

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

THIS MONDAY, THE 25TH DAY OF APRIL, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

MOTION NO: M/919/2019

IN THE MATTER OF CHARLES AMANKWE (DECEASED)

BETWEEN:

**1. MRS BEATRICE MUNONYE
2. MR GODSON AMANKWE
3. DR. ISAAC AMANKWE
4. FLORENCE EJKEME** } APPLICANTS

AND

**THE PROBATE REGISTRAR, HIGH COURT
OF FEDERAL CAPITAL TERRITORY RESPONDENT**

JUDGMENT

By an Originating application dated 8th November, 2019 and filed the same date at the Registry of this court, the Applicants pray for the following Reliefs:

- 1. An ORDER of this Honourable Court assigning/appointing the 1st and 4th Applicants as Joint Guardians for the purpose of obtaining grant of administration of the Estate of Mr. Charles Amankwe (Deceased) for the exclusive use and benefit of Deborah Uche Amankwe.**
- 2. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.**

GROUND UPON WHICH THIS APPLICATION IS BROUGHT

- 1. The 1st – 3rd Applicants are surviving siblings of Mr. Charles Amankwe (deceased) who passed on 11th May, 2018.**
- 2. The 4th Applicant is mother of the deceased's sole surviving child.**
- 3. The said Charles Amankwe (deceased) did not execute a Will or any form of testamentary documents prior to his demise.**
- 4. That Deborah Uche Amankwe is the sole and surviving child of the deceased's dissolved marriage with the 4th Applicant and the deceased's next of Kin as a matter of fact.**
- 5. The deceased does not have any other child except Deborah Uche Amankwe.**
- 6. The surviving child being a minor does not have the requisite capacity to administer the deceased's estate without the authority and supervision of at least one guardian who is an adult.**
- 7. This application which is brought pursuant to the extant rules of this Honourable court has become expedient to obtain an order of this Honourable court to appoint the 1st and 4th Applicants as guardian for purpose obtaining the grant of administration of the Estate of the deceased for the exclusive use and benefit of Deborah Uche Amankwe, the deceased's sole surviving child until she is legally capable to administer the deceased's estate.**
- 8. This Application has been brought in accordance with the Rules of this Honourable court.**
- 9. That it is in the interest of justice to grant this Application.**

The Application is supported by two affidavits. The first affidavit by the 1st Applicant is a twenty nine (29) paragraphs affidavit dated and filed on the 8th November 2019 with eleven (11) annexures marked as **Exhibits 1a, 1b, 2, 3a – 3d, 4, 4e, 4f1 – 4f2**. The 2nd affidavit by the 4th Applicant is a sixteen (16)

paragraphs affidavit dated and filed at the Registry of this Court on the 8th November, 2019 with one annexure marked as **Exhibit 1**.

In the written address in support of the application, two issues were raised as arising for determination as follows:

1. Whether the court (sic) the Applicants are entitled to the reliefs sought?

2. Whether the court can exercise its discretion in favour of the Applicants.

Submissions were made on the above issues which forms part of the Record of Court. The summary of the submissions is that the deceased herein, Charles Amankwe died intestate (without a will) and the deceased's sole surviving biological child is the person ordinarily entitled to a grant of letter of administration of the deceased estate, given the fact that the marriage between the 4th Applicant and the deceased had since been dissolved even before the demise of the deceased. That the only surviving biological child being a minor does not have the legal capacity to deal with the estate of her deceased father and the Respondent herein is not automatically entitled to be the Next of Kin of the said surviving sole child of the deceased, Deborah Uche Amankwe. Also, the Respondent will not grant any letter of administration except by an order of this court hence this application. The Respondent did not file any process in opposition and did not oppose the application.

At the hearing, **I.A. Abdulsalam** of counsel for the Applicants relied on all the paragraphs of the supporting affidavits and adopted the submissions in the written address in urging the court to grant the Application.

P.M. Lebo of counsel to the Respondent in her brief address submitted that the Applicants have satisfied all factual and legal requirements to allow for the grant of the application.

I have carefully considered the processes filed by the Applicants and submissions by both counsel and the narrow issue from the Applicants affidavits is whether the Applicants in the circumstances have creditably made out a case to entitle them to the Reliefs sought.

The Applicants rely on the provision of **Order 64 Rule 39 (1) (a) and (3) of the High Court of FCT Civil Procedure Rules 2018** which states thus:

“39(1) Where a person to whom a grant ought be made is an infant, a grant for his use and benefit until he attains the age of 18 years shall, subject to sub rules (3) and (5), be granted –

(a) to both parents of the infant jointly or to any guardian appointed by a court of competent jurisdiction; or ...

(3) Administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian by order of a court in default of, or jointly with or to the exclusion of, a person mentioned in sub rule (1), and such an order may be made on an application by the intended guardian, who shall file an affidavit in support of the application and if required by the court, an affidavit of fitness sworn by a responsible person.”

The above provisions are clear and unambiguous.

The Applicants were constrained to institute this action in the interest of the sole surviving child of the deceased and to protect and preserve the Estate of the deceased for her benefit.

Now from the facts as disclosed in the two affidavits in support and I will here highlight only the relevant facts, it is clear that the 1st, 2nd and 3rd Applicants are the siblings of late Mr. Charles Amankwe, while the 4th Respondent is the biological mother of Deborah Uche Amankwe, the sole surviving child of late, Mr. Charles Amankwe. The Respondent is the officer of Court in charge of issuing letters of Administration. The said Late Charles Amankwe passed on in 2018 without executing a Will. The deceased is survived by **Deborah Uche Amankwe**, 13 years and the only next of kin. The 4th Applicant and the deceased divorced in December, 2008 shortly when Deborah Amankwe was born. The said Deborah being an infant has no requisite capacity to administer her Deceased father’s Estate without the authority and supervision of at least a guardian who must be an adult and to be appointed by a court of competent jurisdiction.

The 1st and 4th Applicants have jointly agreed and also mandated by the other Applicants to jointly act as guardian to the said Deborah Uche Amankwe for the purpose of obtaining Letter of Administration of the Estate of the deceased for

the benefit of Deborah Uche Amankwe, the sole surviving child of Late Charles Amankwe, the deceased.

The above facts were not challenged by Respondent. The law is settled that uncontradicted deposition in an affidavit are deemed correct. See **Kotoye V Saraki (1993) 5 NWLR (pt.296) 710 at 723**. Indeed where facts in an affidavit are not challenged, the court is bound to accept those facts as established and taken as true unless they are obviously false to the knowledge of the court. See **Honda Place V Globe Motor Holdings Nig. Ltd (2005) 14 NWLR (pt.945) 273 at 293 – 294 FA**. In this case, there is really nothing to impugn the averments in the two (2) affidavits filed in support of the application. I take them as established.

Accordingly, the application has considerable merit in the circumstances and further to the clear provisions of the provisions of **Order 64 Rule 39 (1) a and (3) of the Rules of Court**, the interest of justice will be better served to grant the application to the benefit of the only surviving infant child of the deceased.

The Application is thus granted and I accordingly order as follows:

The 1st and 4th Applicants are hereby jointly appointed as Guardians for the purpose of obtaining Grant of Administration of the Estate of Mr. Charles Amankwe (deceased) for the Exclusive use and Benefit of Deborah Uche Amankwe.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. A. Abdulsalam, Esq., for the Applicants.*
- 2. P.M. Lebo, Esq., for the Respondent.*