IN RE KORANTENG-ADDOW (DECD); KORANTENG-ADDOW V. KORANTENG

(1996) JELR 67821 (CA)

COURT OF APPEAL · DEC. 12, 1996 · GHANA

CORAM

WOOD JA, BROBBEY JA, SAPONG JA

WOOD JA.: The appellant, who is a natural child of the deceased, Dr Gustav Koranteng-Addow, applied for letters of administration to administer his estate. The respondent, a paternal brother of the deceased, caveated. After a summary determination of the question of which of the two persons is entitled to the grant, the trial judge concluded the matter as follows:

"I accordingly hold and find as a fact that the deceased intestate was survived by the four children mentioned by the caveator.

I also order that from the affidavit, evidence and other exhibits placed at my disposal, letters of administration should be jointly granted to the applicant, the caveator and to Mr Reynolds Mfodwo Koranteng (the two customary successors) to administer the estate of the deceased jointly for and on behalf of those who are in law beneficially entitled to enjoy the estate of the deceased."

The appellant however was dissatisfied with these crucial findings, namely (1) the number of children who survived the deceased; and (2) the appointment of the caveator as a co-administrator. Consequently, he caused his solicitors to appeal against the decision. Four original grounds of appeal were filed. These were, by the additional grounds of appeal filed on 9 July 1996, expanded to seventeen. For our purposes, the relevant ground is ground (a) of the original grounds of appeal which is the general well-known and often used ground—"That the ruling was against the weight of the evidence."

One may wonder how come out of the seventeen grounds which were filed only this simple ground became relevant. The reason is this. At the hearing, the additional grounds (1), (2), (3), (4) and (5) were also argued. It raised the important issue of whether, given the facts of the case and the applicable law, the appointment of Koranteng as a co-administrator is valid. In the course of the argument, however, the appellant's counsel made this point clear that they would not be averse to a joint grant to them and the customary successor of the deceased on the matrilineal side. In other words, that their dissatisfaction lay with the appointment of the customary successor on the patrilineal side, as a co-administrator. Because the respondent's counsel quickly agreed to this compromise, emphasising that in any case they had all along been advocating this line of action, it became clear that the only relevant matter for consideration in this appeal then is the question of the number of children who survived him.

Before I proceed to examine this issue, I wish to make one quick comment. The appellant, applied by way of motion to tender at the hearing of this appeal, a document showing who the natural father of the two of the said children, namely Susan Koranteng-Addow and Nana Amma Ofosua Koranteng-Addow was. The panel, differently constituted, with me presiding granted it. At the hearing, however, the appellant's counsel never used this exhibit at all which we had allowed as exhibit 1. It is not surprising. The grounds upon which the learned judge concluded that these two young women are children of the deceased were not that the deceased was their natural or biological father but rather that they were "recognised" by the deceased as his children. In matters like this then, birth or baptismal certificates describing who the natural father was, are not necessarily relevant.

I will now deal with the arguments put forward by the appellant's counsel. Counsel submitted that in an action of this kind, ie where the claimant wishes to establish that that kind of recognition ie recognition as a child, was accorded the person, obituary notices and tributes cannot offer the necessary proof. Counsel's contention is that some evidence better than any of these should be proffered.

Counsel's further argument is that having regard to exhibit X, an affidavit sworn to by one of the Liverpool children–Susan—in which she described the deceased as his stepfather, the conclusion that she was recognised as a child and so was entitled to the property was definitely wrong and unsupported by the record.

Mrs Isabella Mintah, another lady described as his child, died during the pendency of this appeal. The simple argument with regard to her is that, evidence never came from the right source, that is the matrilineal family to which the deceased belonged in proof of this fact.

Counsel for the respondent, however, invited us not to disturb the finding that the three women are also his children, as the available evidence, particularly the tribute and the fact that Mrs Mintah in her capacity as a child provided the coffin, clearly demonstrates he so recognised them.

Now, the relevant provision of the Intestate Succession Law, 1985 (PNDCL 111) which defines the word "child" is section 18. It reads as follows:

"18 . . . . except where the context otherwise requires— 'child' includes . . . any person recognised by the person in question as his child. . ."

