SEALING OF PROBATE AND LETTERS OF ADMINISTRATION OBTAINED FROM COUNTRIES OUTSIDE GHANA

By

REGINALD NII ODOI

SEALING OF PROBATE AND LETTERS OF ADMINISTRATION OBTAINED FROM COUNTRIES OUTSIDE GHANA

REGINALD NII ODOI [1]

ABSTRACT

A human's life is characterized by the acquisition of several properties which are material in nature and thus are left behind in the unlikely event of death. The death of a person who leaves property behind comes with its own issues. One of such is the need to ensure that the personal representatives of the deceased are clothed with the power to administer the estate of the deceased in favor of the named or intended beneficiaries. The grant of probate or letters of administration is very necessary in order for a personal representative to commence the distribution of the Estate. There are instances where a deceased person acquired properties in Ghana as well as in other countries of the world. As a result, it is common that named executors of that deceased person's Will or in the case of one who died intestate, the administrators, would after applying for and being granted probate or letters of administration in the foreign country take steps to have the grant re-sealed in Ghana. This Article seeks to give the legal rules, practice and procedures governing the effect and enforceability, in Ghana, of the grant of probate or letters of administration made by foreign courts. This Article would employ a prescriptive and descriptive approach to assess the process in Ghana by which a grant of probate or letters of administration obtained outside Ghana is re-sealed in Ghana. Thereafter, the Article would make some recommendations that would ensure that certainty is brought to the process of re-sealing in Ghana and would make the process simpler and straightforward.

"Death is not the end. There remains the litigation over the estate."[2]

1.0 INTRODUCTION

A human's life is always characterized by the acquisition of several properties which are material in nature and thus are left behind in the unlikely event of death. Many prudent

1 The Writer at the time of writing this Article possesses an LLM Degree from **Harvard Law School (USA)**; a Qualifying Certificate in Law from the Ghana School of Law and an LLB Degree **(First Class Honors) from Kwame Nkrumah University of Science and Technology (KNUST).** Email is reginaldodoi0927@gmail.com.

2 Ambrose Bierce.

people, whilst alive, care so much about what would happen to their properties after they die. Accordingly, many make plans for their death and that which follows thereafter by preparing a Will which contain their express wishes on how their properties, both immovable and movable, should be distributed and to whom they should be so distributed after their death.

By so doing, they appoint trusted persons as their executors who would take over the duty of distributing properties in accordance with their wishes. Others for whatever reasons fail to prepare a Will and thus their properties are distributed in accordance with the laws of Ghana.[3] Under Ghanaian law, the movable and immovable properties[4] of a deceased person devolves upon death to the personal representatives.[5] The grant of probate or letters of administration is very necessary in order for a personal representative to commence the distribution of the Estate.[6] A personal representative refers to an executor *(original or by representation),* or an administrator for the time being of a deceased person.[7] An executor is one who is named in the Will of the deceased whilst an administrator is one who is granted letters of administration to administer the estate of a deceased person who died without a Will.

The civil jurisdiction of the High Court[8] of Ghana extends over the administration of estates of any person who, at the time of death, had a fixed place of abode[9] or property[10] within the jurisdiction of the court i.e. the property should be wholly or partly situated in Ghana. Notwithstanding the fact that probate and letters of administration are mostly and commonly granted, at first instance, by Courts of competent jurisdiction in Ghana, this Article seeks to give the legal rules and procedures governing the effect and enforceability in Ghana of the grant of probate or letters of administration made by foreign courts.

2.0 FOREIGN GRANTS

There are instances where a deceased person acquired properties in Ghana as well as in other countries of the world. As a result, it is common that executors of that deceased person's Will or in the case of one who died intestate, the administrators, apply for and are granted

3 Intestate Succession Law, 1985 (PNDCL 111).
4 Order 66 rule 1(5) of the High Court Civil Procedure Rules, 2004 (CI 47).
5 Section 1(1) of the Administration of Estates Act, 1961 (Act 63).
6 Section 61 of the Administration of Estates Act, 1961 (Act 63).
7 Section 108 of the Administration of Estates Act, 1961 (Act 63).
8 Article 140 of the 1992 Constitution, 1992 and the Courts Act, 1993 (Act 459) as amended.
9 Order 66 r 1(1) of CI 47.
10 Order 66 r 1(2) of CI 47.

