

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
*(Civil Appellate Jurisdiction)*

**CIVIL APPEAL NO. 25 OF 2013**

**BETWEEN:**           **BEASANT MORRIS**  
*Appellant*

**AND:**               **MATTHEW ABOCK**  
*First Respondents*

**Coram:**             Hon. Chief Justice Vincent Lunabek  
                          Hon. Justice Bruce Robertson  
                          Hon. Justice Oliver Saksak  
                          Hon. Justice John Mansfield  
                          Hon. Justice Robert Spear  
                          Hon. Justice Mary Sey

**Appearances:**     Eric Molbaleh for the Appellant  
                          Less John Napuati for the Respondent

**Hearing:**           Tuesday 19 November, 2013

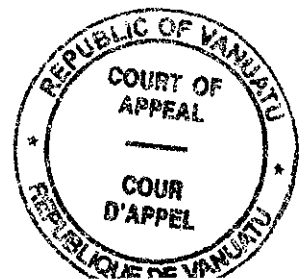
**Judgment:**        Friday 22 November, 2013

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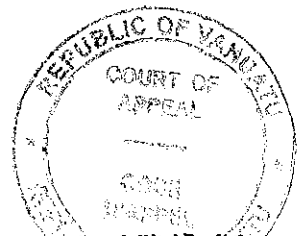
**JUDGMENT**

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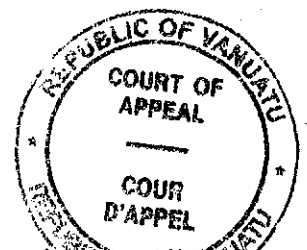
1. Lily Abock died on 14 June 1990 without leaving a will. On 8 August 2013, Fatiaki J granted administration of the Estate to Matthew Abock. This appeal challenges that grant of administration.
2. To understand the case it is necessary to set out something of the family history which has been gained not only from the material presented in the appeal documentation but also with counsel's assistance.



3. Lily Abock married Elizabeth Abock in 1963. They had two sons being Matthew Abock (the respondent) and another son who died. This was Elizabeth Abock's second marriage.
4. Elizabeth Abock was previously married to Morris and they had one son Joel. The appellant Beasant Morris is the son of Joel and thus the grandson of Morris and Elizabeth.
5. Lily Abock died in 1990 survived by his wife Elizabeth who subsequently died in 2005. It is not known whether or not her son to Lily Abock pre-deceased her.
6. At some early stage, Lily Abock bought two residential properties in Port Vila. For many years, Joel Morris occupied one of those properties (lease title 11/0A22/028). We are informed by counsel that the other property was transferred to Matthew Abock by Matthew's father Lily Abock during his parents' lifetime. Clearly, it will be a matter within the administration of Lily Abock's estate as to what property falls to be distributed from it.
7. This appeal really arises because of Beasant Morris' wish to secure the property in which his family has been living for some years. The property concerned is claimed to be part of the estate of Lily Abock who indeed remains the registered proprietor of that lease.
8. Beasant Morris applied in June 2011 for a grant of administration in respect of the Estate of Lily Abock. In support of that application he specified:-
  - a) That the late Lily Abock was his grandfather;
  - b) That the Late Lily Abock transferred the property to his father (Joel Morris);
  - c) That he had always paid the rent tax on the property as well as occupying it.



9. It is clear, however, that Lily Abock was not truly Beasant Morris's grandfather although he may well have assumed that role given Lily Abock's twenty seven year marriage to Beasant Morris's grandmother, Elizabeth Abock.
10. Beasant Morris's application to be granted administration of the estate of Lily Abock was opposed by Matthew Abock who rightly disputed that Beasant Morris was Lily Abock's grandson. That application was struck out by Aru J on 3 July 2012. That dismissal was partially due to the non-appearance by Beasant Morris at a number of conferences. Additionally, and pursuant to Rule 3.2 of the Probate and Administration Rules and Rule 9.10 of the Civil Procedure Rules, on the grounds that Beasant Morris had not complied with orders made by the Court to file and serve sworn statements in support of his application for a grant of administration.
11. Aru J further mentioned in his decision that Matthew Abock had produced a "valid will" from Elizabeth Abock which left the property to him. It is clear, however, that the document that has been produced does not meet even the most basic requirements for a will and in particular it was not appropriately witnessed. Furthermore, the application for a grant of administration in the estate of Lily Abock and not Elizabeth Abock.
12. Matthew Abock then applied for grant of administration in the Estate of Lily Abock and that application was granted by Fatiaki J on 8 August 2013. The value of the Estate was specified in the application to be under Vt 1,600,000 which suggests that Mathew Abock considered that the only asset of the estate was the property in which Beasant Morris was residing.
13. There appears to be a dispute as to whether the property occupied by Beasant Morris is part of the estate of Lily Abock or whether it was gifted by Lily Abock to Beasant Morris's father Joel at some earlier time. That is a dispute that will need to be determined in separate proceedings



