

IN THE HONOURABLE SUPREME COURT OF THE
 REPUBLIC OF LIBERIA, SITTING IN ITS MARCH TERM, A.D.
 2018.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
 BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
 BEFORE HIS HONOR: PHILIP A.Z. BANKS, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH... ..ASSOCIATE JUSTICE

Nyonjay Bettie, of the City of Monrovia)	Liberia
.....		Appellant)
Versus)	
Enid Darby Bettie, Administratrix of)	Appeal
The Intestate Estate of the late Theophilus)	
C. Bettie of the City of Monrovia, Liberia)	
.....		Appellee)
)	
<u>Growing out of the case:</u>)	
)	
Enid Darby Bettie, Administratrix of)	
The Intestate Estate of the late Theophilus)	
C. Bettie of the City of Monrovia, Liberia)	Motion for Summary
.....		Movant)
Versus)	Judgment
Nyonjay Bettie, of the City of Monrovia)	
Liberia.....		Respondent)
)	
<u>Growing out of the case:</u>)	
)	
Enid Darby Bettie, Administratrix of)	
The Intestate Estate of the late Theophilus)	
C. Bettie of the City of Monrovia, Liberia)	Petition for Declaratory
.....		Petitioner)
)	JudgmentVersus
)	
Nyonjay Bettie, of the City of Monrovia)	
Liberia.....		Respondent)

HEARD: November 25, 2015

DECIDED: August 2, 2018

Key Words: **Rights of Next of Kin**

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The facts in this case are not in dispute rather, it is only the meaning of those facts that have ignited the petition for declaratory judgment, the root of this appeal that is now before us.

The records reveal that on November 8, 2013, Theophilus T. Bettie died without leaving a last will and testament, necessitating his widow, Enid Darby Bettie, the appellee herein to obtain letters of administration from the Monthly and Probate Court for Montserrado County to administer his estate. Subsequently, Mr. Ynonjay Bettie, brother of the decedent and the appellant herein, approached the United Bank of Africa (UBA) in Monrovia and requested that the proceeds from account number 53030500022556 in the name of his late brother be delivered to him, as his late brother designated him as 'next of kin' to said account. In a letter dated March 13, 2014, the bank denied the appellant's request stating that the bank had been ordered by the Monthly and Probate Court for Montserrado County to pay the proceeds from the subject account to the appellee as she had obtained letters of administration, and as such, the bank was obliged by law to honor the court's order to avoid the risk of being held in contempt.

However, on March 20, 2014, the probate court ordered the Bank to halt the payment of all proceeds from the account of the deceased to anyone pending an investigation to determine the true beneficiary entitled thereto and that the bank provide the name(s) of the 'lawful' beneficiary(ies) to said account. The court's stop order of March 20, 2014, reads thus:

“IN RE: PROCEEDS OF ACCOUNT OF THE LATE THEOPHILUS
BETTIE

COURT'S ORDER

FROM: Edwin Boimah Sr., Clerk, Monthly and Probate Court, Montserrado County,
Temple of Justice, Monrovia, Republic of Liberia.

TO: Major Richard J. Scott, Sheriff, Monthly & Probate Court, Temple of
Justice, Monrovia, Republic of Liberia.

Date: March 20, 2014

You are hereby commanded to notify the Manager/CEO of the United Bank of Africa to halt the payment of any money to anyone pending the outcome of an investigation of the legitimate beneficiary to the said account belonging to the late Theophilus Bettie and furnish this court with the name or names of the lawful beneficiaries to the said account within seventy-two (72) hours.

And for so doing, this shall constitute your legal and sufficient authorities. Hence,
have you there this court's order

Approved: J. Vinton Holder
Judge Monthly & Probate Court
Montserrado County, R.L.”

