AN APPRAISAL OF THE ADMINISTRATION OF ESTATE OF DECEASED MILITARY PERSONNEL UNDER THE NIGERIAN MILITARY LAW

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Abstract

The Armed Forces Act Cap A20 Laws of the federation of Nigeria (LFN) 2004 is the primary legislation that provides for the administration of estate of deceased military personnel in Nigeria. The Act virtually made provision for the procedure to be followed in administering the estate of deceased personnel who died intestate or testate. However, there are some gaps and lacuna regarding the procedure in the administration of estate of the deceased military personnel which were not addressed in the Act. This research was conceived as a result of the misconception regarding the status and duties of a next-of-kin which was not provided or defined in the Act. This silence was the reason for the erroneous belief that a next-of-kin of a deceased personnel is the sole beneficiary of the deceased military personnel's estate which often result to conflicts between appointed next-of-kin and the heirs of the deceased personnel, which have generated series of petitions and litigations against next-of-kin. A next-of-kin has a fiduciary relationship with the heirs of a deceased military personnel to hold the property of the deceased on trust, and therefore, he\she is not a sole representative\personal representative for the administration of the deceased property under the law.

Key words: Military, Soldier, Testate, Intestate, Will.

Introduction

A soldier upon acquisition of military status under the Nigerian legal jurisprudence subject himself to a tripartite legal status namely: military law, civil law and international law.[1] Thus, the administration of estate of deceased military personnel in Nigeria is governed by these laws. Basically, when a military personnel dies, two issues arise in relation to his property or estate depending on whether he died testate or intestate. A Military Personnel dies testate if at the time of his death, he has a valid will by which he deposed off his property. He dies intestate if he had no will at all, or if his will turns out to be invalid.[2] In either case, the Armed Forces Act (AFA) Cap A20 Laws of the Federation of Nigeria, 2004 has adequately made provisions for the administration and distribution of the estate of deceased military personnel. However, there are gaps in the AFA in which recourse may be made to some other legal framework such as the Administration of Estate Laws,[3] Customary laws,[4] Islamic law, depending on the circumstances of

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1 Ashdown, P. 'An Analysis of the Application of the Doctrine of Compact under the Nigerian Law' (NCICC 2008) 5

2 Gbemiosola, J. A. 'The administration of military personnel estate in Nigeria: challenges and prospects (Peace Research Journal [2019] (12) (3) 113-117

3 Cap 2 LFN, 2004.

4 A set of customs, practices and beliefs that are accepted as obligatory rules of conduct by indigenous people and local communities.https//www.wipo.int Accessed 22 February 2022.

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the case. It is some of these gaps and lacuna that this paper seeks to critically examine. Generally, the administration of estate laws in Nigeria consist of the administration of estate laws made by the various states in Nigeria, including the customary laws of succession. Under the Islamic law, the law lays a firm foundation for the procedure Wasiyat[5] which is the testate succession which allows the Muslims to devise of not more than one-third of their estate as testamentary gifts.[6]

The making of a will under the AFA is an optional phenomenon. Where a will is not made by a service personnel, the customary laws of succession of the tribe of the deceased personnel applies. However, where a will is made, the distribution of the estate of the deceased is guided by the will.[7] Under the AFA, a service personnel may wish to pass his property rights such as death benefit, gratuity, allowances and any money he is entitled to, to his survivors and successors-in-title by a will. This is simply made by writing a signed or acknowledge by the maker in the presence of an officer of the Forces or a government medical officer. Under the Civil Law, the laws governing the administration of the estates of deceased persons in Nigeria differs according to state within the region concerned, each state now has its own wills law and administration of estates law. It is pertinent to state that most of the states in Nigeria still apply the pre 1900 English law in the administration of deceased estate with minor modifications.

