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IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 3296 OF 2021

**IN THE MATTER of the
Application for Letters of
Administration in the Estate of
the late SONGI EPHRAIM
DAVID**

**AND IN THE MATTER of
Section 2.3 and 2.5 of the
Probate and Administration
Rules 2003 and Section 6 and 7
of the Queen's Regulation No. 7
of 1972**

BETWEEN

JACQUELINE SONGI

Applicant

AND

LUCY LEILANG SONGI

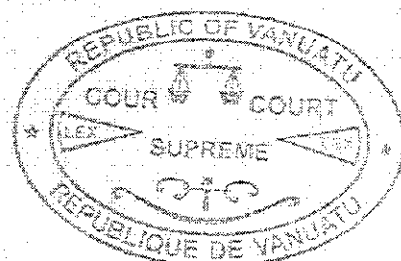
Respondent

Date of Hearing: 06th September, 2022
Delivered: 21st October, 2022
Before: Deputy Master Aurelie Tamseul
Appearances: Julieth Kulkare counsel for the Applicant
Edwin Macreveth counsel for the Respondent
Present: Lucy Leilang Songi (Respondent)

RESERVED DECISION

Headnote

Letters of Administration- Persons entitled to grant –Duties of an Administrator



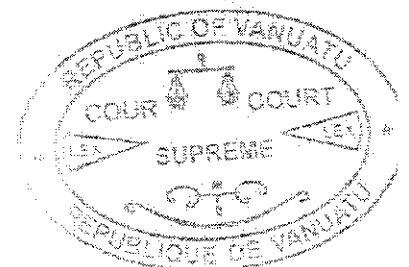
A. Introduction

1. The Respondent filed on the 14th October, 2021 a Response objecting to the grant being made to the Applicant.
2. The Respondent filed an additional Application on the 14th October, 2021 to strike out the Application for Letters of Administration.
3. Both parties filed written submissions addressing the Application to strike out, thus the said Application will be dealt with on the papers only.
4. This judgment will discuss the three issues raised in my Order dated 30 November, 2021, following the filing of the Response, to wit:
 - (i) What is the purpose of Applying for Letters of Administration?
 - (ii) What are the duties of an Administrator?
 - (iii) Who are the parties to the deceased?

B. Respondent's Case

5. The Respondent's counsel submitted that the purpose of Applying for Letters of Administration is to ask the Court to appoint a person to administer the estate of the deceased.
6. Counsel submitted that the persons entitled to grant are outlined in Section 7 of the Queens Regulation No. 07 of 1972.
7. Counsel submitted that the duties of an administrator are outlined in Section 6 (1) of the Queens Regulation No. 07 of 1972 which is further explained in the Court of Appeal case of *In Re. Molivono*¹.
8. Counsel referred to additional case laws but upon enquiry, he indicated that the other cases may not be so relevant to the issues in this matter.
9. Counsel submitted that his client is the deceased wife and that the Applicant is the deceased daughter.
10. Counsel therefore submitted that the Letters of Administration should be granted to his client.

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



C. Applicant's reply

11. Counsel for the Applicant having basically agreed with the answers provided by the Respondent's counsel in relation to the Law.
12. However, counsel submitted that the Respondent should not be entitled to a grant on the basis that her short length of marriage period with the deceased being five (5) months, being too insufficient to give her standing to apply.
13. Counsel further added that the property of the deceased should not be considered as matrimonial property as they had been acquired by the deceased prior to his marriage to the Respondent.

D. Respondent's rebuttal

14. The Respondent provided no rebuttal.

E. Discussion

(i) What is the purpose of Applying for Letters of Administration?

15. The purpose of Applying for Letters of Administration is to ask the Court to appoint a person entitled to grant, to distribute or administer the estate of the deceased.
16. The persons entitled to grant under the law are also provided for in Section 7 of the Queens Regulation No. 7 of 1972.

"PART IV – GRANTS OF LETTERS OF ADMINISTRATION

Persons entitled to grant.

