

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE FICMC

ON MONDAY THE 18TH DAY OF FEBRUARY, 2020

SUIT NO: FCT/HC/CV/M/1373/2019

BETWEEN:

**IN THE MATTER OF THE ADMINISTRATION OF THE ESTATE OF THE
LATE AGUH JOY BERNARD AND THE LETTER OF ADMINISTRATION
ISSUED TO MR AGUH BERNARD TONYI (DECEASED)**

RULING

By a Motion on Notice filed on 25/11/2019 and predicated on Order 2 Rule 6 of and Order 63 Rule 3 of the Rules of Court 2018 and inherent jurisdiction of the Court, the Applicant seeks for the following orders of the Court.

1. AND ORDER of Court directing the Chief Registrar of the FCT High Court to pay the total sum of N9,389,168.09 (Nine Million, Three Hundred and Eighty Nine Thousand, One Hundred and Sixty Eight Naira, Nine Kobo) and \$6, 212.74 USD (Six Thousand, Two Hundred and Twelve Dollars, Seventy Four Cent) to AGU DAMARICE AREFOG being the sister to late AGU BERNARD ANYI
2. That the above order is at the behest of the Chief Registrar of the FCT High Court
3. AND FOR SUCH further order(s) as this Honourable Court may deem fit to make in the circumstances”.

The application is supported by on 8-paragraph Affidavit disposed to by Miss Aguh Damarice Aregu on 25/11/2019, A further Affidavit of six paragraphs deposed to by Miss Aguh Damarice, a 7- paragraph affidavit deposed to by Agu Martina Amboh, a 7-paragrah affidavit deposed to by Agu Julius Azaah and a 7-paragraph Affidavit deposed to by Agu Henry Christian and Written Address of the Applicant's Counsel.

In the affidavit in support deposed to by Miss Agu Damarice Aregu, she averred inter alia, that she is "The Sister and next of Kin to late Bernard Aguh 23rd of July 2019, shortly after the letter of administration for his late wife, Mrs Aguh Bernard Joy was issued in his name on the 24th of June, 2019. A copy of the letter of administration is hereby attached as Annexure A".

She further deposed that "at the family meeting of her siblings and herself held on 4/8/2019 at no. 115B it was resolved that I should be responsible for my late brother's estate in Abuja as I have always lived with him at the above address. A copy of the Extract of the resolution is hereby attached as Annexure "B".

That she had earlier written an application to the probate registrar asking the money for her late brother's wife in the account of the FCT High Court be paid through her for the family. A copy of the letter is attached as Annexure C".

The money in the total sum of N9,389,168.09 and \$6,212,74USA Dollars will only be paid on the order of this Court.

The family has further agreed and same has been effected that her late brother's daughter be adopted by Agu Henry, her brother who resides with his family in Canada.

Concluding, she avered that she has already given her Account details to the probate Registry.

In his Written Address in support Olaniyi Oyinloye Esq of Counsel for the Applicant referred to the prayer in the motion paper and affidavit in support and urged the Court to grant the prayers as it is meritorious, non-contentions and will serve the end of justice for the family of late Mr. and Mrs Bernard Aguh and especially the baby girl they left behind. He referred to MAPLE P LTD V. LAHAI INU-LTD (2007) 22WRN P. 33 and urged the Court to exercises its discretion in favour of the Applicant.

In their own affidavits deposed to by Agu Martina Amboh, Aguh Julius Azaah, and Aguh Henry on 8/1/2020, they avered that they are the siblings of late Mr. Aguh Bernard Tanyi and recounted the resolution of the family regarding the estate of the deceased Bernard Aguh as avered by the Applicant.