What this means is that any non-natural child claiming any portion of the estate of a deceased

under section 18 of PNDCL 111 must prove that the deceased in his lifetime recognised the claimant as his child. Put in other words, the recognition that the claimant is a child must have come from the deceased. So, it is not how the claimant himself or herself viewed the deceased or the status or the recognition he or she in turn accorded the deceased that is crucial. The determining factor is how the deceased, obviously in his lifetime, viewed or reckoned the claimant. Did he accept or count him as a child? I would emphasise that it is not enough that he was like a father to the claimant. The essential thing is that he recognised or reckoned him as a child. This, in my view, must be the applicable rule even when as happened in this instant case, the claim is not being made by the person himself, but on his behalf by another.

I say so because the appellant made a fetish of exhibit X, arguing strenuously, per his counsel, that the fact that Susan described the deceased as his stepfather is proof that he never recognised her as his child. I disagree with this submission.

I am of the opinion that regardless of how Susan viewed the deceased, irrespective of what recognition she in turn gave him, the central question for any judge faced with the issue of whether or not a person is a child within the meaning and intendment of section 18 of PNDCL 111 is whether the deceased recognised the person as his child. I will be quick to point out that naturally one would expect such recognition to be reciprocal, that is to say that the “child” would or should in turn recognised the deceased as his or her father. In which case, the reciprocity becomes one of the essential means of proof. But I would hold that the absence of it is no conclusive proof that the claimant was not so recognised. The real test then is whether the deceased recognised that person as his child. If the answer is in the positive then he or she qualifies under the law as a beneficiary. Of course, there are moral dimensions to these cases where recognition is not reciprocal. But I think, it will be left to the conscience of such a claimant to judge whether morally he or she is entitled to the fruits of one he shows ingratitude to by not according to him the revered position of a father when that person had recognised him as a child.

As far as this appeal is concerned then, I would say that exhibit X is no conclusive proof that the Liverpools are not “children” of the deceased.

Under our law, the burden of producing evidence in support of the assertion that the deceased recognised the three women as his children rested on the respondent. This means he must produce sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence: see sections 11 (4) and 12(1) the Evidence Decree, 1972 (NRCD 323). Furthermore, in an action of this kind, where a non-biological child claims a share in the estate of the intestate, on the basis that the deceased in his lifetime recognised him or her as a child, the general rule or principles requiring the court to examine with care claims against dead persons becomes immediately relevant. I have in mind the following case Moses v. Anane [1989-90] 2 GLR 694, CA where it was held as stated in the headnote:

“. . . a claim against a deceased’s estate . . . must be scrutinised with the utmost suspicion. Proof must be strict and utterly convincing as one of the protagonists was dead and could not assert his claim.”

Judges who fail to apply this test of scrutinising such claims and ensuring strict proof stand the risk of having their findings and decisions reversed. Added to this, is this rather curious state of affairs which must not be overlooked when one comes to determine whether or not the evidence adduced

is more probable of the existence of the fact alleged than its non-existence.

All the three intended beneficiaries are adult women fully aware of the death of the man the family claims recognised them as his children. I find it difficult to believe if they were so recognised, that they themselves did not know of such recognition, to the extent that none of them put in an application for a share in the estate in her own capacity. We have not been told of any proceedings pending and brought by them for a determination of whether or not they qualify as children. Even more pertinent, no affidavit came from any of them in proof of this fact. If they were minors perhaps their conduct would be understandable. I am not saying that the absence of any such affidavit is conclusive proof that they were not so recognised. The point I wish to emphasise is that the court must not overlook this important factor in evaluating the evidence.

I will now examine the evidence led by the respondent in respect of Mrs Isabella Mintah. In respect of her the respondent by his affidavit deposed:

"That regarding Mrs Isabella Mintah (née Bampoe) evidence will be led at the trial to establish beyond doubt that she is the first natural child of the deceased and that in keeping with custom she was the one who provided the coffin and the necessary customary drinks for the burial of her father, a fact well-known to the applicant who was present at the funeral."