Who is a Next of Kin in the Military

In the armed forces all over the world, as it is also in Nigeria, every service personnel on enlistment or upon commission is required to declare who is his next of kin and is also expected to update his record time to time in the relevant official record of the service.[8] Furthermore, Section 275 (1) (a) of the AFA provides that a person subject to service law shall upon enlistment, declare the name of the person or persons to whom, in the event of his dying without having made a valid will, any money or personal property belonging to him should be paid or delivered.[9] Subsection 2 provides that the name of the person declared under subsection 1 of this section and the record shall be verified periodically and the person who made the declaration shall promptly report any alteration he wishes to make to the record.[10]

The phrase "next of kin" simply refers to the person who shall receive the soldier's personal properties within the contemplation of the above provisions. What it means is that if the soldier who made a declaration as stated above dies in service intestate, that is without making a will. The AFA provisions under section 275 will be espoused. The provisions of section 275 of the AFA as to the next of kin of a service personnel are regarded as sacrosanct in the military because the next of kin is the person recognized to receive the monies and personal properties of the deceased service personnel. Unfortunately, there have been occasions where Nigerian service personnel on enlistment put on their records the names of their father or brothers as their next of kin, but when they got married, they inadvertently, did not change the next of kin to their wives or children. In

[5] Under Islamic law a person who executes a will is called wasiyat

[6] Oba Adeniji Audu, Islamic Law as Customary Law: The Changing Perspective in Nigeria International and Comparative (Cambridge University Press 2002) 34

[7] Ibid.

[8] T.E.C. Chiefe, Military Law in Nigeria: under Democratic Rule (Diametrics Nigeria Limited 2008) 385

[9] AFA CAP A20 LFN, 2004.

[10] Ibid.

such cases, the wives or children who should have received those monies or personal property, will not be so entitled, because they were not made next of kin by the husband or father as the case may be.[11]

Subsection 3 of section 275 of the AFA vested the appropriate superior authority with the powers to pay the next of kin any monies or properties belonging to the person subject to service law who dies intestate who has complied with the provisions of subsection 1 of section 275, the law also provides that the monies or property may be delivered to the customary court which has jurisdiction in the place named by that person in the prescribed manner.[12] The basic issues under the AFA regarding succession as it relates to next of kin/personal representative whom the estate of a deceased personnel will be delivered to, upon the demise of the Service Personnel, was that, the status and duties of such personal representative were not expressly stipulated under the Act. This lacuna has in many instances caused the erroneous believe that a personal representative of a deceased service personnel is the sole beneficiary of the deceased. Thus, resulting to conflicts between the NOKs and the heirs of the deceased personnel.

Definition of a Will

A Will is the expression by a person of wishes he intends to take effect only at his death. Unlike a disposition of property by deed which operates at once, a will speaks from death and remains revocable by the testator during his life time.[13]Notably, a will is a creation of statute. For it to be valid, it must comply strictly with the relevant statute. Having said that, now let's look at the nature of will under the Armed Forces Act. The AFA have a special provision for making will.[14] The provision is synonymous to the will Act 1837 but distinct in some aspect. This will be seen below. However, generally, a will speaks from death. It is ambulatory or testamentary. One of the important distinguishing features of a will is that it is of no effect until the death of the testator. This is also the case under the AFA. Until the testator's death, the will is revocable and the testator is free as many times over as he wishes to alter, amend or even cancel it by destruction. The will is a mere declaration of his intentions.[15] Similarly, no beneficiary can take any interest in any property disposed by will until the death of the testator. No beneficiary will take any interest under the will, unless he is alive at the testator's death. A will can be revoked at any time. A will must be in writing under the Armed Forces Act. This is one of the statutory requirements of a valid will. What it means is that any will made under the Act which is not in writing is invalid. However, under the Wills Law 1958 of the Western Nigeria, it appeared that members of the Forces in the Military are exempted from complying with the above requirement.[16]

Formal Requirement of A Will under the Armed Forces Act

Generally, the formal requirement of a will under the will Act 1837 which is a statute generally applicable to also members of the Armed Forces as Nigerian citizens include the following requirements:

[11] Ibid.
[12] Ibid.
[13] C.O. Adubi, Drafting Conveyances and Wills (The Light House Publishing Co. Ltd 1995) 107
[14] Section 276 (1) AFA CAP A20 LFN, 2004.
[15] Ibid.
[16] Section 9 (2) Wills Law of Western Nigeria 1958.