probate or letters of administration in the foreign country where some of the properties of the deceased are situated. One would then ask the vital question that: *"What step must one take in order to ensure that the probate or letters of administration granted outside Ghana by a foreign court is enforceable in Ghana thus allowing the said properties to be lawfully dealt with and further distributed to the intended beneficiaries?"*

Under the Common Law, a grant of probate or letters of administration in a foreign country is not to have any effect or operation outside the place of the initial grant. Thus, at Common law, an executor or administrator would have to take steps to commence the process of obtaining a fresh grant in Ghana, in the event that an earlier grant of probate or letters of administration has been made in a foreign country other than Ghana.

Thankfully, the process of obtaining a fresh grant of probate or letters of administration after probate or letters of administration has been obtained in a foreign jurisdiction has been made much simpler under Ghanaian law. This is because, for example, in the case of an application for a probate obtained in a foreign country to be granted in Ghana, the process becomes shorter and simpler since the Will is presumed to be valid and thus need not be proved again in Ghana.

Thus, in the Ghanaian case of **Re Lartey (Deceased), Lartey v Affutu – Nartey**[11] it was stated **Per Archer J.A.** *(as he then was)* that, *"when the Will of a testator has been proved with such pomp and circumstance according to internal law of Liberia, another foreign jurisdiction should hesitate before declaring the Will invalid. It is to avoid such conflicts that the Hague Convention of 1961 was agreed to by participating countries. Ghana has adopted the convention by incorporating the agreement in section 15 of the Wills Act, 1971."*

The Administration of Estates Act contains some provisions on the subject. It is to the effect that where grant of probate or letters of administration is made in a Commonwealth country or any other country, a fresh grant is not necessary. What it suggests is that the probate or letters of administration granted outside Ghana could simply be re-sealed in Ghana after having a copy *(original or certified true copy)*[12] deposited in the Ghanaian courts. This process is popular known in Ghana as Sealing/Re-sealing of probate or letters of administration obtained in a foreign country. Once this is done, it is the case that the foreign grant takes full force and

11 [1972] 2 GLR 488, CA. at page 499.
12 Section 85 of the Administration of Estates Act, 1961 (Act 63).

effect in Ghana.

Section 84 of the Administration of Estates Act provides as follows:

> *"(1) Where a Court of Probate in a Commonwealth country or in any country to which this section is applied has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to and a copy thereof deposited with the court, be sealed with the other seal of the court, and thereupon shall be of the like force and effect, and have the same operation in Ghana as if granted by the court."*

Thus, what is required under law is that the necessary estate duty is paid and that sufficient security has been provided to cover the property situated in Ghana. The Administration of Estates Act in **Section 84(4)** further provides that:

> *"The President by legislative instrument may apply this section to a specified country on such conditions, if any, as may be prescribed in the order."*

The **Re Lartey (Deceased), Lartey v Affutu – Nartey case** (supra) seems to suggest that the provisions in the Act on the enforceability of grants obtained in Commonwealth countries and other countries would come into force when the President takes steps to specify in an L.I. which country's grant would be automatically accepted and re-sealed in Ghana. In the above case,

Archer JA stated thus[13] :

"Finally, we wish to remark that an attempt to reseal the Liberian grant in this case was refused here because there was no agreement between Ghana and Liberia. Section 84(1) of the Administration of Estates Act enables grants in Commonwealth countries and other countries to which the section has been applied, to be resealed in this country. It is our hope that the appropriate authorities will consider this matter and enter into agreements with other countries, especially African countries, to enable grants made abroad to be resealed and vice versa. This is an area in which the aims of objectives of African Unity can be demonstrated by action and with realism."

13 [1972] 2 GLR 488, CA. at page 499.

It is suggested that the President of Ghana takes steps, as a matter of urgency, to specify in an L.I. the countries whose grant would be easily accepted and re-sealed in Ghana. The L.I. should also state clearly the legal processes by which such re-sealing should be done.

3.0 THE RE-SEALING (SEALING) PROCESS IN PRACTICE

In practice, the re-sealing process, as provided for in the rules, is done in the Ghanaian courts (i.e. the High Court) for grants made abroad relating to property situate in Ghana. The process involves the executor or administrator filing an application ex parte comprising a motion praying specifically for an order for the re-sealing of the probate granted in a foreign court. The motion must be supported by an affidavit signed by the executor or administrator to whom the foreign grant was made. The Courts are willing to accept a Power of Attorney duly executed by the executor or administrator authorizing another person to sign the affidavit on his or her behalf.