Faced with these claims:

(i). that she was neither an adopted child nor one recognised by the deceased as his child, but a natural child; and

(ii).that she provided the coffin and the necessary drinks, the appellant reacted thus:

"(2) That in my earlier affidavit in support of this application I strongly contended that, I am the only living or surviving son of my late father Dr Gustav Koranteng-Addow and that I still stand by my contention . . .

(4) That I deny with all emphasis that the said Isabella Mintah alias Ama Ohenewa Bampoe bought the coffin for the burial of my father or performed any rites as the daughter of my father.

(7) That Isabella Bampoe's mother is also alive and resident at Sadisco in Accra and the said Isabella herself do not contend that she is my father's daughter."

It is thus clear from the affidavits that the most critical issue that arose for determination with respect to Isabella is whether or not Mrs Mintah (née Bampoe) was a natural child of the late Dr Koranteng-Addow. The judge resolved that issue thus:

"Strangely in their joint affidavit sworn to and filed on 22 September 1988 in support of a motion ex parte for grant of letters of administration to them, the present applicant and one Captain Joshua Michael Mireku Agyekum averred in paragraph (4) thereof as follows:

(4) That the deceased died as a widower and was survived by the following children:

(a) Mrs. Isabella Mintah (nee Isabella Ohenewa Bampoe)—49 years.

(b) Joseph Godfried Darko Koranteng-Addow—44 years.

It is true that the applicant's motion in which the above averment formed part was withdrawn, but nowhere in his subsequent affidavits did the applicant aver that the above quoted affidavit was wrong or false.

The learned trial judge therefore concluded on these basis that Isabella was a natural child. The applicant's counsel's contention is that the said finding is unsupported by the record and so wrong in law. His argument is that once an affidavit has been withdrawn it ceases to be part of the proceedings. It therefore ceases to be part of the evidence and it cannot be used as evidence in proof or disproof of a disputed fact.

I agree with this reasoning. Affidavit evidence is normally the evidence on which a court relies to determine issues arising out of trials by affidavit. So that, once upon an application, a particular affidavit has been withdrawn, it ceases to be the evidence being relied upon in proof or disproof of an issue in contention. At best, where it is intended that it should constitute an integral part of the trial then it must be exhibited as the withdrawn affidavit whose contents will be referred to and used as one of the pieces of evidence in proof or disproof of the matter in controversy. As for example happened in the case of exhibit X. Exhibit X was used in a previous trial. At the subsequent trial, it was exhibited and successfully used by the appellant. But that is not what was done in this case. In my view then, that withdrawn affidavit did not form part of the evidence in this case and the learned trial judge was wrong in basing his findings and conclusions on it.

More importantly, the law is certain. The burden of persuasion lies on the person alleging the fact. In this instant case, it falls on the respondent, not the appellate to prove that Isabella was a natural child. That being so, it is the duty of the respondent to prove as he had even promised in his affidavit, the fact first. It is when he had discharged this burden that it, ie the evidential burden, shifts on to the appellant to disprove same. I am of the opinion that the rules of evidence relating to the burden of persuasion as well as the standard of proof are the same rules that govern trials by affidavit evidence. It seems to me in the instant case, that the trial judge shifted the burden of persuasion on to the appellant, not the respondent and then used extraneous material to rule in favour of the respondent. I think the trial Judge was in error. I think therefore that from the evidence adduced, the court should have concluded that the assertion that she was a natural child was never proved and so dismissed the claim.

Why do I say that fact was never proved? First, although the respondent promised to lead evidence at the trial in proof of this fact beyond doubt, there was no solitary piece of evidence coming from him in proof of same. Secondly, he failed to do this even though the appellant has given him particulars of one of the most reliable persons who can help him establish this claim—the mother of Isabella. How often do we not hear this refrain "'only mothers know" when the paternity of a child is being disputed? Thirdly, from his own affidavit, the lady's maiden name was not Koranteng-Addow but Bampoe, leading to the inference, rebuttable though, that she was not a natural child. Fourthly, the lady herself never appeared at the trial to substantiate the claim.

