

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

MOTION NO. FCT/HC/M/10890/2020

DATE: 01-06-2023

BETWEEN

1. ADMINISTRATORS OF THE ESTATE OF MRS. LARABA AFAKIRYA	}	PLAINTIFFS/APPLICANTS
2. MR. ABRAHAM AFAKIRYA		
3. MR. ANDREW AFAKIRYA		

AND

THE CHIEF REGISTRAR, HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA	}	RESPONDENT
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JUDGMENT

In this Originating Motion on Notice, the Applicants pray the Court for 3 principal reliefs. They are;

1. A declaration that by virtue of the letters of Administration issued by the Probate Department of the High Court of the Federal

Capital Territory, Abuja on the 19th September, 2005, to Abraham Afakirya and Andrew Afakirya as Administrators of the Estate of their deceased Mother Mrs. LarabaAfakirya, they are the true and lawful Administrators of the deceased's Estate/Properties.

2. A declaration that the property known as House 9 along 571 Road Gwarinpa II Estate Abuja allotted to Mrs. Joy Pitila is one of the properties owned by late Mrs. LarabaAfakirya who died intestate on the 14th August, 2000.
3. An Order of this Honourable Court directing the Chief Registrar of the High Court of Justice of the Federal Capital Territory (FCT) Abuja vide the Probate Department to approve the issuance of Supplementary Letters of Administration with respect to the property known as House 9, along 571 Road, Gwarinpa II Estate, Abuja with Ref. No. FHA/LEM/GWA II/BAK/275 allotted to Mrs. Joy Pitilabeing one and same person as Late Mrs. LarabaAfakirya.

The Applicant is brought pursuant to **Order 62 Rules 34, 42, 45(1), (2), (3), Order 64(5) and (17) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018.**

The grounds upon which this application are as follows;

1. The 2nd and 3rd Applicants as next of kin and children of Mrs. LarabaAfakirya, were appointed the Administrators of the Estate of their deceased mother, Mrs. LarabaAfakirya and who died on the 14th of August, 2000.
2. The 2nd and 3rd Applicants were issued with the Letters of Administration by the High Court of Justice of Federal Capital Territory, Abuja, Probate Division on the 19th of September, 2005.
3. Upon the demise of Mrs. LarabaAfakirya who was also known and referred to as Mrs. Joy Pitila, her husband who was also the father of the 2nd and 3rd Applicants continued to manage the personal property of the deceased until the Applicants became of age and their father, Col. Bzigu Lassa Afakirya subsequently died on the 22nd of June, 2015.
4. The 2nd and 3rd Applicants on the 8th of May, 2020 notified the Federal Housing Authority (FHA) of the demise of their mother of whom letters of Administration had been issued and they forwarded copies of necessary documents including their means of identification and copy the Letter of Allocation issued to Mrs.

Joy Pitila (the deceased) by FHA dated 12th October, 1998 with respect to House No. 9, along 571 Road, at Gwarinpa II Estate, Abuja to enable the Authority update their records.

5. Following the letter dated 8th May, 2020 to the Federal Housing Authority (FHA) the FHA advised the 2nd and 3rd Applicants to proceed to the FCT Probate Department to apply for supplementary to enable the Probate Department list the property in the supplementary.
6. The 2nd and 3rd Applicants deposed to affidavits before the High Court of Justice, Federal Capital Territory, Abuja on the 11th of May, 2020 clarifying the use of different names by the deceased in her life time.
7. By a letter dated 30th of June, 2020 the 2nd and 3rd Applicants made an application to the Chief Registrar of the High Court of the Federal Capital Territory Abuja to issue supplementary of the Letters of Administration.
8. The officials of the Probate Department upon the application, requested the 2nd and 3rd Applicants to provide the following documents: (a) Death Certificate (Original) and Photocopies) (b) Passport Photographs and means of Identification of 2 next-of-

kin (plus physical Presence); (c) Passport Photographs and mean of Identification of 2 sureties (plus Physical Presence) (d) Original Letters of Administration (e) Newspaper Publication (f) N2,200.00 supplementary fees (g) N50,000.00 (Estate fee for landed property (h) Original title documents for sighting and photocopy.