In obedience thereto, by letter dated March 25, 2014, the Bank informed the Probate Court that the appellant was named “next of kin” in the deceased account opening form. The bank’s communication addressed to the probate court is also quoted herein below:

“March 25, 2014 Major
Richard J. Scott
Sheriff Monthly & Probate Court
Dear Major Scott,

Ref: Proceeds of Accounts of the late Theophilus Bettie/Court’s Order

We refer to the court’s order from Mr. Edwin S. Boimah, Senior Clerk of the Monthly and Probate Court of the temple of Justice dated March 20, 2014 notifying the Managing Director/ Chief Executive Officer of the United Bank for Africa (Liberia) Limited about the placement of a halt to all payment of money from the account of the late Theophilus Bettie pending the outcome of an investigation of the legitimate beneficiary to the account. The order also directed the bank to furnish the court with “the name or names of the lawful beneficiaries to the said account.

Please be informed that a review of the account opening documentation filled by the late Mr. Theophilus Bettie shows that Mr. Nyonjay Bettie was named as his next of kin by the late Theophilus Bettie.

Thank you.

Yours faithfully,

For: United Bank of Africa (Liberia) Ltd.

Advertus Smith
Chief Compliance Officer

Majek Folorunsho
Executive Director/COO”

By a subsequent letter dated March 31, 2014, the Bank submitted the deceased account opening form, statement of account, and other documents filed by the deceased with the bank. Our review of the account opening form submitted by the bank show that the late Theophilus Bettie named and designated the appellant as his ‘next of kin’.

On May 16, 2014, the appellee filed a petition for declaratory judgment requesting the Probate Court to declare her and the decedent’s daughter as the sole beneficiaries of the contested account on the basis that the Decedent Estate Law provides for a surviving spouse and children being preferred over the deceased siblings and other relatives in terms of succession to inheritance. The appellee’s seven counts petitionis quoted herein below as follow:

“PETITION

AND NOW COMES the petitioner in the above entitled cause of action and showeth unto Your Honor the following to wit:

1. That the petitioner is the sole administratrix appointed to administer all of the real and personal properties of the Intestate Estate of the late Theophilus T. Bettie. Attached hereto is copy of the Letters of Administration as petitioner’s Exhibit “A”.

2. And that through the order of this Honorable Court emanating from a motion for discovery filed by the movant (petitioner), several banks furnished statements relating to the bank accounts of the decedent. Your Honor is respectfully requested to take judicial notice of the court’s records.

3. And also that the record of the United Bank for Africa, UBA, [53030500022556] shows that the decedent has named Nyonjay Bettie as his next of kin, consequence of which the respondent is claiming to be the beneficiary of the proceeds of the said account. The petitioner submits that although the decedent may have listed the respondent as next of kin, the laws of Liberia provide the order in which individuals that fall within the category of next of kin may inherit from the decedent.

4. And also that the Decedents Estates Law, Title 8, Chapter 3 - Descent and Distribution of Intestate Estates, Section 3.2 (a) says that “if the decedent leaves surviving a spouse and one of more lineal descendants, property to the value of \$5,000 to the spouse outright and one-half the residue to the spouse for life with the remainder thereof to the children” Also Section 3.2 (h) says that “if the decedent leaves surviving no spouse or lineal descendant or parent, then to the brothers and sisters.” The law is clear that the respondent, the brother, could only inherit where the petitioner and her daughter – the spouse and lineal descendant, respectively, or parent did not survive the decedent. Therefore, since the petitioner and her daughter are surviving the decedent, the respondent should be denied from receiving proceeds of the UBA’s account and this petitioner so prays.

5. And also, that the phrase, “next of kin” is generally used when dealing with third parties, such as banks, to indicate the person to be notified in the event of the death of the account holder, and not for the purpose of inheritance.

6. And also, that petitioner says that the intent of the decedent would control in the distribution of his Estate. The petitioner submits that by no stretch of the imagination would one conclude that the decedent would deprive this only child (a daughter who is still in school) of his hard-earned money and bequeath same to a brother.

