

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
PROBATE AND ADMINISTRATION DIVISION I HELD IN ACCRA ON 5<sup>TH</sup> DAY  
OF DECEMBER, 2023 BEFORE HER LADYSHIP EUDORA CHRISTINA DADSON,  
JUSTICE OF THE HIGH COURT

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SUIT NO.PA/1109/2023

LESLIE LARTE LARTEY }  
1 SAMMY LINK }...PLAINTIFF  
OFF ADJIRINGANO ROAD }

VS

EVELYN SALLY LARTEY }  
GBAWE – ACCRA }...DEFENDANT

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**PARTIES: PLAINTIFF ABSENT  
DEFENDANT PRESENT**

**COUNSEL: NANA ASMAH FOR THE PLAINTIFF PRESENT  
BERNARD AGORTEY WITH ERNEST HARDI NATOMAH-SILAS FOR  
THE DEFENDANT PRESENT**

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**RULING**

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**[1] Introduction**

The Plaintiff/Applicant issued a Writ of Summons with an accompanying statement of claim on

4<sup>th</sup> September 2023 for the following reliefs:

1. *“A declaration that the Will was not properly executed.*
2. *Revocation of grant of probate*
3. *Costs on full indemnity basis*
4. *Any other orders that this Honourable Court deems fit.”*

The Defendant entered appearance on 30<sup>th</sup> November 22023 and filed his Statement of Defence on 30<sup>th</sup> November 2023.

The Defendant counterclaimed as follows:

1. *“Accounts and refund of all rents received by the Plaintiff from the tenant in house number 7 Stove Street, Awoshie-Accra.*
2. *Interest on the said amount from January 2023 till date of final payment.”*

## **[2] Motion on Notice to deposit Probate**

The Plaintiff/Applicant praying the Court for probate be deposited in the Registry of the Court. It is the case of the Applicant that on 4<sup>th</sup> September 2023 she filed citation which was served on the Defendant. Search conducted indicates the Probate has not been deposited although the Defendant/Respondent was under an obligation to deposit the Probate within a specified period and she failed to comply.

## **[3] Affidavit in opposition**

The Deponent for Respondent Baba Rockson Salifu deposed that she is opposed to the instant application. The application is unmeritorious and in bad faith.

The Deponent contends that *“the present application is aimed at frustrating the efforts by the Plaintiff to administer the estate of the deceased by preventing her from collecting rent from a tenant in one of the properties forming part of the estate.”*<sup>1</sup>

The Defendant/Respondent relied on paragraphs 6 to 17 in opposition to the present motion.

#### **[4] Court’s Analysis and opinion**

The sole issue for determination in the present application is at what stage of an action for revocation for letters of administration should citation be filed and the procedure if there is non-compliance with the citation?

I will therefore examine the practice and procedure under the Rule and the Statute invoked.

Order 66 rule 33 of High Court (Civil Procedure) Rules, 2004, C.I. 47, provides as follows:

- (1) *“A probate action shall be commenced by writ.*
- (2) *The writ must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased.*
- (3) *Before a writ for 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”.*

Order 66 rule 37 of High Court (Civil Procedure) Rules, 2004, C.I. 47, provides as follows:

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<sup>1</sup> Paragraph 5 of the Affidavit in opposition

*“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 deceased 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.*

*(2) A person on whom a notice is served under subrule (1) shall comply with the notice not later than four days from the date of service of the notice.*

*(3) Where a person served with a notice under subrule (1) does not comply with it within the time specified, the plaintiff may apply to the Court for an order directing that the probate or letters of administration shall be brought and left at the registry of the Court within such time as the Court may specify”.*

S 67 of the Administration of Estates Act, 1961, Act 63 provides as follows:

*“Where administration is granted in respect of an estate of a deceased person, a person shall not bring an action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant is recalled or revoked.”*

A citation must be filed before an action to revoke letters of Administration is commenced. It has been held in the case of ANYINAM vs. MENSAH [1989-90] 2 GLR 96, by Omari-Sasu J as he then was, as follows:

*“The effect of section 67 of the Administration of Estates Act, 1961, Act 63 was that before an aggrieved plaintiff commenced an action aimed at the revocation of letters of administration already granted, he must as a first step file a citation calling upon the citee to produce his letters of administration at the registry of the court and the citee must show cause why his grant of letters of administration should not be revoked. Within the citation, it was the duty of the plaintiff-citor to give the reason for his filing the citation. In the*

