

IN RE SOLOKU (DECEASED) and IN RE ADMINISTRATION OF
ESTATES ORDINANCE (CAP. 2)

SUPREME COURT (Beoku-Betts, J.): January 10th, 1950

(Civil Case No. 247/49)

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[1] Courts—Supreme Court—jurisdiction—civil jurisdiction—grant of letters of administration—court may grant letters to one native of Protectorate in respect of another's estate if property within its jurisdiction and not native court's: The Supreme Court may, under the Administration of Estates Ordinance (*cap.* 2), grant to a native of the Protectorate letters of administration in respect of the estate of another such native provided that the property is within the jurisdiction of the Supreme Court and not within the jurisdiction of any native court (page 11, lines 1–8).

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[2] Succession—probate and letters of administration—jurisdiction of court—court may grant letters of administration where property to be distributed is within its jurisdiction: A court has jurisdiction to make a grant of letters of administration where there is property belonging to the intestate within its jurisdiction to be distributed (page 10, lines 38–41).

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[3] Succession—probate and letters of administration—jurisdiction of court—Supreme Court may grant letters of administration to one native of Protectorate in respect of another's estate if property within its jurisdiction and not native court's: See [1] above.

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[4] Succession—probate and letters of administration—persons entitled to letters of administration—those entitled to distribution of estate in order of priority of interest—applies where distribution under statute or under customary law: Whether succession to an estate is governed by the Administration of Estates Ordinance (*cap.* 2) or native law and custom, the court will act on the principle that the persons entitled to a grant of letters of administration are those entitled to distribution in order of priority of interest (page 10, lines 31–37).

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The applicant applied on notice of motion for a grant of letters of administration of an intestate's estate.

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The applicant was the mother and next-of-kin of the deceased, who died intestate leaving real and personal property in Freetown. Both the applicant and the deceased were natives of the Protectorate. In these proceedings the applicant claimed letters of administration of the estate. The Supreme Court considered whether, under the Administration of Estates Ordinance (*cap.* 2), one native of the Protectorate could be granted letters of administration of the estate

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of another, and how the order of entitlement to a grant was to be determined.

Legislation construed:

Administration of Estates Ordinance (Laws of Sierra Leone, 1946, *cap.* 2),
s.1: "[The Ordinance] shall also apply to the Protectorate in respect
of— 5

(b) any part of the estate of a deceased native which is not within
the jurisdiction of any native court." 10

s.9(1): "The estate of every person dying intestate after the date of the
operation of this Ordinance shall devolve upon the Official Admini-
strator. Provided that upon the grant of letters of administration
under the provisions of this Ordinance, the estate shall be divested
from the Official Administrator and be vested in the person or persons
to whom letters of administration have been granted as aforesaid." 15

s.43: The relevant terms of this section are set out at page 10, lines 5-10;
page 10, lines 13-19.

Margai for the applicant.
The respondent did not appear and was not represented. 20

BEOKU-BETTS, J.:

This is an application on notice of motion that the court may
order that letters of administration of the estate of Edward Lamin
Soloku be granted to one Madam Lucia, the mother and next-of-kin 25
of the deceased. The deceased was a native of the Protectorate
and so is the applicant. The deceased was at the time of his death
resident in Freetown in the Colony and left real and personal
property in Freetown. The question is whether letters of administra-
tion of the estate of a deceased native of the Protectorate can be 30
granted by this court to another native of the Protectorate. Under
s.9 of the Administration of Estates Ordinance (*cap.* 2), on the death
of any person intestate, his estate shall devolve upon the Official
Administrator, subject to being divested upon the grant of letters
of administration to some other person under the Ordinance. As 35
regards natives of the Protectorate, this provision applies to the
estate of a deceased native which is not within the jurisdiction of any
native court (s.1(b)). As Freetown is not within the jurisdiction of
any native court, the estate of any deceased native who dies in
Freetown is subject to the provisions of s.9. 40

I have next to consider who are the persons, if any, who are

capable of being granted letters of administration of the estate of deceased natives of the Protectorate, who would, on such grant, divest the Official Administrator of his vested right to administer. Section 43(1) of the Ordinance provides:

5 “Notwithstanding anything contained in this Ordinance,
where any native dies intestate leaving assets in Sierra Leone
which are not within the jurisdiction of any Native Court the
distribution of such assets after payment of the debts of the
10 deceased and the costs of administration shall be according to
native law and custom.”

This section partly repeats s.1(b) of the Ordinance with an additional provision as to the method of distribution. Sub-section (2) provides:

15 “Where the Official Administrator administers any such
estate he shall request the District Commissioner to ascertain
from the Native Court of the area to which the deceased
belonged the names of the persons entitled to the balance of
the estate and on such names being certified to him by the
District Commissioner shall pay such balance to the persons
so named.”

20 A consideration of these two sub-sections suggests that it was not
intended that in all such cases the Official Administrator shall be
the only person entitled to administer. Sub-section (1) lays down
the method of distribution. Sub-section (2) enables the Official
Administrator, where he administers, to ascertain native law and
25 custom as to distribution. If it was intended that in all such cases
the Official Administrator should administer, then sub-s.(1) would not
have been provided and sub-s.(2) would have been worded differently.
The use of the words “Where the Official Administrator administers”
shows clearly that some other persons could administer and that
30 they should follow in the administration sub-s.(1) of the Ordinance.

By the joint effect of s.1(b) and s.43 of the Ordinance, native
law and custom is recognised and must be applied. In my opinion
the persons who would be entitled to distribution according to native
law and custom would also be the persons entitled in order of
35 priority to the grant of letters of administration. The principle on
which this court acts is that the grant of administration follows the
interest (*Ingpen on Executors and Administrators*, 2nd ed., at 114
(1914)). The law is admirably stated in 14 *Halsbury's Laws of
England*, 1st ed., at 182, as follows: “The foundation of the juris-
40 diction of the court to make a grant is that there is property belonging
to the intestate within its jurisdiction to be distributed”

There is nothing in the Ordinance which precludes a native of the Protectorate from being granted letters of administration to the estate of another if the property is within the jurisdiction of this court and not within the jurisdiction of any native court. In my opinion the law places the estates of deceased persons who leave property in Freetown in the same position whether they are natives of the Colony or the Protectorate. The only difference is as to the method of distribution. 5

Section 43 recognises the rights of natives of the Protectorate to distribution of their estates, and in cases under s.43(1) any question as to wrongful distribution would be within the jurisdiction of the court. The question which remains is whether it has been proved that Madam Lucia is the person prior in order of distribution and to whom letters of administration should be granted. I am satisfied from the affidavits filed that Madam Lucia is the mother of the deceased, but there is nothing to show me that the deceased died without children or brothers and sisters and, if so, whether they would claim prior to Madam Lucia. I cannot, therefore, make an order that letters of administration should be granted to Madam Lucia. 10 15 20

I have decided the question of the principle in favour of the applicant, and, as the Official Administrator has not contested the matter, this judgment will be regarded as interlocutory. The applicant is allowed to file a further affidavit as to whether the deceased died leaving children, brothers or sisters, and their order of priority in the distribution of the estate. Liberty to apply is therefore granted. 25

Order accordingly.

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