7. And also, that seeks this Honorable Court to declare the rights of the petitioner as to the aforementioned proceed of the UBA’s account, as a matter of law.

WHEREFORE, AND IN VIEW OF THE FOREGOING, petitioner prays this

Honorable Court for a Declaratory Judgment, declaring

- i. That the petitioner is the administratrix appointed to administer all of the real and personal properties of the decedent; and
- ii. That pursuant to the Decedents Estates Law, Title 8, Chapter 3 - Descent and Distribution of Intestate Estates, Section 3.2, the administratrix, as spouse of the decedent, and their only child are entitled to inherit all of the properties, real and personal, including the proceeds of the UBA's account, of the Decedent.

And that Your Honor will grant unto Petitioner such other and further reliefs, as are deemed just and legal.”

The appellant filed his returns contending that the appellee having exclusively benefitted from all the proceeds of the decedent, to include other bank accounts, death benefits, and insurance benefits, was now attempting to deprive him of the only income or money that his late brother bequeathed to him; that he is being [targeted] and discriminated against by the appellee in that the deceased having named and designated other relatives as his next of kin to other bank accounts, which the appellee registered no objection or prohibited them from benefitting from the proceeds of those accounts. In order to fully grasp the contention and argument of the appellant we have decided to quote counts 4, 5, 6, 7, 8, 9, 10, 11 and, 12 of the thirteen (13) count returns which read thus:

4. “Respondent says that truly, the little brother of the deceased was named as Next of Kin to only the account at UBA, indicating that it was the desire of the deceased for him to be the beneficiary to that account. Respondent submits that there were several other accounts and benefits which the petitioner collected to the exclusion of other distributees which is not mentioned in this petition. Respondent says count three (3) is primarily intended to mislead this court and deprive the respondent of what his brother intended for him.
5. Further to count four (4) above, respondent submits that he was personally named by the deceased during his life time. Additionally, respondent says that where is the evidence that all that was taken by the petitioner was distributed among all the (next of kin), distributees. Said count is only intended to further show the greed of the petitioner which the deceased foresaw and therefore named him to benefit from this single account. Count three (3) of the petition is misleading and should therefore be ignored and the entire petition dismissed.
6. Still further to counts four and five (4 & 5) above, respondent says this Honorable Court and Your Honor have recognized that to be named as Next of Kin on an account makes one a beneficiary. Your Honor is respectfully requested to take judicial notice of the order issued in favour of Una F. Harris who was named as Next of Kin on the GTBank account. Respondent maintains that count three (3) of the petition is misleading and should therefore be ignored.

7. And also, because as to count four (4) of the petition, respondent says that the portion of the law cited by petitioner does not apply to the property (money) subject of these proceedings. Respondent says that the deceased had expressed who should benefit from this account by naming the respondent. Respondent is not named in any other account neither has he been considered or given any amount from the huge amounts received all over. RESPONDENT GIVES NOTICE THAT IF NEED BE HE SHALL ESTABLISH THE HEAVY INCOME THAT ACCRUED TO THE PETITIONER. Again, count four (4) is intended to mislead this honorable court and should be ignored and the entire petition dismissed.
8. And also, because as to count five (5) of the petition, respondent says that the petitioner's counsel actually intends to mislead this court because if the naming of Next of Kin to an account was for death announcement purposes why didn't the deceased name one next of kin to all his accounts but better stated who would be situated than the Wife? The intent of the deceased was that this amount must not be relinquished to anyone else other than his brother. Count five (5) of the petition further demonstrates the desire of the petitioner to deprive everyone including those specifically named from the benefits of the deceased.
9. Further to count eight (8) above, respondent says that if the argument of the petitioner and her Counsel is to be accepted, were Una F. Harris also named to be notified in the case of death? What a mockery of the law. Count five (5) of the petition should be ignored and the entire petition dismissed.
10. And also, because as to count six (6) of the petition, respondent says that same speaks to the insincerity of the petitioner as she is aware that this was not the only account of the deceased neither was this the only available amount. Respondent says that all the money received from the deceased account(s), the money from Central Bank, Insurance money, etc are being utilized exclusively by the petitioner and the respondent's niece. The suggestion in the said count six (6) that there is nothing left for the deceased child is false and misleading.
11. Further to count ten (10) above and count six (6) of the petition, respondent says that if the petitioner desires that the intent of the deceased should be the controlling factor, and he not leaving a will but his little brother in the subject account, it is certainly his, (the deceased), intent that his brother be a beneficiary of said account.
12. And also, because as to count seven (7) of the petition, respondent says that petitioner's right does not and cannot be extended to the account to which he is named as a beneficiary/next of kin."

