IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HOHOE, HELD ON WEDNESDAY THE 31ST DAY OF JANUARY 2023 BEFORE HIS LORDSHIP JUSTICE AYITEY ARMAH-TETTEH

SUIT NO: E12/8/2021

1. SAMUEL KWAME BEDDU
2. PAAPA BEDDU NKRUMAH
3. FRANCISCA DEEDE BEDDU NKRUMAH --- PLAINTIFFS

(BENEFICIARIES & CUSTOMARY SUCCESSORS
OF THE LATE JOHN KODZO BEDDU, SUING IN
A REPRESENTATIVE CAPACITY OF THE OTHER BENEFICIARIES)

VRS

GLORIA BEDDU --- DEFENDANT

PARTIES: - 1ST PLAINTIFF PRESENT
2ND AND 3RD PLAINTIFFS ABSENT

DEFENDANT PRESENT

COUNSEL: - MR. JOHN HANSON SENOO FOR PLAINTIFFS PRESENT
MR. ERNEST DELA AKATEY FOR DEFENDANT PRESENT

JUDGMENT

BACKGROUND AND FACTS

The father of the parties one John Kodzo Beddu (the deceased) a native of Aveme-Aglama and a resident of Kpando died on 28 October 2006. The deceased left behind a lot of movable and immovable properties. On 9 February 2012 letters of Administration in respect of his estate was granted to one Togbe Sekyere also known as Philip Bansah. On 6 December 2012, the said Togbe Sekyere died leaving the estate unadministered. On 2 June 2015 the Plaintiffs applied to the Court for the revocation of the letters of

administration granted to Togbe Sekyere for a new one to be granted to them. The defendant on the 7 July 2015 filed a caveat and thereafter filed an affidavit of interest. In her affidavit of interest she said the deceased died leaving a Will and objected to the grant of the letters of administration to the Plaintiffs. In the events that followed the Court ordered the Plaintiffs to issue a writ of summons to determine who is entitled to the grant of letters of Administration to administer the estate of the deceased.

On 8 September 2020, the Plaintiffs in their representative capacities for the beneficiaries of the estate and customary successors of the late John Kodzo Beddu issued the writ of summons against the defendant for the following reliefs:

1. *An order for the grant of Letters of Administration in respect of the estate of the late John Kodzo Beddu of Aveme-Aglama.*
2. *An order to account for the sale of the deceased vehicle No. GT. 4489 -D and renting of House No. TNE-AO57 and TNT 8/21.*
3. *General damages for the intermeddling with the estate of the late John Kodzo Beddu.*
4. *Costs.*

Upon service of the writ of summons and statement of claim on the defendant, she entered appearance through her lawyer and subsequently filed a defence. She contested in its entirety all version of the Plaintiffs' claim.

It is the claim of the plaintiff that the deceased died without a Will and the Will purported to be the last Will of the deceased was not the deed of the deceased as the deceased was an illiterate and could not read or write English. They further contend that the deceased always thumb printed his documents so he could not have signed the document presented by the Defendant as the Will of the deceased. The Plaintiffs further alleged that the defendant has intermeddled with the estate of the deceased.

The defendant resisted the claim of the Plaintiffs and said the deceased was a literate and died testate having made a Will and same deposited at the registry of this Court. The defendant further denied that she has intermeddled with the estate of the deceased.

ISSUES

The following issues were set down for the determination of the suit:-

1. *Whether or not the late John Kodzo Beddu was an illiterate and died intestate.*
2. *Whether or not the Plaintiffs are entitled to the grant of Letters of Administration in respect of the estate of their father.*
3. *Whether or not the Defendant has intermeddled in the estate of the late John Kodzo Beddu.*

In proof of their case the 2nd Plaintiff testified for himself and on behalf of the other Plaintiffs and called one witness. The defendant also testified and called one witness.

ISSUE 1*. Whether or not the late John Kodzo Beddu was an illiterate and died intestate*.

