

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
PROBATE AND ADMINISTRATION DIVISION I HELD IN ACCRA ON TUESDAY  
THE 9<sup>TH</sup> DAY OF JANUARY, 2024 BEFORE HER LADYSHIP EUDORA CHRISTINA  
DADSON (MRS.) JUSTICE OF THE HIGH COURT

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SUIT NO. PA/0872/2023

ELIZABETH CRANKSON	}
H/NO. 15 OBAKUMA STREET	} ...PLAINTIFF
HAATSO, ACCRA	}

VS

MARTHA AKORKOR BIBAH	}
ACCRA	}...DEFENDANT

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PARTIES: PLAINTIFF PRESENT  
DEFENDANT PRESENT

COUNSEL: CHRISTOPHER KWAME MANU WITH ABENA BOATEMAA ENNIN  
HOLDING THE BRIEF OF JAH JOSIAH FOR THE  
PLAINTIFF/RESPONDENT PRESENT  
ROBERT YARTEY FOR THE DEFENDANT/APPLICANT PRESENT

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## RULING

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[1] Introduction

The Plaintiff/Respondent issued a Writ of Summons with an accompanying Statement of Claim on 21<sup>st</sup> June 2023 for the following reliefs:

- a. "A declaration that the Will and Testament dated 7<sup>th</sup> day of July, 2016 is valid.*
- b. An order to admit the said Will and Testament to probate.*
- c. A declaration that the Defendant Martha Akorkor Bibah is not the legally married wife of the deceased.*
- d. A further declaration that, in view of the fact that the Defendant is not the legally married wife of the Late Opanyin Mackwaw, then the Defendant has no right, interest and/or lacks the capacity to request executors to prove the Will in solemn form.*
- e. Costs*
- f. Any further reliefs this Court shall deem meet."*

The Defendant entered appearance on 24<sup>th</sup> July 2023 and filed her Statement of Defence on 3<sup>rd</sup> October 2023. Application for Directions was filed on 10<sup>th</sup> November 2023, pre-trial orders were made and adjourned for Case Management Conference on 19<sup>th</sup> January 2024.

## **[2] Motion on Notice**

This is a motion on notice by the Defendant/Applicant on 6<sup>th</sup> December 2023 praying for an order for the preservation of the property of the deceased to wit: That all rents due to the estate of the deceased to be paid to the customary successor of the deceased in terms of S1 (2) and S 2 of the Administration of Estates Act and Order 66 rule 2 of CI 47.

One Solomon Ebo Ansah deposed to a 9-paragraph affidavit in support and relied on Exhibits S.E.A 1 -13 series. The Deponent states that he was the head of family of the late Opanyin Abraham Mackwaw and the Defendant is the widow of the deceased.

The Deponent deposed that it had come to his attention that the tenants occupying the deceased House No. 15 Market Street Haatso, Accra have not paid their rents since the death of the deceased. The names of the tenants have been provided in paragraph 8 of the affidavit in support thirteen (13) in number.

The Deponent states as follows:

*“That I am advised and verily believe that until this Honourable Court determines who the executor or administrator of the deceased estate is the estate devolves upon the customary successor by operation of law. That the customary successor of the deceased is his younger brother Quincy Ampah. That I pray the this Honourable Court Orders that the tenants in the deceased house pay their outstanding rent to the said Quincy Ampah.”*

The Deponent contends that this is to preserve the estate pending the appointment of an executor or administrator otherwise by the time any appointment is done the tenants would have absconded with the rent to the detriment of the estate.

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

The Plaintiff/Respondent (hereinafter referred to as “the Respondent”) is opposed to the instant application and has filed a 15-paragraph affidavit in opposition. The Respondent contends that the applications is frivolous, vexatious and misconceived.

It is the case of the Respondent that the Defendant instituted a suit in the District Court with a similar relief sought in the instant application and same was struck out as dismissed by the District Magistrate Court.

