

**IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU**

**(PROBATE)**

**PROBATE CASE NO. 1784 OF 2019**

**IN THE MATTER of**  
Application for Letters of  
Administration in the Estate  
of the late **ROBERT**  
**HOUSTON**

**AND IN THE MATTER of**  
Section 2.3 and 2.5 of the  
Probate and Administration  
Rules 2003 and Section 6  
and 7 of the Queen's  
Regulation No.7 of 1972

- 1. JOHN CALDWELL MALCOLM**
- 2. GEOFFREY ROBERT GEE**

Applicants

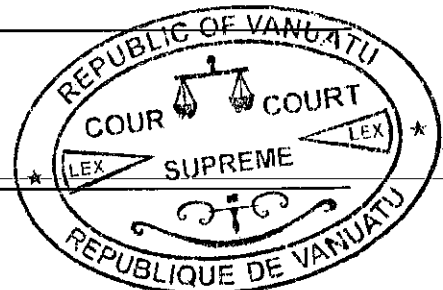
**FLORENCE VIRA**

Respondent

**Date of Hearing:** 20<sup>th</sup> February, 2020  
**Delivered:** 11<sup>th</sup> March, 2020  
**Before:** Deputy Master Aurelie Tamseul  
**Appearances:** John Malcolm as Executor and as counsel for the  
Applicants  
Avock Godden counsel for the Respondent  
**Present:** Florence Vira (Respondent), Sharon Ellis (Beneficiary  
to the Estate)

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**JUDGMENT**



## Headnote

Validity of a Will – proprietorship in common or joint proprietorship interest in properties,

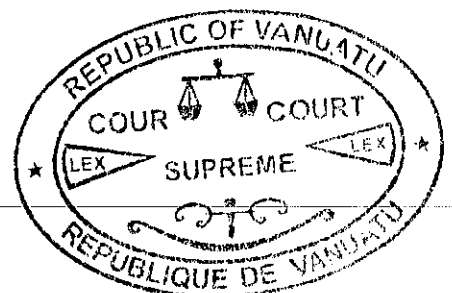
### **A. Introduction**

1. An Application for probate of the Last Will and Testament of Robert Houston was filed on the 11<sup>th</sup> July, 2019. The Respondent objected to the said Application on the basis that the Will, the subject matter of the probate Application is invalid and that the executors are not fit and proper persons to execute the said Will. She states that she should be granted Letters of Administration in the estate of the deceased.

The Court takes judicial notice of Probate Case 1156 of 2019, a separate Application for Letters of Administration filed by the Respondent in the estate of her deceased mother (hereinafter referred to as the second deceased) who was the wife of the deceased in this case ( hereinafter referred to as the first deceased).

The Respondent listed 12 properties which she says form part of the estate of the second deceased. The Court notes that 9 out of the 12 properties are in the joint names of both the first and the second deceased. Those nine titles are as follows: **04/2243/025, 04/3022/044, 04/3022/043, 04/3022/041, 04/3022/040, 04/3022/057, 03/1123/001, 12/0913/291, 04/2243/029.**

2. This judgment will discuss three issues, to wit:
  - 1) Is the Will invalid?
  - 2) Is the Respondent better placed to administer the estate of the deceased?
  - 3) Are the interests in the 9 properties held in joint proprietorship or in proprietorship in common?



## **B. Respondent's Case**

3. The Respondent claims that the first deceased had been suffering from a memory deficit at the time he drafted the Will. She states that he had a high blood pressure condition and took medication to control it. The Respondent claims that the first deceased had failed to take the recommended daily dose of his medication and as a result he suffered from some memory impairment. To support her statement, the Respondent provided the Court with a letter from the first deceased's doctor dated 25<sup>th</sup> September, 2019, three months after the date of his death, which stated that the absence of the medication could not contribute to the mental health problems of the first deceased, and any memory deficit would more likely have been as a result of general poor physical health.

