Cc 149 2019 H NO. 1

In the High Court of Justice of Sierra Leone

(Family and Divorce Division)

BETWEEN:

Mr. Donald Hamilton and Others

(Executor of the Last Will and Testament

of the Late Mr. Justice Patrick Omolade

Hamilton) - **1st Plaintiff/Respondent**

And

Ms. Melrose Renekeh Hamilton

(Purported Executor of the Last Will and Testament

of the Late Mr. Justice Patrick Omolade

Hamilton)

18 Wilson road-

Freetown **2nd Plaintiff/Respondent**

Versus

Ms. Audrey Williams

(Administratrix of the Estate of

The Late Mr. Justice

Patrick Omolade Hamilton) - **1st Defendant/Respondent**

C/O Margareta Chambers

91 Campbell Street

Freetown

And

The Administrator and Registrar- **2nd Defendant/Respondent**

General

Walpole Street

Freetown

Elvis Kargbo Esq. for the Interested

Parties/ Applicants

Augustin S. Marrah Esq. for 1st Defendant/Respondent

Ruling on an Application for the Striking out of a Writ of Summons, the Setting Aside of Letters of Administration and the Inclusion of Interested Parties to an Already Subsisting Action etc., Pursuant to a Notice of Motion, dated the 3rd June 2019, delivered by Hon. Dr. Justice A. Binneh-kamara, on Friday, 24th January, 2020.

This ruling is predicated on a notice of motion, dated the 3rd June, 2019, bolstered by the requisite affidavit of Joyce Millya Hamilton and Dolcie Millicent Hamilton, sworn to and dated the 3rd June, 2019; filed by Elvis Kargbo Esq. of Betts and Berewa Solicitors, pursuant to Sub rule (1) of

Rule 17 of Order 21, Sub rule (2) of Rule 2 of Order 52 and Rule 3 of Order 55 of the High Court Rules, 2007, Constitutional Instrument N0. 25 of 2007 (hereinafter referred to as the High Court Rules, 2007).

Meanwhile, twelve (12) documentary pieces of evidence are accordingly exhibited and attached to the said affidavit to support the application; praying for the following specific orders:

1. That the Interested Parties/Applicants herein be made parties to this action for purposes of this application.
2. That this Honourable Court set aside the Writ of Summons, dated the 8th January, 2019, and all subsequent proceedings, for the following irregularities:
    i. That the action is frivolous and vexatious and it discloses no reasonable cause of action.
    ii. That the action contravened the provision of Sub rule (2) of Rule 2 of Order 52 of the High Court Rules, 2007.
    iii. That the action instituted by the Plaintiffs/Respondents is completely in contravention of Rule 3 of Order 55 of the High Court Rules, 2007.
3. That this Honourable Court grants an order setting aside the Letters of Administration granted on the 23rd October, 2018 and for same

to be expunged from the Probate Registry of the High Court of Justice.

4. That an order be granted by this Honourable Court that the death gratuity payment in respect of the Late Hon. Mr. Justice Patrick Omolade Hamilton (PIN NO. 600699) be paid to Keystone Bank S/L Limited, Account Number 013-001-1149000085 (Joyce and Dolcie Hamilton) with B Ban Number 013-001-1149000085-34 by the Political Parties Registration Commission.
5. Any other order (s) that this Honourable Court may deem just in the circumstances.
6. Costs.

However, consequently, on the 27th June, 2019, Augustine S. Marrah Esq., of KMK Solicitors, filled in an affidavit in opposition, sworn to by Audrey Williams as an affiant. The said affidavit clearly set out a plethora of facts, but some of the facts deposed to in that affidavit, are in tandem with some of the fundamental facts that characterised the affidavit in support of the application. Purposefully, on the 22nd October, 2019, Elvis Kargbo Esq., moved the application and firmly articulated, on the strength of the affidavit of 3rd June, 2019 and the authorities cited, the quintessential reasons why he felt that it would be rationally and [illegible] expedient for this Honourable Court to grant all t
underpinned the application.