On August 28, 2014, the appellee filed a motion for summary judgment contending that there being no disputed factual issues to warrant a trial, the sole issue of law for determination by the trial court was whether or not the law on lineal descent was applicable and whether the appellant could inherit

before a surviving spouse and heir.

The appellant filed his resistance contending that the law of lineal descent was inapplicable to the present case, given the fact that he was specifically named and designated as next of kin to his late brother's account, and that by the said act the account can no longer form a part of the intestate estate of his late brother.

On September 23, 2014, the trial court upon entertaining arguments from the parties, granted the summary judgment in favor of the appellee ruling that the account of the late Theophilus Bettie was still part of his estate and as such the law of lineal descent was applicable; that the appellant cannot inherit anything from his late brother while his late brother's spouse and heir are still alive. In order to better appreciate the ruling by the trial court we have decided to quote below a relevant portion which reads thus:

“...From the pleadings, legal memorandum and argument of counsel for the parties there appears to be no genuine issue of any material fact in this case. Therefore, a summary judgment should be granted, as a matter of law. The question is whether it [the motion for summary judgment] should be granted in favor of the petitioner or the respondent?”

In reliance on the definition of next of kin, as contained in Black's Law Dictionary, lawyers for the respondent contended that because he was named next of kin on the account opening form, the proceeds from the said bank account should be set aside from other properties of the intestate estate of the decedent and awarded to him, as if the proceeds account was willed to him.

The lawyers for the petitioner contended that the phrase, next of kin, is a term of art, having a special meaning in the law which may be different from the meaning assigned to it by non-lawyers. Petitioner's counsel referred the court to the definition of next of kin which is relied upon by the respondent's counsel. Black's Law Dictionary says with regards to the definition of next of kin that in the law of descent and distribution, the phrase next of kin denotes the persons nearest of kindred to the decedent that is those who are most nearly related by blood; but is sometimes construed to mean only those who are entitled to take under the statute of distributions. The term next of kin is used with two meanings: (a) nearest blood relations according to the law of consanguinity and (b) those entitled to take under the statutory distribution of the intestate estate and the term is not necessarily confined to relatives by blood but may include a relationship existing by reason of marriage.

Petitioner's counsel further contends that the next of kin as used on the UBA pre-printed account opening form was obviously used as in common parlance, by non-lawyers, because the respondent, a brother of the decedent, fits neither of the legal definitions of next of kin. That is the respondent is neither in the nearest degree of living relatives to the decedent nor is the respondent entitled by law, the Decedent Estate Law to receive the property of the decedent when the decedent spouse and

daughter are still alive.

It is rather clear in the mind of this court that the UBA's usage of the phrase next of kin cannot be construed by this court as having any legal significance, as it was obviously used in common parlance, as suggested by the petitioner.

