

**IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(PROBATE)**

PROBATE CASE NO. 2295 OF 2022

IN THE MATTER of Application for
Letters of Administration in the
Estate of the late **NOEL KUVU**

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

JULIANA NOEL

Applicant/ Joint-Administrator

AND

ANGELINE NOEL

Respondent/ Joint-Administrator

ORDER

BEFORE: Aurélie TAMSEUL

(Deputy Master)

DATED: 13th day of May, 2024

ENTERED: 14th day of June, 2024

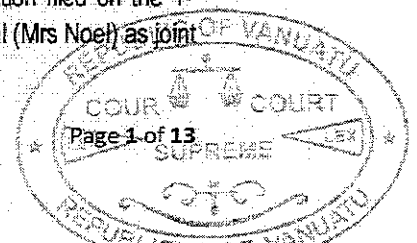
APPEARANCES: Garry Blake counsel for the Applicant, Kent Ture Tari counsel for the Respondent

PRESENT: Juliana Noel (Applicant), Angeline Noel (Respondent)

DECISION

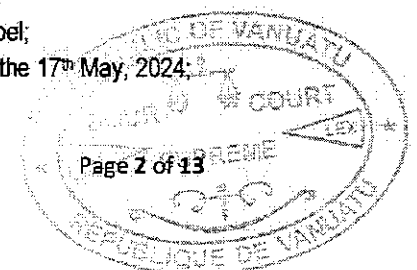
a. Introduction

1. This matter came up for hearing of the Juliana Noel's (Ms. Noel) Application filed on the 1st December, 2023 with a sworn statement in support to remove Angeline Noel (Mrs Noel) as joint



Administrator pursuant to the decision entered on the 16th January 2023 in the estate of the deceased Noel Kuvu.

2. The Application was filed on the grounds that the Mrs. Noel refused to cooperate with Ms. Noel to jointly carry out the Administrator's duties and that the former has had access to the estate without prior discussion with the latter.
3. Here is the list of all documents filed following the filing of the Application to remove Mrs. Noel as a joint administrator, to wit:
 - (i) Defence to Application of Juliana Noel dated 1st December 2023 filed on the 15th January 2024;
 - (ii) Application filed on the 15th January, 2024 by Angeline Noel supported by all the beneficiaries as to the administration of the estate and direction orders concerning existence of a Will;
 - (iii) Notice of ceasing to act by Edwin Macreveth filed on the 15th January 2024;
 - (iv) Notice of beginning to act by Rollanson Takaro Willie filed on the 15th January 2024;
 - (v) Sworn statement of Angeline Noel filed on the 16th January 2024;
 - (vi) Sworn statement of Lorenzo Noel filed on the 16th January 2024;
 - (vii) Sworn statement of Delphine Noel filed on the 16th January 2024;
 - (viii) Sworn statement of Kestin Noel filed on the 16th January 2024;
 - (ix) Sworn statement of Babra Noel filed on the 16th January 2024;
 - (x) Sworn statement of Debra Noel filed on the 16th January 2024;
 - (xi) Sworn statement of Bebeto Noel filed on the 16th January 2024;
 - (xii) Sworn statement of Michel Henderson filed on the 16th January 2024;
 - (xiii) Sworn statement of Joan Rona Rihai filed on the 16th January 2024;
 - (xiv) Sworn statement of Bennett Solomon Owe filed on the 16th January 2024;
 - (xv) Sworn statement of William John filed on the 16th January 2024;
 - (xvi) Notice of ceasing to act by Rollanson Takaro Willie filed on the 8th March 2024;
 - (xvii) Sworn statement of Julianna Noel filed on the 21st March, 2024;
 - (xviii) Notice of beginning to act by Kent Ture Tari filed on the 2nd April, 2024;
 - (xix) Submission by Angeline Noel on the validity of the Will filed on the 2nd April, 2024;
 - (xx) Sworn statement by Angeline Noel on account of her Administration filed on the 2nd April, 2024;
 - (xxi) Preliminary submission on validity of the Will filed by counsel for Juliana Noel on the 2nd April, 2024;
 - (xxii) Submission for Juliana Noel in respect of her Application to remove Angeline Noel as joint Administrator of the estate filed on the 16th April, 2024;
 - (xxiii) Notice of discontinuance of proceeding by Kent Ture Tari on behalf of Angeline Noel filed on the 7th May, 2024;
 - (xxiv) Memorandum in support of notice of discontinuance filed on the 7th May, 2024;
 - (xxv) Application filed on the 10th May, 2024 by counsel for Juliana Noel;
 - (xxvi) Memorandum filed on the 10th May, 2024 by counsel for Julianna Noel;
 - (xxvii) Angeline Noel's Response to the Juliana Noel's Application filed on the 17th May, 2024;
 - (xxviii) Submission by Angeline Noel filed on the 17th May, 2024



