of law on the face of the ruling of the court. Quoting Bamford-Addo JSC in the Ex parte Industrialization Fund for Developing Countries case, Ansah JSC held that the *"authorities make it also clear that it is not just any error that has the effect of ousting a court of jurisdiction, but that for an error to have any such effect it ought to be basic and fundamental."*

(14) In the instant case, the error complained of has resulted in the declaration of the Applicant's writ of summons a nullity and was struck out. It is unnecessary to say that granted even that the writ of summons and statement of claim offended the rules of the High Court considered earlier in this decision, the counterclaim should also not have suffered the same fate. The error of the Court in misapplying the rules of the High Court under consideration did not end there. The objection to the noncompliance was taken after proceedings before the High Court had advanced. Pleadings had literally closed. The question provoked by the situation is this; was the objection to the noncompliance validly taken at the time when it was raised? The rules require all objections arising out

of noncompliance with the rules of court to be taken timeously failing which such objection is not permissible. This is the crux of the fourth ground of the application which falls within the purview of the provisions of Order 81 rule 2(2) of the rules of the High Court. It provides that:-

"(2) No application to set aside any proceeding for irregularity shall be allowed unless it is made within a reasonable time and the party applying has not taken any fresh step after knowledge of the irregularity."

(15) Given the way in which the rule has been rendered it is clearly mandatory. Its mandatory effect reinforced by the words' used by the legislature. This is indisputable when account is taken of the words *"**No**"* and *"**shall**"* appearing in the rule. The effect of the rule was stated Atuguba JSC in the case of **Standard Bank Offshore Trust Company Limited (suing on behalf of investors in promissory notes) (substituted by; Dominion Corporate Trustees Limited Vs. National Investment Bank & Others. (Review Motion No.J7/15/2017, dated 17th March, 2018).** In what may appear to be a dissent, the learned Justice held that although the setting aside of any proceedings is in the exercise of judicial discretion. The exercise of such discretion is *"**not permissible upon application after fresh steps taken**"* and that: *"**no court has the jurisdiction to nullify proceedings etc. for noncompliance with any of the Rules under the High Court (Civil Procedure) Rules, 2004 (C.I.47).**"*

(16) Reference is also made to the case of **Republic v High Court, Koforidua; Ex-parte Ansah-Otu & Another (Koans Building Solutions Ltd. Interested Party) [2009] SCGLR 141**, where Ansah JSC held that by rule 2(2) of Order 81 of CI 47, the party affected by the non-compliance with the rules of court, may apply to the trial court to set aside the proceedings for irregularity,

provided an application was made timeously and without taking any fresh step in the matter after knowledge of the irregularity.

(17) We find it unnecessary to multiply authorities on this point. Suffice it to say that certiorari may lie to quash the decision of the High Court when the High Court commits an error apparent on the face of the record. In the case of **Republic Vs. High Court (Ex-parte Eastwood) [1995-1996]1 GLR 689** Hayfron-Benjamin JSC held at page 698 of the report that, an error of law appearing on the face of the record is such an error which is so obvious as to make the decision a nullity. In the **Okofo Estates Ltd. Vs. Modern Signs Ltd.** (supra) this Court intervened in the exercise of its supervisory jurisdiction over the High Court when the High Court judge though had jurisdiction to hear an application, committed an error of law apparent on the face of the record by taking into account extrinsic evidence when the rule under which the application was made did not permit the use of affidavits. In so doing, this Court held that the Trial Judge fell beyond the bounds of his jurisdiction and the ruling was therefore be set aside. In holding (4) of the headnote, it is reported that certiorari would lie to quash the decision of a court on the ground of error of law on the face of the record if such error went to jurisdiction, or was so obvious as to make the decision a nullity.

(18) In the instant case, the decision of the High Court is clearly a nullity arising from two basic points of law. First, misapplying the provisions of Order 66 rules 33(3) and 37(1) of the rules of the High Court, and secondly, setting aside proceedings contrary to the clear provisions of Order 81 rule 2(2) of the rules of the Court which forbid the perdition of proceedings initiated by a party on grounds of technicality where the procedural objection is not raised timeously and at the time the blunder is alleged to have been

committed. In the case of **Republic Vs. Fast Track High Court, Accra, Ex parte Electoral Commission, (Mettle-Nunoo & Others Interested Parties) [2005-2006] SCGLR 514** Prof. Ocran JSC of blessed memory, put the matter succinctly when he held that certiorari lies not only to review and quash a decision taken in the absence of initial jurisdiction, but also in excess of jurisdiction as when a court initially clothed with jurisdiction, embarks upon a path unwarranted or uncalled for in the disposition of the specific matter before it.