*instant case, the plaintiff who sought revocation of the defendant's grant of letters of administration had woefully failed to file the citation which by Section 67 of Act 63 was a mandatory statutory condition precedent to the commencement of an action for the revocation of letters of administration. The whole proceedings were thus a nullity."*

The learned Author Kwami Tetteh, in his invaluable book Civil Procedure, A Practical Approach, at page 740 states as follows:

*"Once a grant is under challenge, it must be surrendered to the court pending the determination of the challenge. Or 66 R 33(3) of C. I 47 requires that before a writ for the revocation of a grant is issued, the would-be plaintiff must serve the grantee a citation to deliver the grant in the registry, if not previously delivered."*

In the case of HEWARD-MILLS vs. HEWARD-MILLS [1992] 1 GLR 153 the Court of Appeal held as follows:

*"Where a statutory condition must be complied with before a court could have jurisdiction to make an order, failure to comply with such a condition would leave the court with no discretion to make any order or orders in the matter. Order 4, R 5(1) and (2) and Order 6 R 2(3) and 6(1) of the Probate and Administration Rules, 1991 (L.I 1515) made it clear that before a person could cause the issue of a writ to revoke a grant of probate he should first have served a notice on the person to whom the probate had been granted, requiring him to bring and leave at the registry of the court, the probate that had been granted to him"*

In the case of BONSU v EYIFAH AND ANOTHER [2001-2002] 1 GLR 9, the Court held as follows:

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<sup>2</sup> Or 66 r 37(1) on the other hand, requires that such notice shall issue "where the action is brought". A purposive interpretation is required as the former rule refers to the later. Such purposive interpretation would apply both harmoniously for the citation to issue before or at the issue of the action.

*The combined effect of section 67 of the Administration of Estates Act, 1961 (Act 63) and Orders 4 and 6 of the Probate and Administration Rules, 1991 (LI 1515) was that where an action involved the recall and revocation of probate or letters of administration granted, notice should be given to the grantee of the said probate or letters of administration for a recall of same to be deposited at the registry. The citation should either be served on the grantee first before the commencement of the action or the citation and the writ could be commenced together simultaneously. However, in the later case, the citation had to be served first. Accordingly, the commencement of the action against the defendants or the service of the writ on the defendants without first serving them with a notice requesting them to deposit the letters of administration granted them at the registry of the court was irregular. Since the irregularity bordered on non-compliance with statutory provisions, i.e. section 67 of Act 63 and orders 4 and 6 of LI 1515, it could not be cured under Order 70 of High Court (Civil Procedure) Rules, (LN 140A). Accordingly, the plaintiff's action was a nullity."*

The rules are therefore clear that, prior to the institution of an action for revocation of probate or at the time the Writ of Summons with an accompanying Statement of Claim is being issued the citation must be filed. It is mandatory precedent for instituting that kind of action else the subsequent writ issued shall be a nullity.

The Plaintiff/Applicant issued a Writ of Summons with accompanying Statement of Claim on 4<sup>th</sup> September 2023. One of the reliefs sought is for the revocation of probate – relief b. The Applicant filed a citation on 4<sup>th</sup> September 2023 at 10.35am. The citation was served on Respondent on 12<sup>th</sup> September 2023 at 12.10pm and this is evidenced by affidavit of service dated 13<sup>th</sup> September 2023.

Per Order 66 Rule 37 (2) of CI 47 the Respondent had 4 days within which to comply with the citation from the date of service. Has the Respondent complied with the citation, the answer is no. What option does the Applicant have to ensure that the Respondent comply

with the citation? The answer can be found in Order 66 Rule 37(3) of CI 47 which states as follows:

*(3) Where a person served with a notice under subrule (1) does not comply with it within the time specified, the plaintiff may apply to the Court for an order directing that the probate or letters of administration shall be brought and left at the registry of the Court within such time as the Court may specify.*

The Applicant has embarked on the right procedure and the Respondents plea that the grant of the present application would lead to the dissipation of the estate does not arise in the consideration of the present application. The Respondent is not entirely without a remedy.

**[5] Conclusion**

For reasons stated above, I accordingly grant the Motion on Notice for an Order directed at Respondent to deposit probate filed on 8<sup>th</sup> November 2023.

I make the following Order.

I order the Respondent to deposit the Probate obtained from the High Court dated 15<sup>th</sup> May 2023 into the Registry of this Court within seven days from today.

I make no order as to costs.

**(SGD.)**

**H/L EUDORA CHRISTINA DADSON (MRS.)**

**JUSTICE OF THE HIGH COURT**