- (xxix) Submission by Juliana Noel pursuant to Order of 13 May 2024 filed on the 17th May, 2024;
- (xxx) Further submission on notice of discontinuance and stay Order for the present proceedings by counsel for Angeline Noel filed on the 21st May, 2024;
- (xxxi) Submission in opposition of removing Angeline Noel from Administrator of the Estate in favour of removing Juliana Noel for the same by counsel Kent Ture Tari filed on the 21st May, 2024;
- (xxxii) Memorandum by counsel on behalf of Juliana Noel filed on the 23rd May, 2024;

b. The Law

a. Remove Administrator

"24. Court may revoke administration or order new or additional bond.

The court may, at any time, upon the application of any person interested in the estate or of his own motion on the report of the Registrar –

- (a) revoke the administration already granted, or*
- (b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or*
- (c) order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable."*

b. Inventory and accounts

"40. Inventory and accounts.

- (1) Every person to whom probate or administration is granted may and shall if so required by the Registrar file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the court may order.*
- (2) The order of the court allowing any account shall be prima facie evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, except so far as it is shown by some person interested therein that a wilful or fraudulent error, omission or entry has been made in such account."*

c. Assets

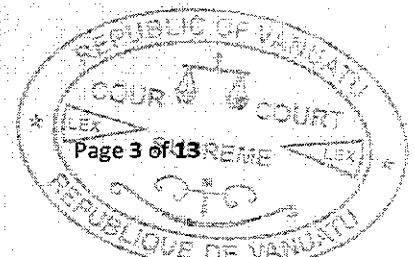
"Assets.

- 12. (1) The estate of every deceased person shall be assets in the hands of the executor to whom probate has been granted, or administrator, for the payment of all duties and fees and of the debt's funeral and testamentary expenses of the deceased in the ordinary course of administration.*
- (2) No personal representative shall by virtue of such office have or exercise any right of retain or in priority to the other creditors of the estate in respect of any debt due to him.*
- (3) An executor to whom probate has been granted, or administrator, may, for the purposes of administration, sell or lease the whole or any part of the estate, or mortgage the same, with or without a power of sale, and assure the same to a purchaser or mortgagee in as full and effectual a manner as the deceased could have done in his lifetime."*

¹ Succession, Probate and Administration Regulation 1972

² Succession, Probate and Administration Regulation 1972

³ Succession, Probate and Administration Regulation 1972



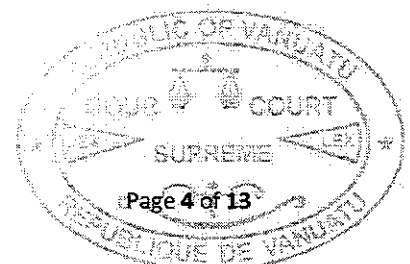
d. Discontinuing proceeding

- 9.9** (1) *The claimant may discontinue his or her claim at any time and for any reason*
(2) *To discontinue, the claimant must:*
(a) *file a Notice of Discontinuance in Form 18; and*
(b) *serve the notice on all other parties;*
(3) *If there are several defendants:*
(a) *the claimant may discontinue against one or some only; and*
(b) *the claimant's claim continues in force against the others.*
(4) *If the claimant discontinues:*
(a) *the claimant may not revive the claim; and*
(b) *a defendant's counterclaim continues in force; and*
(c) *the party against whom the claimant discontinued may apply to the court for costs against the claimant.*⁴

