

MISC. APP. 237/2009 2009 B. NO.29

**IN THE HIGH COURT OF SIERRA LEONE**  
**(PROBATE JURISDICTION)**

IN THE MATTER OF THE ESTATE OF HAJA DANKAY KABIA ALIAS  
HAJA TIGIDANKAY KABIA (DECEASED) INTESTATE.

AND

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CAP 45  
OF THE LAWS OF SIERRA LEONE.

BETWEEN: -

ALHAJI BOB AMARA BANGALI - PLAINTIFFS  
ALHAJI ABDULAI KAMARA  
ALHAJI KABBA KABIA THE BENEFICIARIES  
REPRESENTING THE ESTATE OF HAJA  
DANKAY KABIA ALIAS HAJA TIGIDANKAY KABIA

AND

THE ADMINISTRATOR & REGISTRAR - 1<sup>ST</sup> DEFENDANT  
GENERAL

AND

DANIEL L. SESAY - 2<sup>ND</sup> DEFENDANT

A. F. Serry Kamal Esq. for the Plaintiffs  
Y. H. Williams Esq. for the 1<sup>st</sup> Defendant  
E. A. Halloway Esq. for the 2<sup>nd</sup> Defendant

**JUDGMENT DELIVERED THE 7<sup>th</sup> DAY OF May, 2012**

The Plaintiffs herein have filed a Judges Summons dated 18<sup>th</sup> August 2009  
in which they are seeking the following Orders:

1. An Order that this Honourable Court approves of the family arrangements agreed to by the family of the deceased intestate.
2. An Order that the defendant be ordered to convey the properties to the appointed representatives of the paternal and maternal sides of the

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family of the deceased who are the only beneficiaries of her estate as trustees for their respective sides.

3. Ann Order that the defendant gives an account of all amounts received and expended by the defendant.
4. That the defendant pays all amounts standing to the credit of the various assets of the deceased intestate to the relevant beneficiaries.
5. Such further or other order as the court shall deem fit.

In support of the application are the affidavits of **BOB AMARA BANGALI, ALHAJI ABDULAI KAMARA and ALHAJI KABBA KABIA**, the Plaintiffs herein. The gist of their affidavit is that the deceased intestate, **HAJA DANKAY KABIA** was their relation and that after her death there was a family meeting, where representatives of the deceased relations on the mother side and the father side respectively were appointed to represent the said families in the administration of the said deceased's estate. The three Plaintiffs were the persons appointed to represent the said families. The said deceased intestate was a Temne by tribe and a native of Marampa Chiefdom in the Port Loko District in the Northern Province of Sierra Leone. She died intestate leaving no issue and the entire family agreed with the assistance of the Paramount Chief, P. C. Bai Koblo Queen II to distribute the properties of the deceased intestate in the manner specified in Deed of Family Arrangement registered with the office of the Registrar General Freetown.

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A copy whereof is attached to the said affidavit. Prior to the signing of the said Deed there were series of disputes between various members of the family of the deceased intestate but those disputes were resolved and peace now prevails in the family following the Deed of Family Arrangement.

I should mention that several affidavits were sworn relating to the interest of the 2<sup>nd</sup> Defendant herein now deceased who was added as a party to the action as the widow of the said deceased intestate. His subsequent death brought an end to his right to claim against the Deceased Intestate. See this court's Ruling on the issue dated 24<sup>th</sup> February 2012.

Counsel for the Plaintiffs referred the court to the provision of s. 23 of the Administration of Estates Act Cap 45 of the Laws of Sierra Leone 1960 and the case of **In re Banufeh** (Dcd) 1968-69 ALRSL 268. He prayed the court to grant the reliefs claimed.

The 1<sup>st</sup> Defendant opposed the application and an affidavit in opposition sworn to by Mariama Seray Kallay the Administrator and Registrar General was filed on her behalf. She deposed inter alia that she is the Administrator of the estate of the said deceased Intestate and that she received in January 2009 a registered Deed of Compromise entered into by some of the claimants purporting to be entitled as beneficiaries of the estate of the said deceased intestate. She stated that in her view the said Deed was not in place since all the claimants were not signatories and that what was needed was a family arrangement as opposed to a Deed of Compromise.