The Wills Act, 1971 (Act 360) and Order 66 of the High Court (Civil Procedure) Rule 2004, C.I. 47 govern matters in respect of Wills in Ghana. Act 360 among other things provides the manner a Will shall be made for it to be valid. Order 66 of C.I. 47 provides the procedure for the application for the grant of probate to Wills and Letters of Administration with Will annex and for trial of contentious probate matters.

The fundamental issue in this matter is the validity of the document presented by the defendant as the Will of the late John Kwadzo Beddu. The Plaintiffs are saying that the document presented by the defendant as the Will of the deceased is not the deed of the deceased and that the signature that appears on it is not his signature. Essentially the plaintiffs are alleging that the document is a forgery or a product of fraud. The settled law is that, where the validity of a Will is challenged especially on grounds of forgery, the proponents of the Will have the burden to satisfy the court that the document

presented as the Will and Testament of the deceased was freely made by him or her and was duly attested to by two witnesses who were present at the same time and it was executed in accordance with the Wills Act. The proponents are further to satisfy the court that the testator or testatrix at the time he or she executed the Will was *corpus mentis* and not suffering from any impairment of mind. Once the proponents of the Will discharge this burden on them, then the burden of proof shifts to the party alleging that the document is a forgery or does not meet the requirements of the Wills Act to prove those allegations.

See:

1. **Thomas Tata Atanley Kofigah and Anor v. Kofigah Francis Atanley and Anor** Civil Appeal No. J4/05/2019 dated 22nd January 2020 (unreported).
2. **In Re Blay-Miezer (Deced); Ako Adjei & Anor v Kells & Anor** [2001-2002] SCGLR 339.

A look at the document presented as the Will of the late John Kodzo Beddu, Exhibit '1' there are no named executors (which I will explain later in this judgment) and the defendant who claims that the deceased made a Will and that she is a beneficiary of the said Will, in my view will be the proponent of the Will of the deceased and she has the burden to prove to the satisfaction of the Court that the Will was executed in accordance with the Wills Act. If she is able to satisfy the Court that the Will was executed in accordance with the Wills Act, then the burden will shift to the Plaintiffs who allege that the signature on the Will is not the signature of the late John Kodzo Beddu and that the Will is a product of fraud or forgery.

It must be borne in mind that this a civil case and as in all civil cases, the burden of proof or persuasion is proof by preponderance of probabilities but where an offence is alleged in a civil case the proof of the alleged offence must be proof beyond reasonable doubt.

Sections 12(2) the Evidence Act provides as follows:

> *"**Preponderance of the Probabilities**" means that degree of certainty 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."*

Section 13(1) also provides as follows:

> *"In a civil or criminal action, the burden of persuasion as to the commission of a crime by a party of a crime which is directly in issue requires proof beyond reasonable doubt,"*

Section 14 also provides as follows:

"14. *Allocation of burden of persuasion*

> *Except as otherwise provided by law, unless 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 that party is asserting."*

15. Burden of Persuasion

> *Unless it is shifted,*
>
> *(a) The party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue.*

In **Aryeh & Akakpo v. Ayaa Iddrisu** [2010] SCGLR 891 at 903 Brobbey JSC held as follows:

> *"It is provided by the Evidence Act, 1975 (NRCD 323), s.13 (1) that:*
>
> > *"In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt "*

This rule in section 13(1) of the Evidence Act 1975 emphasis that where in a civil case a crime is pleaded or alleged, the standard of proof changes from the civil one of balance of the probabilities to the criminal one of proof beyond reasonable doubt."

And a party who raises an issue essential to the success of his case assumes the burden of proof and he does discharge this evidential burden by the production of sufficient and reliable evidence.

See the case of **Bank of West Africa Ltd v Ackun** [1963] 1 GLR 176 where the court in holding 2 of the head notes held as follows:

"The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof. In the instant case the defendants accepted substantially the plaintiff's claim but raised an additional or separate issue. The trial judge was right in placing the onus of proving this additional issue on them."