The Respondent states:

*“The estate of Opanyin Abraham Mackwaw was devised in a Will and Testament of the said Opanyin Abraham Mackwaw dated 7<sup>th</sup> July 2016. That upon the reading of the Will aforesaid, the Defendant/Applicant herein (who also claims to be the wife of the deceased) issued out a notice requesting that the executrix proves the Will in solemn form at the High Court (Probate Division).”*

The Respondent states that whilst the matter was pending before the Court she issued the Writ of Summons claiming the reliefs thereto endorsed.

The Respondent contends that because there is a Will with regards to the deceased estate the said Quincy Ampah cannot hold himself out as the customary successor to the deceased estate until the final determination of the suit at the High Court.

The Respondent reiterates inter alia the submissions above in paragraphs 9 to 12 of her affidavit in opposition.

The Respondent states that as Executrix of the estate of the deceased she is the best possible person to collect rent from the tenants and account same to the estate in due course. According to the Respondent the deceased devised the property in question to the Plaintiff/Respondent (Executrix), Dora Kunakey (surviving spouse) and Theophilus Mackwaw (son).

#### **[4] Court's analysis and Opinion**

Whether the present application should be granted?

I shall proceed to examine the applicable rules. The Applicant contends that the application is anchored under Sections 1 (1) (a) and 2 of Administration of Estates Act, 1961, Act 63 as well as Order 66 rule 2 of CI 47.

Sections 1 and 2 of Act 63 states as follows:

Section 1—Devolution on Personal Representatives.

*“(1) The movable and immovable property of a deceased person shall devolve on his personal representatives with effect from his death.*

*(2) In the absence of an executor the estate shall, until a personal representative is appointed, vest as follows:—*

*(a) if the entire estate devolves under customary law—in the successor;*

*(b) in any other case—in the Chief Justice.*

Section 2—Status of Personal Representatives.

*(1) The personal representatives shall be the representative of the deceased in regard to his movable and immovable property.*

*(2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers”.*

Order 66 rule 2 of CI 47 provides as follows:

2. Preservation of property

*“(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.”*

In the case of **Mensah vs Mensah [1992] 2 GLR 71** the Court held that it is not only when an administrative suit is pending that the High Court must consider the appointment of administrators but even before an administration official or a fit person under Order 60 r 2 of LN 140A to be receiver and manager of the property in order to protect and preserve the property pending its administration.

The expression ‘*personal representatives*’ is used to describe either an executor (whether he has proved the Will or not) or an administrator and is defined to mean the executor, original or by representation or administrator for the time being of a deceased person...The personal representatives represent the deceased regarding his real estate to which he was entitled<sup>1</sup>.

Section 1 and 2 of Act 63 is inapplicable to the instant suit. The deceased for all intents and purposes died testate and if even the challenge to the validity of the Will is upheld, the deceased would have died intestate and the devolution of his estate would be in accordance with the Intestate Succession Law, 1985, PNDCL111.

Admittedly the estate would have to be preserved pending the final determination of this case.

It is not in dispute that there are a number of tenants whose rent is due or tenancies have expired and must be renewed or steps taken to manage the rental properties.

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<sup>1</sup> Handbook on Probate & Administration Practice in Ghana (with Precedents) by Derek Adu-Gyamfi - Page 57

However, considering the provisions of Act 63 and Order 66 rules 12 & 13 of CI 47 the customary successor is the last person in the order of priority.

Given the circumstances, if the parties herein can agree on the person(s) to be appointed Administrator Pendente Lite, this Court is of the considered opinion that, that is a more appropriate application to be considered by the Court to ensure all competing interests would be represented pending the final determination of this case and reduce potential dissipation of the estate.

It is for the reasons above that the Defendant/Applicant's motion filed on 6<sup>th</sup> December 2023 is refused and same is accordingly dismissed.

(SGD.)

H/L EUDORA CHRISTINA DADSON (MRS.)

(JUSTICE OF THE HIGH COURT)

**NUMBER OF ADJOURNMENTS -6**