

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 2490 OF 2024

IN THE MATTER of Application for
Letters of Administration in the
Estate of the late **EVELYNE (NEE
TOKON) aka EVELYNE SAVU
MAEL**

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

BETWEEN

1. MAEL ROSSIE LEILO
2. MAEL KARL

Applicants

AND

WILLIE KOKO WORWOR TANMABUR

Respondent

BEFORE: Aurélie TAMSEUL

(Deputy Master)

DATED: 31st day of March, 2025

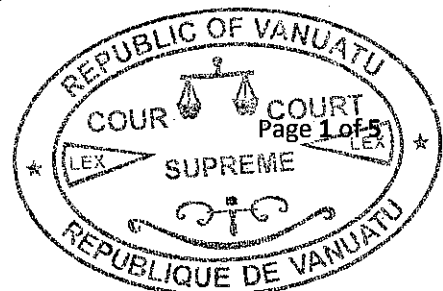
ENTERED: *5th June.*
5 day of March, 2025

COUNSEL: Kylie B. Karu for the Applicants, Lent Tevi counsel for the Respondent

DECISION

a. Introduction

1. The Applicants, being the children of the deceased, filed on the 12th August, 2024 an Application for Letters of Administration in the estate of their late mother.



2. The Respondent, being the deceased husband, filed on 30th September, 2024 an objection to the Application for Letters of Administration and requesting that grant being made to him.
3. The matter was listed for a hearing on the 10th February, 2025 wherein respective counsel took the Court through their cases and it is noted that there is a dispute between the parties over who is entitled to grant.
4. The Court requested, in its order of the 10th February 2025, counsel to file submissions regarding issue 1) and 2) and the Court deeming it necessary to address an additional issue referred herein as issue 3), to wit:
 - 1) Duties of administrator;
 - 2) Joint administration.
 - 3) Persons entitled to grant;
5. The Applicants filed on the 26th February, 2025 a written submission.
6. The Respondent filed on the 20th March, 2025 a written submission.

b. The Law

Duties of Administrator

"Succession to property on intestacy.

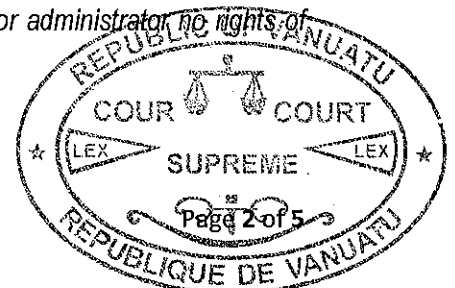
6.(1) Subject to the provisions of the last preceding Part hereof, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Regulation on trust to pay the debts, funeral and testamentary expenses of the deceased and to distribute the residue as follows: -...¹

7. The Court of Appeal referred to the case of *In re Estate of Molivono*² to further elaborated the above-mentioned section of the legislation 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.

¹ Succession, Probate and Administration Regulation 1972, URL: www.pacii.org.vu

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



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...."

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 – **(my emphasis)**

(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 (my emphasis)**

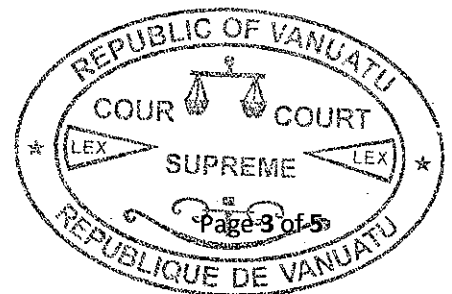
(c) any other person, whether a creditor or not, if there is no person entitled to a grant under the preceding paragraphs of this section resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.

c. Discussion

Issue 1)

8. As stated above, the duties of an Administrator are outlined in section 6 of the **Queens Regulation** and further elaborated in the ***In re Estate of Molivono***³ case for ease of understanding.
9. It is important for the parties to understand that once a person dies, all their properties fall into the estate pool and will remain as such thereupon, regardless of actions taken, until an Administrator is legally appointed.
10. Therefore, any actions taken to maintain an estate prior to an Administration grant should not be considered as giving one beneficiary more power over another.
11. Furthermore, any actions taken by one party, after the death of an individual, to increase the value of the estate will not override the other beneficiaries' legal entitlement to the estate. Once an Administrator is appointed, they are legally bound to carry out the obligations outlined in section 6 **Queens Regulation**.
12. In addition, a grant of Administrator does not give the Administrator a right of ownership over the estate but rather a power to administer the estate for the benefit of all beneficiaries.