On this issue the defendant testified as follows:

1. *"That our father John Kodzo Beddu died testate and he made a Will during his lifetime and the said [Will] has been deposited at the High Court, Hohoe .*
2. *I attached (sic) herewith and marked as "EXHIBIT 1" the said Will of John Kodzo Beddu."*

The Defendant put a copy of the said will in evidence without objection as Exhibit '1'.

The Plaintiffs denied that the deceased died leaving a will and the 2nd Plaintiff testified as follows:

"14. That I assert that our late father, an illiterate did not write and execute any Will as being claimed by the Defendant."

What are the essential requirements of a valid will in terms of the Wills Act, Act 360?

1. POWER TO MAKE A WILL

1) A person of or above the age of eighteen years may in writing and in accordance with this Act, make a will disposing of the property

(a) of that person, or

(b) to which that person will be entitled at the time of death, or

(c) to which that person may be entitled after death.

2) A person suffering from insanity or infirmity of mind so as to be incapable of understanding the nature or effect of a will does not have capacity to make a will during the continuance of that insanity or infirmity of mind.

3) A will, or a provision of a will, obtained by fraud or made under duress or undue influence, is void

2. EXECUTION OF A WILL

1) *A Will is not valid unless it is in writing and signed by the testator or by any other person at the discretion of the testator.*
2) *A signature is not operational to give effect to a disposition or direction which is underneath or which follows it, or which is inserted after the signature has been made.*
3) *The signature of the testator shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time.*
4) *A signature by any other person at the discretion of the testator shall be made by that other person in the presence of the testator and two or more witnesses present at the same time.*
5) *The witnesses shall attest and sign the Will in the presence of the testator but a form of attestation is not necessary.*

6) *Where the testator is blind or illiterate, a competent person shall carefully read over and explain to him the contents of the Will before it is executed, and that competent person shall declare in writing on the Will that the Will had been read over and its contents explained to the testator and that the testator appeared perfectly to understand the Will before the Will was executed.*

In the instant case was the Will executed in accordance with the Wills Act. Firstly, there is no evidence that at the time of the death of the deceased he was mentally incapacitated and could not make a Will so the capacity of the deceased to make a Will is not in doubt. The plaintiff did not challenge the mental capacity of the deceased to make a Will.

Secondly, on the face of Exhibit '1' even though there is a named executor his name appears at the bottom of the document and underneath the signature of the alleged testator. It appears as follows:

"REMARKS:

THIS WILL TO BE EXECUTED BY

TOGBUI KWAME SEKYERE IV,
DUFIA OF AVEME -AGLAMA."

The effect is that this direction appearing at the bottom and underneath the signature of the alleged testator is not effective to make Togbui Kwame Sekyere IV an Executor of the Will in terms of section 2 (2) of the Wills Act supra.

Thirdly, PW1 testified that the two attesting witnesses to the Will at a meeting where the Will was the subject of the said meeting, admitted that they were present when the Will was executed by the deceased.

This what PW1 said:

> *"Sometime in 2012, Togbe Sekyere IV the Chief of Aveme-Aglame invited me and the principal members of the family as customary successor of John Kodzo Beddi and the parties. Togbe Sekyere showed us a Will allegedly written by John Kodzo Beddu which I was asked to read. One of the elders Togbe Adzam enquired whether anybody knew about the Will and Togbe Sekyere admitted knowing about the Will. Another elder Kojo Panyim Wilson, Kodzo Kumaga also said he knew about the Will. These two who knew about the Will were witnesses to the Will. The elder demanded whether they knew the contents of the Will and they answered in the negative."*

And this is what ensued when PW1 was cross examined.