c. The Applicant's case

4. Ms. Noel filed an Application to remove Mrs. Noel as joint administrator on the grounds of non-cooperation and for the latter's actions in prolonging the joint administration of the estate and mismanagement of assets.
5. Annexure "A" attached to the Applicant's sworn statement filed on the 1st December, 2023 is the Applicant's lawyer letter dated 28 July 2023 addressed to Edwin Marcneveth, then the Respondent lawyer, requesting a meeting with the Respondent to discuss the joint administration of the estate.
6. Annexure "B" attached to the Applicant's sworn statement filed on the 1st December, 2023 is the Applicant's lawyer letter dated 28 August 2023 addressed to Edwin Marcneveth requesting another meeting with the Respondent to discuss the joint administration of the estate.
7. Annexure "C" attached to the Applicant's sworn statement filed on the 1st December, 2023 is the Respondent's lawyer letter dated 4th September 2023 addressed to Mr. Blake, being the Applicant's lawyer, outlining the actions the Respondent had taken in the Administration of the estate and requesting the Applicant's cooperation.
8. Annexure "D" attached to the Applicant's sworn statement filed on the 1st December, 2023 is a list of invoices and receipts paid in the in the following details:
 - i. VT 460,000 credited into NBV account No.0177781001 on the 05.06. 2023 being for VCCE prmt for April-Rent Inv.13;
 - ii. VT 920,000 credited into NBV account No.0177781001 on the 11.07.2023 being for VCCE prmt for Rent Inv.26,27 May/June;

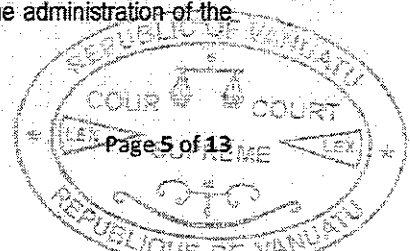
⁴ Civil Procedure Rules 2002



9. Annexure "E" attached to the Applicant's sworn statement filed on the 1st December, 2023 is a proof of the efforts made pursuant to the Respondent's counsel requesting Ms. Noel to cooperate with Mrs. Noel. The statement shows that between the 5-12 September, 2023 Ms. Noel made fifteen (15) calls in an attempt to speak with Mrs. Noel. In addition, Ms. Noel provided screenshots of telephone messages sent to Ms. Noel and Bebeto Noel, one of the beneficiaries, as proof of attempts to communicate.
10. Annexure "F" attached to the Applicant's sworn statement filed on the 1st December, 2023 is a list of correspondences between the Applicant's lawyer and one of the Creditor requesting payment of debts owed by the deceased.
11. Annexure "G" attached to the Applicant's sworn statement filed on the 1st December, 2023 is a copy of the Applicant's lawyer email dated 21st September, 2023 to the Respondent's lawyer requesting him to facilitate communication and/or convey their message to the Respondent.
12. The Applicant filed on the 21st March, 2024 a sworn statement outlining her administration of the estate, to wit:
 - i. VT 2,415,000 paid by Carpenter Motors (Vanuatu) Limited for unpaid rent for the period up to November 2023 being for four (4) months' rent which was deposited into the ANZ Account for Santo Road and Construction;
 - ii. VT 1,840,000 paid on the 17 January, 2023 by VCCE and deposited into Juliana Noel Bred Bank account which she stated is held in trust awaiting creation of the estate account to be transferred into;
 - iii. Estimated costs of work on the premises at around VT 400,000 is held off awaiting clarification around issue of administration.
 - iv. Outstanding rent to be paid by VCCE for the period of January-March 2024 in the amount of VT 2,910,000 is expected to be paid by end of March into ANZ Santo Road Constructions. Included in this amount is the increase of Rental from VT 460,000 p.m. to VT 510,000 p.m. which the Applicant negotiated with VCCE. The said increase was due to start on the 1st January, 2024.
 - v. Attached to the statement is annexure "A" being exchange of emails between Ms. Noel and a third party who purchased an asset of the estate in the amount of VT 5,000,000 which is deposited into NBV Account No.0177781001 in the name of Bebeto Noel. The date of purchase being the 24th August 2022. The content of the said email indicates that the transfer of ownership of motor vehicle was signed by Angelina Noel.

d. Submission

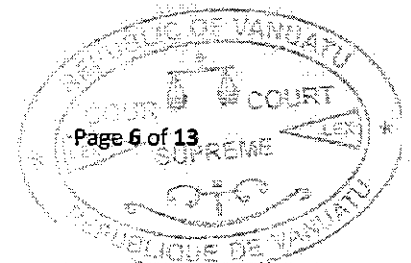
13. In her submission filed on the 17th May, 2024, the Applicant submits that the Respondent be removed as joint-Administrator to enable the former to proceed with the administration of the estate as a sole Administrator.