Under these circumstances, how can obituary notices, the church and family meeting records and Judicial Service biographies that state that Isabella was his child, be preferred to these glaring facts. The matters contained therein are all mostly postmortem. The dead man is not around to challenge or confirm them. There has not been produced any evidence that in the deceased "lifetime he confirmed the fact that she was his child." In any case, family history ought to be treated the same way as we treat traditional history, with utmost care. So that, if there is some

primary evidence or some reliable facts which are inconsistent with that family history as it is told or retold, it ought to be rejected. And in our culture, where children are adored and a man's status in society is also measured by the number of children who had survived him, then claims by persons who do not bear his name that they are his children, must be scrutinised carefully. In my view then, the respondent did not discharge the burden that rested on him. He never proved that Isabella was a natural child.

Having this as a fact, the allegation that she bought the coffin and provided the drinks for the burial are all immaterial. Immaterial because that was alleged to have been done on the basis that she was his first natural child. Thus when the primary fact has been found to be unproven, the secondary facts founded upon the primary loses its importance. After all there are other reasons why people provide coffins for others. The Liverpools — I have no difficulty in concluding that there is no evidence on the record to show that these two young ladies were recognised by the deceased, during his lifetime as his children.

Now one of the reasons that led the learned trial judge to conclude otherwise is this. He first found as a fact that they were using the name of the deceased prior to his death. The question is whether this finding is supported by the evidence on the record. I think not. In the affidavit in opposition to the motion for grant of letters of administration filed by the appellant, the respondent averred:

"(4) That it is a well-known fact that the deceased left behind four children including the applicant, namely: Mrs Isabella Mintah, Godfried Darko Koranteng-Addow, Susan Koranteng-Addow and Nana Amma Ofosua Koranteng-Addow."

I quote below the appellant's response to these positive averments:

"(9) That the two girls he also mentioned as Susan Koranteng-Addow and Nana Amma Ofosua Koranteng-Addow are as a matter of fact known as Susan Liverpool and Mary Liverpool, respectively, and that their real father is one Mr Liverpool, a Carribean who now lives in The Sudan."

It became immediately clear that the issue of what surnames they use is crucial. It is crucial because if it is true that they were prior to the deceased's death and are up until the date of hearing officially known as such, then one can reasonably infer from this fact alone that indeed they were recognised by the deceased as his children. Again, the onus lay on the respondent who made the assertion to prove same, and much more so since their natural father was described as Mr Liverpool. What evidence, oral or affidavit, supported by documentary evidence did the respondent supply? (eg gazette notification of change of name). He relied on obituary notices and family meeting records. These, I am afraid cannot be preferred to the more cogent evidence supplied by the appellant which is exhibit X. In it Susan describes herself as a Liverpool. In paragraph (8) she gave the names of other children her mother left behind as follows: "Philip Liverpool, the eldest, aged 21; Rebecca Liverpool, 20 and Mary Nana Liverpool, aged 18." No Koranteng-Addow is mentioned therein.

From her affidavit evidence, exhibit X, also we can glean other pieces of evidence which makes it difficult for one to conclude that he recognized them as his children. I will quote the relevant paragraph:

"That since our mother died the first defendant has done nothing for us. He has not paid our school fees or provided for our support. I honestly believe that the first defendant cannot be relied on to protect our interests.

That in spite of the pendency of this suit, the first defendant has collected the sum of ¢18,000 due on an educational policy my mother took out for me and my brother and sisters. That the first defendant took this money upon representing falsely to the insurance company that he has been responsible for our education. That the first defendant has not spent a pesewa of the money upon any of my mother's children but has appropriated the whole of it to his own use."

The respondent never produced any affidavit deposed to by the deceased in rebuttal to these serious allegations, so that we have no option but to accept the facts contained therein as representing the true state of affairs. Given our cultural values and practices, when we bear in mind that it is the Ghanaian practice to honour the dead and make heroes out of villains even in their tributes, I would not accept the matters contained in the tribute written by Philip and others as being more reliable than the matters deposed to in the affidavit, exhibit X. The tribute is not a deposition whereas exhibit X is.