Q. You agree that Kojo Panyin Wilson and Kudzo Kumaga knew about the Will?

A. Yes.

Q. Did Kojo Panyin Wilson and Kodzo Kumag deny being witnesses to the Will?

A. What I know is that Kodzo Kumaga and Kojo Panyin Wilson were witnesses to the Will.

Q. By paragraph 6 you said the witnesses told you they did not know about the contents of the Will.

A. Yes That Is True.

Q. Where are the witnesses now i.e. Kojo Wilson NA Kodzo Kumaga?

A. Kodzo Kumaga is deceased, but I do not know the whereabout of Kojo Panyin Wilson.

From the testimony of the PW1, the witnesses to the Will admitted before him that they witnessed the execution of the Will by the deceased but that they did not know the contents. According to PWI the attesting witnesses were reprimanded for not knowing

the contents of the Will. I must remark that it is not a requirement of the Wills Act that the attesting witnesses must know the contents of the Will. The Wills Act provides that the signature of the testator shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time. It is not a legal requirement that the attesting witnesses must know the contents of the Will. It is the signature of the testator that must be made or acknowledged in the presence of the two attesting witnesses present at the same time and the contents of the Will.

There is evidence on record that these two witnesses are deceased and as such cannot testify in court, but from the evidence of the Plaintiff's own witness, the attesting witness admitted at the meeting that they were the attesting witnesses to the Will. I have no doubt in my mind that the deceased signed and executed the Will in the presence the two attesting witnesses.

Fourthly, was the deceased an illiterate, and if he was, was the Will executed in accordance with section 2(6) of the Wills Act? The deceased signed exhibit 1 and it is trite that when a person signs a document it is not conclusive evidence that the person is a literate and equally when a person thumbprint a document it is also not conclusive evidence that the person is an illiterate. So the deceased signing the Will is not conclusive evidence that he was literate and could read and write. I am satisfied that the deceased was an illiterate and could not read and write and the Will was not read over and explained to him as required by section 2(6) of the Wills Act for the following reasons.

It is the case of the Defendant that the deceased died testate leaving a Will a claim the plaintiffs deny. The Defendant who is the proponent of the Will has the burden of proof or persuasion to satisfy the court that the deceased was literate and that the document she has presented as the Will of the deceased was executed in accordance with the Wills

Act and that the Will is valid. If she is able to discharge that evidential burden, then the burden of proof shifts to the plaintiffs who are alleging that the Will is a forgery.

It is the case of the Plaintiffs that the deceased was illiterate and could not read and write. The defendant's witness 1 Philomina Beddu who is also one of the children of the deceased testified that the deceased did not have formal education but had a non-formal education and could read and write. This evidence of DW1 in my respectful view is an admission that the deceased at a point time in his lifetime was an illiterate but later had a non-formal education and could read and write after the having the non-formal education. Non-formal education provides functional literacy and continuing education for adults and youth who have not had formal education or did not complete their primary education. In this circumstance the burden of proof or persuasion that the deceased had non-formal education and could read and write lies on the defendant and that the document she has presented as the Will of the deceased was executed in accordance with the Wills Act. The defendant did not provide any evidence in support of her claim that the deceased had a non-formal education, and he could read and write.

The law is that it is the party who stands to lose on an issue if no evidence is led on it that bears the burden of proof as far as that issue is concerned.

This is provided for in Sections 14 and 17 of The Evidence ACT 1975 NRCD 323;

> **"14. Allocation of burden of persuasion**
>
> *Except as otherwise provided by law, unless 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 that party is asserting.*
>
> **17. The burden of producing evidence**

Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence."

In the instant case, if no evidence is led on the allegation that the deceased was a literate by having a non-formal education it is the defendant who will lose on that issue. No iota of evidence was provided by the defendant in proof of her allegation that the deceased was a literate. Indeed, the defendant failed to discharge the evidential burden placed on her by Sections 14 and 17 of the Evidence Act, NRCD 323.I am satisfied that the deceased was an illiterate.

Being an illiterate the contents of exhibit 1 were to be read and explained to the deceased in accordance with section 2(6) of the Wills Act before making his mark. And there should be a writing on the face of exhibit 1 that the contents of the Will were read over and explained to the deceased .On the face of exhibit 1 there is no declaration in writing on it that it had been read over and contents explained to the testator and that the testator appeared perfectly to have understood the Will before it was executed.

