

MISC. APP. 3/12

2012 C. NO. 5

IN THE HIGH COURT OF SIERRA LEONE
(PROBATE JURISDICTION)

IN THE MATTER OF THE ESTATE OF MODU COLE (DECEASED)
INTESTATE

AND

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

BETWEEN: -
SYLVANUS INA COLE - PLAINTIFF/APPLICANT

AND

MUSA TARAWALLIE -DEFENDANT/RESPONDENT

Miss A. Y. Omo Lisk for the Plaintiff/Applicant.
J.B. Jenkins Johnston Esq. for the Defendant/Respondent

RULING DELIVERED THE 1st DAY OF October 2012

The Plaintiff/Applicant filed a Notice of Motion dated 21st May 2012 in which he seeks an order for the Respondent to deposit the letters of administration he obtained in respect of the estate of **MODU COLE** (Deceased) Intestate. Mr. J. B. Jenkins Johnston, counsel for the Defendant/Respondent raised a preliminary objection to the court hearing the application on the ground that the action herein is a Probate action and that contrary to the provisions of Order 55 rule 2 of the High Court Rules 2007, the action herein has not been commenced by a writ of summons. He submitted that only a citation has been issued and therefore the action is not properly before the court.

Counsel further referred to Order 55 rule 1 (2) which defines the phrase “probate action” and he submitted that the action is instituted with the intention of revoking Letters of Administration and therefore falls within the said definition. Furthermore by Order 55 rule 4 of the said rules he submitted no action has been commenced since no writ of summons has been issued. He therefore urged the court to strike out the application.

AEW. In response to the objection raised, Miss Omo Lisk, counsel for the Plaintiff/Applicant/Defendant/Respondent submitted that the action initially started with a writ of summons and referred the court to the judgment of the Court of Appeal dated 12th July 2011. She submitted that all subsequent orders pertaining to the matter have been granted to the Plaintiff/Applicant. In the circumstance she contended the Defendant cannot continue to keep in his custody the Letters of Administration.

The objection raised is that the Applicant failed to commence the action herein by writ of summons having only issued a citation addressed to the Respondent to bring in the grant. As counsel for the Respondent has submitted the rules clearly provide that a probate action is to be begun by writ issued out of the High Court Registry – See Order 55 rule 2(1) relied upon by counsel for the Respondent.

The procedure for obtaining a revocation of letters of administration is set out in **Halsbury's Laws of England**, 3rd ed. Vol. 16 at paragraph 518 as follows: -

“Manner of obtaining revocation. Revocation may be obtained either voluntarily or by compulsory proceedings. In the former case evidence is filed setting out the circumstance and the order may be made on motion or by a Registrar. In the latter case a writ is issued, and a citation is served on the grantee requiring him to bring the grant into the principal Registry and show cause why it should not be revoked. The citation must precede or be simultaneous with the writ -
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The Plaintiff/Applicant ought therefore to have issued a writ of summons in addition to the citation. This he has failed to do. The submissions of counsel for the Respondent are therefore sound and his objection is upheld. The notice of motion dated 21st May 2012 is hereby struck out. No order as to costs.

A. Showers
SIGNED: - A. SHOWERS 1/10/2012
JUSTICE OF COURT OF APPEAL