Also, section 3.2 of the Decedent Estate Law provides that if the decedent is survived by a spouse and one or more lineal descendants, property to the value of 5,000.00 to the spouse outright and one-half the residue to the spouse for life with the remainder thereof to the children. Only if and when the decedent is not survived by spouse, children, or parents would the brothers and sisters be entitled to inherit under the Decedent Estate Law of Liberia. The law is clear that the respondent, the brother could never inherit anything from the decedent when the decedent is survived by a spouse and a child. Therefore, since the spouse and daughter survived the decedent, the respondent as a matter of law, is not entitled to the inheritance of the decedent's UBA account.

Wherefore and view of the foregoing, the motion for summary judgment is hereby granted in favor of petitioner and against the respondent. The spouse and child are in a priority group, who take under an intestate estate to the exclusion of the siblings. The UBA bank is hereby ordered to pay funds in the decedent's account to the intestate estate of the decedent through this Honorable Court. And it is hereby so ordered."

The appellant excepted to this ruling and announced an appeal to the Supreme Court filing a four (4) count bill of exceptions basically stating that the trial judge committed reversible error when he ruled as follows: (a) that the contested account remained part and parcel of the intestate estate; (b) that the term 'next of kin' appearing in the bank's account opening form was only common parlance to indicate who should be contacted in case of the death of the account holder and not for the purpose of inheritance; and (c) that as long as there is a surviving spouse and child, the appellant could never inherit from his late brother. The bill of exceptions is quoted below as follows:

"APPELLANT'S BILL OF EXCEPTIONS

Appellant/respondent in the above entitled cause of action most respectfully praying Your Honor to accept and approve this bill of exceptions and allow the Honorable Supreme Court of Liberia to review Your Honor's final judgment of September 23, 2014 for the following reasons to wit:

1. That Your Honor committed reversible error when you ignored the genuine issue of fact in dispute that is "whether the mentioning of the respondent as "next of kin" on the prepared bank form is merely for death announcement purposes or that separates the amount in that account from the general properties the deceased died seized of.

2. That Your Honor also committed reversible error when you ruled that the amount in the United Bank of Africa was a part of the Intestate Estate.

3. That Your Honor committed reversible error when you ruled that the United Bank of Africa usage of the phrase “next of kin” cannot be construed by this court as having any legal significance but had legal relevance in the case of Ms. Una F. Harris, who was named as “next of kin” on the decedent’s account with Guaranty Trust Bank, which this court authorized the management of said bank to pay to Ms. Una F. Harris money in said accounts since she was named as the sole beneficiary or “next of kin”.

4. That Your Honor also committed reversible error when you relied on Section 3.2(a) of the Decedents Estate Law and ignored the heading which provides that “the property of the decedent not disposed of by WILL or otherwise, after payment of administration and funeral expenses, debts and takes, shall descend and be distributed in the following manner: etc.”

We note that portion of the trial judge’s ruling indicating that the facts of the case were not in dispute and that summary judgment would lie as a matter of law; however, we are not in agreement with the portion of the ruling that granted summary judgment in favor of the appellee. It is the law that a court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law. Civil Procedure Law, Rev Code 1:11.3; Dennis v. Philips 21LLR 506, 513 (1973); Sio v. Sio 35LLR 92, 98 (1988); Hussan v. Butler, Supreme Court Opinion, October Term A.D. 2014.

We have determined that the sole dispositive issue for our attention is:

Whether or not the late Theophilus T. Bettie intended for the appellant to exclusively inherit the proceeds in his account at the United Bank of Africa (UBA) when he named and designated the appellant as his ‘next of kin

Before delving into the issue raised *supra*, it is expedient that we first define the phrase “next of kin”. Our reason for this course of action is based on the fact that this Court has keenly observed that from the genesis of this case in the Monthly & Probate Court up to the present appeal now before us, the lawyers representing the parties have labored to define the phrase “next of kin” by referencing and citing Black’s Law Dictionary, without firstly reverting to our statutes and case law as per the meaning of said phrase. This conduct of the lawyers to substitute our laws for receptive statutes is at variance with the acceptable practice of our jurisprudence and Opinions of the Supreme Court, stating that:

“the common law must remain silent when our statutes and case laws speak to a particular issue.” Attia v. Summerville, 1LLR 215(1888); Pratt v. Phillips, 9LLR 446(1947) National Milling Company of Liberia v. Pupo, 34LLR 467, 470(1987); The Liberia Trading And Development Bank v. Mathies 39LLR 637, 640-641 (1999)

Of recent, this Court held that,

“a court will refer to a receptive statute only when there is no statute or decisional law regarding the matter.” *Whisnant v. Whisnant*, Supreme Court Opinion, October Term A.D 2015.