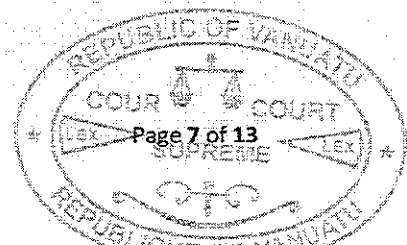
14. The Applicant submits that the Respondent be removed as joint administrator because she refused to work together and that she has been dealing with the assets of the estate as if they were her own where incomes were collected without being accounted for.
15. The Applicant further submits that the actions of the Respondent in this whole proceeding indicated that she lacks the capacity to administer the estate, has no regard for the legal duties of an Administrator and has mismanaged the estate.
16. The Applicant submits that she has 15+ years in accounting and project management and that she is capable to manage the deceased estate to secure a brighter future for all the beneficiaries and their descendants.
17. The Applicant therefore requests that Mrs. Noel be removed as joint-Administrator of the deceased estate and that the former be appointed sole Administrator.

e. The Respondent's case

18. The Respondent filed on the 15th January, 2024 a "***Defence to the Application of Juliana Noel dated 1st December 2023***". Mrs. Noel stated that the joint-Administration granted to Juliana Noel as a beneficiary is now disputed on the basis of the deceased has left a "***Will***" wherein the latter is not a beneficiary. In addition, the Respondent intends to apply for probate of the said "***Will***" together with her son Bebeto Noel under their capacities as executors.
19. Angeline Noel states that the beneficiaries of the "***Will***" all object to Juliana Noel as joint-administrator and request that she be removed for the following reasons, to wit:
 - i. Juliana Noel has never been part of the business **SANTO ROADS AND CONSTRUCTION**;
 - ii. The deceased, in his lifetime, dis-associated himself from Juliana Noel;
 - iii. Juliana Noel developed anger and jealousy towards Angeline Noel and her biological children and now may take action to hurt them through administration of the estate;
 - iv. Angeline Noel fears that Juliana Noel may evict them from their Side River residential property;
 - v. Angeline Noel should be sole Administrator pursuant to Section 7 of the Queens Regulation;
 - vi. Mrs. Noel claims that she was misled by her former counsel, Edwin Macreveth, to sign a sworn statement stating that there was no Will left by the deceased.
20. In addition, the Respondent filed on the 15th January, 2024 an Application titled "***Application by the Applicant supported by all beneficiaries as to the Administration of the Estate and other direction orders concerning existence of a Will***".



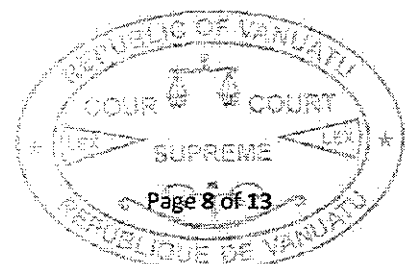
21. In the said Application, Mrs. Noel requests the Court to recognize that there is a **"Will" signed by the deceased** and that the hearing of the Application for Letters of Administration filed on the 23rd August 2022 be stayed and that directions be given for the filing of an Application for Probate.
22. In the said Application, Mrs. Noel requests to be the sole Administrator of the deceased Estate until further Order of the Court.
23. Mrs. Noel submits that in the said **"Will"** the deceased wanted herself and her son, Bebeto Noel, to be the Executors of his estate with the following beneficiaries, to wit:
- (i) Angeline Noel
 - (ii) Bebeto Noel
 - (iii) Lorenzo Noel
 - (iv) Babra Noel
 - (v) Debra Noel
 - (vi) Kestin Noel
 - (vii) Delphine Noel
 - (viii) Melan Noel
 - (ix) Kavu Noel
24. The said **"Will"** is dated 13th July, 2022 witnessed by six individuals and endorsed by the Kuvu Noel (deceased) on the same date at 3:41 p.m. Below are the names of the witnesses:
- (i) Bennett Solomon Owe
 - (ii) William John
 - (iii) Joan Rona Rihai Clement
 - (iv) **Angeline Noel** (also beneficiary)
 - (v) **Bebeto Noel** (also beneficiary)
 - (vi) Michel Henderson
25. Mrs. Noel together with all the above witnesses filed on the 16th January, 2024 respective sworn statements indicating that they were all present when the deceased expressed his wishes and that Joan Rona Rihai wrote it down on paper. The said document was thereafter typed by a third party, printed and given to the deceased to read through to ensure that his wishes are clearly stated thereto and had the witnesses sign it in the presence of each other prior to the deceased endorsing it.
26. Some of the beneficiaries to the estate also filed on the 16th January, 2024 their respective sworn statements in support of the defence filed and other direction Orders concerning existence of the Will. These are the names and ages the beneficiaries who filed a sworn statement:
- (i) Lorenzo Noel (24 years old)
 - (ii) Babra Noel (22 years old)
 - (iii) Debra Noel (20 years old)
 - (iv) Kestin Noel (17 years old)
 - (v) Delphine Noel (15 years old)