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Counsel for the 1<sup>st</sup> Defendant submitted that the application did not comply with the provisions of s. 23 of the said Administration of Estates Act which states that all such applications shall state the grounds on which the application is made. He contended that none of the Orders prayed for mention the said grounds. He contended further that those grounds must be stated either on the face of the motion or on the summons. He urged the court to strike out the said summons or refuse the application for such non-compliance with the provisions of the Act.

Secondly counsel submitted that the facts in issue are so controversial that an originating summons is not the proper procedure to adopt. At this stage I ought to dispose of this submission as the controversy referred to related to the claim of the 2<sup>nd</sup> Defendant already mentioned to supra and which has been held to be abated on his death. The submissions on that point is no longer relevant to the application.

In response to the submissions of counsel for the 1<sup>st</sup> Defendant, counsel for the Plaintiffs maintained that the application made pursuant to s. 23 of the said Act is proper. He stressed that the application is for the courts approval of a family arrangement and that there is provision for the court to approve such family arrangement.



The issue here which is the bone of contention of the 1<sup>st</sup> Defendant is that the Deed is not signed by all the claimants to the estate and that what was needed was a family arrangement as was the case in the **re Banufeh** case (supra). The question is: Can the Administrator and Registrar General, as the Administrator of the estate of the Deceased Intestate oppose a family arrangement? Counsel for the Plaintiff submitted that the Administrator has no such powers and that his/her function<sup>care</sup> is to realize the assets of the estate and distribute them to the beneficiaries. He stated that in this case the Administrator has already advertised for claims in the Sierra Leone Gazette pursuant to s. 18 of the said Act and has disbursed funds out of the estate. He went on to submit that the beneficiaries have now arrived at a family arrangement and that it does not therefore behove the Administrator to oppose that arrangement.

Now both counsel have relied on the case of **In re Banufeh** (supra). In that case it was held that where the estate of a person subject to Mohammedan Law is disposed of according to a reasonable and bona fide family arrangement as understood by courts of equity rather than according to the strict rules of Mohammedan law, the court will uphold the arrangement.

In this case there is evidence that there were serious disputes relating to the distribution of the estate prior to the family arrangement but that since the said arrangement there is now peace between the claimants. I believe this is the rationale in the **In re Banufeh case**. Cole Ag. C. .J. states at page 273 as follows: "Family arrangements are not unknown to Mohammedan law.

It must be remembered in this connection that family arrangements are specially favoured in courts of equity, of which this is one”.

The 1<sup>st</sup> Defendant has opposed the application on the ground that the Deed is Deed of Compromise as opposed to a Deed of Family Arrangement. It is my view that the document although termed a Deed of Compromise in actual fact contains the family arrangements arrived at by representatives of both sides of the family. As stated in the **In re Banufeh** case (supra) since there is evidence of a bona fide family arrangement regarding the disposal of the deceased's property it would not be proper for the court to upset such an arrangement.

In my judgment the principles enunciated in the **In re Banufeh's** case (supra) <sup>are</sup> ~~is~~ applicable here and there does not appear to me to be any reason to disturb the arrangement arrived at by the family of the said deceased intestate as set out in the Deed of Compromise before the court. In the circumstance the application is granted. I make the following Orders:

1. That the family arrangements agreed to by the family of **HAJA DANKAY KABIA** (Deceased) Intestate are hereby approved.
2. That the 1<sup>st</sup> Defendant is hereby ordered to convey the properties mentioned in the Deed of Compromise dated 23<sup>rd</sup> January 2009 to the appointed representatives of the paternal and maternal sides of the family of the deceased intestate who

are the only beneficiaries of her estate, as trustees for their respective sides.

3. That the 1<sup>st</sup> Defendant gives as account of all amounts received and expended by the said 1<sup>st</sup> Defendant.
4. That the 1<sup>st</sup> Defendant pays all amounts standing to the credit of the various assets of the deceased intestate to the relevant beneficiaries.
5. That the Orders in (2) (3) and (4) above are to be complied with within 30 days of the date of this judgment.
6. No order as to costs.
7. *Liberty to apply*

**SIGNED: - A. SHOWERS**

**JUSTICE OF COURT OF APPEAL**