Therefore, and given the fact that our statutes and case laws have succinctly provided a definition for the phrase “next of kin” we will ignore the foreign definitions, references and citations advanced by the lawyers on the meaning of the phrase; and by so doing, adopt and incorporate the definition provided by our statutes and case laws.

Recourse to the Decedents Estates Law Rev Code 8:3.1 reveals that the phrase ‘next of kin’ is defined as follow:

“...Whenever in any statute the words “heirs”, heirs at law”, “next of kin”, or “distributees” are used such words shall be construed to mean and include the persons entitled to take as provided by this chapter.”

The Decedents Estates Law also states that:

“Whenever used in a statute or **instrument**, [our emphasis] unless a contrary intention is expressed therein, the terms “heirs”, “heirs at law” “next of kin” or any term of like import means the distributees as provided in chapter 3.” Id. 1.4.

Further Section 1.3(d) of the same Decedents Estate Law defined a distributee as: “a person entitled to take or share in the property of a decedent under the statutes governing descent and distribution.”

The Supreme Court has approbated this definition by holding that the phrase ‘next of kin’ is equivalent to ‘heirs’, ‘legatees’ and all those who take by descent. The Court speaking through Mr. Justice Azango espoused thus:

“the word heirs/next of kin means those who would, under the statute of distribution be entitled to the personal estate of the persons of whom they are mentioned as heirs/next of kin” in the event of death and intestacy.” *Kamara and Kollie v. Kindi et. al*, 34LLR 732, 749 (1988).

We re-affirm and confirm the definitions provided by the Supreme Court and the Decedents Estates Law Rev Code 8:3.1.

Having provided an accurate and legal definition of the phrase ‘next of kin’, we shall now revert to the main issue of the appeal, which is whether or not the late Theophilus T. Bettie intended for the appellant to exclusively inherit the proceeds in his account at the United Bank of Africa (UBA) when he named and designated the appellant as his ‘next of kin’ in the bank account opening form.

The appellant has argued that by naming and designating him as next of kin to the account, the late Theophilus T. Bettie unequivocally demonstrated his intent for him to singularly inherit the proceeds. The appellant relied on that portion of the Decedents Estates Law Rev Code 8:3.2 which states *inter alia* that “...the property of a decedent not disposed of by will or otherwise, shall descend to the decedent’s next of kin...” and contended that by naming him as next of kin to the account meant that said account was disposed of could not be part of the estate of the decedent.

The appellee disagreed and has counter argued that the phrase ‘next of kin’, as used in the bank’s account opening form, is a common parlance used by lawyers and has no legal significance; that the purpose of the phrase, “next of kin” as used in the bank’s account opening form is to notify the person named on the form in the event of the death of the account holder and not for inheritance purposes; and that the late Theophilus T. Bettie could not and did not intend for the appellant to inherit proceeds of the account when there were a surviving spouse and his heir.

