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**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Probate Case**  
**No's 21/92 and 21/200 SC/PRBT**

**IN THE ESTATE OF JEAN PAUL SAVOIE**  
Deceased

CC 21/92

**AND: Felicienne Savoie**  
Applicant

CC 21/200

**BETWEEN: Felicienne Savoie**  
Applicant

**AND: Odile Savoie**  
Applicant

**AND: Gilbert Johnny, Nagko Johnny &  
Bong Johnny**  
First Interested Parties

**AND: Denis Savoie**  
Second Interested Party

*Date of Hearing:* 17 November 2021  
*Before:* Justice V.M. Trief  
*Counsel:* Applicant F. Savoie – Ms S. Mahuk  
Applicant O. Savoie – Mrs J. Tari Aru, holding papers for Mrs P. Malites  
First Interested Parties – Mr J.W. Taiva, holding papers for Mr E. Molbaleh  
Second Interested Party – in person  
*Date of Decision:* 31 March 2022

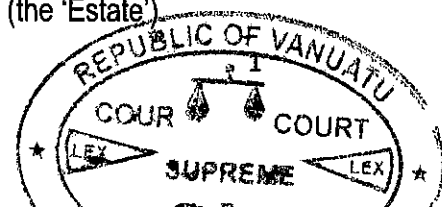
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**JUDGMENT**

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**A. Introduction**

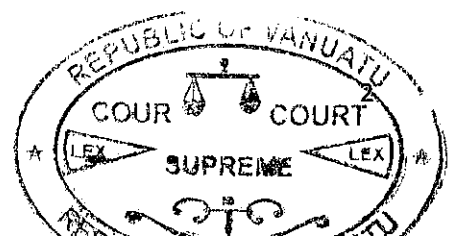
1. The Applicants Odile Savoie and Felicienne Savoie applied to be appointed administrator of the estate of Jean Paul Savoie (the 'deceased') (the 'Estate')



2. The Deputy Master transferred the proceedings to this Court to decide two issues.
3. The first issue has been resolved by the First Interested Parties' Memorandum by counsel Mr Molbaleh filed on 4 September 2021. That is, the First Interested Parties no longer seek to be appointed administrator of the Estate but the debt owed to them will need to be addressed by the administrator once appointed.
4. This decision determines the second issue – whether or not the children named as heirs of the Estate were legally adopted.

**B. Background**

5. The deceased married Odile Savoie (nee Galibert). They separated over 10 years before he died. They never divorced.
6. Odile Savoie's only biological child is Clovis Savoie. Clovis' biological father is John Stephens.
7. The deceased and Odile Savoie also looked another 4 boys:
  - a. Emile Savoie, biological child of Andre Savoie and Ellen Enock;
  - b. Jean Pascal Jerome Savoie, biological child of Andre Savoie and Marie Melta Marcel;
  - c. Jean Dennis Savoie, biological child of Andre Savoie and Rebecca Godden; and
  - d. Armand Guy Bryce Savoie, biological child of Armand Galinie and Elizabeth Galibert.
8. The Applicant Felicie Mapso Savoie, biological child of Andre Savoie and Shelly Georges, is said to be another child that the deceased regarded as his child.
9. After separating from Odile Savoie, the deceased entered a *de facto* relationship with Sylvie Ala. They were together until he died.
10. The deceased and Sylvie Ala looked after Felicie Alice Mapso Savoie, Sylvie's biological daughter.
11. It is common ground that there is no adoption order by the Court for any of the above-named.
12. Only Clovis' (child of Odile Savoie) and Felicie Alice Mapso's (child of Sylvie Ala) birth certificates recorded the deceased as the father. However, Ms Ala evidenced in her sworn statement filed on 9 June 2021 that although the birth certificates named the deceased as the father, neither child was the biological child of the deceased and hence bloodline of family Savoie. There is no evidence to the contrary. It is also common ground that the deceased was unable to have children.
13. The issue between the parties therefore is whether any of the above-named were legally adopted children of the deceased.



C. The Law

14. "Son" and "daughter" were defined in subsection 5(1) of the *Inheritance (Family Provision) Act 1938* (United Kingdom ('UK')) provides as follows:

5. (1) *In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say: -*

...

"son" and "daughter", respectively, include a male or female child adopted by the testator by virtue of an order made under the provisions of the Adoption of Children Act, 1926, and also a son or daughter of the testator en ventre sa mere at the date of the death of the testator.

