

**IN THE COURT OF APPEAL**  
**THE REPUBLIC OF VANUATU**  
*(Appellate Jurisdiction)*

**Civil Appeal Case No: 31 of 2012**

**BETWEEN: SAUL MANSES**  
*Appellant*

**AND: MORRIS MASSING and RAEI MORRIS**  
*Respondents*

**Coram:** *Hon. Chief Justice Vincent Lunabek*  
*Hon. Justice Bruce Robertson*  
*Hon. Justice Daniel Fatiaki*  
*Hon. Justice John Mansfield*  
*Hon. Justice Robert Spear*  
*Hon. Justice Dudley Aru*

**Hearing:** *17 October 2012*

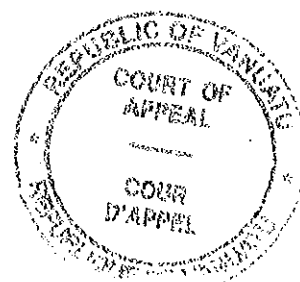
**Appearances :** *Appellant: Saling Stephens*  
*Respondent: Lent Tevi*

**Decision:** *25 October 2012*

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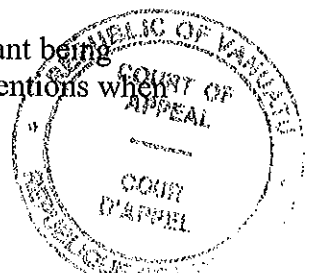
**JUDGMENT OF THE COURT**

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1. This appeal primarily challenges the grant of administration to the respondents in respect of the estate of the late Roy Morris Manses. The appeal is also against a further order of the Supreme Court that the appellant pay an amount of Vt 414,903 to Lau Chung Yau Garage.
2. As it happened, the appeal against the grant of administration to the respondents was abandoned during the course of the hearing. However, the appeal remains in respect of the order that the appellant make the payment to the garage.
3. Notwithstanding that the appeal in respect of the grant of administration was abandoned, we remain concerned that there is still a misconception as to the effect of a grant of probate or administration in respect of a deceased's estate. For that reason, we will deal a little more extensively with this case than simply acknowledging the abandonment of that part of the appeal.
4. Roy Morris Manses died on 27 May 2007. He is survived by his widow Mrs Rael Morris and 7 children that include Saul Manses and Morris Massing.
5. Mrs Rael Morris and Morris Massing applied for a grant of administration as the late Roy Morris died without leaving a will. His estate is effectively comprised of 2 leasehold properties in Luganville with a combined value of Vt 2,467,000.
6. The application by the respondents for administration was opposed first by Saul Manses and second by the proprietor of a local garage.
7. In a reserved decision given on 1 August 2012, the Supreme Court granted administration to Massing Morris and Mrs Rael Morris and furthermore ordered that Saul Manses pay "*the outstanding sum of Vt 414,903 to Lau Chung Garage within 28 days*".
8. The opposition by Saul Manses to the appointment of his brother as one of the administrators of his father's estate is explained in the response filed by him:

"2. **I, SAUL MANSES** of Sarakata, Luganville, Santo oppose the grant being made to **MASING MORRIS** because it had been my father's intentions when



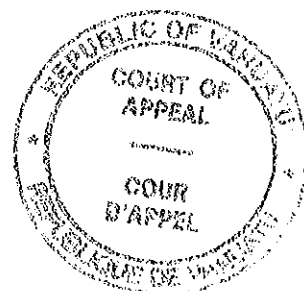
he was alive; that I take over his rights and properties and look after my mother and three (3) brothers. I am the first born son in the family. I do not object to grant being made also to **RAEL MORRIS** (mother) and I refer to paragraph 3 below

3. Administration should be granted to **SAUL MANSES AND RAE MORRIS.**
9. During the course of the hearing, it emerged that Saul Manses claimed a personal entitlement to a shop and a house on the leasehold land owned by his father. We saw this as raising a conflict such that it would not be appropriate for Saul Manses to be the administrator of the estate. Mr Stephens eventually accepted that this must be so and indicated then that the appeal in that respect was abandoned. That was a proper concession in the circumstances.
10. The response form filed by Saul Manses, which explained his opposition to his brother being granted administration, once again identifies a misconception as to the role of a person who is granted either probate or administration of a deceased person's estate. We dealt with this misconception or misapprehension in an earlier case *In re Estate of Molivono*<sup>1</sup>:

*“The second point to be made about this litigation is that the granting of probate or administration does nothing to determine ultimate ownership of the personal property of the person who has died. Not only in this case but in others as well we have seen suggestions that the grant of the right to administer an estate meant there was a determination of what property was owned by the estate and also governed its future ownership. Obtaining probate or administration is placing on an individual an extraordinarily solemn duty. It is the duty first to call in and collect all the properties of the deceased person apart from any interest in custom land. Then, they must pay all the debts of the estate. Their solemn obligation is to ensure that what is left is distributed either in accordance with the terms of the will or in accordance with the rules laid down in Queen’s Regulations 7. It provides for the executor or administrator no rights of ownership or personal benefit.*

*A person who is granted probate or administration is answerable to the Court for the proper exercise of the obligation which he or she has chosen to take up”*
11. Custom land, of course, is required to be dealt with according to custom.

