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**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

PROBATE NO: 13/2007

IN THE MATTER of the Estate of **METUAIVHIVITOA
HOSEPH HERMAN** of Rarotonga,
Deceased

AND

IN THE MATTER of an application by **SHIRLEY
HERMAN** of Melbourne, Australia for
grant of Probate

Applicant

Date of hearing: 02 December 2015
10 December (Memorandum)

Counsel: Mr Arnold for Applicants
Mr T Manarangi for former executor and trustee Shirley Herman

Date of orders: 21 December 2015

**Orders Of Grice J: Removing Garry Smith As Executor And Trustee And
Appointing Alexandrya Tiare Herman And Muraai Glover Herman As Executors
And Trustees**

[1] This matter was called on 26 November 2015. Mr Arnold for the applicant indicated he was seeking an order removing the existing executor and trustee, Garry Smith and appointing in his place Alexandrya Tiare Herman and Muraai Glover Herman in her place. They are beneficiaries in the estate.

[2] The matter was adjourned to arrange for Mr Manarangi to be present. He acts for the original executrix and trustee of the will Shirley Herman, who was replaced by Mr

Smith. There have been ongoing difficulties in ascertaining and recovering the assets of the estate from Shirley Herman. As a result of these Mr Smith was appointed. He is an experienced accountant and has the the financial skills to bring the estate to order.

[3] A first and joint memorandum filed by counsel for Shirley Herman and Mr Arnold for the beneficiaries attached the written consent of the two proposed executors and trustees, as well as in their capacity as beneficiaries, as well as the consent of the three other beneficiaries. Subsequently the written consent of three of the children of Keri Herman were provided to the court. It was not certain as to whether those children were beneficiaries in the estate.

[4] Mr Arnold advises me that Shirley Herman remains in control of the estate's records and information. Mr Smith had difficulties obtaining those. He wishes to resign. There are family issues which indicate that an appropriate way forward to obtain a satisfactory outcome and completion of administration is to appoint the two beneficiaries now proposed as executors and trustees. As beneficiaries of the estate and members of the family they are more likely to be able to progress matters and obtain a positive outcome than Mr Smith was able to do.

[5] Mr Manarangi indicated that his client no longer had any standing, however she effectively has control and is a powerful influence within the family. Her cooperation is preferable. He indicates that she has no objection to the proposed course of action.

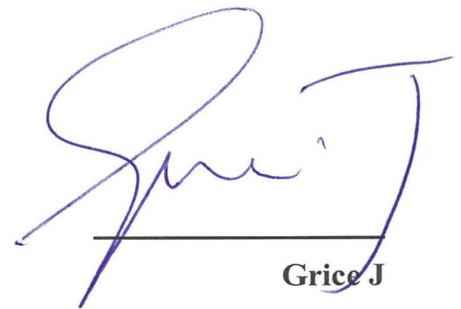
[6] The matter was adjourned for a further memorandum to deal with the consent of Mr Smith and an indication as to his cooperation with the administration of the estate as well as clarification as to the beneficiaries. Mr Arnold for the beneficiaries has now filed a further Memorandum which attaches Mr Smith's consent to his resignation. Counsel confirms that Mr Smith will cooperate as required to allow the administration of the estate by the new executors and trustees. He also confirms that the beneficiaries do not include the children of Keri Herman and those who provided written consent attached to the first memorandum are all the beneficiaries.

[7] Accordingly I make the following orders:

- i. Removing Gary Smith as Trustee and Executor;

- ii. Appointing Alexandrya Tiare Herman and Muraai Glover Herman as executors and trustees of the will of Metuaiviivitoa Joseph Herman of Rarotonga deceased. The executors and trustees having undertaken to the Court that they will faithfully execute the will of their late grandfather, the deceased, by paying the debts and legacies of the deceased so far as the property extends and the law requires from the estate and when ordered to do so to file in this Court and verify by affidavit a true and perfect inventory of all the estate, effects and credits of the deceased which shall have come in to their hands possession or knowledge and also a full distinct and proper account of their execution of the will.

[8] Counsel will apply for further orders if required to complete the administration.



Grice J