(19) It is for these reasons that this Court has no difficulty whatsoever in granting the application before us. The ruling of the Court reinforces the position of the Court on applications for supervisory jurisdiction. The Court will not deploy its supervisory powers over all errors committed by the High Court. It is such errors which are patent and clearly unwarranted. In the instant case, probate can only be deposited if they are in the custody of the person required to deposit them at the registry of the Court. It is therefore manifestly unjustifiable for the High Court to have struck out proceedings which were almost ripe for hearing on the ground that the Applicant herein was required by the rules of the High Court to have demanded the deposit of the probate which was not in the possession of the 2nd and 3rd Interested Parties. What is even worse is the fact that even if the said Interested Parties had in their possession the probate, striking out the proceedings at the stage where pleadings had closed, resulted in a clear violation of the provisions of Order 81 rule 2(2) of the rules of the High Court (Civil Procedure) Rules, 2004 C.I.47.

(20) For all the reasons hereinbefore set out, the application for certiorari succeeds and it is hereby granted. The let effect is that the ruling of the High Court (Probate and Administration) Division No.2 dated 11th

November, 2020 is hereby brought to this court for the purposes of being quashed, and the same is hereby quashed.

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

My Lords, I read in draft the lead judgment of the court written by our noble brother Amadu, JSC and I am in agreement that the trial judge erred in her understandings of **Order 66 Rule 33(3) of the High Court (Civil Procedure) Rules, 2004 (C.I.47)** and wrongly applied the said provision to the facts of the case that was before her. I accordingly concur in the grant of the application for certiorari. However, for the purpose of future guidance, I wish to make a few comments of my own on some pertinent matters of procedure that arise in this case.

The case of the applicant herein (the plaintiff in the High Court) is that she used to be married to Nana Owusu Darko (the Deceased) but their marriage was dissolved by order of the High Court on 28th June, 2018. On dissolution of their marriage, the court made ancillary orders for alimony and property settlement in her favour. However, before she could execute those orders the deceased died on 28th February, 2019 and left a Will disposing of his properties and appointing the 2nd and 3rd Interested parties as executors. The executors applied for probate over the Will of the deceased but the applicant got to know of it only after the application had been granted but before the probate was sealed and issued to the executors. According to the applicant, in order to prevent a dissipation of the estate she was advised by her lawyer to file a caveat to stop the issuance of the probate which she did. The applicant claims that she got to know

that despite the caveat the executors were taking steps to have the Registrar of the High Court issue the probate to them. Her lawyer then conducted a search in the registry of the court and it was confirmed that the probate had not yet been issued. That notwithstanding, she claims that the interested parties were still trying to dispose of some assets of the estate so, to protect her interest, she took out a writ of summons against the interested parties endorsed with the following reliefs;

i. A declaration that the purported last Will and Testament of the Late Nana Owusu Darko with respect of which Probate was granted in Suit No. PA 0092/2020 is a nullity/void.

ii. An order for the revocation of the Probate granted by the Court on 23rd October 2019 respecting the purported Will of the Late Nana Owusu Darko.

iii. A declaration that the estate of the Late Nana Owusu Darko is liable to fully settle plaintiff's accrued claims against the estate before any named and/or legal beneficiary could benefit from the remainder of the estate.

iv. An order directed at the personal representatives and/or executors of the estate of the Late Nana Owusu Darko including 2nd, 3rd and 4th defendants to fully settle the claims of plaintiff before distribution of the estate properties among beneficiaries.

v. An order directed at the defendants to account for the estate properties unjustly appropriated and/or disposed of and to return the proceeds thereof to the estate.

vi. Interest at the prevailing commercial bank lending rate from the date when the said proceeds was paid to the defendants to the date of final payment.

vii. Perpetual injunction restraining defendants from appropriating, dissipating, disposing of, distributing and/or otherwise interfering with the estate properties of the Late Nana Owusu Darko until plaintiff's claims and/or judgments is fully settled.

viii. General Damages and cost.

The applicant joined the 4th interested party to the suit in his capacity as the customary successor of the deceased. On service upon him, the 4th interested party filed a defence and a counterclaim in which, among other reliefs, he prayed for the Will of the deceased to be declared a nullity on grounds of allegations of forgery. The applicant subsequently applied to the court on notice for an order of preservation of the estate pending the determination of the suit but the 1st to 3rd interested parties, while opposing the application for preservation, also filed a motion asking the court to strike out both the action of the applicant and the counterclaim of the 4th interested party on the ground that both were filed in breach of a mandatory statutory precondition, to wit, filing a citation for the probate to be lodged at the registry of the court.

The trial judge determined the two applications together and took the view, that by Order 66 Rule 33(3), both the applicant and the 4th interested party should have filed a citation before commencing proceedings. She accordingly struck out both the writ of summons and the counterclaim. It is that decision that the applicant prays us to bring up and quash for fundamental error of law.

Order 66 Rule 33(3) of C.I.47 that the court based its decision on is as follows;

"(3) Before a writ for the revocation of the grant of probate of a will or letters of administration of the estate of a deceased person is issued out, notice shall be given under rule 37, unless the probate or letters of administration has or have been lodged in the registry of the Court."

