

BETWEEN : ERIC YAKEULA AKE

Claimant

**AND: DOMINIQUE YAKEULA
DANIELLE YAKEULA**

Defendants

Coram: Justice Aru

Counsel: Mr. D. Yawha for the Claimant
Mr. J. Ngwele for the Defendants

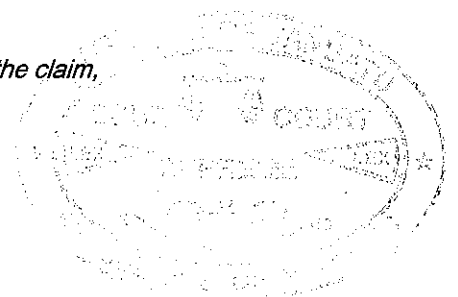
JUDGMENT

Introduction

1. The claimant Eric Yakeula Ake applies for summary judgement. Following the hearing of the Application, the parties, who are blood relatives requested that 14 days be allowed to them to make a final attempt to settle out of court. They were then allowed time as requested. On 31 August Mr Yahwa by letter advised that no settlement was reached and the parties agreed for judgment to be delivered.
2. The Application for summary judgment is made pursuant to Rule 9.6 of the Civil Procedure Rules. Subrule (7), (8) and (9) provide:-

"(7) If the court is satisfied that:

- (a) the defendant has no real prospect of defending the claimant's claim or part of the claim; and*
- (b) there is no need for a trial of the claim or that part of the claim,*



the court may:

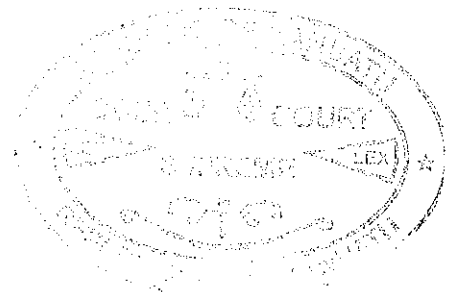
- (c) give judgment for the claimant for the claim or part of the claim; and*
 - (d) make any other orders the court thinks appropriate.*
- (8) If the court refuses to give summary judgment, it may order the defendant to give security for costs within the time stated in the order.*
- (9) The court must not give judgment against a defendant under this rule if it is satisfied that there is a dispute between the parties about a substantial question of fact, or a difficult question of law."*

Background

3. The parties are siblings of the late Larry Ake Yakeula (deceased). Following the passing of their father, Danielle Yakeula was granted letters of administration on 24 September 1997.
4. On 24 October 2014 the appointment of Danielle Yakeula as administrator was revoked in Probate Case No 3 of 2012 and the claimant was then granted letters of administration as the appointed administrator of the estate. When revoking the appointment of Danielle Yakeula, Saksak J stated at paragraph 19 of his judgment as follows:-

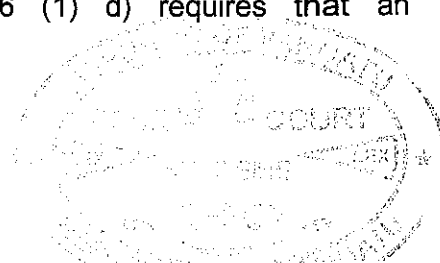
"19. I am satisfied from the evidence of the applicant by his sworn statement filed on 20th August 2014 that the respondent failed in her legal duties as administratrix of the deceased's estate by-

- a. Withdrawing all monies held in the deceased's bank account and distributing to each siblings instead of properly managing it by creating a family trust or opening an invest-bearing account,*
- b. not producing any records of the account to her other brothers and sisters,*
- c. not contributing to the maintenance of the family house and property,*
- d. not contributing to maintain the graves of the deceased members of the family,*
- and*
- e. not paying the outstanding property taxes."*