(2) *References in this Act to any enactment or provision of any enactment shall, unless the context otherwise requires, be construed as references to that enactment or provision as amended by any subsequent enactment including this Act.*

*(my emphasis)*

15. The expressions "son" and "daughter" in the *Inheritance (Family Provision) Act 1938* (UK) were amended in clause 5(1) of the Fourth Schedule of the *Intestates' Estates Act 1952* (UK) as follows:

5. (1) *In this Act, unless the context otherwise requires, the following expression shall have the meanings hereby respectively assigned to them, that is to say -*

...

"son" and "daughter", respectively, include a male or female child adopted by the deceased by virtue of an order made under the provisions of the Adoption of Children Act, 1926, and also the son or daughter of the deceased en ventre sa mere at the date of the death of the deceased.

(2) *References in this Act to any enactment or any provision of any enactment shall, unless the context otherwise requires be construed as references to that enactment or provision as amended by any subsequent enactment including this Act.*

*(my emphasis)*

16. The expressions "son" and "daughter" in the *Inheritance (Family Provision) Act 1938* (UK) were further amended in subsection 8(1) of the *Family Provision Act 1966* (UK) as follows:

8. (1) *In the Inheritance (Family Provision) Act 1938, as amended by Schedule 3 to the Intestates' Estates Act 1952, the definition in section 5(1) of the expressions "son" and "daughter" shall be amended by substituting for the words "by virtue of an order made under the provisions of the Adoption of Children Act 1926" (which have effect by virtue of later enactments and in particular the Adoption Act 1964 so that children adopted anywhere in the United Kingdom, the Isle of Man and the Channel Islands are included) the words "in pursuance of adoption proceedings taken in any part of the United Kingdom, the Isle of Man and the Channel Islands".*

*(my emphasis)*

17. Regulation 6 of the Queen's Regulation sets out the obligations of an administrator on intestacy to hold the property as to which a person dies intestate to pay the debts,



funeral and testamentary expenses of the deceased and to distribute the residue in the manner prescribed. "Child" was defined in sub-regulation 6(3) for the purposes of regulation 6 as follows:

6. ...

(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;*

*(my emphasis)*

14. The *Adoption Act 1958* (UK) provides for adoption by order of the Supreme Court. It does not provide for adoption by any other means including by custom.

15. Sections 11 and 12 of the *Civil Registration and Identity Management Act No. 28 of 2021* provide as follows:

11. *Each of the following:*

(a) *a birth that occurs in Vanuatu; and*

(b) *a death or foetal death that occurs in Vanuatu; and*

(c) *a civil, religious or custom marriage celebrated in accordance with the Marriage Act [CAP. 60]; and*

(d) *an adoption made pursuant to an order of the Supreme Court of Vanuatu; and*

(e) *a change to a person's name that is registered in the Central Register; and*

(f) *any other vital event,*

*must be notified to the Registrar-General, in the approved form.*

12. *If a vital event is notified under section 11, the vital event must be registered in the Central Register, by entering in the relevant civil register, the required date relating to the vital event as determined by the Registrar-General.*

*(my emphasis)*

16. "Central Register", "Registrar-General" and "vital event" are defined as follows in section 2 of the *Civil Registration and Identity Management Act No. 28 of 2021*:

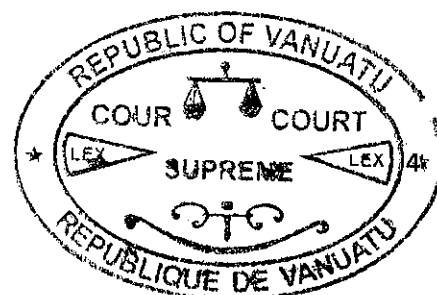
**Central Register** means the Central Register established under section 6;

...

**Registrar-General** means the person who is the Director of the Department, and includes any officer of the Department or other person acting as a delegate of the Registrar-General;

**vital event** means:

(a) a birth; or

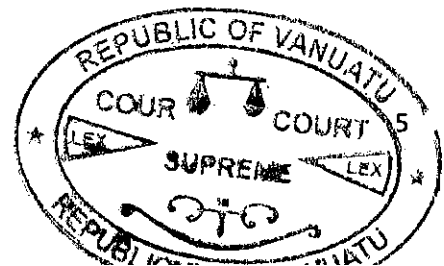


- (b) a death; or
- (c) a marriage; or
- (d) a divorce; or
- (e) an adoption; or
- (f) a legitimization; or
- (g) a recognition of parenthood; or
- (h) an annulment of marriage; or
- (i) a legal separation; or
- (j) a change of name of a person; or
- (k) a foetal death.