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a. A will must be in writing.[17]
b. It must be signed by a testator.[18]
c. The signature of the testator must be in the presence of two or more witnesses who must be present at the same time who subsequently attest to the will.[19]

The making of a will under the Armed Forces takes into consideration the exigency of military service where servicemen can be called out at a very short notice to go for a military operations, that may cause the end of their lives. Adhering to the formality of drafting a will under the 1837 Act may preclude the intention of a testator who wishes to make a will in such an emergency circumstance. The position of the law is that a will made by a person subject to service law under the AFA is valid for disposing of any money or personal property which is due or belong to him at his demise if it is in writing and signed or acknowledge by him in the presence of and in his presence attested by one witness, being an officer of the forces or any government medical officer.[20] It is pertinent to note that, there was no provision under the AFA restricting the testamentary freedom of a service personnel however, as noted earlier, a service personnel is subject to two laws. Where there is gap in the military law, the civil law complements by filling the gap appropriately in accordance with the existing laws applicable to the circumstances of the testator. Hence, it follows that, where a will of deceased military personnel is detected or made as a result.

The testamentary capacity of a Military personnel to disposed of his property in a will is provided under section 276 (1) of the Armed Forces Act.[21] It can be deduced from the wordings of the Act that members of the Armed Forces desirous of making a will have absolute freedom to disposed of all of their property in any manner they wished. Therefore, there is no provision under the Act that restrict the testamentary freedom of a service personnel. However, as stated earlier, a service personnel is subject to two laws which are the military and civil laws. Where there is gap in the military law, the civil law compliments by filling the gap appropriately in accordance with the existing laws applicable to the circumstances of the testator.

Mental Capacity and Other Vitiating Elements of a Will

Members of the Armed Forces are subject to civil law, it therefore follows that other ancillary requirements of a valid will which were not expressly mentioned under the AFA also applies to a will under the AFA hence, before a member of the Armed Forces will be capable to make a will, he must have the necessary capacity to do so. The moral character of service personnel action is not relevant. It is their capacity to comprehend their acts that count. *Okesola v Boyle.*[22] Some of these vitiating elements are as follows:

a. Undue influence,
b. Duress,
c. Misrepresentation,

[17] Section 9 Will Act 1837
[18] Section 6 Will Act
[19] Ibid.
[20] Section 276 AFA CAP A20 LFN, 2004
[21] LFN CAP A20 2004.
[22] *[1998] 2 NWLR (PT 539) P 533*

d. Mistake, and
e. Illegality.

In the above case,[23] the Supreme Court determine the mental capacity of a testator to make a will. The court further stated that for a will to be declared invalid for undue influence, there must be pressure amounting to coercion by a person. The court also held that a mere influence resulting from association without the element of substituted will does not amount to undue influence in this respect.

Distribution in Case of Deceased Service Personnel Who Dies Intestate

The position of the law is that if a service personnel dies without having complied with the requirements of the law,[24] an officer of the Armed Forces or the Accountant General (AG) or any public department having in his possession property or monies of the deceased may, with the consent of the deceased commanding officer or officer acting in such capacity, may pay or deliver same to a claimant who proves to the satisfaction of the Commanding officer or such officer, relationship as widow of the deceased or the child or other near relative of the deceased, as the case may be, according to the rules of succession of the tribe to which the deceased belong.[25] Where the deceased was a muslim, the distribution of the estate may be carried out by the Area Court which has jurisdiction in the district from which the deceased came, and the court shall be responsible for the distribution in accordance with Islamic law. However, if there is no such court, the distribution may be made nearly as may be made in accordance with Islamic law.[26] The Islamic law revolves round three categories of legal heirs and three core rules for the distribution of an estate. The three categories of legal heirs are sharers, residuaries and distant kindred.[27] Sharers are entitled to fixed portion of an estate. Residuaries take what is left out of an estate after disbursement of specified shares to sharers.[28] In some cases these two categories consume the entire estate, and in their absence, except spouses, distant kindred are entitled to inheritance.[29]

Distribution of the Personal Property of Deceased Service Personnel to Creditor

It is trite that where money or personal property or any part of a deceased person subject to service law under the AFA is paid or delivered to his next of kin as beneficiary under the Act,[30] a creditor of the deceased person has the rights and remedies against the person whom the money or the personal property is paid or delivered to, as if that person had received the money or personal property as legal representative of the deceased at the first instance. Under this provision, a creditor is empowered to institute and action or take steps for the recovery of his money against the personal representatives of a deceased military personnel estate.[31]

[23] supra
[24] Section 277 (1) (a-b) AFA CAP A20 LFN, 2004.
[25] AFA CAP A20 LFN 2004.
[26] Ibid.
[27] D.F. Mulla, Principles of Mohammedan Law (Edited by M.A. Manan) (Lahore Publishers 1995) 85
[28] Ibid.
[29] Ibid.
[30] Section 279 AFA CAP A20 LFN 2004.
[31] Ibid.