I have given due consideration to the instant application and the averments in support of it. I have also weighed the submissions of the learned Applicant's Counsel. It does not appear to me that the Applicant and or her counsel did the needful in bringing this application. A reading of the paragraphs 1 and 2 of the affidavit in support does not make much meaning to the Court. In what appears to be a recall of the circumstances

of the deceased Bernard Aguh and his deceased wife, the deponent simply averred thus:

“I am the sister and next of kin to the late Bernard Aguh 23rd of July 2019, shortly after the letter of administration for his late wife Mr. Aguh Bernard Joy was issued in his same on the 24th of June 2019.

A copy of the letter of administration is hereby attached as Annexure A”. The foregoing does not make a clear meaning to the Court as to what the deponent was trying to express or convey. The Court cannot speculate what the deponent intended to convey.

Likewise, in paragraph 2, the deponent alluded to a family meeting she and her siblings held on 4/8/2019 in an address referred to simply as “NO 115B”. The street or close or crescent, etc where the no. 115B is, was not disclosed for the guidance of the Court. The Court cannot speculate the street, or close or crescent the deponent has in mind.

The foregoing inarticulacies do not bring out for the proper understanding and guidance of the Court the facts the Applicant relies in support of the application.

Beyond these and very importantly, it is observed that the instant application is one commenced vide an originating motion. After stating in prayer no 1 that an Order of Court is sought directing the Chief Registrar of the Court to pay the sum of N9,389,168.09 and \$6,212.74 USD to “AGUH DAMARICE AREFOG being the sister to later AGUH BERNARD Anyi, the Applicant in prayer no 2. Stated that “the above Court order is at the behest of the Chief Registrar of the FCT High Court”.

By this prayer, the Court understands the Applicant as saying that the order sought for in payer no. 1 is a request made by the Chief Registrar of the Court.

I do hold the respectful view that if this is the case, the Chief Registrar of FCT High Court must have his reason for requesting for the order before he can deal with the funds of the deceased aforesaid. By reason of this, it is imperative that the Chief Registrar of FCT High Court ought to be made a Respondent to the application so that upon service of the processes on him, he can react to a grant or otherwise of the application. It does not appear to me proper and in tandem with the law that an application of this nature which is an originating Motion does not have a Respondent. To the extent that the funds sought to be released vide an order of the Court is in the custody of the Chief Registrar of FCT High Court or it has a role to play in respect thereof, it ought to be made a Respondent to the application. This is mandatory so that it can validly be bound and compelled by the order of the Court, wherever granted.

Before I strike out this application for being incompetent, I need to point out further, that an application of this nature ought to be predicted upon an extant provision of a statute or Rules of Court authorizing the grant of the order sought. The provision of Order 2 and 6 and Order 63 Rule 3 of the Rules of Court 2018 relied on by the Applicant do not in any way authorize or give the Court a discretion to grant the kind of order sought. Counsel for the Applicant, with due respect, ought to go further and supply the law

which empowers the Court to grant this kind of order sought in this application. Reliance on inherent jurisdiction of the Court may not suffice.

Finally, it is observed that in paragraph 5 of the affidavit it support, the Applicant averred that the family of the deceased persons agreed and it has been effected that her late brother's daughter be adopted by Agu Henry – her brother who resides with his family in Canada. If the adoption meant here is one recognized by the law with the attendant responsibilities, obligations and privileges, that has to be the subject matter of a distinct action brought consistent with the provision of Sections 126 to 148 of the Child Rights Act 2003. An adoption recognized by the law is not attained by mere ipsi dixit of willing siblings. The due process of the law must be followed irrespective of how strongly the siblings of the deceased person(s) desire it. Any such application must also disclosed how the best interest of the child will be achieved. Failing that, steps taken with respect to the minor may turn out to be a wish of illegalities. I say no more.

By reasons of all I have said above, it is apparent the Applicant's instant application has not met the requirements of the law. It cannot be granted. The proper thing should be done, even when it is expressed or intended to be in the best interest of the child. This application is struck out for being incompetent.

SIGNED
HON. JUDGE
18/02/2020

LEGAL REPRESENTATION:

(1). Olaniyi Oyinloye Esq. for the Applicant.