The above Rule may be said to be applicable only in respect of the applicant's relief (ii) that prayed for revocation of the probate but the same cannot be said of the remaining seven relieves the applicant endorsed on her writ of summons. The counterclaim of the

4th interested party too did not contain any relief for revocation of the probate. A casual reading of the other reliefs of the applicant reveals that they concern distinct causes of action that are independent of the relief for revocation of the probate and are not ancillary to that relief. Therefore, even if the judge was right in her interpretation of the Rule, she ought not to have dismissed the whole writ of summons because of only one relief she considered was not in conformity with the Rule. Furthermore, the trite learning is that a counterclaim is a separate and independent suit capable of determination on its own merits so, as the counterclaim in this case that did not contain a claim for revocation of the probate, it did not deserve to suffer the fate of peremptory dismissal decreed in respect of the writ of summons by the trial judge.

In the case of **Republic v High Court, Accra; Ex parte Peter Sangber-Der (ADB Bank Ltd- Interested Party) [2017-2018] SCLRG (Adaare) 552, at page 576** this court speaking through Benin, JSC held as follows;

"Where several reliefs are placed before a court and the court takes the view that it has jurisdiction to hear some of them whilst its jurisdiction is excluded in respect of others, the court is not entitled to decline jurisdiction altogether. In such a scenario there are two options open to the court, it may strike out those reliefs which are outside its jurisdiction and proceed to hear those that fall within its jurisdiction, or it may hear the whole case, but decline to grant the reliefs it is not competent to grant when it delivers its final judgment in the matter."

But, as has been explained in the lead judgment, the facts of this case did not even call for the application of Rule 33(3) of Order 66 since the probate was still in the custody of the court. In fact, on a more fundamental ground, if the applicant's counsel had considered Rule 29 of Order 66 she would not have endorsed that relief of revocation of the probate on her writ of summons. It provides that;

"Action to revoke grant of probate or letters of administration

29. (1) Where grant of probate or letters of administration has been *issued,* any person who seeks to have the grant revoked by the Court may issue a writ to seek the relief.

(2) In any action brought under, rules 25 to 29 of this Order, rules 32 to 43 shall apply." (emphasis supplied).

Accordingly, it is only when a grant of probate or letters of administration has been issued that an action may be brought for its revocation. Since in this case the probate had not been issued, it was premature for the applicant to pray the court to revoke same. What this means is that the applicant had no valid cause of action as far as her relief (ii) is concerned and same could have been struck out by the trial judge, but not for failure to comply with Rule 33(3) of Order 66. The reason for Rule 29 is simple. Until the probate or letters of administration are issued out of the registry of the court to the executor or administrator, the court can always set aside or vary its order for the grant of same upon justifiable grounds by a simple application to the court in the matter by a person adversely affected by the grant. It must be remembered that applications for probate and administration are generally by ex parte proceedings and a court will not hesitate to set aside or vary its orders obtained ex parte if sufficient reason is provided.

Another important observation is that its unclear to me the purpose for which the applicant endorsed her writ of summons with reliefs (i) and (ii) in the first place. From the narration of the facts above, her claim is against the estate of the deceased and not as a beneficiary of the estate. In that case, she can only pursue her claim if there is a legal representative of the deceased against whom she can proceed. For that reason, praying for the declaration of nullity of the Will and revocation of the probate will leave her claim in abeyance as there will be no legal representative to proceed against until the validity of the Will is determined. Meanwhile, in her reliefs (iii), (iv) and (v) she is

pressing claims against the very interested parties she is seeking to unseat. Since the liability to her was incurred by the deceased before his death, it is a debt of his estate and takes precedence over any dispositions in a will or devolution under intestacy. See. **Section 92 of the Administration of Estates Act, 1961 (Act 63).**

It is apparent that the applicant's objective in the proceedings in the High Court is to preserve the estate of the deceased in order that she can pursue her claims against the estate. If that is her concern, the Rule directly applicable appears to me to be Rules 2 of Order 66. It is as follows;

Preservation of property

"2. (1) The Court to which an application is made under rule 1 of this Order may, for the preservation of the property of the deceased within its jurisdiction or for the discovery or preservation of the will of the deceased, take such interim measures as it considers necessary.

(2) The Court within whose jurisdiction the property is situated shall, where the circumstances so require, on the death of the person or as soon as may be practicable after that, appoint an officer of the Court or such other person as it considers fit, to take possession of the property within its jurisdiction or put it under seal until it is dealt with in accordance with law."

It has come to my attention on a number of occasions that counsel handling estate cases do not usually remind themselves that special rules have been made in that regard and instead of reading those rules closely, they tend to approach estate matters using the general procedure rules for civil proceedings in C.I.47. An attentive reading of Order 66 of C.I.47 as a whole by counsel and the trial court would have ensured that this case is properly constituted for efficient and effective adjudication.

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH

(CHIEF JUSTICE)

S. K. MARFUL-SAU

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

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