The affidavit would normally state the last place of abode of the deceased as well as state the date and circumstances surrounding the death of the deceased. The relationship of the deceased to the executor or administrator is also stated. In the case where the deceased died leaving behind a Will, the said fact must be stated as well as having a certified copy of the Will annexed to the affidavit as an exhibit. The affidavit must state the country and the circumstances under which the grant of probate or letters of administration was made by the foreign court. A certified copy of the probate or letters administration must also be attached to the affidavit as an exhibit.

Most importantly is that facts must be stated to show that the deceased was possessed of property in Ghana before his death. It does not matter that the properties located in Ghana are not listed in the foreign grant. This does not in any way hinder the re-sealing of the foreign grant in Ghana. What would be required of the applicant is to file an inventory of the estate in Ghana. This inventory can also be provided in the body of the affidavit in addition to the filing of the inventory form which can be purchased and obtained from the registry of the Courts. The inventory list must identify all the properties of the estate of the deceased testator in Ghana and further give the value of each property. The properties may include both movable and immovable properties such as land, houses, monies in bank accounts etc… This is necessary

because it is required that an estate duty of 3% of the assessed value of the total estate is paid into Court.[14]

On the return date stated on the motion paper, the ex-parte motion would be moved before a judge, who presuming the facts to be true, would grant the order for re-sealing subject to the payment of the appropriate estate duty into Court. In practice, the presence of the applicant to the motion for re-sealing is required in order for the motion to be successfully moved and heard by the judge. However, it may be argued that in extreme cases where the applicant to the motion cannot be present, the Court should still exercise the discretion to have the motion heard if the applicant is represented by Counsel/Lawyer or a lawfully appointed attorney. This position seems to have legal backing from the **Re Lartey (Deceased), Lartey v Affutu – Nartey case** (supra)[15] where it was stated by the learned judge that:

> *"Although the executrix was resident in Liberia and outside the jurisdiction, she was competent to obtain a direct grant to herself. There is no law which provides that before a named-executor is granted probate, he should necessarily be resident within the jurisdiction. It is also not obligatory that he should be present in court when the application is being considered provided his legal representative, that is, his lawyer or his lawfully appointed attorney, attends court to prosecute the application on his behalf."*

Once the application for re-sealing is granted by the Court, the applicant must take steps to effect payment of the assessed estate duty into Court. Upon the payment of the 3% estate duty, which is to be made into the Court Registry, a receipt of payment would be issued which must be sent to the Court where the order granting the re-sealing was made in order for the said order to be drawn up. This drawn up order of the Court would then be attached to a certified true copy of the probate or letters of administration granted in the foreign court. These two (2) documents would then be sent to the Court Registrar who would confirm that indeed the appropriate estate duty has been paid. After such confirmation, the Court Registrar would have the seal of the Court affixed on the order and probate/letters of administration granted in the foreign court thus completing the re-sealing process.

---

14 Section 84(2) (a) of the Administration of Estates Act, 1961 (Act 63).

15 [1972] 2 GLR 488, CA. at page 501 Per Archer J.A.

4.0 CONCLUSION

Indeed, the death of a person who leaves property behind comes with its own issues. One of such is the need to ensure that the personal representatives are clothed with the power to administer the estate of the deceased in favor of the named or intended beneficiaries. This would involve ensuring that a grant of probate or letters of administration made in a foreign court is enforceable in Ghana.

Indeed, the Ghanaian rules on the subject of re-sealing of a grant of probate or letters of administration obtained in a foreign country is not exhaustive. It is necessary that such rules be clearly outlined and detailed so as to make the process of re-sealing a probate or letters of administration already granted in a foreign country automatically enforceable in Ghana though subject to re-sealing by the Courts after paying the required estate duty.

Though the current practice of filing an application in court is simple and straight forward, having an L.I. as required by the law would bring some certainty to the process and could make the process as simple as just presenting the said probate or letters of administration to the Court registry for re-sealing without filing an application especially considering the fact that an elaborate and expensive process has already been gone through in the foreign court in order to have the probate or letters of administration granted.