



Real Estates and Succession
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THE IMPROVED PROBATE REGISTRY OF THE HIGH COURT OF LAGOS STATE

1. INTRODUCTION

In Nigeria, the Probate Registry of most States is where all the activities relating to obtaining legal instruments to facilitate the legal administration and management of estates take place. It is an effective channel of dispensing justice in matters of testacy and intestacy. Such activities include obtaining letters of administration and grant of probate and all other ancillary matters relating to the administration of Estates.

2. FUNCTIONS OF THE PROBATE REGISTRY

The functions of the probate registry are better appreciated under the following circumstances:

- a. When death benefits or pension funds need to be accessed by a deceased person's beneficiaries/relatives.
- b. When legal title to landed property and buildings is required to be obtained by a deceased person's beneficiaries/relatives.

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- c. When there is a need to partition/distribute a deceased person's estate amongst the beneficiaries/family members.

The Probate Registry is usually located within the High Court premises of most states and the following are its usual functions in the administration of justice:

2.1 Custody of Wills

One of the functions of the Probate Registry is the custody of Wills. After a Will has been prepared by a Testator by himself/herself or by his/her Solicitor, it must be lodged at the probate registry of the High Court of the State upon the payment of the prescribed lodgment fee.

The High Court of Lagos State (Civil Procedure Rules) 2012² provides as follows:

“Every original Will, of which probate or administration with Will annexed is granted, shall be kept in the Probate Registry in such manner as to secure at once its due preservation and convenient inspection. A copy of every such Will and of the probate or administration shall be preserved in the Registry. “

Upon receipt of an application to lodge a Will, the Probate Registrar or a designated probate official will carry out a physical examination of the Will to ensure that it complies with the provisions of Section 17 of the Administration of Justice Act 1982 by being sealed and waxed. The envelope must also contain the name of the Solicitor that prepared the Will or the Executors named in the Will, where the Testator seeks personal lodgment of the Will.

The lodgment fee must also be paid, after which an official receipt shall be issued by the Probate Registrar. This receipt or its reference number must be well kept because it serves as the evidence of lodgment of the Will and shall be required in future for the retrieval of the Will, where the Testator desires to amend the Will, lodge another Will or lodge a Codicil³. It will also be required upon the death of the Testator where the family seeks the retrieval of the Will for its public reading.

2.2 Testate Administration

Upon the death of a Testator who lodged a Will at the Probate Registry during his/her lifetime, the probate registry is usually the first port of call after the burial of the Testator. The Probate Registry is charged with the duty of issuing a grant of probate

² Order 58 Rule 2 of the High Court of Lagos State (Civil Procedure Rules) 2012.

³ A codicil is a testamentary document which serves the purpose of adding to or amending a Will.

to a deceased person's Will. This grant of probate is the legal instrument which provides the legal basis for the enforcement of the contents of the Will. The application forms for the grant of probate consist of the following:

- a. Bank certificate
- b. Application for grant of probate of the Will
- c. Oath for Executor/s
- d. Affidavit of attesting witness of the Will
- e. Inventory of assets
- f. Particulars of leasehold/freehold properties left by the deceased
- g. Schedule of debts and funeral expenses

After the Executors have filled and signed the forms, they or their appointed solicitor returns the forms to the probate registry with accompanying documents. It usually takes a minimum of 2 to 3 months for the application to be processed and approved by the appointed Probate Judge depending on whether or not properties are listed as assets of the estate in the application form. Where property/ies is/are included in the list of assets, the Valuation Unit of the Registry shall be required to conduct an inspection of the property/ies for the purpose of ascribing a value thereto and this may extend the time for processing the application by an additional 3 to 5 weeks.

The process of obtaining a grant of probate also involves the payment of estate duty/ inheritance tax which is a figure computed at approximately 10% of the total value of the Testator's assets which usually includes money in the bank, stocks and shares as well as real properties.

2.3 Intestate Administration

The procedure outlined above also applies to intestate administration. However, the difference with intestate administration is that the deceased person did not write a Will to guide the administration of his/her estate. Under such circumstances, the family reaches an agreement on whom the personal representatives/administrators of the estate should be and the nominated administrators take on the role of the executors of the estate by applying for the letters of administration which play the same role as a grant of probate.

It is important to note that not just anyone can apply for the letters of administration. The Probate Registry usually gives consideration to the provisions of the Law which states the order of distribution of an intestate's assets with the spouse and children of

the deceased person as first in line⁴. This will be considered by the Probate Registrar before the confirmation of the administrators upon issuance of the letters of administration.

