

BETWEEN: Molengleng Oscar Tabaiaga
Appellant

AND: Molengleng Rolline
Respondent

Date of HEARING: 17th June 2020
Date of Judgment: 16th July 2020
Before: Justice Oliver. A. Saksak
In Attendance: Mr Eric Molbaleh for the appellant
Mr Steven Garae Junior for the respondent

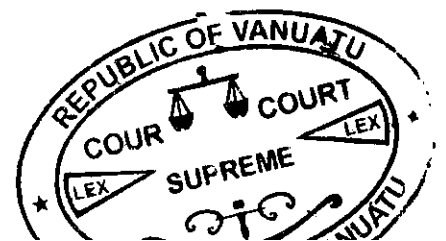
JUDGMENT

Introduction

1. This is an appeal against the grant of Letters of Administration in the estate of the late Michel Tabi Molengleng by the Deputy Master on 20th February 2020 to the surviving wife of the deceased, Mrs Rolline Molengleng.
2. The appeal was advanced on two main grounds and on alternate grounds:-
 - (a) That the Deputy Master had not taken into account the opposition or objection of the appellant,
 - (b) That the Deputy Master had not taken into account the appellant's oral argument and submissions made to her on 20th February 2020, and
 - (c) As an alternative, that the respondent include the brothers of the deceased namely Oscar Tabiaga, Prosper Tabisap and Cyprien Tabiusu as beneficiaries of the estate of the deceased, for a recognition by this Court that he said brothers are beneficiaries of the said estate.

Facts

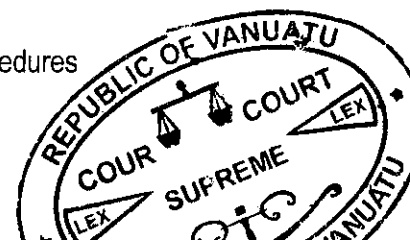
3. The appellant is one of the three brothers of the deceased, Michel Tabi Molengleng. The other 2 brothers are Prosper Molengleng and Cyprien Tabiusu Molengleng.



4. The respondent is the surviving spouse (wife) of the deceased. They got married on 16th December 2000. They had a child by the name of Ricardo Molengleng. Mrs Molengleng had another son out of wedlock called Roger Bule who is also under her care. And they adopted a girl by name of Marina Molengleng. They had lived together for 19 years.
5. The late Michel Tabi Molengleng passed away on 25th August 2019.
6. The estate of the late Michel Tabi Molengleng comprised of 3 Leasehold Titles No. 04/2124/001, No. 03/0592/045 and No. 03/0592/044, 3 Bank Accounts maintained by the Bred Bank, National Bank of Vanuatu and Bank of the South Pacific, and a Toyota Land Cruiser Reg No. 6314.
7. The late Michel Tabi Molengleng operated the Bamwell Stoare as well. This was not included in the inventory.
8. Mrs Molengleng advertised her application on three occasions on 8th, 9th, and 10th October 2019 at 11:30am and 4:30pm on each of those days. The advertisements were made both in English and Bislama languages. Her application was filed on 9th October 2019 together with her sworn statement in support.
9. The advertisement required that anyone who was opposed to Mrs Molengleng's application and for the grant of letters of administration to her **"must file a response in the Supreme Court before 1st November 2019."**
10. Mr Molbaleh filed an opposition to the application on 20th February 2020. Mr Molbaleh filed a sworn statement by Oscar Tabiaga on 18th October 2019 and on 28th February 2020, from Gratien Bulememe on 29th April 2020, and from Prosper Molengleng on 29th April 2020.
11. The Deputy Master considered the application on 20th February 2020 and granted Letters of Administration to Mrs Molengleng on the same date.

The Law

12. I refer to the following relevant provisions in the Rules or Regulations-
 - (a) The Probate and Administration Rules order 28 of 2003:
 - (i) Rule 2.5 providing for the requirement of advertisement and its procedures



- (ii) Rule 2.6 providing for procedure when no response is filed within 28 days after the advertisement was last broadcast.
- (iii) Rule 2.7 providing for the Court's discretion to grant administration if application is not opposed.
- (iv) Rule 3.1 providing for a response as follows:

"3.1 (1) A person who opposes the grant of probate or administration to the applicant must file a response within 28 days after the advertisement required by Rule 2.5 was last broadcast or published.

(2) A response must:

- (a) state that the person opposes the grant of probate or administration to the applicant; and*
- (b) state the person to whom probate or administration should be granted; and*
- (c) set out the address that is the person's address for service of documents; and*
- (d) be in Form 12."*

- (b) The succession, Probation and Administration Regulation No.7 of 1972 , section 6 provides 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:-

(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)

(c) if the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, taken 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)

(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;

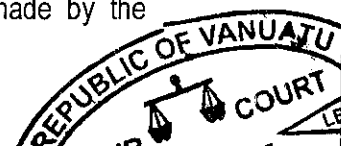
(f)

(g)

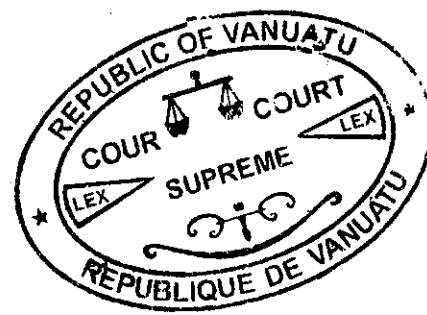
(h) if the intestate leaves no husband or wife and no issue or parents, then the brothers and sisters of the whole blood, and the children of deceased brothers and sisters of the whole blood, of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking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

Discussion

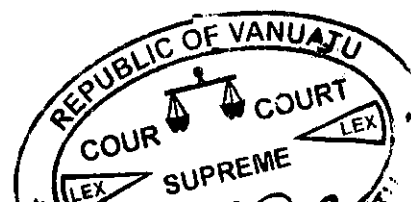
- 13. There is no challenge by the appellant to the advertisement caused to be made by the respondent and the process followed as required by Rule 2.5 of the Rules.