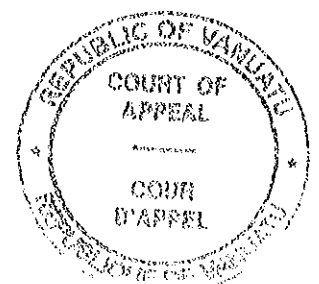
<sup>1</sup> [2007] VUSA 22: CAC 37 of 2007 (13 November 2007).



12. Other property (that might conveniently be described as “non-custom” property) of an intestate is required by law to be distributed according to Regulation 6 of the *Succession, Probate and Administration Regulation 1972* (commonly referred to as *Queen’s Regulations 7*). For ease of reference, we set out Regulation 6 in its entirety

*6. (1) Subject to the provisions of the last preceding Part hereof, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Regulation on trust to pay the debts, funeral and testamentary expenses of the deceased and to distribute the residue as follows:-*

- (a) if the intestate leaves a wife, or husband, with or without issue, the surviving wife or husband shall take the personal chattels absolutely, and –*
  - (i) if the net value of the residuary estate of the intestate, other than the personal chattels, does not exceed ten thousand dollars the residuary estate absolutely; or*
  - (ii) if the net value of the residuary estate exceeds ten thousand dollars, the sum of ten thousand dollars absolutely;*
- (b) if the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, take one-half of the residuary estate absolutely;*
- (c) if the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, taken one-third only of the residuary estate absolutely, and the issue shall take per stirpes and not per capita the remaining two-thirds of the residuary estate absolutely;*
- (d) if the intestate leaves issue, but no wife or husband, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely;*
- (e) if the intestate leaves no issue but both parents, then, subject to the interests of a surviving wife or husband, the father and mother of the intestate shall take the residuary estate of the intestate absolutely in equal shares;*
- (f) if the intestate leaves no issue, but one parent only then, subject to the interests of a surviving wife or husband, the surviving father or mother shall take the residuary estate of the intestate absolutely;*
- (g) if the intestate leaves no issue or parent, the surviving husband or wife shall take the residuary estate of the intestate absolutely;*
- (h) if the intestate leaves no husband or wife and no issue or parents, then the brothers and sisters of the whole blood, and the children of deceased brothers and sisters of the whole blood, of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;*



- (i) *if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or children of deceased brothers or sisters of the whole blood, then the brothers and sisters of the half blood and children of deceased brothers and sisters of the half blood shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;*
- (j) *if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood, or children of deceased brothers or sisters of the whole blood or of the half blood, then the grandparents of the intestate shall take the whole estate of the intestate absolutely, and if more than one survives the intestate they shall take absolutely in equal shares, but if there is no grandparent, then the uncles and aunts of the whole blood, and children of deceased uncles and aunts of the whole blood, of the intestate, being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate, shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;*
- (k) *if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood or children of deceased brothers or sisters of the whole blood or of the half blood and no grand parents or uncles or aunts of the whole blood or children of deceased uncles or aunts of the whole blood of the intestate being brothers and sisters of the whole blood of children of deceased of brothers and sisters of the whole blood, of a parent of the intestate, then the uncles and aunts of the half blood and children of deceased uncles and aunts of the half blood of the half blood of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;*
- (l) *in default of any person taking an absolute interest under any of the foregoing provisions of this section the residuary estate of the intestate shall belong to the Crown as bona vacantia, and the Crown may, out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.*
- (2) *For the purposes of the last preceding subsection –*
- (a) *the net value of the property of a deceased person is the net value of that property at the date of the death of that person;*
- (b) *any income derived from the property of a deceased person shall be distributed among the persons entitled on distribution to that property in the same respective proportions to which they are entitled to share on the distribution of that property.*

13. That regulatory scheme has some technical terms and it might present difficulties to someone unfamiliar to the law of succession. We have attempted to assist the administrators in this case by highlighting the provisions that appear to us to be applicable to the distribution of this estate given our understanding (1) that the estate is comprised solely of two leasehold blocks of land worth approximately Vt 2,450,000 and (2) that the deceased died with his wife and all his seven children surviving him.



14. We appreciate that distribution may cause difficulties given the nature of the property in the estate and so we urge the administrators to seek legal assistance to ensure that the estate is distributed according to law.
15. The second response was by Lau Chung Yau Garage. It was advanced on the basis that, "*the deceased has an outstanding (account?) of being for repair of Toyota Hilux Registraton Number 4902*". The proprietor of the garage considered that administration of the estate should accordingly be granted to him. That response again confirms the generally held misconception as to the role of an administrator.
16. However, all that was before the Supreme Court was an opposed application for a grant of administration. Any issue as to who might be responsible for the repair costs of this vehicle was not one that could be dealt with at that time by the Supreme Court. Any such claim on the estate would need to be considered, first and foremost, by the administrators of the estate. The administrators could either accept the debt or reject it. If the debt is rejected, the garage proprietor is entitled to commence proceedings in the Magistrate's Court against the administrators to prove the debt.
17. Be that as it may, it was not open to the Supreme Court at this hearing to attempt to resolve the issue of responsibility for the garage debt. The order that Saul Manses pay Lau Chung Yau Garage that sum of Vt 414,903 is accordingly set aside.
18. The appeal succeeds only to that limited extent by the quashing of the order that the appellant make that payment to the garage.
19. In these circumstances, we do not consider it appropriate for an order of costs to be made.

**FOR THE COURT**

  
**The Honourable Justice Robert Spear**