Whilst specifying that he was not opposed to the granting of order two (2) and its concomitant sub-orders, Augustine S. Marrah Esq., raised a number of protestations, calculated to dissuade this Honourable Court from granting the other five (5) orders, prayed for on the face of the notice of motion, dated 3rd June, 2019. He also relied on the strength of the affidavit in opposition and canvassed some seemingly convincing reasons why he felt that it would be unfair, unjust and unreasonable, for the other orders to be granted and for the application to be dismissed with substantial cost.

Significantly, I am compelled to synoptically or rather elliptically replicate the central argumentations that underscored the positions assumed by both counsels in the determination of why this Honourable Court should or should not grant the orders as prayed for. Meanwhile, the following points, substantiated by provisions in the High Court Rules, 2007 and other statutes, underpinned the protestations of Counsel for the Interested Parties/Applicants:

1. Counsel recognised and endorsed the 1st Defendant's/Applicant's application by way of a notice of motion, dated the 20th December, 2018, that this Honourable Court strikes out the Writ of Summons, dated 30th November, 2018, on the ground that since it alleges fraud, and that it ought to have been generally indorsed as

mandated by Paragraph (g) of Rule 3 of Order 6 of the High Court Rules, 2007. Moreover, Counsel noted that even though he recognised and indorsed the said application, his recognition and indorsement are informed by reasons that are distinctively different from those of Counsel of the 1st Defendant/Applicant in that application, dated the 20th December, 2018.

2. Counsel asserted that the aforementioned Writ of Summons should be struck out because it is frivolous and vexatious and discloses no reasonable cause of action, because the Plaintiffs on whose behalf the aforesaid Writ of Summons was issued and served on the Defendants, have nothing to do with the estate of the deceased. Their case is predicated on the assumption that they are either executors or executrix of a Will, but Counsel submitted that there is no subsisting Will of the Late Hon. Mr. Justice Patrick Omolade Hamilton. Moreover, Counsel bolsters his protestation on this point with the provision in Sub rule (1) of Rule 17 of Order 21 of the High Court Rules, 2007.
3. The said Writ of Summons was issued and served in contravention of Sub rule (2) of Rule 2 of Order 52 of the High Court Rules, 2007.
4. The Writ of Summons was further issued and served in contravention of the provisions in Rule 3 of Order 55 of the High Court Rules, 2007.

5. The third order prayed for is for the Letters of Administration granted on the 23rd October, 2018, to be expunged from the Probate Registry of the High Court of Justice. Counsel argued that the 1st Defendant/Respondent had no business taking out Letters of Administration in respect of the estate of the deceased. Counsel drew the Bench's attention to paragraphs 10 through 14 of the affidavit in opposition and Section 3 of the Devolution of Estate Act, 2007.
6. Counsel alluded to paragraphs 14 and 15 of the affidavit in support of his application in justification of the reason why the payment of their father's gratuity should be made into the account stated in order four (4).

Nevertheless, the following argumentations underpinned the reason why Counsel for the 1st Defendant/Respondent felt that it would be unfair, unjust and reasonable to grant any of the orders prayed for, apart from the second (2) and its concomitant orders:

1. Counsel vociferously pilloried the first order for two principal reasons. First, that since the Interested Parties/ Applicants have unequivocally applied for the Writ of Summons to be struck-out, they cannot simultaneously applied to be added as Interested Parties/Applicants. Secondly, they have not cited any authority in

justification of the reason why the Writ of Summons should be struck-out.

2. Counsel's response to the third order resonated with his submission that the Interested Parties/Applicants have not shown any reason (s) for the order to be granted, noting that they cannot be granted such order, when they are not a party to the action.
3. Counsel's response to the fourth (4) order also resonated with his submission that the Interested Parties/Applicants have not shown any reason (s) for the said order to be granted, noting that they cannot be granted such order, when they are not a party to the action. In tandem with this objection, Counsel further submitted that should the Letters of Administration, dated 23rd October, 2019, be set aside, the administration of the deceased's estate will revert to the Administrator and Registrar- General.

