Ordinance by the petitioner asking relief from the court, and, fortified by the authorities I have already referred to, after reading the facts and circumstances as outlined by the petition, I find it is a case in which the court should order that the notice which has been served by the Director of Public Works should be revoked.

Petition granted.

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

SUPREME COURT (Kingsley, J.): February 11th, 1952
(Civil Case No. 349/51)

[1] **Succession—intestate succession—disposal of estate—petitions to court on legal, equitable or moral grounds—blood relationship with deceased does not guarantee share—must be close relationship and proved need:** Where a person petitions on legal, equitable or moral grounds to secure a share in the estate of an intestate who leaves no widow, or widower, or next-of-kin, the mere tie of blood relationship between the petitioner and the deceased does not *per se* entitle the petitioner to a share in the estate; there must be some close relationship between them and a proved need on the part of the petitioner (page 189, line 29; page 190, line 31; page 192, lines 2–5).

The petitioners claimed under s.29 of the Administration of Estates Ordinance (*cap.* 2) shares in the estate of the deceased.

The deceased died intestate and left no widower or next-of-kin as defined by the Administration of Estates Ordinance. The residue of her estate, after payment of all dues, was paid into the Intestate Fund, and the petitioners claimed shares on legal, equitable or moral grounds. Not all of the petitioners filed grounds of claim; not all the petitions showed relationship with the deceased and a need to benefit from her estate; and one of the petitions did not contain the petitioner's address. The Supreme Court considered what relationship had to be proved to have existed between the deceased and the petitioners, and the extent of their need, to entitle them to shares in the estate.

Case referred to:

(1) *In re Clarke (Dcd.)*, Supreme Court, Civil Case No. 35/40, unreported, *dicta* of Graham Paul, C.J. applied.

Legislation construed:

Administration of Estates Ordinance (Laws of Sierra Leone, 1946, *cap.* 2), s.29(1):

"Whenever the Official Administrator shall have administered the estate of any person who has died intestate and without leaving any widow or widower, or next-of-kin, . . . he shall forthwith pay all sums of money which shall be in his hands to the credit of such intestate into . . . the 'Intestate Fund,' and shall . . . [call] upon all persons claiming to be interested in such estate on legal, equitable or moral grounds, to present their petitions to the Court."

s.29(4): "Every such petition shall state the place of residence of the claimant and the ground upon which and the description of the estate in respect of which such claim is made . . . ."

s.30(1): "If any petitioner verifies his claim by evidence to the satisfaction of the Court, the Court shall make such order . . . as it shall think fit."

Betts, Edmondson and *Miss Wright* for the petitioners;
R.E.A. Harding for the respondent.

KINGSLEY, J.:

The petitioners in this case, moving under s.29 of the Administration of Estates Ordinance (*cap.* 2), claim the residue of the estate of the late Clarissa Cassandra Weeks Thomas, and some of them at any rate have done so quite obviously I think under a misapprehension as to what the section really means.

Its wording is precise and clear, and under it the only people entitled to claim are those who can assert legal, equitable or moral grounds, which they must verify by evidence to the satisfaction of the court. Mere relationship is not of itself sufficient. In the case of *In re Clarke (Dcd.)* (1), which concerned a petition under s.40 of the Intestate Estates Ordinance, 1924 (the predecessor so to speak of the present s.29 of *cap.* 2), Graham Paul, C.J., after examining a large number of case files of these petitions, said:

"It seems to me that in the absence of any opposition or argument there has grown up a tendency to expect the prayers of these petitions to be granted almost as a matter of course. In my view that tendency is entirely wrong and it should be corrected. The law is quite clear on the point. It is only where a petitioner verifies his claim by *evidence to the satisfaction of the court* that the court can grant the prayer of the petition. It is the duty of the court therefore to examine the evidence in

each case carefully to see whether it does really verify a claim against the estate in question on legal or equitable or moral grounds." [Emphasis supplied.]

