

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 3201 OF 2020

IN THE MATTER of Application
for Letters of Administration in
the Estate of the late **BILLIE
KENNETH**

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

BETWEEN

KENNETH TATANGIS

Applicant

AND

REUBEN ALAN KENNETH

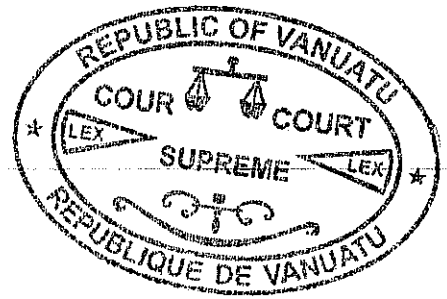
Respondent

Date of Hearing: 20th April, 2021
Delivered: 14th May, 2021 (on the papers only)
Before: Deputy Master Aurelie Tamseul
Appearances: Kylie B. Karu as counsel for the Applicants
Anna Sarisets holding papers for Eric Molbaleh counsel for
the Respondent

RESERVED JUDGMENT

Headnote

Letters of Administration- Persons entitled to grant -Duties of an
Administrator



A. Introduction

1. The Respondent, who is the grandson of the deceased, filed on the 9th February, 2021 an objection to the Application for Letters of Administration.
2. The Applicant is one of the children of the deceased.
3. This judgment will discuss two main issues:
 - (i) Who is the person entitled to grant?
 - (ii) What is the duty of an Administrator?

B. Respondent's Case

4. The Respondent claims that his father Allan Kenneth, now deceased, had contributed to the purchase of property title no. 11/OX21/003 which will be referred to in this judgment as "the property".
5. The Respondent submitted that the Applicant tricked the other children of the deceased into consenting to his application for Letters of Administration with the ulterior motive that upon grant he would sell "the property".
6. The Respondent agreed that he does not fall into the priority of ranking to apply but claims that based on the monetary contribution made by his father towards the purchase of "the property" he is the right person to administer the estate of the deceased.
7. The Respondent provided no proof of the said contribution but referred to paragraph 7 of the sworn statement of the Applicant filed on the 4th March, 2021 where the Applicant acknowledged the said contribution is a proof enough that payment had been made.
8. The Respondent informed the Court that a number of cautions had been previously placed on "the property" to refrain the Applicant from selling the said property but which currently have all been removed.
9. The Respondent submits that there are third parties, amongst some of the beneficiaries, residing on "the property" and he fears that if the Letters of Administration is granted to the Applicant he would sell "the property" which would affect the interest of all those people.

10. Thus, the Respondent submitted that the Letters of Administration should be granted to him so that he could protect “the property” and safeguard the interest of all the people living there.

C. Applicant’s reply

11. The Applicant submitted that the Respondent is not a reliable person and that the Court should disregard his evidences.

12. To demonstrate that the Respondent is not a reliable person, the Applicant referred to the family tree the former attached to his sworn statement filed on the 4th March, 2021 as annexure “RK2” and informed the Court that the said information is erroneous and misleading.

13. The Applicant disagreed with paragraph 7 of the sworn statement filed on the 9th February, 2021 and stated that the Respondent nor his father had made no contribution to the purchase of “the property” as there is no proof of the said payments.

14. The Applicant referred the Court to paragraph 29 of the sworn statement of the Respondent filed on the 9th February, 2021 and stated that the signatures referred in annexure “RK4” do not belong to the names of the persons outlined thereto.

15. Mrs. Karu submitted that her client understands that a grant of Letters of Administration does not give the Applicant a right of ownership over the estate of the deceased but rather an administrative duty to ensure that the said estate is distributed to the beneficiaries in accordance with the Law.

16. To support her statement Mrs. Karu referred the Court to the case of Morris-v-Abock¹ where the principle in the Molivono² case has been referred to.

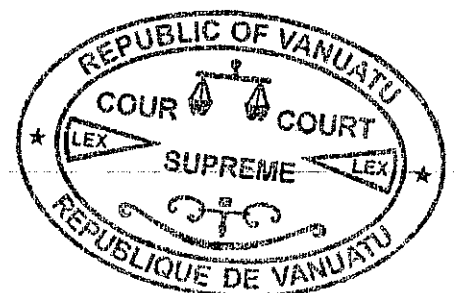
17. Mrs. Karu submitted that the Applicant who is the son of the deceased is the right person to apply for Letters of Administration.