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Legal Requirements for the Certification of a Deceased Personnel Debts

Upon the death of a service personnel who dies intestate, before disposing off the money and the personal property of the deceased, once there is a notice to the appropriate superior authority (ASA) as to any debt due by the deceased, ASA notwithstanding anything to the contrary is vested with the capacity to apply the money and the property as may remain in it control as may be required in or towards the payment of the debt provided it is proved/satisfied that: the claimant has proved the debt to the satisfaction of the commanding officer or of the officer acting on behalf of the commanding officer,[32] a demand for the payment of the debt was made within one year after the death of the person, the debt was incurred within three years before the death of the deceased.[33]The purpose of the provision is to safeguard the deceased monies or property from irregular distribution or fraudulent misrepresentation.

Administration of a Deceased Military Personnel Unclaimed Money under the Armed Forces Act

Upon the death of a service personnel who dies intestate, any money accruable to the deceased service personnel if not disposed within a year, if not in cash usually converted into cash, and paid over to the Accountant General of the Federation (AG) who is vested with the responsibility to apply it towards establishing a fund for the benefit of service personnel and ex-service personnel.[34] This provision does not preclude any subsequent claim by any person who may brought up a claim against the deceased estate, provided such claim is made within twelve months after the application of such fund by the AG.[35] The Minister of Defence, in consultation with the Forces Council is responsible for the disbursement of the fund under this provision.[36] One of the shortcoming of the above provisions of the Act is that the Act did not provide for any mechanism to check mate the powers conferred on the office of the AG under the Act in relation to the administration of this fund.

Conclusion

A soldier by the doctrine of compact is subject to both the military and civil law. The procedure for the administration of estate of deceased military personnel under the Armed Forces is double fold, which is testate and intestate procedures. Administration by means of a will is less cumbersome. The terms of distribution in a will are usually explicit. Cases of conflict within a family where a will was made are very rare in the Nigerian Military. However, this article has critically analysed the fact that administration of deceased military personnel property through the intestate procedure was characterized with certain shortcomings in the Nigerian Military; some of these shortcomings include: Duties of personal representative which are not stated in the AFA and not known to soldiers families of the deceased, NOKs is usually misconceived by some families as sole beneficiary of deceased personnel estates as a result of ignorance, NOK appointment form was not adequately designed to describe the essence of such appointment, no modalities to prevent abscondment of personal representatives when deceased estate are delivered

[32] Section 278 (1) (a) AFA LFN, 2004.
[33] Section 278 (1) (b-c) AFA LFN, 2004.
[34] Section 280 (1) AFA CAP A20 LFN 2004.
[35] Section 280 (2) AFA CAP A20 LFN 2004.
[36] Section 280 (3) AFA CAP A20 LFN 2004.

to NOKs. It is from this analysis that this paper concluded that most ranks and file personnel in the military do not know the status of a personal representative/next of kin as envisage by the AFA CAP A20 LFN, 2004. Hence, the need for sensitization in this regard cannot be over emphasized.

Recommendations

It is recommended that:

a. Ministry of Defence should re-design the NOK/Personal representative declaration form in such a way that it will specifically provide that NOK is to carry out representative function and not the sole beneficiary of the intestate estate of deceased military personnel.
b. The National Assembly should amend the provisions of the AFA relating to the administration of estate to expressly outline the duties of personal representatives/NOKs.
c. The Nigerian Military should also establish a department which will be responsible for sensitizing family members of the Armed Forces on the essence of personal representative.
d. Commanders of military units and formations should be task to deliver the intestate estate of deceased personnel to customary court for distribution to the heirs in accordance with the custom of the deceased personnel tribe in complicated cases such as the death of both personal representatives.
e. Probate Registries of the various states should monitor their Staff, identify each officer's areas of strength and weakness and draw up a training schedule to increase their knowledge and technical expertise.
f. Probate Registries and departments concern with the management of deceased estate in the Armed Forces should continue to have constant interaction with and sensitization of military personnel on issues of probate by publication of guidelines, organizing Seminars etc.

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