And in law the burden of proof to establish that an illiterate person understood and appreciated a document before execution is on the person who is relying on the same. The standard of proof being on a preponderance of the probabilities.

See **Akuteye & Ors v. Nyakoah &Ors** (J4 58 OF 2017)[2018] GHASC 13 (23 May 2018)

In the instant case the defendant was unable to prove that the deceased who was an illiterate appreciated the contents. I find that the deceased an illiterate did not have the contents of the Will red over and explained to him. My view is supported by the inconsistencies and factual errors in exhibit 1. If the contents had been read over and

explained to him, he would have noticed those inconsistencies and factual errors and had them corrected.

In paragraph 2 of Exhibit 1 the following were named as Sole beneficiaries.

Louis Kuma Bedu ,Philomina Bedu, Kofi Bedu, Bebeno Yaw Bedu and Esinam Bedu.

Paragraph 2 further states that:

1. "All my properties including House No. TNE-A-057 and House No. TNT 8/21 situate, lying and being at Kpando Tsakpe New town, Kpando with site Plans and building plan inclusive.
2. That all my personal belongings to be shared amongst the beneficiaries as listed above."

Again, paragraph 5 of Exhibit '1' states that "That my son Richard Bedu also was sent to Europe to study, but he came back empty handed and I gave him no portion of my properties. He has no inheritance in my properties."

In sharp contrast it is said in paragraph 6 that "That my children. i. Richard Bedu is entitled to two(2) Bedrooms in my house No. TNT 8/21 and ii. Dedee Bedu is also entitled to two (2) Bedrooms in my house No. TNT 8/21.

It must be noted that this House Number TNT 8/21 is the same house referred to in paragraph 2 devised to five (5) of the testator's children mentioned as sole beneficiaries.

Again Richard Bedu , the testator had said he was sent to Europe and came back empty handed and has no inheritance in his properties is now entitled to two(2) bedrooms with one Deede Bedu not mentioned in paragraph 2 as the sole beneficiaries .

But evidence on record indicates that he was never sent to Europe, and he was named as a beneficiary in the will.

Under cross examination of DW1 this is what ensued:

Q. Do you know your father's son called Richard Beddu?

A. Yes

Q. Where is he now?

A. Deceased

Q. Is it true that your father sent him to Europe?

A. No.

I am satisfied that it was the deceased who signed the will even though he was an illiterate. However there is no evidence that the contents of the Will were explained to him and that violates section 2(6) of the Wills Act. I will therefore declare the will to be invalid. The estate of the deceased falls into intestacy and it should be distributed in accordance with the provisions of the intestate succession law.

ISSUE 3 *"Whether or not defendant has intermeddled in the estate of the John Kodzo Beddu "*

Order 66 rue 3 of the High Court (Civil Procedure) Rules C.I. 47 provides as follows:

> *"Where any person, other that the person named as executor in a will or appointed by Court to administer the estate of a deceased person , takes possession of and administers or otherwise deals with the property of a deceased person, the person shall be subject to the same obligations and liabilities as an executor or administrator and shall in addition be guilty of the offence of intermeddling and liable on summary conviction to a fine not exceeding 500 penalty units or twice the value of the estate intermeddled with or to imprisonment for a term not exceeding 2 years or to both."*

In **Impraim v Baffoe** [1980] GLR 520 Okunor J. held as follows:

"2) Any person who, not having been appointed executor of a will, either expressly or by implication, intermeddled with the goods of the deceased in such a manner as to show an intention of exercising the authority of an executor, might make himself liable as an executor de son tort. Very slight acts of intermeddling would make a person executor de son tort, for example receiving debts due to the estate. In the present case, the defendant confessed to collecting rents due to the estate. The executor de son tort was liable to be sued by the rightful executor or administrator or by a legatee. He had to account to the personal representatives and would thus put an end to his liability except as regarded outstanding legal actions."