D. Respondent’s rebuttal

18. The Respondent had decided to make no rebuttal the Applicant’s reply.

¹ Beasant Morris-v-Matthew Abock, Civil Appeal No. 25 OF 2013

² In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



E. Discussion

We will discuss two main questions which will determine this case.

- (i) Firstly, who are the persons entitled to grant under the law?

"PART IV – GRANTS OF LETTERS OF ADMINISTRATION

Persons entitled to grant.

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 or 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 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."³

19. Counsel for the Respondent agreed that the Applicant takes priority of ranking under the law to apply for Letters of Administration.

20. Ms. Sarisets submitted that her client only objected on the basis that he has an interest on the land following his father's contribution. However, no evidence of the said contribution had been provided other than the fact that the Applicant acknowledged the said payments in paragraph 7 of his sworn statement filed on the 4th March, 2021.

21. I had informed Ms. Sarisets that the Master and Deputy Master only deal with succession and do not to decide on contentious matters in relation to interest in Land pursuant to the Land Leases Act.

22. I had further informed counsel that if her client thinks that he has an interest on "the Property" then he may need to file a claim for his interest under the Land Leases Act which will then be determined by a Judge of the Supreme Court.

³Succession, Probate and Administration Regulation 1972, URL: www.paclii.org.vu

23. The Second issue to discuss is:

(ii) What are the duties of an Administrator under the law?

"Succession to property on intestacy.

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:-...**⁴

24. Mrs. Karu referred to the case of Morris-v- Abock⁵ in which the Court of Appeal referred to the case of **In re Estate of Molivono**⁶ where the above mentioned law has been extensively explained and I quote:

"... 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...."

25. The grant of Letters of Administration does not therefore give the Applicant a right of ownership over the estate of the deceased but an obligation to administer the estate in accordance with the Law. The Applicant is answerable to the Court for any failure is the exercise of his administration.

F. Finding

18. The Response is dismissed.

19. This Court makes no finding on the reliability of the Respondent.

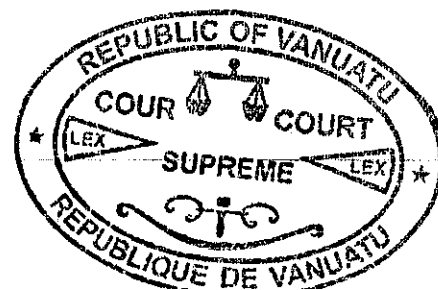
20. The Letters of Administration does not give the Applicant right of ownership over the estate of the deceased. Therefore, the Applicant is to consult with the all beneficiaries prior to making any development on property title no.11/OX21/003.

21. Under law, the Applicant is the rightful person to Apply for Letters of Administration.

⁴ Succession, Probate and Administration Regulation 1972, URL: www.paclii.org.vu

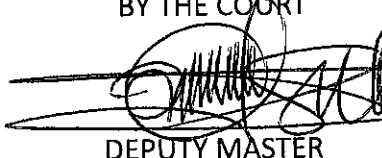
⁵ Beasant Morris-v-Matthew Abock, Civil Appeal No. 25 OF 2013

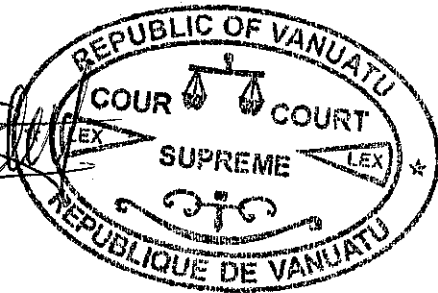
⁶ In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



26. That the Respondent is to pay the standard costs of VT 30,000 in favour of the Applicant within 21 days.

27. The Respondent has 14 days to Appeal this decision.

BY THE COURT

DEPUTY MASTER



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it features a scale of justice and the word "SUPREME". On either side of the scale, the word "COURT" is written, with "LEX" in a small triangle below each. A small star is located on the right side of the seal.