14. There appears to be three brothers of the deceased who are seeking recognition as beneficiaries of the estate. However only one of them is named as the appellant.
15. There is no challenge to the grant of administration to the respondent. The only challenge the appellant has is the failure or omission by the Deputy Master in -
- (a) Not taking into account the appellant's objection or opposition filed on 20th February 2020,
 - (b) Not taking into account the appellant's oral and written submissions made on 20th February 2020, and
 - (c) Not recognising the appellant and his 2 other brothers as beneficiaries of the estate.
16. Those are the issues. I deal first with the opposition of the appellant filed on 20th February 2020. This document is entitled "**OPPOSITION TO THE APPLICATION FOR ADMINISTRATION OF THE ESTATE OF LATE MOLENGLENG MICHEL TABI TO BE GRANTED TO MRS MOLENGLENG ROLLINE.**"
17. The document has 7 paragraphs instead of just 4 paragraphs. It is not in the appropriate Form 12 as required by Rule 3.1 (2). And it is not a Response. This is the first fundamental flaw of this appeal.
18. Secondly the opposition was filed only on 20th February 2020 well outside the 28 days required by Rule 3.1 (1). The advertisement was last broadcast on 10th October 2019. According to Rule 3.1 (1) a Response should have been filed on 6th November 2019. The opposition was filed only at 3:00pm on 20th February 2020, almost some 4 months later. This was the second fundamental flaw and failure of the appellant.
19. The respondent filed confirmation of advertisement on 29th October 2019. The application by Mrs Molengleng was determined by the Deputy Master without a hearing at 9:00am on 20th February 2020. This is obvious from the opening statement of the order dated 20th February 2020. It means there was no hearing. Therefore the submission by Mr Molbaleh that oral arguments and submissions were received on 20th February 2020 is not correct.



20. Further, the opposition by Mr Oscar Molengleng was filed at 3:00pm on 20th February 2020. This was some 6 hours after the grant of administration was made at 9:00am. In essence and technically, no response had been filed as required by Rule 3.1 (1) of the Rules. That being the case the application was not opposed or challenged and the Deputy Master was entitled to exercise her discretion to grant administration. She would not have had the opposition at 9:00am as they were filed only at 3:00pm.
21. The submission that the Deputy Master did not take into account the opposition by the appellant is correct, but the reason for that is that the opposition was not available to her at 9:00am on 20th February 2020. Therefore the argument and submission is untenable. The appellant is responsible for failing to file the opposition within 28 days as required by Rule 3.1 (1) of the Rules. This ground therefore cannot be sustained.
22. The second issue of whether or not the Deputy Master failed to take into account the oral and written submissions of the appellant also fails for the simple reason that Mr Molbaleh was not personally present at the hearing as there was no hearing. Further, there were no written submissions before the Deputy Master at the time. If there were, they are not included in the Appeal papers before the Court.
23. The only documents the Deputy Master had before her was the application and its supporting sworn statements and the statements of Oscar Tabiaga filed on 18th October 2019. This statement was made in support of the response and objection to the application for administration by Mrs Molengleng. However there is no evidence of any such response and when it was filed. Without such a response filed in accordance with Rule 3.1 (1) of the Rules the Deputy Master was not obliged to take this statement into account and consideration. Therefore this ground of appeal too fails.
24. The final issue is whether the Deputy Master or this Court should recognise and include the appellant and his two other brothers as beneficiaries of the estate of the late Michel Tabi Molengleng?
25. The appellant and his brothers do not dispute that Mrs Rolline Molengleng is their deceased brother's wife. She has a son from her marriage with him and another son out of wedlock who is in her care. By law this son is her child by definition of "child" and "issue" under section 6 (2) of the Succession Probate and Administration of Estates Regulation 1972.



26. Therefore as long as the late Michel Molengleng leaves a surviving spouse and issue, they are the only beneficiaries of his estate by virtue of section 6 (1) (a) and (c) of the Regulation.
27. The appellant and his brothers would only be recognised if the deceased was not survived by his wife and children and therefore their entitlement would arise under section 6 (1)(h).
28. Sadly as the law stands, the appellant and his 2 brothers cannot be recognised and included as beneficiaries of the estate of the Late Michel Tabi Molengleng.
29. The appellant and his brothers best position is perhaps they are creditors, but that does not entitle them to be recognised as beneficiaries. If they think the deceased owes them any money, Rule 2.5 (e) requires them to contact Mrs Molengleng and/or her lawyer. They should take proper legal advice as to their next best course of action against the estate. But that should be an entirely separate matter.

The Result

30. As far as the appeal goes, all grounds raised fail. Accordingly the appeal is dismissed.
31. There will be no order as to costs.

DATED at Port Vila this 16th day of July 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