## **C. Discussion**

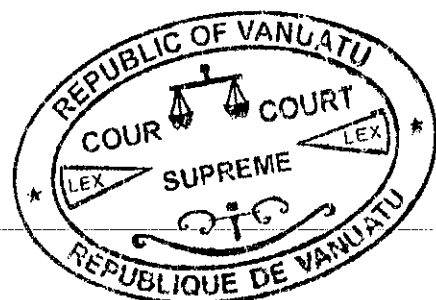
### **(i) Is the Last Will and testament of the first deceased valid?**

4. To justify the invalidity of the Will the Respondent must satisfy the Court that the Will does not reflect the true intention of the first deceased.
5. Section 17 of the Wills Act refers<sup>1</sup>:

#### ***Section 17. Validity and Construction***

*(2) In construing a will the court shall not be bound by any technical terms of what might otherwise be considered technical terms but shall be concerned solely to ascertain the true intention of the deceased*

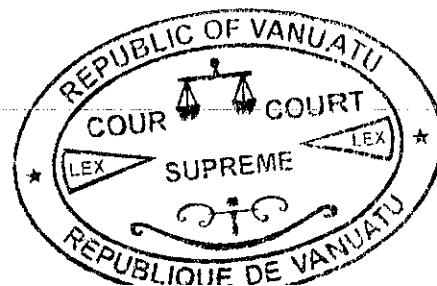
The Respondent argues that the Will does not reflect the true intention of the first deceased due to memory deficit. Evidence of this memory deficit provided by the Respondent rests on a letter from the Doctor of the first deceased which reads as follows:



<sup>1</sup> Wills Act, Cap 55

*"If Robert were without his Conversyl a Blood pressure tablet and Doiaformin a sugar lowering tablet for 6 months it would affect his physical health rather than his mental health leading to an increased risk of BP and heart diseases and increased risk of stroke among other side effects of increased BP and elevated sugar. This would not be a direct cause of mental health problems including memory deficit but could be an indirect cause of some due to general poor physical health." (my emphasis underlined).*

6. It is apparent from this letter that the actions of the first deceased in not taking his medication would have only impaired his physical health and not his mental health. In spite of the clear opinion of the Doctor, the Respondent argued that the first deceased's failure to take his medication would not only cause poor physical health but could indirectly cause his mental deficit. The Respondent has unfortunately provided no further evidence which would demonstrate deterioration of the first deceased physical health which led to a deterioration of his mental capacity at the time of the drafting of the Will.
7. The Respondent further argued that mental deficit of the first deceased is proven due to the fact that the names of two of the beneficiaries had been incorrectly spelt, and that the first deceased had even left out his last born child which, to the Respondent, seemed an impossibility and clear proof that the deceased was suffering from mental deficit.
8. The beneficiaries to whom the Respondent referred to were Sharon Houston who is now married and is known by her married name Sharon Leigh Hills. The Second, Joanne Mirrie who is also married and known by her married name of Joann Miree Marshall.
9. The condition of marriage does not and did not alter the identity of the aforementioned beneficiaries. Their marriage is merely a circumstantial technicality. Their identity being apparent, I find that the intention of the first deceased was to have bequeathed his estate to Sharon Houston also known as Sharon Leigh Hills and Joanne Mirrie also known as Joann Miree Marshall.



10. The Respondent having provided insufficient proof of mental deficit it is obvious that the first deceased clearly intended for the named beneficiaries to inherit from his estate. Additionally, his failure to include one of his children does not suffice as proof of mental deficit but a clear intention to have disinherited the said child which he is within his right to have done.

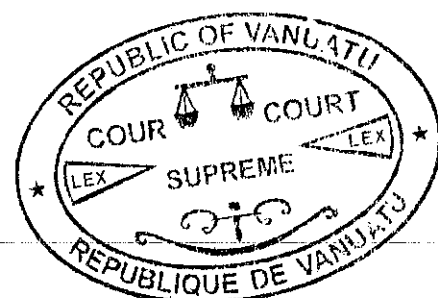
**D. Is the Respondent better placed to administer the estate of the First deceased?**

11. The Respondent is a beneficiary of the estate of the first deceased who wishes to assume the responsibility of administering the said estate. She has provided no evidence that the Executors are not fit to administer the estate nor has she demonstrated why she is better able to do so. I therefore find no reason to remove that responsibility from the Applicants.