9. The 2nd and 3rd Applicants through their legal representative produced items in paragraphs a, b, c, d and h; and was willing to provide others but the officials of the Probate Department received the items in paragraphs a, b, c, d and refused to receive the photocopy of the title document after sighting the original.
10. The Probate Department based its refusal on the name contained in the letter of Administration, though the attention of the officials were drawn to the affidavit deposed to by the 2nd and 3rd Applicants and other documentation but the officials rather insisted on their position and sent the file to the Director of Probate for further directive.
11. The 2nd and 3rd Applicants made further clarifications in writing by another letter dated 15th July, 2020 vide the Law Firm of Y. C.

Maikyau and Co., but the Director of Probate referred the decision to the Chief Registrar for further directive.

12. The Chief Registrar sometime in September, 2020 advised the Probate Depart to request the 2nd and 3rd Applicants to obtain an Order from Court to enable the Chief Registrar to approve the issuance of the supplementary.
13. The 2nd and 3rd Applicants out of abundance published on two National Dailies to wit: Leadership and Daily Trust Newspapers of 14th September, 2020 the deceased (Mrs.) LarabaAfakirya use of the name Mrs. Joy Pitila.
14. That it is in the interest of Justice to grant this application.

In support of this application is a 22 paragraphed affidavit deposed to by one Abraham UsijuAfakirya, the 2nd Applicant in this case. Another 23 paragraphed affidavits were deposed to by the 3rd Applicant in support of this Originating Motion on Notice. The third affidavit of seven paragraphed in support was deposed to by one DaudaLawan a tenant in the property for which this application is made. Also, in support are 18 Exhibits attached and a written address.

The Learned Counsel to the Applicants while moving the Motion in Court adopted the written address as his arguments and relied on all the

Exhibits and depositions in all the affidavits in support in urging the Court to grant this application.

The material facts leading to this application is that the Applicants applied for issuance of supplementary Letters of Administration from the Chief Registrar of the High Court of the Federal Capital Territory, Abuja but due to the name on the title document which was to be listed on the supplementary, the Chief Registrar refused to give approval and rather requested the Applicants to obtain an order of the Court before the approval can be given for the issuance. This in short is the brief facts that culminated this application.

The Applicants have clearly shown vide the affidavit evidence in support of this application that their root of title and the fact that there is no dispute or contest with respect to the property in question is enough evidence for them. The only grey area is the need to clarify whether Late Mrs. LarabaAfakirya is the same person who owns the property issued with the name Mrs. Joy Pitila.

The Applicants have been in possession of the property and are still in possession of the property. They are also receiving rents for the said property. No dispute or challenge to same and the inter use of names by

the deceased mother, no response from the public with respect to the Newspaper publications (Exhibits 5 and 6). Suffice to say that one AlhajiDauda has been a tenant in the said property from 2009 till date.

Of equal importance is the fact that there has never been a dispute as to ownership of the said property either from Federal Housing Authority or anybody. The letter to Federal Housing Authority (Exhibit 1) attest to the fact that the Applicants are Administrators to the Estate of their deceased mother Mrs. Joy Pitila. Also, the burial program (Exhibits 9 and 10) attest to the use of name Laraba Joy Afakirya as well as the First Bank share Certificate which tied the link with Pitila.

By Exhibits 2 and 16, the Applicants deposed to affidavit explaining the use of different names while the deceased mother was alive.

With the provisions of Order 62 Rules 42 and 45(1)(2) and (3) and Order 64 Rule 5 of the Rules of this Court which empower the Court to grant application in circumstances such as, in the instant case together with all the Exhibits attached and the Powers granted the Court by those Provisions of Rule that I grant all the reliefs in this application.

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S. B. Belgore
(Judge) 01-06-2023