Counsel also stated that the order does not contemplate the involvement of the Official Administrator by law. Another issue which Counsel raised in connection with this point, resonated with paragraphs 2 and 3 of his affidavit in opposition. Further, Counsel concluded this argument on this point with the submission that in the foregoing paragraphs, the Administratrix of the estate, deposed to the fact that the deceased had five children, who are beneficiaries of the estate, including the 1st Defendant/

Respondent. Hence, the order seeks for the monies to be paid to the two Interested Parties/ Applicants, leaving out the other beneficiaries.

4. Finally, Counsel submitted that the application is to be dismissed with substantial cost, because it is devoid of any merits (plaudits). Counsel further argued that Exhibits ABW 1 and 2, are survey plans, showing the effort being made by the 1st Defendant/Respondent to administer the estate. Counsel also alluded to Paragraph 6 of the affidavit in opposition, depicting the estate account at the Rokel Commercial Bank, to which there are six (6) beneficiaries. Counsel therefore urges this Honourable Court to dismiss the application.

However, having incisively presented the argumentations of both Counsels, I will now attempt to analyse them in the context of Sierra Leone's existing legal regimes in a bid to determine whether the orders prayed for in the application should or should not be granted. The first order (prayed for by Counsel for the Interested Party/Applicant) is for the Writ of Summons, dated 30th November, 2018 to be struck-out. This is an application, which even Counsel for the 1st Defendant/Applicant had made by way of a notice of motion, dated the 20th December, 2018, on the ground that because the Writ alleges fraud, it ought to have been generally indorsed as mandated by Paragraph (g) of Rule 3 of Order 6 of the High Court Rules, 2007.

Nonetheless, whereas Counsel for the 1st Defendant/Respondent, relied on the aforementioned provision, Counsel for the Interested Parties/Applicant, bolstered his argumentation with Sub rule (1) of Rule 17 of Order 21, Sub rules (1) and (2) of Rule 2 of Order 52 and Rule 3 of Order 55 of the same High Court Rules, 2007, for the Writ of Summons to be struck-out. Essentially, I will now proceed to put the authorities relied on by both Counsels into context to determine whether they are sufficient enough (for this Honourable Court) to make an order for the Writ of Summons to be struck-out.

Alas! I am amused and bemused by the protestation of Counsel for the 1st Defendant/Respondent that the Writ of Summons, was issued and served in contravention of the provision in Paragraph (g) of Rule 3 of Order 6 of the High Court Rules, 2007. Meanwhile, my reading of the said provision does not dovetail with Counsel's understanding of it. First, the whole of Rule 3 of Order 6 concerns itself with special and not general indorsement of writ of summonses. Secondly, the proviso to Paragraph (g) of Rule 3 of Order 6, makes it quite lucid that the whole Rule is merely directory not mandatory, as Counsel has interpreted it.

Thirdly, the rule is only applicable in circumstances, wherein the Plaintiff seeks to recover a debt or liquidated demand in money payable by the Defendant (with or without interest) in the circumstances, encapsulated

in Paragraphs (a) through (g). Thus, the Writ of Summons was never issued and served on the Defendants/Respondents to recover a debt or liquidated demand, arising in any of the circumstances, contemplated in Paragraph (a) through (g). So, I will dub the submission a misnomer, a misconception and an uncertainty that is accordingly clarified and dispelled in the light of the foregoing analysis.

Quintessentially, it would be unfair, unjust and unreasonable, should this Honourable Court strike- out the Writ of Summons, on that protestation of Counsel, which appears to be devoid of any legal plaudits. As indicated above, Counsel for the Interested Parties/Applicants, canvassed three distinctively different reasons why he felt the Writ of Summons should be struck-out. First, he referenced Sub rule (1) of Rule 17 of Order 21, which deals with striking out of pleadings and indorsements. The provision thus reads:

> The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement on the ground that (a) it discloses no reasonable cause of action, or defense, as the case may be; (b) it is scandalous, frivolous and vexatious; (c) it may prejudice, embarrass or delay the fair trial of the action (d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered, accordingly, as the case may be.