Graham Paul, C.J. then went on to refer to two petitions, namely, those in the estates of Henry Jarrett and C.J. Macauley respectively. In the former the petitioners had averred simply that they were the lawful brothers and sisters of the widow of the deceased, and the petition was dismissed. In the latter, the petitioner was not related at all to the deceased, but his petition was nevertheless granted because of special circumstances other than relationship which the court held justified his claim.

He then concluded:

"I quote these two cases [*i.e.*, those of Jarrett and Macauley] in order to emphasise that blood relationship—legitimate or illegitimate, near or distant—is not of itself sufficient and that on the other hand blood relationship may be unnecessary in special circumstances."

In two other cases, those concerning the estates of Nathaniel Maddy and Leah Morrison, the petitioners, apart from the usual relationship plea, claimed only that they had been friendly with the deceased. In both cases the petitions were dismissed.

Now, whilst I am not of course bound by those decisions, I am of the opinion that they were eminently correct. If it were not so, these petitions would become mere automatic farces, as indeed, I am afraid they have shown a tendency to do. "I am related. I was friendly, therefore I am entitled": so runs the average petition. Such indeed has been the case, as I will indicate presently, with some of the petitioners in this case. As I have already pointed out, each claim must be verified by evidence to the satisfaction of the court, and I now proceed to consider such verification as there is in this case.

I can deal shortly with the claims, such as they are, of Benjamin Howard and George Howard, on whose behalf Mr. Betts said he had been instructed to appear. There are neither petitions nor affidavits on the file from either of these people. How then counsel can appear for them, except perhaps purely in a watching capacity, is something which doubtless he will explain to them should they or either of them make any inquiry. The fact that A in his petition mentions B as being another relative of the deceased person cannot *per se* make B a petitioner. Messrs. Benjamin and George Howard are not in my view petitioners within the meaning of the Ordinance,

and accordingly are not entitled to anything. If they have incurred any expense in giving instructions, they must pay their own costs.

As regards those who have properly petitioned the court, I think the first thing that needs to be said is that the words in s.30 of the Ordinance—"verifies his claim by evidence to the satisfaction of the Court"—must at the very least imply that the petition must contain only the truth, and that the evidence in the box must likewise be nothing but the truth. In one or two instances, even Mr. Betts was obviously embarrassed by the behaviour of his own clients and had to appeal to them in some such terms as—"Don't laugh, woman." I am sure they will have long since been advised of the impression that sort of thing makes on the court.

Now, to deal more specifically with the petition—a joint one—of Regina Cole, Sally Green, Georgiana Clemens, Nancy Cole, Leah Howard and Georgiana Jones, para. 3 reads: "That your petitioners are all petty traders and need the amount lying to the credit of the estate to enable them to carry on their trade and to maintain themselves." The petition was signed by all the petitioners with the exception of Nancy Cole. It was presumably because of this that she was not called. She is not a petitioner within the scope of the Ordinance, and so her claim, such as it is, or was, goes by the board. Sally Green on the other hand did sign the petition but was not called. As there is no affidavit on the file by her, the result is that there is no evidence by which I can possibly test her claim. It must accordingly be likewise dismissed.

As regards Regina Cole and Georgiana Clemens, it is in my view no exaggeration to say that the above-quoted paragraph of their petition is so deliberately misleading as to destroy the value of anything they said in the box. The one is the wife of the chief clerk at a local bank, and the other the wife of a grade three clerk in the railway. Both, with the hesitancy one usually associates with blatant perjury, asked me to believe that they did not know—"had no idea" one actually said—of what salary their respective husbands earned. In the witness-box both were prone to giggle like overgrown schoolgirls. Both made the sort of impression that satisfied me that it would be most improper for me to believe anything they said, and that far from their having any legal, equitable or moral claim to the estate in question here, it would on the contrary be highly amoral to give either of them a single penny.

Leah Howard is in a different category. She apparently is not married, and I know of no reason why I should not believe her

evidence that she depends entirely on her trading for her living. At any rate her behaviour in the box was perfectly correct. She has both relationship and need on her side. Whilst her case may not be a particularly strong one, I think that within the scope of the Ordinance she is entitled to share in the estate.