Under an application for letters of administration, there is a procedure for the publication of the estate where the details of the Estate such as the names and addresses of the proposed administrators to the estate are published against the name of the deceased person. It serves as a notice to all interested parties that the administration of the estate will be granted to the appointed administrators in the absence of any opposition.

The application forms for letters of administration consist of the following:

- a. Bank certificate
- b. Application for letters of administration (without Will)
- c. Oath for Administration (without Will)
- d. Administration Bond (without Will)
- e. Declaration as to next of kin form
- f. Inventory of assets form
- g. Particulars of freehold/leasehold properties left by the deceased
- h. Schedule of debts and funeral expenses

It usually takes an average of 4 to 6 months to obtain letters of administration in Lagos State once the forms have been properly filled and returned with accompanying documents/requirements to the probate registry and barring bureaucratic delays.

3. WELCOMING THE DESIRED IMPROVEMENTS AT THE PROBATE REGISTRY

It can be argued that in the past, not much attention was directed to the Probate Registries within the federation. However, this situation has taken a turn in the last few years with the realization that the probate registry has great potential for immense revenue generation for the Government in the form of probate duty/inheritance tax, especially in pioneer States like Lagos State.

⁴ Section 49(e) of the Administration of Estates Law (Lagos State) 2004.

In the past, it is true that concerned members of the public experienced delays with probate applications and also faced documentary challenges such as loss of official files whilst others have fallen victims to “touts” in their pursuits at the Probate Registry and this has led to the Government’s realization that it is important to create an improved and efficient Probate Registry which facilitates a timely and effective delivery of Probate services in Lagos State.

The creation of a user friendly system will ensure that applicants are not discouraged or frustrated in the bid to obtain letters of administration and grant of probate to estates and also promote the development of Succession Law, Practice and Administration in Nigeria much to the delight of beneficiaries of Nigerians in diaspora, as well as private foreign investors. These groups of beneficiaries often need to approach the Probate registry for the grant of probate/letters of administration as well as resealing of grants of probate/representation obtained outside Nigeria whenever the occasion arises.

The following are the improvements that are currently being effected to improve the workings of the Probate Registry in Lagos State.

3.1 An improved Service Delivery System

Service delivery at the Registry has improved drastically in the last few months. More information is being circulated to solicitors and applicants. This was not the situation before now and it makes it easier for solicitors and applicants to go about their business at the registry with relative ease.

There is also a stricter requirement in the documentation to be presented for the processing of letters of administration such as the sighting of the original death certificate. The effect of this requirement is the prevention of probate applications being triggered by the wrong parties as was the situation in the past.

3.2 Review of the Administration of Estates (Small Estates Payments Exemption Law) 2005

There is an existing Small Estates Payment Exemption Law of 2005 that excludes estates worth ₦100, 000.00 and below from undergoing the publication process and payment of 10% probate duty. These estates are usually assessed at a flat rate for the issuance of the letters of administration or a grant of probate. It has been recommended that the limit of ₦100, 000.00 be increased to a limit of ₦1,500,000.00 to encourage the processing of more applications for letters of administration/grant of probate at the registry in a speedy and cost effective manner.

3.3 The Introduction of a Digital/Electronic Filing System

An electronic probate system is being prepared and will soon be launched to eradicate the need for the manual processing of files at the probate registry. There will also be improved application forms for grant of probate and letters of administration which are of international standards and which will also be made available online.

The advantage of a properly developed electronic structure in addition to aiding a faster procedural system rid of bureaucratic challenges is that it will lead to a drastic reduction in the problem of revenue leakage whilst rendering the required service in a timely and efficient manner.

3.4 Consideration of Appeals on Abandoned/Pending Applications and the Allowance of Payment of Estate Duty in Installments

There are situations where families are unable to pay the assessed probate duty which is a prerequisite to the grant of probate/letters of administration. Under such circumstances, an application for a reduction in probate duty on reasonable grounds and supporting documentation may be directed to the Office of the Chief Judge. A provision for the payment of Estate duty in reasonable installments has also been introduced. The grant of probate/letters of administration shall be issued after the payment of the final installment.

4. CONCLUSION

The general functions of the Probate Registry are potentially simple mechanisms for the administration of justice because it supports transfer of assets to proper parties. It could also be a viable income generating stream for all State Governments especially now that more attention is being directed to its management and administration with the foresight of providing equal access to justice for the general public.

The methodology being devised by the Government of engaging various stakeholders and considering all interests ensures a potential “win-win” situation.

The effect will be to transition the current system into an improved system which will provide clarity for the applicants, faster service delivery for practitioners, revenue for the government and an assurance in career development for conscientious staff/officials.

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