Equally important, why are these children not parties to this action? They are not infants, neither are they persons of unsound mind, and so wholly incapable in law and in fact of contesting this action. At least Susan has shown by paragraph (16) of exhibit X that they have all come of age and are well able to pursue their own rights. So she deposed:

"(9) That since all of us are now of full age, there is no justification involving the second defendant in this matter since he has no interest whatever in this estate."

I am in agreement with the appellant's counsel that the conclusion that they are the deceased's children is against the weight of the evidence and the same ought to be set aside.

In conclusion, I hold that the deceased left behind only one child—the appellant—Godfried Darko Koranteng-Addow. In the result, the appeal would, subject to this slight variation that the letters of administration be granted to the present appellant and the customary successor of the deceased's matrilineal family, Mr Koranteng Mfodwo, be allowed.

BROBBEY JA.

By the close of arguments on the appeal in this case, all but one of the issues had been compromised. Counsel for both parties had agreed that the estate of the late Dr Justice G Koranteng-Addow (hereinafter referred to as the deceased) should be administered jointly by his customary successor and the appellant.

The only outstanding issue was whether or not Mrs Isabella Mintah (also known as Miss Isabella Bampoe), Miss Susan Liverpool also described in the proceedings as Susan Koranteng-Addow and Nana Amma Ofosua Liverpool also described similarly as Nana Amma Ofosua Koranteng-Addow were the children of the late Dr Justice G Koranteng-Addow in terms of the Intestate Succession Law, 1985 (PNDCL 111), s 18. A resolution of that issue was necessary to clarify to other administrators of the estate who constituted the "Children" of the deceased for the purpose of determining the beneficiaries of the estate.

The relevant law, section 18 of PNDCL 111 provides that:

"18. In this Law, except where the context otherwise requires— 'child' includes a natural child, a person adopted under any enactment for the time being in force or under customary law relating to adoption and any person recognised by the person in question as his child or recognised by law to be the child of such person."

There was no evidence or affidavit showing that any of the three females by name Isabella, Susan and Nana Amma Ofosua was the natural child of the deceased. There was also no evidence that any of them was his adopted child. The issue can only be resolved if there was evidence proving that any of the children was recognised by the deceased as his child or recognised by law to be the child of the deceased.

In his ruling which has been appealed against to this court, the trial judge held that Mrs Isabella Mintah was the child of the deceased. The sole reason he assigned for that holding was that there was an averment in an affidavit filed by the appellant and one Captain Joshua Michael Mireku Agyekum on 22 September 1988 to support their motion for letters of administration. In this averment, they both deposed that when Dr Koranteng-Addow died he was survived by his children who were Mrs Isabella Mintah and Mr Godfried Danso Koranteng-Addow.

The trial judge himself admitted that that averment was contained in a motion which was withdrawn in its entirety. The word "withdraw" has a number of meanings. One of them is "To take back, retreat (one's words or expressions)": see Shorter Oxford English Dictionary (3rd ed) at p 2439.When any material has been withdrawn, it should be regarded as having ceased to exist. If the withdrawn material has to be used in the same proceeding from which it was withdrawn, it has to be formally reintroduced.

It is arguable that an affidavit is a solemn declaration and therefore its contents can be used as evidence against interest. I would not unconditionally subscribe to that view. Before an affidavit or any material which has been withdrawn can be relied upon in subsequent proceedings or in the same proceedings, the reasons which led to the withdrawal should be known and considered. If the reason given for the withdrawal is known and is found not to have affected the correctness of contents of the withdrawn material (including affidavits), that unaffected material may perhaps be properly used as evidence against interest. Where the reason for the withdrawal is undeclared or is unknown, it may cause potential injustice to allow the contents of the withdrawn material to be used as evidence against interest. The reason for this view will be simply this: If whoever swore to that affidavit or put in that material subsequently discovered some errors unconsciously or unwittingly introduced in the affidavit or the material, he may be allowed by the Court to withdraw the material or affidavit if satisfactory explanation is given. After all, to err is human.