Prima facie, in accordance with Counsel's submission, the aforementioned rule, contains two limbs that should warrant the striking out of this action. Paragraphs (b) and (d) are clearly indicative of this prima facie position. Moreover, paragraph 9 of the affidavit in support of the application, alludes to the fact that the Plaintiffs brought this action as either Executors or Executrix of the Last Will and Testament of the deceased. The said Paragraph 9 articulates that a correspondence from a solicitor in the Office of the Administrator and Registrar General indicates that there is no existing will in the said office, relating to the estate of the deceased.

Exhibit H is thus instructive on this. Be that as it may, it is rationally and legally expedient to pinpoint that because the fact deposed to in Paragraph 9 is yet to be controverted, it is still of evidential value to this Honourable Court. Thus, the significance of affidavit evidence in civil proceedings, is clearly articulated in Order 31 of the High Court Rules 2007 (see Order 31 in its entirety). So, the argumentation that the Writ of Summons, should be prima facie struck out, would hold good because, it dovetails with Paragraphs (b) and (d) of Sub rule 1 of Rule 17 of Order 21, which expatiate that the Court may strike out or amend any pleadings

or indorsement of any writ in an action, if it is scandalous, frivolous and vexatious; or if is otherwise viewed as an abuse of process of the Court. Principally, these are protestations which Counsel for the Interested Parties/Applicants unambiguously raised in his submissions to this Honourable Court. Therefore, it is factually wrong, as Counsel for the 1st Defendant/Respondent asserted, that Counsel on the other side, has not furnished this Honourable Court, with the requisite authorities on the first order prayed for. Meanwhile, I will meticulously proceed with the next submission, which Counsel said should warrant a prima facie case for the Writ of Summons to be struck out.

That argumentation is rooted in Sub rule (1) of Rule 2 of Order 52 of the High Court Rules, 2007. Order 52 in general, concerns itself with cases appropriate for application of judicial review; it encompasses applications, relating to the orders of mandamus, prohibition, certiorari; or injunction. Thus, the proviso to Paragraph (b) of Rule 1, makes it mandatory for any of the foregoing reliefs to be only prayed for (in the context of Order 52) via an application for a judicial review.

In which context is Order 52 mostly invoked? Purposefully and incontestably, the peculiarity of Order 52 is that its applicability is contingent on evidence of exercise of excessive judicial power and / or inappropriate exercise of judicial power in circumstances that are in

contravention of the spirits and intendments of statutes, the common law or any rules of procedure. Thus, there is nothing before this Honourable Court, relating to the exercise of judicial powers, beyond the spirits and intendments of any subsisting law in favour of the Plaintiffs/Respondents. And unarguably, there is no rule of law; and in fact, nothing in the High Court Rules, 2007, precluding a plaintiff from praying for the orders (prayed for) in the Writ of Summons, dated 8th January, 2019. Be that as it may or however it may, the submission that the foregoing Writ of Summons is issued and served in contravention of the spirits and intendments of the provisions in Order 52, does not hold good in the face of that Order; it is indubitably guilty of a naïve procedural miscalculation.

Assuming without conceding that the Writ of Summons was issued and served on the Defendants/ Respondents, contrary to Order 52, then depending on the extent of the irregularities complained of, that would not have amounted to a procedural nullity. So, I am constraint to give succour to the protestation that the aforementioned Writ of Summons should be struck-out. Meanwhile, the next contention to resolve is whether (as canvassed by Counsel for the Interested Parties/ Applicants), the action is in complete contravention of Rule 3 of Order 55 of the High Court Rules, 2007. The rule thus states:

Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his estate shall be made a party of any action for revocation of the grant.

Nevertheless, circumspectly, before any attempt is made to deconstruct the aforementioned provision in Rule 3 for meaning, it is legally expedient to examine whether the Plaintiffs/Respondents have rightly or wrongly, approached this Honourable Court for the orders as prayed for on the Writ of Summons, commencing this action. Order 55 (referenced above) restricts its scope to contentious probate proceedings. And Sub rule (1) of Rule 2 herein, confirms that every probate action shall be commenced by a writ of summons, issued by the High Court Registry.

