



Real Estate & Succession
4th July 2024



Magnus Ejelonu



Tolulope Adeyemi

Navigating Estate Administration in Oyo State: Devolution, Distribution, and the Probate Process¹

1. Introduction

- 1.1 When a person dies, the question as to what happens to the assets left behind usually arises. This is because the death of an individual is not an instant termination of the legal rights and interests the person possessed in his assets, rather those interests pass on to the deceased's personal representatives.² This is the point at which the devolution³ process becomes relevant. To avoid chaos, the law makes provisions that aid in determining what happens to the assets of a deceased person.
- 1.2 This article explores the devolution and distribution of a deceased's estate⁴ in Oyo State, as well as the procedural steps involved in obtaining a grant of probate and letters of administration.

2. Applicable Laws

- 2.1 Administration of estate of a deceased person in Oyo state is governed by the following laws:

¹ **Magnus Ejelonu, Associate Partner and Tolulope Adeyemi, Trainee Associate, S. P. A. Ajibade & Co., Ibadan, Nigeria.**

² See, *Usioyol v. Aortyo* [2022] LPELR-57545(CA) and section 4 of Administration of Estates Law.

³ Black's Law Dictionary, 8th Edition, defines "devolution" as the transfer or transition from one person to another of a right, liability, title or estate, or office. See also; *Toriola v Williams* [1982] 13 NSCC 187.

⁴ In *Carew v. Oguntokun & Ors* [2011] LPELR-9355(SC) p. 24 para B, per Aloma Mukhtar JSC defines Estate as "...the property that one leaves after death; the collective assets and liabilities of a dead person."

- 2.1.1 Administration of Estates Law of Oyo State;⁵
- 2.1.2 Trustees Law of Oyo State;⁶
- 2.1.3 Wills Law of Oyo State;⁷ and
- 2.1.4 High Court of Oyo State (Civil Procedure) Rules 2022.

3. **Devolution and Distribution of Estate in Oyo State**

3.1 **Section 4 of Administration of Estates Law** provides thus:

“1 All property to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition therefore, devolve from time to time on the personal representatives of the deceased:

Provided that any interest in land shall not be administered unless the administrator shows to the satisfaction of the court that other assets of the estate are insufficient to pay the intestate's debts and expenses of his funeral and of taking out administration.

- 2. The personal representatives for the time being of a deceased person are deemed in Law to be his heirs and assigns within the meaning of all trusts and powers.
- 3. The personal representatives shall be the representatives of the deceased in regard to any property to which he was entitled for an interest not ceasing on his death. [Emphasis added]

3.2 Therefore, the estate of the deceased upon his death will devolve on the personal representatives,⁸ who then have to make an application to the Probate Registrar for a grant.⁹ The type of grant issued is contingent on whether the deceased left a valid Will. If the deceased left a Will, he or she is considered to have died testate. Conversely, if the deceased did not leave a Will, he or she is said to have died intestate.

⁵ Cap 1, Laws of Oyo State 2000.

⁶ Cap 166, Laws of Oyo State 2000.

⁷ Cap 170, Laws of Oyo State 2000.

⁸ Personal representative has been defined in section 2 of the Administration of Estates Law as “... the executor, original or by representation, or administrator for the time being of a deceased person”.

⁹ The application may be made to the Probate Registrar either personally or through a legal practitioner.

3.3 Where a person dies testate, an application for a grant of probate¹⁰ will be made. On the other hand, when a person dies intestate, an application will be made for a grant of letters of administration.¹¹ The probate and letters of administration are the legal instruments granted to the executors or the administrators which confer authority on them to administer the estate. It must be stated that grants of probate and letters of administration are issued by the Probate Registry of the High Court of the State which is vested with the exclusive jurisdiction to do so, to a minimum of two and a maximum of four persons.¹²

3.4 Upon the devolution of the testate estate to the personal representative, the distribution of the testate estate is carried out in accordance with the provisions set forth in the testator's Will. Conversely, the distribution of the intestate estate is governed by **Section 49(1) of the Administration of Estates Law of Oyo State**, which provides as follows:

“The residuary estate of an intestate shall be distributed in the manner or be held on the trusts set out in the Second Schedule.”

4 The Procedure for Obtaining Letters of Administration

4.1 As stated above, the personal representatives must obtain letters of administration from the Probate Registry of the High Court of Oyo State before they can take any action on the deceased's estate. It is imperative to note that the letters of administration may cover either the real property only or the personal property of the deceased or both, as an administrator has no right or power to administer a property not provided in the letter of administration.¹³ Pending the grant of the letter of administration, the estate of the deceased is deemed to have been vested in the Chief Judge of the State from the date of his death until administration is granted.¹⁴

4.2 The application for a grant of administration is made at the Probate Registry of the High Court of Oyo State. Upon payment of the requisite fees and submission of the relevant documents, a notice of the application is published in a national newspaper or a gazette for a period of 21 days to allow any objections. Where there is no objection, the estate is inspected and valued to determine the estate duties payable.

¹⁰ In *Sule & Ors v. Sule & Ors* [2019] LPELR-47178(CA) p. 9 para D-F, per Adumein JCA, defines probate to mean "... the judicial procedure by which a testamentary document is established to be a valid Will, the proving of a Will to the satisfaction of the Court." See also, *Nsefik & Ors. v. Muna & Ors.* [2013] LPELR-21862(SC).