if it is maintained by Beasant Morris. Indeed, if that property is not part of Lily Abock's estate, then it does not appear that there will be anything of substance to be considered for distribution.

14. Assuming that the property does form part of the estate of Lily Abock, it will need to be subject to distribution by the administrator Matthew Abock in strict accordance with the Queen's Regulations.
15. Of concern is the explanation given by Matthew Abock as to why he was applying for administration – *"I want one of Late Lily Abock's property to be transferred to my name (his son)."*
16. As this Court has said on a number of occasions, the grant of administration to a person does not give that person any personal right to the benefits of the property of the deceased which the person would not otherwise have under the law. We said this in the recent case of *In re Estate of Molivono*<sup>1</sup>

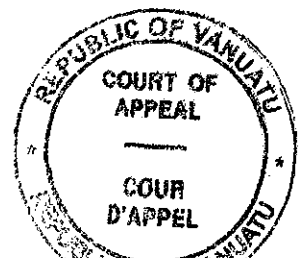
*"The second point to be made about this litigation is that the granting of probate or administration does nothing to determine ultimate ownership of the personal property of the person who has died. Not only in this case but in others as well we have seen suggestions that the grant of the right to administer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

That clear statement was endorsed by this court as recently as April 2013<sup>2</sup>:

<sup>1</sup> *In re Estate of Molivono* [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)

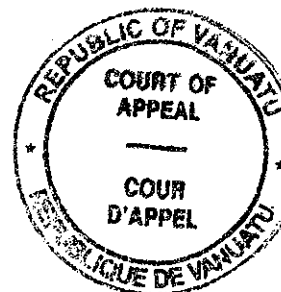
<sup>2</sup> *In re Estate of Raupepe Fidelia* [2013] VUCA 6; Civil Appeal 46-12 (26 April 2013)



17. In short, the grant of administration does not give Matthew Abock the right to deal with the property as if it was his own. That grant of administration places on him the clear responsibility of ensuring that the estate of the Lily Abock is distributed according to law.
18. That statement by Matthew Abock (para 15 above) also suggests that there may in fact be more than one property in the estate of Lily Abock. That again may be a matter requiring consideration in a separate proceeding. Certainly, Matthew Abock as administrator of the estate of Lily Abock is duty bound to ascertain what property falls within the estate.
19. As Lily Abock died intestate, his estate falls for distribution pursuant to the various priorities detailed in Regulations 5 and 6 of the Succession Probate and Administration Regulation 1972 (*the Queen's Regulations*). Of particular relevance to this estate are Reg.s 6 (1) (a) & (c). However, for completeness, and particularly as there appears to be a widespread misunderstanding of the role of an administrator of an estate, we set out both sections 5 and 6:

***Distribution of estate of intestate.***

5. *Notwithstanding anything to the contrary contained in any laws in force in New Hebrides at the date of commencement of this Regulation, the property of an intestate dying on or after the date of commencement of this Regulation shall be distributed in accordance with the provisions of this Regulation, and no person shall have any right, title, share, estate or interest in such property except as provided in this Regulation.*



**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:-

(a) if the intestate leaves a wife, or husband, with or without issue, the surviving wife or husband shall take the personal chattels absolutely, and –

(i) if the net value of the residuary estate of the intestate, other than the personal chattels, does not exceed ten thousand dollars the residuary estate absolutely; or

(ii) if the net value of the residuary estate exceeds ten thousand dollars, the sum of ten thousand dollars absolutely;

(b) if the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, take one-half of the residuary estate absolutely;