Sub rule 2, makes it mandatory (not directory) that before a writ beginning a probate action is issued, it shall be indorsed with a statement of the nature of the interest of the Plaintiff and of the defendant in the estate of the deceased to which the action relates. However, my reading of the Writ of Summons, commencing this action, discloses that it does not state the nature of the interest of neither the Plaintiffs/Respondents, nor that of the Defendants/Respondents in the estate of the deceased.

Alas! The Writ's indorsement does not reflect an estate or probate action as mandated by the said Sub rule.

I now proceed to deconstruct the aforesaid Rule 3, to determine whether the Plaintiffs/Respondents, are in complete compliance with it or not. The facts of this case are clear; it is brought by the Plaintiffs, purporting to be the Executors/Executrix of the Last Will and Testament of the deceased, against the Defendants/Respondents. The said Rule 3 as set out above, makes it mandatory for any person that has interest in the estate of a deceased to be made a party to an action that is brought before a court of competent jurisdiction in respect of that estate.

Moreover, upon perusal of the affidavits (in support and opposition) of the application, I reckoned that the deceased had five (5) children; and they are all beneficiaries to his estate. And it was the Administratrix (see Letters of Administration, dated 23rd October, 2018) of the deceased's estate that lived and took care of him for some years immediately preceding his death. So, an action instituted pursuant to Order 55, must accordingly comply with its Rule 3, which makes it mandatory for every beneficiary of the deceased's estate to be made a party to this action. The rationale of this Rule is that, whatever decision that is made in a probate action, can affect the interest of every other person that is a beneficiary to the estate.

Consequently, the failure of the Plaintiffs/ Applicants, to comply with the foregoing Rule 3, constitutes an irregularity, which Counsel for the Interested Parties/Applicants, believes should warrant the striking-out of the Writ of Summons, but is the said irregularity sufficient enough to warrant the striking out of this action?

Thus, I will choose to answer the question in the negative, by invoking the significance of Order 2 of the High Court Rules, 2007. The authors of the Supreme Court Practice of 1999 (The White Book) are very clear on the legal significance of the rule of non-compliance with the rules (see analysis between pages 9 and 12 of same). Essentially, I will also direct Counsel's attention to the cases of **Harkness v. Bell's Asbestos and Engineering Ltd. {1967} 2 Q.B 729 p. 735, CA and Golden Ocean Assurance Ltd. and World Mariner Shipping SA v. Martin, The Golden Mariner {1990} Lloyd's Rep. 125;** in which the Courts were reluctant to strike out writs of summonses for what were dubbed as mere irregularities; as opposed to what were thought to be procedural nullities.

Thus, undoubtedly, Order 2 of the High Court Rules, 2007, salvages the Writ of Summons, commencing this action, from the multi-dimensional threats of procedural nullity, which underpinned the submissions of Counsel for the Interested Parties/Applicants. Circumspectly, this

Honourable Court's position to save the Writ of Summons from drowning, is not entirely predicated on Order 2, but it is as well anchored by its inherent jurisdiction, to order that it be amended, to fill its lacunae; to take in the compellable provisions in Rule 3 of Order 55, in particular; and any other rule that its issuance and service might have infringed upon. Further, I will invoke the directory (not mandatory) provisions in Sub rule (1) of Rule 17 of Order 21, to get Counsel for the Plaintiffs/Respondents, to amend the relevant portions of the Writ that are in contravention of Paragraphs (b) and (d) of same (see analysis on the first point on irregularity in the orders prayed for on the face of the notice of motion, dated 3rd June, 2019).

Meanwhile, the next issue, which is to be addressed in this ruling, is whether this Honourable Court should or should not grant an order, setting aside the Letters of Administration, granted on the 23rd October, 2018 and for same to be expunged, from the Probate Registry of the High Court of Justice. Moreover, the need to grant or not to grant this order, entirely depends on the position of the substantive law, relating to whether the 1st Defendant/Respondent is the bona fide person, entitled to take out Letters of Administration in respect of the estate of the deceased.