Intermeddling is a criminal offence, and the standard of proof is proof beyond reasonable doubt. The elements of intermeddling in my view are (1) the person(s) is not an administrator of the estate of a deceased person, or a named executor (2) and he takes possession of and administers or otherwise deals with the property of a deceased person.

It is the claim of the Plaintiff that the defendant has intermeddled in the estate of the deceased. This allegation was denied by the Defendant. The Plaintiffs pleaded as follows:

" 14. The Plaintiffs state that the Defendant is intermeddling with the estate of their late father even though [she] was not granted a probate by any Court within the republic of Ghana."

On this issue the 2nd plaintiff testified as follows:

"15. The defendant is intermeddling with the estate of our late father even though she has not been granted a Probate by any Court."

The plaintiff just repeated his averment on intermeddling when he mounted the witness box and nothing more. There is no evidence that the Defendant has obtained Probate in respect of exhibit 1 but the Plaintiffs failed to establish that the Defendant has taken

possession of and administer or otherwise deals with the property of a deceased person in any manner. They would be deemed not to have proved the allegation of intermeddling against the defendant.

It is trite law that a bare assertion by a party of his pleadings in the witness box without proof did not shift the evidential burden onto the other party.

In the case of **Mojalagbe** v. **Larbi & Ors** (1959) GLR 190 Ollenu J. (as he then was) stated as follows:

> *"Proof in law is the establishment of facts by proper legal means; Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness-box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true."*

The plaintiffs have failed to proof that the deceased has intermeddled in the estate of the deceased. There was no evidence led by the Plaintiffs that the Defendant has in her possession any property belonging to the estate of the deceased.

The plaintiffs again alleged that the defendant sold a Mercedes Benz bus with registration number GT 4489-D. Again the plaintiffs just repeated this averment in their pleading when 2nd Plaintiff mounted the witness box. The Plaintiffs will be deemed not to have proved the allegation that the Defendant sold the Mercedes Benz belonging to the deceased. See **Mojalagbe** v. **Larbi & Ors supra**

ISSUE 2: *Whether or not the defendants are entitled to the grant of letters of administration*.

The deceased died intestate on 28 October 2006 and Order 66 of C.I.47 provides for the order of Priority of grant of letters of administration where a person dies intestate after the enactment of PNDCL 111 as follows:

"Where a person dies intestate on or after 14th June 1985, the person 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;
d) the customary successor of the deceased"

Under PNDCL 111 the persons who have beneficial interest in the estate of a person who dies intestate are those listed in order 66 rule 13 and in addition a child of the deceased who predeceased the deceased i.e. grandchildren of the deceased.

In the present action, the deceased was by the parties and other children. There is no evidence that he was survived by a widow

From the list of those who have the priority to be granted letters of Administration under order 66 rule 13, the parties and the surviving children are those to be granted letters of administration. There are more than 4 surviving children of the deceased. Rule 14 of order 66 provides as follows:

(1) unless otherwise provided by any enactment, the number of persons to whom a grant of letters of administration may be made shall not exceed four.

(2) Where two or more persons are entitled to a grant in the same degree, the Court may make a grant to any one of them without joining the others.

All the children of the deceased including the Plaintiffs entitled to a grant of the letters of administration in the same degree and the court should have made a grant to only one. All the children are not from the same mother and will grant letters of Administration of the deceased to one of the Plaintiffs and defendant and the Registrar of this court.

In conclusion, I will declare exhibit 1 as invalid and grant relief (a) of the Plaintiffs and appoint the Paapa Beddu Nkrumah, Gloria Beddu and the Registrar of this Court as administrators and adminitratrixes of the deceased. I will also dismiss reliefs (b) and (c) of plaintiff's relief.

I make no order as to costs.

(SGD)

Ayitey Armah-Tetteh J.

(Justice of the High Court)