The relevant provision of our Decedents Estates Law captioned “Succession to property, real and personal, on intestacy” provides:

“the property of a decedent not disposed of by will or otherwise, (Our Emphasis) after payment of administration and funeral expenses, debts and taxes, shall descend and be distributed in the following manner:

- a) If the decedent leaves surviving a spouse and one or more lineal descendants, property to the value of \$5,000 to the spouse outright and one-half the residue to the spouse for life with the remainder thereof to the children and the issue of the children..
- b) If there is no surviving spouse, the entire estate to the children and to the issue of a deceased child...
- c) If there is no lineal descendants but a surviving spouse and parents, property to the value of \$10,000 and one half of the residue to the spouse and the balance to the parents.
- d) If there are no parents and lineal descendants but a surviving spouse, brothers and sisters, property to the value of \$10,000 and three quarters of the residue to the spouse, and the balance to the brothers and sisters and to the issue of the brothers and sisters.
- e) If the decedent leaves surviving a spouse but no lineal descendant, brother or sister, the entire estate to the spouse;
- f) If there is no spouse or lineal descendant, but leave surviving parents and one or more brothers and sisters, the property to the value of \$10,000 and one-half of the residue to the parent and the balance to the brothers and sisters and issue to of any deceased brother or sister;
- g) If the decedent leaves surviving parents but no spouse or lineal descendant or brother or sister, the entire estate to the parent;
- h) If there is no spouse, parents or lineal descendant, the property to following persons living at the death of decedent and in the following order and manner:
 - Brothers and sisters and to issue of any deceased brother or sister

- To the grandparents
- To the uncles and aunts and to the issue of any deceased uncle or aunt.
- To the Republic of Liberia”. The Decedents Estates Law, Rev Code 8:3.2.

The above quoted provision of our decedent estates statute is clear and unambiguous as regards the class of property(ies) subject to descend and distribution; and such property(ies) must be one that was not disposed of by will or otherwise. In view thereof, we affirm and confirm Section 3.2 of the Decedents Estates Law and hold that the property of a deceased not disposed of by will or otherwise shall descend and be distributed according to Section 3.2 of the Decedents Estates Law.

Applying the above holding to the present appeal, this Court says that for the provision of the law to be applicable to the disputed account, it must be established that the property of the decedent was not disposed of before his death for intestacy succession to apply. Hence, this being said, can the account in question be considered separate and distinct from the intestate estate of Theophilus T. Bettie to which the law of descent is inapplicable or; did the late Theophilus T. Bettie intend to retain the account as a component of his estate and in so doing only designated the appellant as his “next of kin” in order for him to receive notification from the bank in the event of his death as argued by the appellee? We shall revert to pertinent undisputed facts to answer this query.

The certified records show that the appellant, in counts six (6) and nine (9) of his pleadings, specifically alleged that the deceased opened a savings account at the Guaranty Trust Bank Liberia Limited; that Mrs. Una F. Harris was named as next of kin to the said account and that Una F. Harris subsequently received the proceeds from the account by order of the Monthly and Probate Court without any objection by the appellee. We observed that this allegation of the appellant was neither denied nor refuted by the appellee before the trial court or the Supreme Court. It is the law in vogue that “he who should speak and remains silent assents; that the failure of a party to deny those averments of an adverse party which are known or believed by him to be untrue amounts to an admission.” *Kamara & Kollie v. Kindi et al.*, 39LLR102, 108 (1998); *Constance et al., v. Ajavon et al.*, 40LLR 295, 304 (2000); *Bent v. Coleman*, 2LLR 210, 214 (1915). *Cole v. Cole*, Supreme Court Opinion, March Term, 2013; *Brumskine et al., v. National Elections Commission*, Supreme Court Opinion, October Term A.D. 2017. Pursuant to the afore-stated principle of law, this Court says that it will not be remiss to accept as true the appellant’s allegations that Mrs. Una F. Harris was indeed named as next of kin to the deceased account at the Guaranty Trust Bank Liberia Limited and that the said Mrs. Harris later received the proceeds of the account by order of the Monthly and Probate Court. In addition, thereto, it can be inferred and deduced that by naming Mrs. Una F. Harris as his “next of kin” in the bank’s account opening form, the deceased intended for Mrs. Una F. Harris to receive the proceeds at the Guaranty Trust Bank Liberia Limited which intent the Monthly and Probate Court executed by ordering the bank to remit the proceeds to Mrs. Una F. Harris.

