

**IN THE CIRCUIT COURT '2' ADENTAN SITTING BEFORE HER HONOUR
SEDINAM AWO BALOKAH (MS) THE PRESIDING JUDGE
ON THE 10TH DAY OF FEBRUARY, 2023**

TIME: 9:30 AM

SUIT NO. C7/024/2022

**IN THE MATTER OF THE ESTATE OF JOHN KWABENA OFOSU-AFRIYIE
(JOFA)**

AND

**IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTERS OF
ADMINISTRATION BY MAVIS
OPAREBEA HOYLE (WIFE), THERESA NAANA AFRIYIE (DAUGHTER),
MICHAEL AFRIYIE (CUSTOMARY SUCCESSOR)**

Parties

Applicants present

Representation

Caveator's Lawful Attorney present

Hope Agboado present holding brief for Bright Amu for Applicants.

James Gawuga Nkrumah present for Caveator.

By Court – Ruling

This is a Summary determination of the substance or essence of the caveat filed by Jude Ofosu-Afriyie acting per his Lawful Attorney, Marcus Owusu-Afriyie.

In the said Caveator's Affidavit of Interest, he claims that a Will of the deceased, John Kwabena Ofosu-Afriyie (Hereinafter referred to as "The late JOFA") made in June 2007 is still in existence and thus rendered it legally unsound for this Court to have granted Letters of Administration to the Applicants herein.

It is the Caveator's further claim that the said June 2007 Will of the Late JOFA has since its making not been legally revoked as required by the **Wills Act, 1971 (Act 360)**, therefore the Court must set aside the grant of Letters of Administration to the Applicants herein. The Applicants have argued that the late JOFA had by a letter to the Akim Oda High Court Registrar, written to the said Court indicating his intention to withdraw from the Court's Custody, his June 2007 Will (**See "Exhibit E"**). This, the Applicants argue, amounts to a legal revocation of the said Will by the Late JOFA. They therefore submit that, the grant of Letters of Administration to the Applicants proceed as there exists no Will of the Late JOFA.

The question to answer is whether or not there exists a Will belonging to the Late JOFA as at the date this Court granted the Application for Letters of Administration subject to publication. The Court will not raise and answer any question as to the validity of any such Will. That issue is not before this Court per this Caveat. From **"Exhibit JOFA 5" and "Exhibit E"**, it is clear that the Late JOFA deposited a Will at The Akim Oda High Court on 5th July 2007, the Will being a June 2007 Will. It is further clear that the Late JOFA sought to withdraw the said Will by **"Exhibit E"**. Does the withdrawal amount to a revocation of the Will thereby nullifying its existence? I think not. **Section 9 of Act 360** clearly stipulates the acts that amount to a revocation of a Will. **"Exhibit E"** is definitely not an act that meets the criteria set out in **Section 9 of Act 360**.

Further, **Section 11 of Act 360** indicates that the deposit of a Will with a High Court is merely for safe keeping in the custody of the Court, especially as withdrawal of a Will from the custody of a High Court is not mentioned at **Section 9 of Act 360** as an act of revocation of the said Will. In the circumstances, it is hereby determined that so long as the June 2007 Will of the Late JOFA is still in existence and not revoked as per **Section 9 of Act 360**, the grant of Letters of Administration to the Applicants herein subject to publication, made by this Court on the 29th day of August 2022, is made in violation of law as the Late JOFA per **"Exhibit JOFA 5"** died testate and not intestate.

The 29th August 2022 grant is therefore rescinded. Parties are advised to proceed in accordance with law.

Counsel for Caveator: We waive cost.

By Court

No award as to cost at same is waived by Counsel for Caveator.

(SGD)
H/H SEDINAM AWO BALOKAH
CIRCUIT COURT JUDGE

Sarafina./*