¹¹ In *Ugolo v. Odiama* [2019] LPELR-47168(CA) pp. 18-19, paras F-A per Umar JCA held that: "Letters of Administration can be defined as a formal document issued by probate Court appointing one as an administrator of an estate."

¹² See, section 22 of the Administration of Estates Law, and Trustee Law.

¹³ See, *Folarin v. Agosto* [2023] 11 NWLR (pt. 1896) 559.

¹⁴ Section 10 of Administration of Estate Law of Oyo State 2000.

Upon payment of the estate duties, the letter of administration is granted to the administrators, thereby vesting the estate in the administrators as trustees.

5 The Procedure for Obtaining Grant of Probate

The procedure for obtaining a grant of Probate depends on whether the application for probate is contentious or non-contentious.¹⁵

5.1 Non-Contentious Probate

In the absence of a caveat, the procedure for grant of non-contentious probate is in the following order: search for the Will; discovery of the Will; marking and reading of the Will; making an application for probate; and Proof of the Will and grant of probate.

5.1.1 Search for the will: Search begins after the death or burial of the deceased by the family members or any interested person. Where the Will is in the possession or custody of any person, he is obligated to send it to the Probate Registry within three (3) months of his knowledge of the testator's death.¹⁶

5.1.2 Application for the Reading of the Will: Upon the discovery of the Will of the Testator, the family members or their Solicitor will apply to the Probate Registry for the official reading of the Will. The application for the reading of the Will must be accompanied with evidence of payment and of lodgment of the Will, the death certificate of the deceased obtained from the National Population Commission, and payment of prescribed fees.

5.1.3 Reading of the Will: The Probate Registrar, based on information supplied by the Applicant(s), shall summon interested persons in the estate of the deceased and when they appear on a fixed date, the Registrar then brings out the Will, breaks the sealed wax on it and reads the Will in the presence of the people present and makes a record of the proceedings.¹⁷

5.1.4 Application for Grant of Probate: After the reading of the Will, the executors or their solicitor can proceed to apply for the Grant of Probate by way of Petition in a prescribed form.¹⁸ The Applicant will also be required to fill and attach the following forms; Oath for Executor;¹⁹ Affidavit of attesting witness of Will; Inventory of personal property; particulars of real property, schedule of debts due by the deceased, and schedule of funeral expenses.

¹⁵ Order 67 Part I & II of the High Court of Oyo State (Civil Procedure) Rules 2022.

¹⁶ Order 67 Rule 4 of the High Court of Oyo State (Civil Procedure) Rules 2022.

¹⁷ With advancements in technology, the reading may be done physically or virtually.

¹⁸ Order 67 Rules 1 and 51 of the High Court of Oyo State (Civil Procedure) Rules 2022.

¹⁹ Order 67 Rule 53 of the High Court of Oyo State (Civil Procedure) Rules 2022.

After submission of the application, a bank certificate will be issued to the Applicant. This bank certificate will be taken to all banks and companies where the deceased owned accounts and shares; where information of such accounts will be filled in and endorsed. Where the deceased owned real property, the Valuation Unit of the Registry will conduct an inspection and evaluation of the property or properties to determine the estate duty payable. Afterward, the Applicant will be required to pay the estate duty (10% of the value of the estate).

5.1.5 **Marking of the Will:** After confirmation of payment, the file shall be passed for marking of the Will, where the Executors shall attest to administer the estate according to the provisions of the Will. After the marking of the Will, comes the preparation of the Minutes and Order, which is to be approved by the Chief Judge of Oyo State.

5.1.6 **Grant of Probate:** When the Probate Registrar is satisfied that the Will was duly executed, that the testator made the Will with knowledge of its contents, and that due process has been followed, the Probate Registrar would then grant probate.

5.2 **Contentious Probate**

The procedure for a grant in contentious probate is not completely at variance to the procedure outlined above. An application for probate becomes contentious when an interested party files a caveat at the probate Registry or files a notice to prohibit a grant of administration. A caveat is filed to ensure that no grant is sealed without notice to such interested party ("Caveator"). The Probate Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect of the estate. The 'Applicant' or an interested party may file a warning to the caveator to appear and show his contrary interest in the deceased's estate. Following this, a probate action may be commenced at the High Court by way of a Writ of Summons.

6 **Conclusion**

The process of devolution and distribution of the assets of a deceased follows a systematic legal procedure in order to ensure an orderly transfer of interests and management of the deceased assets. The relevant procedure to be followed to obtain a grant depends on the existence of a valid Will. Where a person fails to obtain a grant and proceeds to administer the deceased's estate, such person is

regarded as an intermeddler (*executor de son tort*)²⁰ and could be liable for subsequent liabilities that arise.²¹ The definitive aim of the above-stated legal frameworks is to guarantee proper management and distribution of the deceased estate as well as settlement of surviving debts and liabilities.

For further information on this article and area of law,
Please contact **Magnus Ejelonu** and **Tolulope Adeyemi** at:
S. P. A. Ajibade & Co., Lagos by
Telephone (+234 1 472 9890), Fax (+234 1 4605092)
Mobile (+234 815 088 2840, +234 803 747 6651)
Email: mejelonu@spaajibade.com
www.spaajibade.com

²⁰ See, *Jacob v Eton* [2020] LPELR-49577(CA).

²¹ See, *Udensi v Mogbo* [1976] LPELR-3294(SC).