Once such an affidavit or material has been withdrawn and the withdrawal is not disallowed by the court or any issue taken by the opponent for that withdrawal, how just would it be to use the very material (containing the error) as evidence against interest? I do not see any fairness in that proposition. In fact, it would amount to gross injustice to use the very material or affidavit which a party has rejected or been allowed to reject by the withdrawal as evidence against his interest.

This was precisely how the trial judge erred. He did not know why the affidavit was withdrawn. He did not probe into the withdrawal. To have proceeded as he did by holding the deponents to the

contents of the withdrawn affidavit presupposed that the trial judge concluded that the deponents stood by the depositions in the affidavit. If error in the depositions was the reason for the withdrawal of that affidavit, it would mean that the trial judge would be holding the deponents to that error. He clearly would have faulted to have based his judgment or facts on depositions which had been rejected by the deponents as erroneous. The reason for the withdrawal could have been anything. Since the reason was undisclosed, he speculated on the accuracy of the contents of the affidavit which he used as evidence against the interest of the appellant. He therefore erred when he based his view that Isabella Mintah was the deceased's child on the sole reason that the appellant had said so in a previous affidavit which had been withdrawn.

The trial judge implied that if the deponents did not want the affidavit relied upon they should have deposed that the contents of the affidavit were wrong or false. That was the wrong approach. Once the affidavit had been withdrawn, it had ceased to exist and it would have been superfluous to have sworn that what did not exist was wrong or false. That sounds absurd.

Since the affidavit was his sole reason for his view that Isabella was the deceased's child and that reason was wrong as demonstrated above, the correct conclusion he should have reached should have been that there was no evidence from which it could be said that Isabella Mintah was recognised by the deceased or the law as the daughter of the deceased.

In respect of Susan and Nana Amma Ofosua, it was argued that the only positive evidence supporting the viewpoint that the deceased recognised them as his children were the facts that they bore his name and stayed with him while their mother was alive. In this case, however, there is no evidence that the children were called "Koranteng-Addow" when the stepfather was alive. None of them swore any affidavit to that effect even though they were alive and above eighteen years while the instant case was in court. The only affidavit from Susan described her in exhibit X by her biological name of "Liverpool." The logical conclusion one could draw from exhibit X was that Susan did not regard herself as a "Koranteng-Addow." All the references in the obituary notice, the tributes and the meeting with a Presbyterian Church which the trial Judge relied upon were irrelevant because they took place after the death of their stepfather. Matters taking place after a man had died cannot be used as evidence to prove that he recognised the children in his lifetime as his own children. Those ex post facto matters could produce no retroactive effect.

The logical deduction from the foregoing was that there was no evidence to prove that in his lifetime or by law Susan and Nana Amma Ofosua were recognised as the children of the late Dr G Koranteng-Addow.

In conclusion, the evidence on record did not establish that Isabella, Susan and Nana Amma Ofosua were the children of Dr Koranteng-Addow. This is the legal state of the three females vis-a-vis the estate of the late Dr G Koranteng-Addow.

Subject to the grant of letters of administration to the appellant and the customary successor as already agreed by counsel in the course of hearing the appeal, I would allow the appeal against the ruling of the trial judge which made those three females children of the late Dr Koranteng-Addow.

SAPONG JA.

The applicant applied for letters of administration for the estate of Dr Gustav Koranteng-Addow (deceased). One Sono Addow caveated. The caveator was warned to file his interest. He did and

the matter was heard by the court below on affidavits. The deceased died intestate.

The trial court held that the deceased belonged to two families Abetifi Kwahu and Akropong Akwapim and so the deceased belonged to the combined families of Akropong-Akwapim and Abetifi Kwahu. Thus the family that is entitled to a share of the portion of the deceased's estate is the combined families of Abetifi and Akropong.

The trial judge also held that the applicant was not the only surviving child of the deceased. There were also Mrs Isabella Mintah, nee Isabella Bampoe, Susan Liverpool and Mary Nana Amma Liverpool. And also relying on the affidavit of the caveator, he held that the deceased was survived by four children. Finally, he ordered that the caveator and Mr Reynolds Simson Mfodwo are to administer the estate of the deceased.