The Application

5. It appears that the main asset of the estate which is the subject of these proceedings is a 4 bedroom house located on lease title No 11/0G21/030 (the Property).
6. The claimant submits that the grounds for seeking summary judgment are that the defendants have no real prospects of defending the claim, secondly that the claimant as administrator is empowered to manage the estate for the benefit of the beneficiaries (who are the parties) and the administrator's powers to manage the estate cannot be overridden by wishes of the beneficiaries or the fact that one of the beneficiaries is occupying the Property.
7. The defendants in their defence admit and say that the claimant and the defendants are siblings and that on 24 October 2014 the claimant was awarded the power to administer the estate of the deceased, Lari Ake Yakeula.
8. The main issue arises as the defendant Dominique Yakeula who is also a beneficiary, occupies the Property but does not pay rent and refuses to vacate the Property so that the Property could be put on the market and rented out to meet the debts of the estate.
9. In 2015, the defendants' response to the claimant's notices for payment of rent communicated through the offices of the Public Solicitor as Counsel then were that his "*client also had shares in the Property and it is not right for my clients to pay rent against their shares*". That position is still maintained by the defendants in their defence to the claim filed on 2 November 2015. In their submissions in opposing the Application for summary judgment, the defendants say that as beneficiaries they must be consulted by the administrator before any eviction process or on any new tenants. Furthermore they submit that the claimant intends to evict them and sell the Property for his own benefit.
10. Both parents of the parties are now deceased. Under the Succession Probate and Administration Regulation 1972, section 6 (1) d) requires that an



administrator after settling any debts and funeral expenses must distribute the residue of the estate to the children as beneficiaries per stirpes where the deceased leaves issue but no wife or husband. The argument that the Claimant will sell the property for his own benefit has no basis. An administrator does not own any property of the estate.

11. In re Estate of Molivono [2007] VUCA 22 the Court of Appeal stated that:-

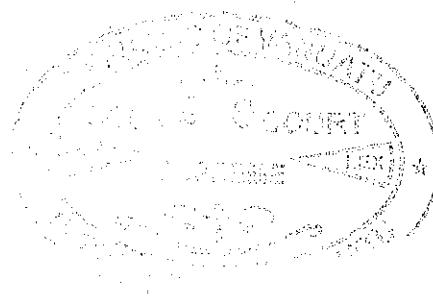
"the granting of probate or administration does nothing to determine ultimate ownership of the personal property of the person who has died. Not only in this case but in others as well we have seen suggestions that the grant of the right to administer an estate meant there was a determination of what 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."

12. The position was reemphasised in re Estate of Melteklesi [2014] VUCA 20 that:-

"15. The Supreme Court has available to it a wide range of powers which may address such concerns, whether on application by a person interested in the estate or of its own motion.

16 Under rule 4.2 of the Probate and Administration Rules, the Court may at any time order a personal representative to file accounts. This ties in with a solemn promise made by an applicant for administration when applying. Form 4, the sworn statement in support of an application for administration which is required by rule 2.3(1) (d), contains paragraph 9: "If the Court grants administration to me I will administer the estate according to law and I will give a true account of my administration to the court if it asks me to."



17. In addition, the Court may, under regulation 24 of the Queen's Regulation, at any time on the application of any person interested in the estate, or of its own motion on the report of the Registrar, revoke the administration already granted".

13. The defendants although are also beneficiaries, they will be entitled to their share when the residue of the estate is finally distributed. Until then they cannot prevent the claimant as administrator from performing his functions even if applying to evict the defendants from the Property to ensure that it earns income to offset any debts of the estate. If the defendants are unhappy with the way the estate is managed the available avenue is to apply to this Court.

14. I am satisfied that the defendants have no real prospects of defending the claim and therefore there is no need for a trial. The Application for summary judgment is granted and I make the following orders:-

ORDERS

1. An eviction order is issued for the defendants to vacate the Property within 28 days;
2. Damages to be assessed;
3. A further conference is listed for 11.00 am on 24 February 2017;
4. No order as to costs.

DATED at Port Vila this 22 day of December, 2016.

BY THE COURT

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D. ARU
Judge