27. Mrs. Noel filed on the 2nd April, 2024 a sworn statement of her Administration to indicate that there has been movement of funds from the business "**SANTO ROADS AND CONSTRUCTION**" since February, 2023 to March, 2024.
28. On the 7th May, 2024 Mrs. Noel filed a Notice of Discontinuance against Ms. Noel with a memorandum filed on the same date in support. In the said Memorandum, Mrs. Noel refers to the original Application for Letters of Administration in the estate of late Kuvu Noel filed on the 25th August, 2022 indicating that she no longer wishes to proceed with the said Application on the basis that the deceased left a "*Will*" which she intends to probate.
29. On the 17th May, 2024, Mrs. Noel filed a Response to the Application of Juliana Noel filed on the 10th May, 2024 indicating that the former's action in filing a Notice of Discontinuance brings an end to Application for letters of Administration. Furthermore, that the only standing Application being the one filed by Ms. Noel to be appointed sole Administrator.
30. Mrs. Noel submits that Ms. Noel was not entitled to grant under the next of kin priority because she is a child of the deceased previous marriage.

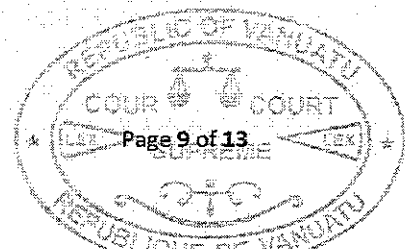
f. **Submission**

31. Counsel on behalf of Angeline Noel filed three (3) submissions.
32. The first submission was filed on the 2nd April, 2024 on the Validity of the Will of the deceased. Counsel provided case laws to support their claim on the validity of the Will.
33. The second submission was filed on the 17th May, 2024 where in summary, counsel on behalf of his client submits that since an Application for Probate has been filed, these proceedings must be stayed pending determination of their Application for Probate.
34. The two (2) last submissions were filed on the 21st May, 2024 where counsel addressed the Application by Ms. Noel to remove Mrs. Noel as a joint Administrator. In the further submission filed counsel submits that a Notice of Discontinuance brings an end to a proceeding as pursuant to the **Civil Procedure Rules 9.9**. In the same submission, counsel requests that the present proceedings be stayed pending the determination of their Application for the probate.
35. Counsel, on behalf of Mrs. Noel submits that they are persuaded, due to the opposing counsel's conduct, that the Court's decision was a violation of the overriding objective in **Civil Procedure Rules 1.2 (1) (2)** in dealing with the matter of administration prior to the determination on the validity of the Will.



