

Mrs. Adufe is to them and their heirs, while the devise to the children of Mrs. Henrietta is to them simply with no mention of heirs. Secondly, I note that after making the devises to the two groups of children the testator provided: "I desire that the whole of the children should have a life interest in the properties so devised" Thirdly, after making the devises to the first two groups, the testator proceeded to distinguish a third group, the daughters among them, whose interests should become terminable on marriage. The extent of the estate acquired by the daughters therefore differed from the estates given to the sons.

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Blackstone says (2 *Commentaries*, at 180) that a joint tenancy is distinguished by unity of possession, unity of interest, unity of title and unity of the time of the commencement of such title. Under the will the unities of possession, title and time of commencement exist between the three groups, but there is no unity of interest as between the sons and daughters, as the daughters have a lesser estate than the sons.

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I therefore rule that, notwithstanding the absence of words importing division between the devisees, the estates which they took are tenancies in common and not joint tenancies.

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Ruling accordingly.

MAUZI and OTHERS v. SHAB

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SUPREME COURT (Beoku-Betts, J.): November 8th, 1951
(Civil Case No. 130/44)

[1] **Civil Procedure—certificates—Master's certificate—contents of certificate in cases of accounts—reasons for disallowance of any amount should be stated—Master's certificate not final:** A Master's certificate which disallows any amount in an account should state the reasons for such disallowance with such particulars as to enable the court to determine whether sufficient grounds did in fact exist for the disallowance, since such a certificate cannot be regarded as final (page 137, lines 22-27).

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The defendant (now the applicant) applied on motion for the court to discharge or vary a Master's certificate.

In an action by the present respondent against the applicant, an executor of an estate, an order for an enquiry was made and, after a delay of some years, the Master of the Supreme Court issued a

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certificate in which he disallowed certain disbursements incurred by the applicant in respect of the estate. No reasons were given in the certificate for disallowance of the items in question. The applicant sought in the present proceedings to have the certificate discharged or varied.

The Supreme Court considered whether there was sufficient material contained in the Master's certificate to make it a final decision.

10 **Legislation construed:**

Rules of the Supreme Court (England), O.L.V, r.68:

"Where an account is directed, the certificate shall state the result of such account . . . and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied"

Rogers-Wright and *R.W. Beoku-Betts* for the defendant-applicant;
Margai for the plaintiff-respondent.

BEOKU-BETTS, J.:

This is an application on motion to discharge or vary a Master's certificate:

1. By an order allowing certain disbursements in this estate in respect of the testator's debts in the account of the defendant, an executor, namely, items 1, 11, 12, 13, 14, 17, 18, 19 and 32 of the Master's certificate which were disallowed by the Master.

2. By setting forth what is due as undisposed of or outstanding personal estate in the hands or possession of Ya Fera Turay.

3. By setting forth the evidence upon which the different findings in the said certificate are based.

The writ in this action was issued in 1944. The order for an enquiry was made on February 4th, 1945, and the Master's certificate was made on September 10th, 1951. It has therefore taken six years to complete the enquiry. I do not propose to assess blame for this most unsatisfactory condition of things. I do not know to what extent, if any, counsel contributed to this by application for adjournments. I understand the present Master came into the case comparatively late. I am sure all those engaged in this case would agree that such a long delay in coming to some conclusion does not tend to enhance the interests of justice.

I have considered the grounds on which the application is made and I have also considered the grounds of the opposition. In this

matter it has to be borne in mind that the amount that has been disallowed against the defendant is the sum of £694. 0s. 10d., and it should also be remembered that the defendant is an executor who alleges he has expended money which should be refunded to him. In such circumstances the court, on such an application, must consider whether there was sufficient material to make the Master's certificate the final decision. 5

Unfortunately the Master's certificate does not state the reasons for disallowing this large sum of money. Counsel for the plaintiffs seeks to supplement this omission by attaching to his affidavit in opposition a letter to him by the Master. It must be apparent that that was a very wrong procedure. I observe that the letter was not made an exhibit, is not marked as required by the Supreme Court Rules, 1947, but merely put with the record. This is most irregular and I am surprised counsel for the defendant did not notice this. 10
 It is important to remember that the powers of the court to grant relief in these matters must be distinguished when the application is made within the time provided by law or within an extended time and when the application is made after time has expired and special leave is required. In this case leave to extend time was granted. 15
 In addition the Master did not comply with O.LV, r.68 of the English Rules of the Supreme Court in the form of the certificate. In my opinion a certificate disallowing any amount should state the reasons for such disallowance with such particulars as to enable the court to determine whether sufficient grounds exist for such disallowance, since by no stretch of the imagination can the Master's certificate be regarded as final. If even proof of irregularity were required, the failure to state the reasons for disallowance in this case would be sufficient to justify me in coming to the conclusion that this is a matter in which I should vary the certificate or make such order as would ensure that justice is achieved. I therefore vary the certificate by ordering that the matter should go back to the Master for further enquiry into the items in ground 1 of the notice of motion. I further order that in such further enquiry the Master should take evidence on oath and then find out which of the items should be allowed and which disallowed, and should in each case state the grounds of the allowance or disallowance. I do not consider it necessary to interfere with the Master's certificate on ground 2 of the notice of motion. In order to expedite the matter, the Master is to fix a specific date as early as possible for the hearing, and report to me any cause for delay. Costs to abide the results. 20
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Order accordingly.