(c) if the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, take one-third only of the residuary estate absolutely, and the issue shall take per stirpes and not per capita the remaining two-thirds of the residuary estate absolutely;

(d) if the intestate leaves issue, but no wife or husband, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely;

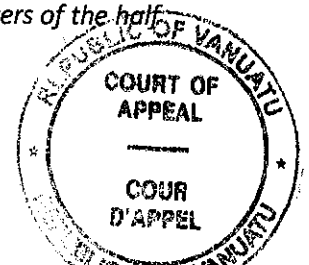
(e) if the intestate leaves no issue but both parents, then, subject to the interests of a surviving wife or husband, the father and mother of the intestate shall take the residuary estate of the intestate absolutely in equal shares;

(f) if the intestate leaves no issue, but one parent only then, subject to the interests of a surviving wife or husband, the surviving father or mother shall take the residuary estate of the intestate absolutely;

(g) if the intestate leaves no issue or parent, the surviving husband or wife shall take the residuary estate of the intestate absolutely;

(h) if the intestate leaves no husband or wife and no issue or parents, then the brothers and sisters of the whole blood, and the children of deceased brothers and sisters of the whole blood, of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;

(i) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or children of deceased brothers or sisters of the whole blood, then the brothers and sisters of the half blood and children of deceased brothers and sisters of the half



*blood shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;*

*(j) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood, or children of deceased brothers or sisters of the whole blood or of the half blood, then the grandparents of the intestate shall take the whole estate of the intestate absolutely, and if more than one survives the intestate they shall take absolutely in equal shares, but if there is no grandparent, then the uncles and aunts of the whole blood, and children of deceased uncles and aunts of the whole blood, of the intestate, being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate, shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;*

*(k) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood or children of deceased brothers or sisters of the whole blood or of the half blood and no grand parents or uncles or aunts of the whole blood or children of deceased uncles or aunts of the whole blood of the intestate being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate, then the uncles and aunts of the half blood and children of deceased uncles and aunts of the half blood of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;*

*(l) in default of any person taking an absolute interest under any of the foregoing provisions of this section the residuary estate of the intestate shall belong to the Crown as bona vacantia, and the Crown may, out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.*

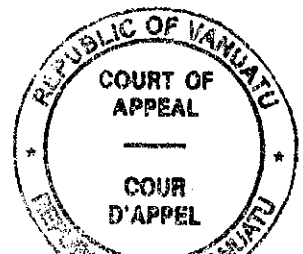
*(2) For the purposes of the last preceding subsection –*

*(a) the net value of the property of a deceased person is the net value of that property at the date of the death of that person;*

*(b) any income derived from the property of a deceased person shall be distributed among the persons entitled on distribution to that property in the same respective proportions to which they are entitled to share on the distribution of that property.*

*(3) In this section –*

*"child" –*



(a) in relation to an intestate, means any child, whether legitimate, illegitimate, or legally adopted, of the intestate;

(b) in relation to any person entitled under the provisions of this Regulation to share in the property of an intestate, means any child legitimate, illegitimate, or legally adopted of that person;

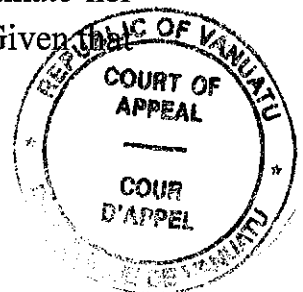
"issue" includes a child or any other issue whether legitimate or illegitimate, in any generation, of an intestate.

(4) For the purposes of this section, an illegitimate relationship between a father and his child shall not be recognised unless the court is satisfied that the father admitted paternity or that it has been established in affiliation proceedings.

20. A consideration of s. 6 points to the estate of Lily Abock falling for distribution as follows:-

- a) To his surviving wife Elizabeth Abock all the personal chattels;
- b) Also to his surviving wife Elizabeth Abock, the first "\$10,000" (in Australian dollars broadly equivalent to Vt 1 million) of the residuary estate. Assuming that the property occupied by Beasant Morris is the only significant asset of the estate, this would result in the Estate of Elizabeth Abock taking a majority share in that leasehold residential property which, of course, is the essential subject of the dispute between Beasant Morris and Matthew Abock;
- c) The remaining balance is then shared:
  - i. one third to his surviving wife Elizabeth Abock
  - ii. two thirds between his (Lily Abock's) surviving children *per stirpes* (that is, if one of the children pre-deceased Lily Abock leaving a child or children, then that child or those children would share their deceased parent's entitlement equally).