Circumspectly, to determine this, I shall rely on the provisions of the Devolution of Estate Act, 2007 (hereinafter referred to as Act N0. 21 of 2007). Thus, Section 2 which is the interpretation section, is quite elaborate; it defines a plethora of words and phrases, within the context of the Act, emphasizing their 'connotative' as opposed to their 'denotative' meanings. Of the multiple of words and phrases defined, the word 'spouse' is quite essential here. Contextually, for purposes of this application, the word 'spouse' means, 'a person married to the intestate or testator'; or 'an unmarried woman who has cohabited with an unmarried man as if she were in law his wife for a period of not less than five years immediately preceding the death of the intestate or testate.'

Significantly and emphatically, there is no evidence before this Honourable Court that the 1st Defendant is married to the deceased. So, the first limb of the definition of a 'spouse', alluded to in the aforementioned paragraph, is in applicable to this situation. Meanwhile, it is the second limb of the definition that chimes with this situation. Moreover, Paragraphs 10 through 14 of the affidavit in support of this application, recognise the fact that the 1st Defendant/Applicant, stayed in the premises of the deceased as a 'friend', but the notice of intention to apply for a grant of letters of administration, the affidavit of entitlement for grant and the oath of the Administratrix (though she is erroneously dubbed 'Administrator' therein!) clarified the fact that she

lived in Villa 40, OAU Village, Hill Station, Freetown in the Western Area of the Republic of Sierra Leone, with the deceased (see Exhibit I).

Further, paragraph 11 of the affidavit that bolsters the application, affirms that the 1st Defendant/ Respondent lived with their deceased father between May, 2014 and 7th July, 2018, but Paragraph 5 of the affidavit in opposition, indicates that the 1st Defendant/Respondent, lived with the deceased between May, 2013 and 7th July, 2018. Meanwhile, the facts deposed to in both affidavits, confirm the month (May) in which the 1st Defendant/Respondent got to stay with the deceased.

Essentially, what is in dispute, is the fact that both affidavits contain conflictual information about the very year, in which the 1st Defendant got to stay with the deceased. And there is no other available evidence before this Honourable Court, contravening or justifying either of the facts deposed to in both affidavits. So, which of them is factual or truthful? What is the rationale for the deposition of those conflicting facts in both affidavits? Inferentially, it is clear that the Interested Parties/ Applicants, have consciously deposed to the fact that the 1st Defendant/ Respondent did not stay with their deceased father for up to five years, immediately preceding his death; therefore she is not the bona fide person, entitled to take out letters of administration; as

espoused by Subsection (2) of Section 3 of Act N0. 21 of 2007. Conversely, the 1st Defendant/Respondent, herself deposed to such fact because, she believed that she had every justification to take out the very Letters of Administration, issued out of the Probate Registry of the High Court of Justice, in respect of the deceased's estate.

However, the decision to grant or not to grant an order setting aside the said Letters of Administration, cannot be made on the aforesaid conflicting facts alone. Are there other facts in both affidavits that would guide this Honourable Court to make an order on this seriously contentious issue that would live no room for questioning in the minds of any rational or reasonable creatures in being? This quite intriguing question leads to some serious scrutiny of some other facts in both affidavits. In fact, the same Paragraphs 10 through 14 of the affidavit in support, are also very much instructive here.

The Interested Parties/Applicants, clearly stated that they were unaware that the 1st Defendant/Respondent had taken out letters of administration; they only came to know about it, when the 1st Defendant/Respondent, sent the Supplemental Letters of Administration to them for signing. Against this backdrop, they refused to sign it; and inter alia, applied for them to be made parties to this action; while recognizing the very serious and crucial role, which the 1st

Defendant/ Respondent, played in their deceased father's life. However, the foregoing facts are contradicted by Paragraph 4 of the affidavit in opposition, wherein it is stated that the 1st Defendant/Respondent took out the Letters of Administration, dated 23rd October, 2018, with the knowledge and concurrence of the Interested Parties /Applicants. Inferentially, if they had consented to the taking out of the foregoing Letters of Administration, why should they refuse to sign the Supplemental Letters of Administration, when the 1st Defendant/Respondent sent it to them for signing?