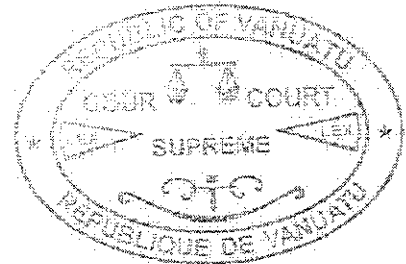
g. The Applicant's reply

36. Counsel on behalf of Ms. Noel filed on the 16th April, 2024 a submission in respect to the Application to remove the latter as joint Administrator. In the said submission Ms. Noel questions Mrs. Noel's recognition of her status as a beneficiary under law and dealing with her interest on the basis that there is now an allegation as to the presence of a "Will". Ms. Noel submits that since the grant of joint-administration, Mrs. Noel has persistently refused to work with her and had not opened a Bank account for the estate.
37. As to the VT 1,840,000, Ms. Noel submits that the correct date of credit into her account was the 17 January, 2024 and not 17 January, 2023. She maintains that the said amount is ready and available to be paid into the estate account once opened. She submits that all other monies had been paid into the "**SANTO ROADS AND CONSTRUCTION**" ANZ account which is currently frozen accepting only deposits.
38. Ms. Noel then addressed the irregularities in the accounts provided and stating that the monies had been credited into one of the beneficiary's Bank accounts with no proper accounting. Furthermore, that of the estate monies had been used for things outside the day-to-day business run. Those expenses fall under the heading "other assets" and are as follows: *Deborah pocket money, Elon lawyer, pocket money mum and Rona*.
39. Ms. Noel therefore submits that the actions of Mrs. Noel are proof that she is unable to carry out her legal duties as joint administrator. Ms. Noel submits that Mrs. Noel's actions in dealing with the estate amount to maladministration therefore the latter must be removed as joint-administrator.
40. Ms. Noel then filed on the 10th May, 2024 an Application to be the sole Administrator of the deceased estate on the basis that the Respondent has filed a notice of Discontinuance of her claims which grounds are stipulated in the memorandum filed on the same date in support. Ms. Noel relies on **Rule 9.9 of the Civil Procedure Rules**.
41. Counsel on behalf of Ms. Noel filed on the 17th May, 2024 a submission pursuant to the Order of the 13th May, 2024 where she submits that:
- (a) Ms. Noel be appointed sole administrator of the estate; and
 - (b) There be no order to stay the above-mentioned order; and
 - (c) Costs be ordered against Mrs. Noel personally for her conduct in the proceeding
42. The Applicant filed on the 24th May, 2024 a Response submission in respect to the two (2) submission by counsel on behalf of Mrs. Noel filed on the 21st May, 2024. In the said submission, counsel on behalf Ms. Noel questions Mrs. Noel capacity to file additional submission after having filed a Notice of Discontinuance.

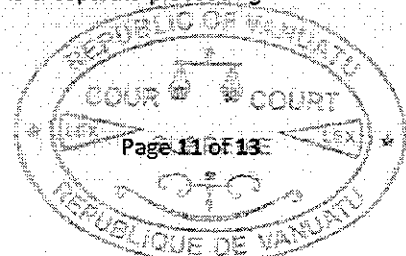


h. Discussion

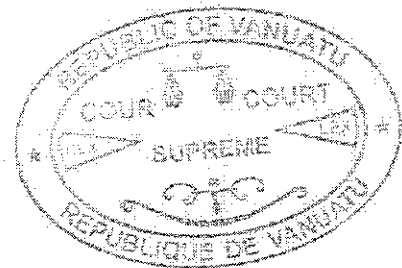
43. The parties were ordered to file submission by the 17th May, 2024. However, on the 21st May, 2024 the Respondent filed additional submission. Time was given to the Applicant to file any additional information by the 24th May, 2024.
44. We will now consider and analyse all the information provided. For information purposes, it is to be noted that the deceased passed away on the 21st July, 2022. That a joint- administration in his estate was granted to Mrs. Noel and Ms. Noel on the 16th January, 2023.
45. Juliana Noel, filed an Application to remove Angeline Noel as joint- Administrator pursuant to Section 24 (b) of the **Succession, Probate and Administration Regulation 1972**.
46. Once an Application is filed, the Administrator must provide an account of their administration to refute any allegations made against them.
47. The Court ordered Mrs. Noel to provide an inventory and account as pursuant to Section 40 (1) of the **Succession, Probate and Administration Regulation 1972**.
48. On the issue of accounts, Angeline Noel filed an inventory and account. It is noted on Mrs. Noel's submission that upon grant, she has had access to the deceased estate for almost 15 months and used the estate money to pay for things such as: *house use, food, electricity bills relating to house and workshop, Deborah pocket money, pocket money (mom & rona), elon lawyer, lawyer ronilson, lawyer ken, lawyer ken*. These items do not appear to be for costs of the business administration but rather personal expenses causing the value of the estate to decrease. This is in contradiction to sections 5 & 6 of the **Succession, Probate and Administration Regulation 1972**.
49. Mrs. Noel's accounts shows that she her access to the estate assets violated section 12 of the **Succession, Probate and Administration Regulation 1972**.
50. Mrs. Noel's own accounts indicate that she does not have the capacity and cannot be trusted to manage the estate for the benefit of all the beneficiaries. She has demonstrated a lack of knowledge in the legal requirements of an Administrator and has done nothing since the grant was entered to increase the value of the estate.