This Court disinclines and refuses the appellee’s argument that the appellant was only designated as “next of kin” in order to receive notification from the bank about the deceased death since according to the appellee, the phrase “next of kin” is a common parlance used by lawyers with no legal significance. Our reason is premised firstly on the fact of the definition of the phrase “next of kin” from the

Decedents Estates Law quoted herein. Secondly, common sense and practice dictates that it is the family of a deceased who informs the bank about the death of an account holder or depositor and not in the reverse, that is, the bank contacting family members to inform them of the death of account holder or depositor. We find it incomprehensible for a banking institution to assiduously keep tabs on each of its depositors just to ascertain whether they are alive or dead and then take upon the obligation to notify family or next of kin.

Our reasoning is further premised on the fact that the bank's account opening form is a legal document, and not an ordinary piece of paper as the appellee has argued. The bank account opening form is a contract between the depositor and the bank, and this Supreme Court has recognized the relationship between the bank and its customers as a contract. *Leigh-Parker v. International Bank (Liberia)*, Supreme Court Opinion, March Term A.D. 2007. Even at common law it is stated that:

“...the relationship between a bank and a depositor is a contractual relationship that is governed by the written agreement between the parties; and that an account signature card [account opening form] is a type of contract that must be read, considered and construed in its entirety in keeping with the general principles of contract interpretation.” 10 Am Jur 2d, Banks And Financial Institutions, § 711; id 717.

Therefore, the bank account opening form signed by the deceased is a valid contract between the bank and the deceased; and the phrase “next of kin” as used therein is not a common parlance as denoted by the appellee but the said is governed by the definition appearing in the Decedents Estates Law quoted herein.

Accordingly, we hold that given the attending facts and circumstances of the present case, the late Theophilus T. Bettie, having named his brother, Nyonjay Bettie, as his ‘next of kin’ to his savings account at the United Bank of Africa (UBA) and having not revoked or disaffirmed this action prior to his demise, is evidence that he, Theophilus T. Bettie, intended for the appellant to inherit the funds in the said account; the decedent's intent is analogous to his decision regarding his designation of Mrs. Una F. Harris as his next of kin to receive the proceeds in his savings account at the Guaranty Trust Bank Liberia Limited.

It should be quickly noted that our holding stated herein, is not an override of Section 3.2 of the Decedents Estates Law; neither do we intend to vitiate the law of lineal descent provided for in the Decedents Estates Law. To the contrary, our holding in this case is premised solely on the law that each case should be reviewed and decided on its own merits. The prevailing facts and circumstances of this case clearly show that the decedent, through his actions, intended that the appellant inherit the proceeds of his account at the United Bank of Africa (UBA) especially given the fact that the deceased had full control of the account in question during his life time and never revoked or disaffirmed his actions in any form or manner by removing the appellant's name from the Bank's account opening form which we have earlier concluded constituted a valid contract between the deceased and the Bank, and which contractual relationship this Court is legally obligated to uphold. Further, given the unique peculiarity of this case we note that our decision is exclusive to the facts and circumstances stated herein and same is restricted and limited only to this case.

WHEREFORE AND IN VIEW OF THE FOREGOING, the summary judgment of the Monthly and Probate Court for Montserrado County in favor of the appellee is hereby reversed.

The Clerk of this Court is hereby ordered to send a Mandate to the court below ordering the judge presiding therein to resume jurisdiction over this case and give effect to this Opinion. Costs are ruled against the appellee. It is so ordered.

Judgment Reversed

When this case was called for hearing, Counsellors Theophilus C. Gould and Kathleen Makor of the Kemp & Associates Legal and Consultancy Chambers appeared for the appellant. Counsellor D. Onesimus Barwon of the Brumskine & Associates Law Offices appeared for the appellee.