The only other petitioner called by Mr. Betts was Mrs. Georgiana Jones, and I would at once point out that the petition does not contain her address, as s.29(4) of the Ordinance requires that it should. The section is mandatory in its wording and technically her petition ought to fail. I apprehend however that since she has given evidence of address in the box, I may in my discretion in the peculiar circumstances here look upon the omission as purely a typist's error, because that is what it obviously appears to be, seeing that the addresses of all the other petitioners were correctly and properly stated in the same petition.

Mrs. Jones is an elderly lady of some 69 years of age, and apparently is suffering from some form of cataract in one of her eyes. She gave her evidence quite unexceptionally, except perhaps for, in the circumstances, a not unnatural tendency to exaggerate her eye complaint. She is after all but human, and behaved as though stone blind. She may well be. I hope for her own sake she is not. She said she was a trader. I realise that this word has a very wide meaning in Freetown, but heaven alone can accurately gauge the trading possibilities of a woman of her age and health. The fact that her children keep her, or possibly help to do so, should not in my view disentitle her. Children are, even in the best-regulated families, sometimes inclined to be unreliable. I have come to the conclusion that Mrs. Jones should be allowed to participate in the estate.

I now come to Mr. Edmondson's client, Admire Quin-Macfoy. She relies primarily on relationship, and I have no doubt that, quite *bona fide*, she was advised that that was perhaps sufficient. As I have already said, that is not so. She was however so frank in the witness-box that, whilst I am not able to grant her anything out of the estate, I propose to allow her her taxed costs. Subject to these costs, her petition is dismissed.

And now finally to Miss Wright's client, Ernest Claudius John Bowlay-Williams, another very honest witness who made an excellent impression in the witness-box. The deceased lady died on July 10th, 1948, and from that time up to July 23rd, 1951 the petitioner had in his custody several properties belonging to the deceased, a good

many of which he could probably have disposed of had he been other than scrupulously honest. He handed over a list of these properties to the Official Administrator on the latter date. His relationship to the deceased may not be as close as that of some of the other petitioners, but as I have already indicated relationship is by no means the only index by which the court assesses claims in cases of this kind. I am satisfied that Mr. Williams has a perfectly good claim to a share in the estate, and I hope that the money he will receive will enable him to fulfil the very laudable purpose of completing his education in England.

In the result I order that, after deduction of the taxed costs of Mr. Betts, Mr. Edmondson and Mr. Harding, the Accountant-General pay out the balance now lying to the credit of the estate of the late Clarissa Weeks Thomas in three equal shares to Leah Howard, Georgiana Jones and Ernest Claudius John Bowlay-Williams.

Order accordingly.

HARRIS *v.* NICOL and HARDING

SUPREME COURT (Beoku-Betts, J.): February 18th, 1952
(Civil Case No. 216/51)

[1] **Land Law—estate tail—creation—devise "to A and his children"—devisee takes joint estate with children or estate tail according as children living or not at date of devise:** A devise "to *A* and his children" *prima facie* gives an estate tail to *A* if *A* has no children at the time of the devise or, if there are children, a joint estate to *A* and his children as purchasers; and this effect will also be given to the devise where it is one "to *A* and his issues" but not where it is "to *A* and his issue" (page 196, lines 7–20; page 197, lines 7–11).

[2] **Land Law—estate tail—descent traced from last purchaser—purchaser is person taking property other than by act of law:** In order to determine who is entitled to inherit an entailed interest, descent must be traced from the last purchaser, he being the person who last took the property other than by descent, escheat, partition or other act of law (page 195, lines 32–35).

[3] **Land Law—joint tenancy—creation—devise "to A and his children"—devisee takes joint estate with children or estate tail according as children living or not at date of devise:** See [1] above.

[4] **Succession—wills—construction—devise "to A and his children"—devisee takes joint estate with children or estate tail according as children living or not at date of devise:** See [1] above.