Again, if at all, they had knowledge and concurred the taking out of the aforementioned Letters of Administration, why should they now come to contest it? Why should they even deposed to facts in their affidavit in support, indicating that the 1st Defendant/ Respondent is not the appropriate person, pursuant to Subsection (2) of Section 3 of Act No. 21 of 2007, to take out Letters of Administration, in respect of the estate of their deceased father? Significantly, the reasonable answers to the aforesaid questions, point to the fact that the Letters of Administration dated 23rd October, 2018, was not taken out with the consent of the Interested Parties/Applicants, who are also beneficiaries of the deceased's estate.

Furthermore, it is also clear in the face of the Writ of Summons that the other beneficiaries, including the Plaintiffs/Respondents, were neither aware of the said Letters of Administration, nor are they convinced that the 1st Defendant/Respondent is the bona fide person that ought to have taken it out; so they are also seeking for it to be struck out, although they have canvassed some other reasons, contrary to those of the Interested Parties/ Applicants.

Meanwhile, the foregoing analysis of the peculiarity of the circumstances that culminated in the grant of the Letters of Administration, depicts the extent to which any reasonable tribunal of facts, would conclude that it was not accordingly taken; with the knowledge and concurrence of those other beneficiaries, whom she said consented to it being taken out. And, there is indeed no tangible and indubitable reason, to undoubtedly convince this Honourable Court that the Administratrix, really meets the threshold of Subsection (2) of Section 3 of Act N0. 21 of 2007, to take out the Letters of Administration that is now in contention.

Circumspectly, since there are a clear contention, regarding whether the 1st Defendant/Respondent is the deceased lawful spouse; that is qualified as Administratrix to take out the Latters of Administration, dated 23rd October, 2018; and there is no available evidence before this Honourable Court (beyond the contested fact deposed to in paragraph 5

of the affidavit in opposition) that she stayed with the deceased for up to five years, immediately preceding his death; considering the fact that the Interested Parties/Applicants are also beneficiaries of the estate of the deceased and ought to have been made parties to this action, pursuant to Rule 3 of Order 55 of the High Court Rules, 2007; mindful of the fact that to strike out the Writ of Summons, contravene Order 2 of same, and will prevent the Interested Parties/Applicants to be made parties to this action; and having regard to the incontrovertible fact that Counsel for the 1st Defendant/Respondent, has categorically consented to the second order prayed for, I therefore conscientiously order as follows:

1. That the Interested Parties/Applicants herein are hereby made Parties to this action.
2. That notwithstanding the irregularities, complained of in the second order, prayed for in the Notice of Motion, dated 3rd June, 2019, I hereby direct that the said Writ of Summons shall be amended to take in the concerns, which are raised in the Notice of Motion; and any other rules which might have been contravened, relative to the issuance and service of the said Writ of Summons in consonance with the requisite provisions of the High Court Rules, 2007.

3. That I hereby set aside the Letters of Administration, granted on the 23rd October, 2018, and that same be expunged from the records of the Probate Division of the High Court of Justice.
4. That the death gratuity payment of the deceased shall not be paid into the Accounts stated on the face of the Notice of Motion, dated 3 June, 2019, but such payment shall be made to any Account (s) which this Honourable Court deems reasonable, fair and just, in the interests of all the deceased's surviving beneficiaries; including the 1st Defendant/Respondent.
5. That the Administratrix of the expunged Letters of Administration (the 1st Defendant/Respondent) provides records of the accounts and everything relating to the deceased's estate to this Honourable Court, for the period October, 2018 and January, 2020.
6. The cost of this application shall be cost in the cause.

I so order.

Hon. Dr. Justice A. Binneh-Kamara, J