

CF

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 2976 OF 2022

IN THE MATTER of Application
for Letters of Administration in
the Estate of the late **MUNRO
ANDREW ROSS**

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

BERNICE EILEEN MUNRO
Applicant

AND

MATTHEW ROSS
Respondent

BEFORE: AURELIE TAMSEUL
(Deputy Master)

DATED: 16th day of December, 2022

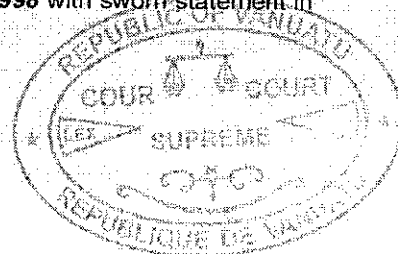
ENTERED: 16th day of December, 2022

APPEARANCES: No appearances, matter dealt with on the papers only

MINUTE AND ORDER

a. Introduction

1. The Applicant filed on the 24th October, 2022 an Application for Probate the "**Last Will and Testament**" of the deceased dated 27th March, 1998 with sworn statement in support.



2. The Respondent filed on the 10th November, 2022 a Response opposing the grant to be made to the Applicant with sworn statement in support.
3. Pursuant to R 1.2 (e) the Court decided in its Order dated 16th November, 2022, the to combine this case with **PRBT 2843 OF 2022** on the basis that they are related to the estate of the same deceased person.
4. In a letter dated 25th November, 2022 addressed to the Court, counsel for the Applicant questioned the Deputy Master's Jurisdiction to hear a combine case based on his interpretation of the **Probate and Administration Rule 3.2(1) (2) and Section 42(3)(iii)**.
5. The Respondent filed on the 28th November, 2022 a sworn statement challenging the content of the said letter.
6. The Court requested counsel to address the said issues raised and following which counsel filed on the 14th December, 2022 a submission addressing the question of Jurisdiction.
7. The Applicant filed on the 30th November, 2022 an urgent Application for grant of Probate-Advertisement-Estate Actions- Response Filed-Strike out.
8. The Respondent filed on the 30th November, 2022 an urgent Application to set aside Bernice Eillen Munro's urgent Application for grant of probate, sworn statement in support, strike out Application and Summary Judgment with sworn statement in support.
9. The Respondent filed on the 12th December, 2022 an additional Application for Summary Judgment.

b. Discussion

(i) The Law

10. The Wills Act [Cap 55] is the law governing the Wills in Vanuatu.
11. The Respondent stated that he is not aware of the presence of the deceased "**Last Will and Testament**" presented by the Applicant and that therefore the latest exchange of message on viber between himself and the deceased should be considered by the Court as an alteration, if not to say a revocation, of the Will.
12. The Respondent has, at no point in time, questioned the legality of the said document.

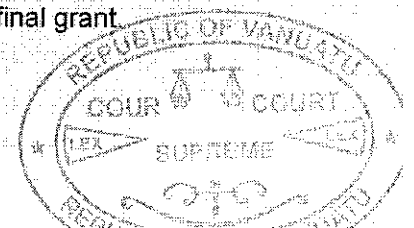


(ii) **The Deputy Master Jurisdiction to hear a contested Application for probate**

13. Counsel for the Applicant submits that based on his interpretation of the rules in conjunction with the law, I may not have the jurisdiction to hear contested Application for probate.
14. I will have to disagree with counsel's interpretation on the basis that a Response filed, following an Application for Probate, forms part of the said Application.
15. The "***Probate and Administration Rule 3.2 (1) (2)***" mentions the "***procedure to be used***".
16. One needs to carefully read the Rules of Probate and Administration to understand that what is lacking in the said Rule is provided for in the ***Civil Procedure Rules***.
17. In considering Rule 3.2 (1) of the Probate and Administration Rules 2003 published a year after the Civil Procedure Rules No. 49 of 2022, one will appreciate that it was not necessary to repeat the procedure to follow in a contested Application for probate. The Procedure has already been established in the Civil Procedure Rules.
18. To simplify, the words of the Rules 3.2(2) read "...in Particular, the Civil Procedure Rules apply **as if**..."
19. Therefore, when a Response is filed, the Application will be considered **as if** it were a claim and the Applicant is a plaintiff and the Respondent a Defendant so that the parties may be guided by the procedure set out in ***Part 4 of the Civil Procedure Rules No.49 OF 2022***.
20. Counsel should not be misguided in his interpretation of the word "**Procedure**" to mean **Jurisdiction** established by the legislation.

(iii) **Urgent Application to grant Probate**

21. The filing of the said Application was not necessary.
22. The Court regularly checks the progress of the Application to ensure that the regulatory requirements are complied with prior to preparing a final grant



(iv) Application for summary judgment

23. The Respondent's basis of a text message on viber could not outweigh the legality of a Will.

24. The Respondent's opposition to the grant being made has no legal standing and no merit.

c. Decision

25. The "Last Will and Testament" of the deceased dated **27th March, 1998** has not been revoked by the viber message.

26. The Master/Deputy Master has jurisdiction to hear an Application for probate in its entirety.

27. The urgent Application for grant of probate was not necessary for the reasons outlined above.

28. That the Application for Probate is granted to the Applicant.

29. The Application for summary Judgment is dismissed for lack of merit.

30. That each party bear their own costs.

BY THE COURT

DEPUTY MASTER