51. Ms. Noel also provided a brief account of her actions as a joint-administrator in the estate of the deceased where it appears that Mrs. Noel started accessing the assets of the estate well prior to 16th January, 2023 being the date of the grant of joint-administration. This is reflected in the chain of emails referred to in Ms. Noel's sworn statement filed on the 21st March 2024 wherein annexure "A" is an exchange of emails between Ms. Noel and a third party who purchased an asset of the estate in the amount of VT 5,000,000. The date of purchase being the 24th August 2022 and the said amount was deposited into NBV Account No.0177781001 in the name of Bebeto Noel. The content of the said email indicates that the transfer of ownership of motor vehicle was signed by Angelina Noel. It is clear that Mrs. Noel's action in the said transaction is in contradiction to sections 5 & 6 of the **Succession, Probate and Administration Regulation 1972**. Mrs. Noel provided no evidence to rebut the said statement.
52. Ms. Noel swore under oath that she did received VT 1,640,000 from VCCE which amount is deposited into her Bred Bank account. She stated that the said amount is held on trust to be ultimately deposited into the estate account once created. In an earlier statement she indicated the date of credit of that amount into her account being the 17th January, 2023 and thereafter filed a sworn statement to state that the date was a typographical error and that the correct date of credit being the 17th January, 2024. I have noted that both dates fall after the date of grant being 16th January, 2024.
53. Ms. Noel swore under oath that she has an accounting background and is able to carry out the duties of an Administrator. Furthermore, Ms. Noel had shown that she acted in her capacity as joint Administrator to negotiate an increase from VT 460,000 to VT 510,000 being for monthly rental of properties by VCCE. Her actions added value to the estate which is consistent with her statement of ensuring that the estate is well managed for the benefit of all beneficiaries including Mrs. Noel being the deceased wife.
54. I also note from the submission of Ms. Noel that a creditor of the estate liaised with her regarding the non-payment of services provided to the deceased in his lifetime. The said debt remains unpaid awaiting collaboration from Mrs. Noel regarding payment. The non-cooperation from Mrs. Noel has delayed the payment of debts owed by the estate which falls under the duties of the administrator as stated in section 6 of the **Succession, Probate and Administration Regulation 1972**.
55. On the issue of non-communication and collaboration regarding joint administration, Mrs. Noel claimed that she has attempted to work together with Ms. Noel but for the latter's animosity towards her they were not able to work together. However, Ms. Noel submitted proof of her attempts to communicate with Mrs. Noel who did not reciprocate. Mrs. Noel on the other hand provided no proof to show that she tried to communicate with Ms. Noel regarding joint-administration.
56. On the issue of stay, Mrs. Noel requests that this proceeding be stayed pending determination of their Application for Probate. The filing an Application for probate is a separate proceeding and will not warrant a stay in the in this matter.