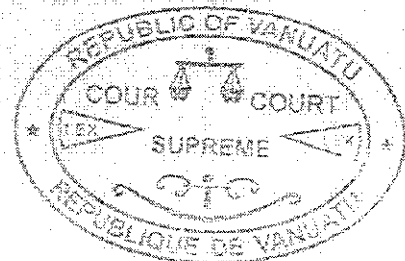
7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than twenty-one years of age –

(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."⁴²

⁴²Succession, Probate and Administration Regulation 1972, URL: www.pactii.org.vu



17. Counsel therefore agreed that under the law both parties are entitled to grant but that the Respondent being the deceased wife is the first person under the law to apply followed by the Applicant being the deceased daughter.
18. Ms. Kaukare submitted that her client objected to the grant being made to the Respondent on the basis that the short length of her marriage to the deceased is insufficient to allow her to have an entitlement to the estate.
19. Counsel referred to the Matrimonial Causes Act but had been unable to point the Court to section of the law which supported her argument.
20. I informed counsel that the allegations relating to the contribution of the Respondent to the properties of the deceased may remain an issue which the Applicant may want to take up with the relevant Court.
21. In dealing with an Application for Letters of Administration, the parties are reminded to consider the legal standing and capacity of a person applying to administer the estate of the deceased. All arguments going beyond this extend may fall outside of the proceeding.
22. The division of property falls under the duties of the Administrator and to ask this Court to determine that issue will be to pre-empt the course of administration. The law provides for that process.

(ii) **What are the duties of an Administrator under the law?**

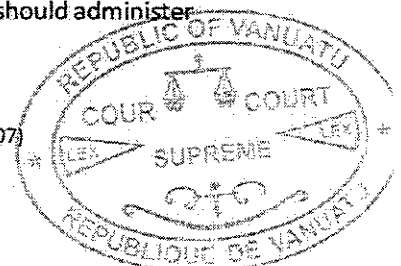
"Succession to property on intestacy.

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: ...³

23. The above section of the legislation has been extensively explained in the Court of Appeal case of *In re Estate of Molivono*⁴. Thus, no further explanation is required.
24. Mr. Macreveth submitted that the professional background of his client, being a Bank Officer, puts her in a better position compare to the Applicant to administer the estate of the deceased.
25. Counsel further added that his client being the wife of the deceased should administer the estate of the deceased.

³ Succession, Probate and Administration Regulation 1972, URL: www.pactj.org.vu

⁴ In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



26. In addition, counsel submitted that the Applicant is currently out of the country and her absence will only delay the administration further which will devalue the estate. Counsel submits that interests are deducted daily on monies held with the banks when the accounts are left without operation for too long.
27. Counsel added that his client accepts that the Applicant is a beneficiary to the estate and that she will exercise her legal responsibilities to ensure that all beneficiaries their shares in the estate.
28. Counsel and his client also added that the deceased adopted in custom a male child namely **Brenden Songi** and the he is also considered as a beneficiary to the estate of the deceased.
29. The parties signed a consent agreeing to the adoption in custom of the named **Brenden Songi**. Therefore, where both parties agree and there being no issues as to the legitimacy of a custom adoption of the child, **Brenden Songi** will be listed as a beneficiary of the estate.

(iii) **Who are the parties to the deceased**

30. The Applicant is the daughter of the deceased.
31. The Respondent is the wife of the deceased.
32. Section 7 of the Queen Regulation No. 07 of 1972 puts the Respondent before the Applicant by rank of priority of persons entitled to apply.

(iv) **Additional issue of Joint Administration**

33. Counsel for the Applicant stated that her client has no objection to the Administration being granted jointly.
34. The Respondent objects to joint administration on the basis that the Applicant will render administration difficult as she stated in "**Paragraph 1 page 2 of the Affidavit JS3, filed on the 6th October, 2021**" that she is not ready to have any discussion with the Respondent in relation to the administration of the estate of the deceased.
35. Counsel for the Respondent submitted that a joint administration where one does not cooperate will result in the process being prolonged and will result in diminishing the value of the estate which will eventually affect the beneficiaries shares in the estate.
36. I will now deal with the Application to strike out the Application for Letters of Administration. The said Application was unnecessarily filed as there was a Response filed. The Response follows the Application and striking it out means that the Respondent will have to file new Application for Letters of Administration. Therefore, to make efficient use of the Court's time, the said Application must be dismissed.

F. Finding

37. The Application to strike out Application for Letters of Administration is dismissed.
38. That the Law puts the Respondent in a priority position over the Applicant and given the estranged relationship between the parties a joint administration would not be beneficial to the parties.
39. That Letters of Administration is granted to the Respondent.
40. That the beneficiaries to the estate of the deceased are:
- i. The wife of the deceased Lucy Leifang Songi
 - ii. His daughter and son respectively:
 - (i) Jacqueline Songi
 - (ii) Brenden Songi
41. The Administrator in carrying out her duties must be guided by *Section 6 of the Queen's regulation No.07 of 1972* to ensure the shares of the estate are distributed properly to the beneficiaries.
42. That the Applicant, being a beneficiary, has the right to call the administrator into account should there be a mismanagement of the estate of the deceased.
43. That parties to pay their own costs.

BY THE COURT

DEPUTY MASTER

