

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

Probate Case No. 05 of 2013

**IN THE MATTER OF:**

**AN APPLICATION FOR  
PROBATE  
ADMINISTRATION**

**IN THE ESTATE OF:**

**TIMOTHY HOLU**

Deceased

**BY:**

**ANDRE THOMAS**

Applicant

**AND:**

**ROTHA HARRY**

Respondent

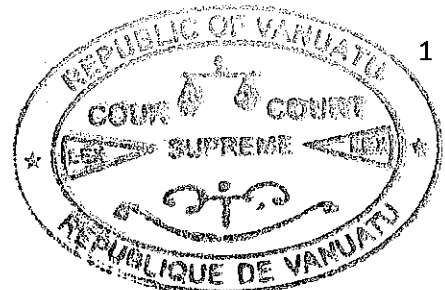
**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Ms Jane Tari for Applicant  
Mr. Lent Tevi for Respondent*

**Date of Hearing:** *4<sup>th</sup> February 2014*  
**Date of Judgment:** *12<sup>th</sup> February 2014*

**JUDGMENT**

1. Timothy Holu, died intestate on 4<sup>th</sup> August 2012. He was a seaman. He left property in American Samoa worth about USD\$4,000 as follows:-
- (a) \$1,584.00 cash in a brown wallet.
  - (b) Clothes in plastic bag.
  - (c) Sheets (Clothes) wrapped in a sheet.
  - (d) 12 pack of Pepsi.
  - (e) 12 pack Nesta Ice Tea.
  - (f) Back pack containing CD Folder with Music/Movies, Note pad, Medication and some AV wires.



(g) HTC cell phone (with box, no charger).

(h) \$823.01 in wages for his last trip and \$1,000 from the employer's workmen's compensation insurer.

2. The deceased had no wife or issues.

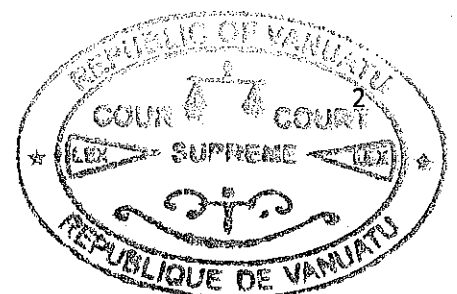
3. The Applicant Andre Thomas is the deceased's uncle, brother of the deceased's mother, Rotha Harry, the Respondent who currently lives in Noumea, New Caledonia. She has lived there since 1970.

4. Rotha Harry opposes Andre Thomas' application on grounds that she is the mother of the deceased and as such she should be entitled to a grant of administration of the deceased's estate.

5. In deciding the issue of which of the party the Court should grant administration of the estate of the deceased, I have read the sworn statement of Andre Thomas filed on 15<sup>th</sup> April 2013 and the written submissions filed by Ms Tari on 4<sup>th</sup> February 2014. Further, I have considered the sworn statement of Rotha Harry filed in opposition to the grant of administration dated 1<sup>st</sup> November 2013 together with oral submissions by Mr. Tevi made on 4<sup>th</sup> February 2014. Mr. Tevi relied on the case of Morris v. Abock [2013] VUCA; Civil Appeal Case No. 25 of 2013.

6. Ms Tari relied on Regulation 7 (b) of the Succession, Probate and Administration Regulations 1972 (Queen's Regulation). The Court of Appeal set out the relevant provisions of this Regulation at paragraph 8 of the Judgment in Raupepe Didier v. Fredy Wass; Civil Appeal Case No. 46 of 2012.

7. Regulation 7 provides:-



7. The Court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than twenty-one years of age:-

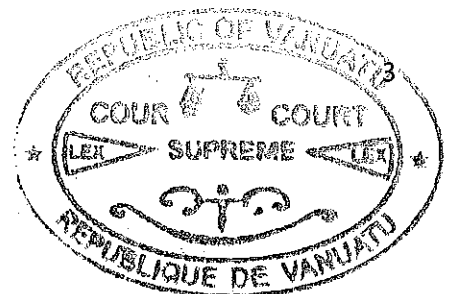
(a) The husband or wife of the deceased; or

(b) If there is no husband or wife to one or not more than four of the next of kin in order of priority of entitlement under this Regulation in the distribution of the estate of the deceased; or

(c) Any other person, whether a creditor or not, if there is no person entitled to a grant under the preceding paragraphs of this section and he is resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration." (Emphasis by underlining).

8. From the evidence it is clear that Andre Thomas and his sister Rotha Harry are the next-of-kin of the deceased. In order of priority it appears Rotha Harry should be granted administration. However, she has to show she is fit to be so entrusted with the administration. From her sworn statement dated 1<sup>st</sup> November 2013 Rotha placed her thumb print instead of placing her signature. That indicates that she is old and illiterate. She has not provided her date of birth and any medical certificate certifying she is a fit person. She deposed that she has been living in New Caledonia since 1970, some 43 years. And further, she deposed to leaving the deceased to her mother in 1968 when the deceased was just 13 years old.

9. It is for those reasons the Court is reluctant to grant administration to Rotha Harry. If she was so concerned, she should have been the first to file an application seeking administration and pay all fees payable in relation to the processes. As the mother she was entitled to do so but she failed. Her failure prompted her brother and uncle of the deceased as next-of-kin to so apply.



at who was Evidence show it was Andre Thomas who was the care-taker of the deceased.  
the grant of admin As such he should be entitled to the grant of administration.

10. Accordingly, the Court allows the application of Andre Thomas and grants  
administration of the estate of the deceased Timothy Holu to him. The response  
by Rotha Harry is rejected and dismissed. A Separate order will be issued to this  
effect.

11. The Court will reiterate what the Court of Appeal said in the case of Morris v.  
Abock that Andre Thomas (as approved administrator has no ownership or  
personal benefit of the properties in the estate of late Timothy Holu. Andre  
Thomas must not deal with the property as if they were his own. Instead the  
grant of administration places on him the clear responsibility of making sure the  
estate is distributed to all those relatives who are entitled to them according to  
Section 6 of the Regulation (Queens Regulation 1972) provides for the  
relevant list of persons who are entitled to the deceased's estate.

DATED at Luganville this 12<sup>th</sup> day of February 2014.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