57. On the issue of the "Will", Mrs. Noel in her submission, claims that the deceased had left a "Will" when in fact, she swore under oath when she filed on the 25th August, 2022 the Application for Letters of Administration that she has no knowledge of a "Will". That statement is referred to in paragraph 3 of her sworn statement filed on the 25th August, 2022 in support of her Application for Letters of Administration. Mrs. Noel then waited twelve (12) months after the grant of Letters of Administration to file a statement that she was misled by her previous lawyer to sign the statement that the deceased left no valid "Will".
58. Mrs. Noel has put herself in an unfortunate situation when she retained lawyers who were incapable of properly advising her therefore causing her to act in ignorance. However, ignorance of the law is not a defence as anybody who decides to come to Court imposes upon themselves the responsibility to read and understand the law and to act accordingly.
59. I thank both counsel for filing submissions in relation to the validity of the "Will". However, the Respondent has filed an Application for Probate therefore I cannot make a determination on the validity of the said "Will".
60. On the issue of Ms. Noel's eligibility to apply for administration and capacity of entitlement. Those issues had already been decided in the grant order. Counsel for Mrs. Noel knows the procedure to follow when a party disagrees with the outcome of a decision bringing finality to a matter.
61. Mrs. Noel also filed an Application to remove Ms. Noel as joint Administrator on the basis that she is not a beneficiary under the Will. I cannot allow that basis to stand here as the Application of Probate of the Will is yet to be determined.
62. On the issue of the Notice of Discontinuance, counsel on behalf of Mrs. Noel submits that the said notice has been filed to discontinue the Application for Letters of Administration. Unfortunately, the said Application had been granted resulting in joint-administration. Therefore, Mrs. Noel has no standing to file the Notice of Discontinuance on the proceeding for the Application for Letters of Administration.
63. Counsel for Mrs. Noel in their submission raised other peripheral issues such as opposing counsel's capacity to represent Ms. Noel on the basis that they have an interest in the estate. Must I remind counsel that Mr. Blake acted for Ms. Noel since the lodging of the Application for Letters of Administration and his capacity as counsel had never been challenged by Mrs. Noel. Furthermore, Mrs. Noel provided no proof to show that Ms. Noel used the estate money to pay for her lawyer fees. All creditors of the estate must be paid out of the estate under the administration process.




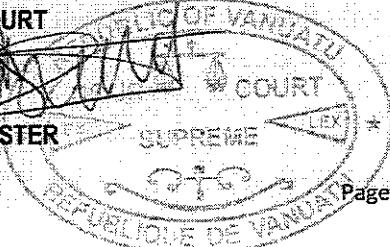
64. On the issue of **Civil Procedure Rule 1.2 (1) (2)**. Counsel on behalf of Mrs. Noel requests that this matter stayed to allow their Application for Probate to be determined. Counsel is reminded that the calling of an Administrator into account is an administrative step taken by interested parties in the estate to verify if the Administrator has carried out their duties under the law subsequent to their appointment under the substantive case. If counsel is persuaded that their client is aggrieved, he needs to consider the Rules and apply the correct principle. The Application for Probate is a separate proceeding therefore it would be inappropriate to use the principle in **Civil Procedure Rule 1.2 (1) (2)** under these circumstances.

65. I took judicial notice of a **Probate Case No.24/1295** filed by Angeline Noel and Beбето Noel for the Probate of the "*Will*" of the deceased. Parties are hereby notified that I will recuse myself from dealing with the matter and give it to the Registry to be allocated to a Judge for determination. I will ensure that a copy of this decision is placed in that file for information purposes.

66. All parties are again reminded that the duties of an Administrator are not to manage the estate into the future but to carry out the duties of an administrator outlined in **section 6 of the Succession, Probate and Administration Regulation 1972.**

i. Finding

1. Juliana Noel's Application to remove Angeline Noel as a joint administrator is granted.
2. The Notice of Discontinuance of the Application for Letters of Administration is dismissed on grounds of irregularity.
3. That Angeline Noel's Application to remove Juliana Noel as joint Administrator on the basis that she is not a beneficiary under the will is dismissed on ground of being filed prematurely.
4. The Application to stay is not granted.
5. The Application to appoint Angeline Noel as sole Administrator of the deceased estate until further orders of the Court is not granted.
6. Juliana Noel's Application to be appointed sole Administrator of the deceased estate is granted.
7. Juliana Noel has twelve (12) months to complete administration regarding the collection of all assets, reconciliation of accounts, payment of all the debts of the estate and to share the remainder to all the beneficiaries under section 6 of the **Succession, Probate and Administration Regulation 1972.**
8. Costs to be agreed if not then counsel for Ms. Noel to file an application for taxation.

BY THE COURT

DEPUTY MASTER

REPUBLIC OF VANUATU
COURT
SUPREME
LEX