21. That Elizabeth Abock subsequently died (2005) does not eliminate her estate from taking her entitlement to the estate of Lily Abock. Given that





Elizabeth Abock also died intestate, it will now be necessary for someone to apply for a grant of administration of her estate. It is timely to mention that Reg. 7 of the Queens' Regulations clearly identifies who is to be considered for appointment:

**PART IV – GRANTS OF LETTERS OF ADMINISTRATION**

***Persons entitled to grant.***

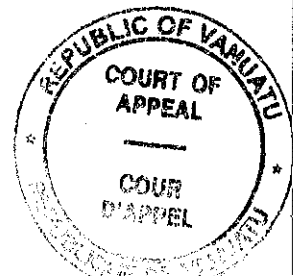
*7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than twenty-one years of age –*

*(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*

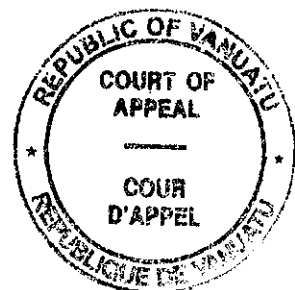
*(c) any other person, whether a creditor or not, if there is no person entitled to a grant under the preceding paragraphs of this section resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.*

22. It may be that an application by both Beasant Morris and Matthew Abock for a joint grant of administration in the estate of Elizabeth Abock would be appropriate here but that is a matter for the Supreme Court.
23. The estate of Elizabeth Abock would then fall for determination again pursuant to the priorities set out in Reg. 6.
24. We are unable to be more precise in respect of the distribution of the estate of Lily Abock or the estate of Elizabeth Abock. That would require information that is not before us. In particular, but not exhaustively:
  - a) We are informed that Joel (son of Elizabeth and Morris) died after Elizabeth leaving one child, Beasant Morris. Counsel informed us that Joel was survived by a wife. Accepting that to be so, that surviving wife would then be entitled to a share in her deceased



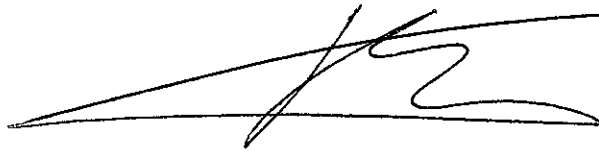
husband's (Joel's) estate which would include his entitlement to a share in his mother's estate.

- b) Much the same consideration must also apply to Matthew Abock's brother.
25. It can be seen accordingly that further work is required to analyse the family situation. The distribution of the estate of Elizabeth Abock is accordingly likely to be determinative of the majority of the estate of Lily Abock.
26. We remind Matthew Abock that he is by law required to distribute the estate of Lily Abock according to law and as described above. Matthew Abock is certainly not entitled to take ownership of the property and he has to understand that Beasant Morris's mother is likely to end up with a significant share in that property.
27. If there is an issue as to whether the leasehold property in fact formed part of the estate of Lily Abock then a separate claim by Beasant Morris would have to be brought for that issue to be resolved. Matthew Abock cannot avoid having to have this issue determined.
28. We say finally that the legal issues are interesting and not without their difficulties. In the end, it might well be to the distinct advantage of both Matthew Abock and Beasant Morris to reach agreement with all those entitled to share in the various deceaseds' estates about the interest to be taken in the property. In that respect, the parties will need to be guided by their respective legal advisers.
29. For all these reasons the appeal must be dismissed. However, we urge the parties to adopt a pragmatic approach to the resolution of these outstanding issues as the likely value of the estate would make it difficult to justify further litigation.



30. Although the appellant should have brought different proceedings for a declaration that the property was his, rather than part of the estate of Lily Abock, the respondent also wrongfully assumed that as the administrator of the estate of Lily Abock, he could deal with the property as if it were his own. There is fault on both sides and so there will be no order for costs on the appeal.

**FOR THE COURT**



**Chief Justice Vincent Lunabek**

