

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 2313 OF 2024

IN THE MATTER of Application for
Letters of Administration in the
Estate of the late **RONGLEY NOAH
STEPHEN**

AND IN THE MATTER of Rules 2.3;
2.5 and 3.1 of the Probate and
Administration Rules 2003 and
Section 7 of the Queens Regulation
NO.07 of 1972

BETWEEN

EDA WELEGTABIT

Applicant

AND

NOAH FAMILY

Respondent

BEFORE: Aurélie TAMSEUL

(Deputy Master)

DATED: 13th day of November, 2024

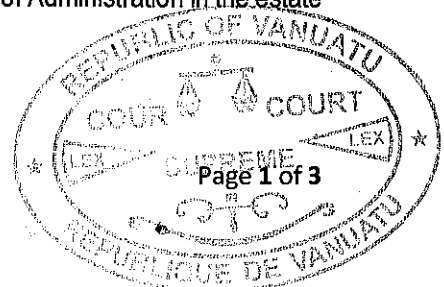
ENTERED: 13th day of November, 2024

APPEARANCES: Akineti Yeeon holding papers for Barbara Taleo counsel for the Applicant, Jerry Boe
counsel for the Respondent

Decision

a. Introduction

1. The Applicant filed on the 26th July, 2024 an Application for Letters of Administration in the estate of the deceased.



2. The Respondent filed on the 3rd September, 2024 a Response opposing the Application for Letters of Administration being granted to the Applicant.
3. The Respondent objected to the Letters of Administration being granted to the Applicant on the grounds that:
 - a. There are no properties forming part of the estate of the deceased; and
 - b. The Respondent alleged that the Applicant committed adultery during the lifetime of the deceased therefore she should not be granted Administration over the deceased estate.

b. Issues

- (i) Who is entitled to grant?
- (ii) What are the duties of an Administrator?

c. Consideration

Issue (i)

4. The Applicant, being the deceased wife, falls under the priority of ranking as a person entitled to grant.

"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 –

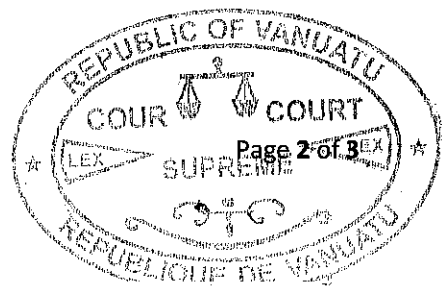
(a) the husband or wife of the deceased; or (My emphasis)

(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 (My emphasis)

(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."¹

5. The Respondent raised the allegation of adultery on the part of the Applicant in an attempt to show that she should not be granted administration. The determination of adultery lies outside of my jurisdiction to decide and is not an element to be considered where the law is clear on the persons entitled to grant. The Respondents provided no order for dissolution of marriage between the Applicant and the deceased. Therefore, the status of the Applicant as the deceased wife remains intact.
6. The Respondent entitlement to grant will only be considered if there is no husband or wife. Where there is a wife, she takes priority over the Respondent.

¹ Queen Regulation No.7 of 1972



Issue (ii)

7. The duties of the Administrator are outlined as follows:

"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: ...² **[my emphasis]**

8. The Court of Appeal in the case of ***In re Estate of Molivono [2007] VUCA 22³*** went further into detail in explaining the above mentioned, and I quote:

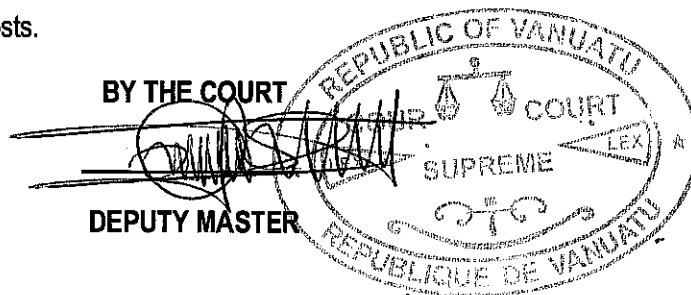
"The second point to be made about this litigation is that the granting of probate or administration does nothing to determine ultimate ownership of the personal property of the person who has died. Not only in this case but in others as well we have seen suggestions that the grant of the right to administer 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."

9. The law very clearly outlined the duties of an administrator and also provides for the mechanism which will hold an Administrator accountable if they fail to carry out their legal duties.

d. Result

1. The objection to the Applicant being granted letters of Administration is dismissed.
2. That the Administration in the estate of **Rongley Noah Stephen** late of Gaua, TORBA Province in the Republic of Vanuatu who died on the 6 April 2023 is granted Eda Welegtabit.
3. That the sworn value of the estate is under VT 500,000.
4. That there is no order for costs.



² Queens Regulation No.7 of 1972

³ *In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)*