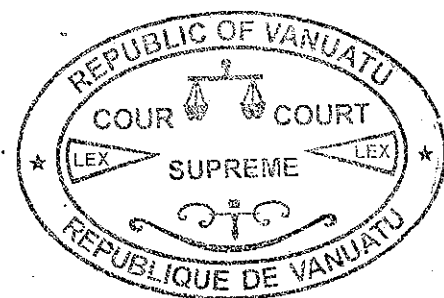
³ In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



13. To evidence their understanding on the duties of an Administrator, the Applicants referred to the Court of Appeal case of **Morris v Abbock [2013] VUCA 7** wherein paragraph 19 the said Court provided a detailed analysis of **sections 5 and 6** of the *Queens Regulation*⁴.
14. Counsel on behalf of the Respondent filed a written submission of their understanding of the duties of an administrator and referred to the case of **Manses v Massing [2012] VUCA 22**.
15. The parties are encouraged to familiarise themselves with the Court of Appeal's elaboration on the duties of the Administration in the **Molinovo**⁵ case to better understand the duties of an Administrator.

Issue 2

16. **Section 7 of the Queens Regulation** gives the Court the discretion to make a grant of administration separately or jointly to the list of persons outlined thereunder.
17. Where there is a dispute between beneficiaries on who is entitled to grant, the Court has the discretion to decide either or not to make a joint administration order.
18. The Respondent submits that as the deceased husband he is the person entitled to grant and should be granted sole administration because following the death of the deceased, he was solely responsible for the maintenance of the deceased estate.
19. The Applicants submit that given their current estranged relationship with the Respondent, they fear that if the Court grants sole administration to the Respondent, he may not give them their share of the estate. Therefore, the Applicants submit that the Court should grant them joint administration with the Respondent over the deceased estate. Therefore, he should be granted sole administration in order to look after the estate.
20. The Applicants and the Respondent, being both beneficiaries to the estate need to cooperate to ensure their share in the estate is distributed in accordance with the law. Counsel will need to assist the parties in the joint administration to ensure compliance with the legal requirement.



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

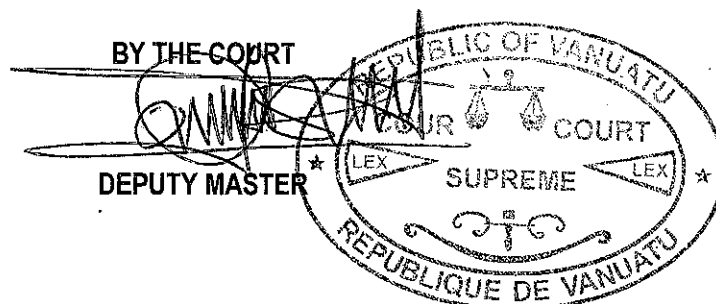
⁵ In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)

Issue 3

21. In **Section 7 of the Queens Regulation**, the Respondent clearly takes priority over the Applicants in the priority of ranking vis-à-vis the persons entitled to grant.
22. The Applicants in their submission accepted the Respondent, being the deceased husband takes priority in ranking over them as children under the legal provisions in **section 7 of the Succession Act⁶** of a person entitled to grant.
23. However, the Applicants submitted that given their common interest as beneficiaries to the estate, it would be in the best interest of all that administration be granted jointly to them and the Respondent.
24. The Applicants submitted that a joint administration will allow them to discuss their shares in the estate.
25. The particulars of this matter show that the Respondent is currently residing in Santo but that the Applicants are residing on the title forming part of the estate located here in Vila.
26. Therefore, though the Respondent takes priority over the Applicants in the raking of persons entitled to grant, as beneficiaries they are all entitled to grant.

d. Finding

1. That in the estate of **Tokon Evelin Savu late** of Paama Island, MALAMPA Island in the Republic of Vanuatu who died on 26 May 2023.
2. **That ADMINISTRATION** of the estate of the above deceased is granted jointly to Willie Koko Worwor Tanmabur, Mael Rossie Leilo and Mael Karl
3. The sworn value of the estate is estimated over VT1,000,000.
4. That there will be no order for costs.



⁶ Succession, Probate and Administration Regulation 1972, URL: www.pacilii.org.vu