Against the decision of the court below, the appellant, ie Godfried Darko Koranteng-Addow appealed. The learned counsel for the appellant argued that the trial judge had erred in law in relying on the extract from the Presbyterian Church, Akropong-Akwapim appearing in the record of proceedings to say that Mrs Isabella Ohenewa Mintah, Godfried Darko Koranteng-Addow, Susan Oforiwa Koranteng-Addow and Mary Nana Amma Ofosua Koranteng-Addow are the children of the deceased. His reason being that by customary law and usage, in appointing successors and identifying issues of a deceased the church, in this case the Presbyterian Church, cannot be and does not form part of the family of the deceased.

He argued that this duty is the preserve only of the family of the deceased. And what is the family of the deceased? Learned counsel says the deceased's father is from Abetifi-Kwahu and his mother is from Akropong-Akwapim. The Abetifi and Akropong people are Akans. They inherit matrilineally. Therefore the family of the deceased is that from Akropong-Akwapemang and none other. I do entirely accept this as a fact and also the correct statement of the customary law.

The learned counsel for the appellant did also contend that the caveator is from Abetifi from the father's side of the deceased therefore he cannot claim to have any say in the family matters of the deceased. The caveator does not come from the family of the deceased. He is thus a stranger and is meddling in the affairs of a family to which he does not belong, unless he has a power of attorney from the issues. There is none. The issues are all adults.

This is also correct in so far as customary law and usage are concerned. I am therefore of the view that the caveat should have been removed and the caveator told in no uncertain terms that he does not belong to the family of the deceased according to customary law and usage.

The caveator did contend that the deceased had four children surviving him and so these should have a share in the deceased's estate. The appellant disputed this. Evidence should have been led to establish the issues that survived the deceased. This was not done but the trial judge relied on only affidavits to determine same and held that four issues survived the deceased.

The trial judge did say that Susan Koranteng-Addow and Mary Nana Amma Koranteng-Addow were regarded by the deceased as his children in his lifetime. The trial judge says this is borne out by the affidavits. Is this correct? There is evidence from an affidavit sworn to by Susan Liverpool, ie exhibit X, which says otherwise. Paragraph (11) thereof is pertinent. It says: "(11) That since our mother died the first defendant has done nothing for us. He has not paid our school fees or

provided for our support." The first defendant in exhibit X was the deceased and the mother therein referred to was the late Justice Cecilia Koranteng-Addow, the wife of the deceased.

Paragraph (2) of exhibit X says that the deceased was the stepfather of the children of the late Justice Cecilia Koranteng-Addow. And that one Liverpool is their biological father. These issues are therefore not the biological children of the deceased. But the caveator contends that the deceased regarded them as his issues. Whether this is so or not it has already been decided that it cannot be so said.

The learned counsel for the appellant did also contend that the judge fell into error in taking into consideration funeral brochures, obituary and tributes to hold that the Liverpools were the children of the deceased. With all due respect counsel contends, these documents are not conclusive for evidence should have been led. The judge therefore did err.

I do agree entirely that evidence should have been led to enable the judge decide whether the deceased did regard the Liverpools as his children. This not done, the trial judge has erred.

The caveator also contended that Mrs Isabella Ohenewa Mintah is the biological daughter of the deceased. This was denied by the appellant. Evidence should have been led. It was not done. And so accepting it as a fact, I do say is not conclusive.'

The points raised by learned counsel for the respondent, ie the caveator, respecting the issues, have been already considered by me and a pronouncement made. I do not therefore intend to go over them.

At the end of the argument advanced by both counsel for the appellant and the respondent they say that they do not mind if letters of administration was granted to the appellant and Koranteng Mfodwo who belongs to the matrilineal family of the deceased and hence the family of the deceased.

In the result, I do allow the appeal in part and say that letters of administration be granted to the appellant, ie Godfried Koranteng-Addow and Koranteng Mfodwo to administer the estate of the deceased.

APPEARANCES

BLAY FOR THE APPELLANT; OSEI NYAME FOR THE RESPONDENT.