**E. Are the interests in the 9 properties held in joint proprietorship or in held in proprietorship in common?<sup>2</sup>**

12. The Respondent claims that the properties are held in proprietorship in common by the first and second deceased. The Respondent provided no further evidence of the said interest.

13. Part 11, Section 73, 74 and 75 of the Land Leases Act outlines the difference between an interest held in joint proprietorship and in proprietorship in common:



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<sup>2</sup> Land Leases Act, Cap 163

## **PART 11 – CO-PROPRIETORSHIP**

### **73. Co-proprietorship**

*(1) Every instrument required to be registered under this Act whereby an interest would become vested in more than five persons shall, notwithstanding anything to the contrary contained therein, operate to vest the interest in the first five persons named in the instrument as joint proprietors on the statutory trusts.*

**(2) An instrument required to be registered under this Act made in favour of two or more persons shall declare whether such persons are joint proprietors or proprietors in common and in the case of proprietors in common, the share of each such owner.**

### **74. Proprietorship in common**

**(1) Where a registered interest is vested in proprietors in common, the proprietors shall be entitled to undivided shares in the interest in such proportion as may be registered and on the death of any of the proprietors in common his share shall be administered as part of his estate.**

*(2) No proprietor in common of a registered interest shall dispose of his undivided share in favour of any person other than another proprietor in common of the same interest except with the consent in writing of the remaining proprietor or proprietors of the interest, but such consent shall not be unreasonably withheld.*

### **75. Joint proprietorship**

*(1) Where a registered interest is vested in joint proprietors, the joint proprietors shall hold on the statutory trusts.*

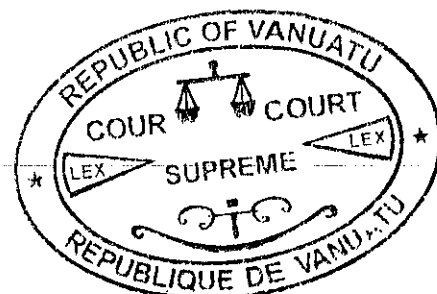
*(2) Where two or more persons are joint proprietors of such a registered interest –*

**(a) a disposition of that interest shall be made only by all the joint proprietors; and**

**(b) on the death of a joint proprietor the interest shall vest in the surviving proprietor or proprietors.**

14. If one is claiming that an interest is held in proprietorship in common, one should have an instrument to show the share each proprietor holds. Out of the 9 copies of leasehold titles provided, only leasehold title 04/2243/025 clearly indicates that the first and second deceased hold the lease as joint proprietors.

15. In the absence of a clear indication on the Land Register as to the shares each proprietor holds, the finding could only be that the 8 other leasehold titles are held jointly by the proprietors. Therefore, at the date of death of the second deceased, the interest on those properties automatically vested in the first deceased.

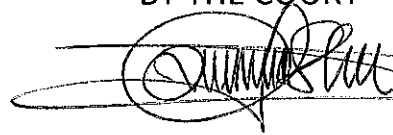


16. The Court notes from the Death Certificates that Annie Damne, the second deceased, passed away on the 30<sup>th</sup> May, 2017 and Robert Houston, the first deceased, passed away on the 12<sup>th</sup> June, 2019 respectively. Therefore, at the date of Mrs. Damne death, all her interest vested in Mr. Robert Houston. The 9 properties therefore now form part of the estate of the deceased Robert Houston.

**F. Finding**

17. This Court therefore finds that the Will of the first deceased is valid and the interests on the 9 properties were held in joint proprietorship. The Respondent having failed to prove the invalidity of the Will nor provided any evidence to show that she is better placed to administer the estate of the deceased, and the Executors having not revoked their executorship, I find no reasonable ground to remove that power from them.

18. That standard costs of VT 30,000 in favour of the Applicant to be paid within 21 days.

BY THE COURT  
  
DEPUTY MASTER