...

#### D. Discussion

17. The administrator of the estate of a person who died intestate is obliged to administer the estate in the manner prescribed in regulation 6 of the Queen's Regulation.
18. By sub-regulation 6(3), "child" is defined for the purpose of regulation 6 as "any child, whether legitimate, illegitimate, or legally adopted, of the intestate".
19. None of the above-named children were the biological child of the deceased therefore no question arises as to whether they were illegitimate or illegitimate children of the deceased.
20. Clovis' and Felicienne Alice Mapso's birth certificates recorded the deceased as their father. However, that is not determinative as there is no law that a birth registration certificate is proof of an adoption. On the contrary, an adoption must be notified to the Registrar-General of the department responsible for civil registration where it is an adoption made pursuant to an order of the Supreme Court: para. (d) of the *Civil Registration and Identity Management Act* No. 28 of 2021.
21. The question then is were any of the above-named legally adopted children of the deceased?
22. In the absence of legislation passed by Parliament, the *Adoption Act* 1958 (UK) applies in Vanuatu. That Act provides for adoption by order of the Supreme Court.
23. Earlier UK legislation applying in Vanuatu including the *Inheritance (Family Provision) Act* 1938 (UK), the *Intestates' Estates Act* 1952 (UK) and the *Family Provision Act* 1966 (UK) defined the expressions "son" and "daughter" to include a male or female child adopted by the deceased by virtue of an order made pursuant to the UK's adoption legislation.
24. That legislative history shows that the UK legislature consistently referenced adoption by a deceased to an adoption order made in accordance with UK adoption legislation.



25. There is no order by the Supreme Court for the adoption of any of the above-named.
26. The Court of Appeal recognized in *In re Estate of Molivono* [2007] VUCA 22 at p. 5 that issues of adoption can arise in two ways within the Republic: via the *Adoption Act 1958 (UK)* or in custom. As to the latter, it stated:

*Equally custom has long recognized the potential for adoption. A mere assertion that it has occurred is insufficient. There must be clear evidence that what occurred was in accordance with the custom of that place and its tradition and approaches. What may be a recognizable form of adoption on one island or in one village may be quite unacceptable and not worthy of recognition in another.*

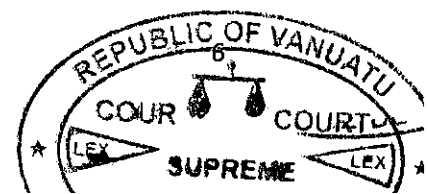
*If in any legal proceeding there is to be an assertion that there has been an adoption according to custom, the Court or tribunal will require clear and unequivocal evidence from those who hold leadership positions in that area of custom as to what is required and what in fact occurred and that the appropriate recognition exists.*

*(my emphasis)*

27. It is common ground that no evidence has been filed of adoption according to custom for any of the above-named. The evidence of Ellen Enock and Marie Melta Marcel does not prove any adoption in custom in the terms set out above by the Court of Appeal or otherwise.
28. Accordingly, the deceased was no more than the guardian of the above-named.
29. I reiterate that the *Adoption Act 1958 (UK)* provides for adoption by order of the Supreme Court. It does not provide for adoption by any other means including guardianship.
30. In conclusion, none of the following are legally adopted children of the deceased:
- a) Clovis Savoie, biological child of John Stephens and Odile Savoie;
  - b) Emile Savoie, biological child of Andre Savoie and Ellen Enock;
  - c) Jean Pascal Jerome Savoie, biological child of Andre Savoie and Marie Melta Marcel;
  - d) Jean Dennis Savoie, biological child of Andre Savoie and Rebecca Godden;
  - e) Armand Guy Bryce Savoie, biological child of Armand Galinie and Elizabeth Galibert;
  - f) Felicienne Mapso Savoie, biological child of Andre Savoie and Shelly Georges, and
  - g) Mapso Worwor Savoie, Sylvie Ala's biological daughter.

E. Result and Decision

31. None of the following are legally adopted children of the deceased:
- a) Clovis Savoie, biological child of John Stephens and Odile Savoie;



- b) Emile Savoie, biological child of Andre Savoie and Ellen Enock;
  - c) Jean Pascal Jerome Savoie, biological child of Andre Savoie and Marie Melta Marcel;
  - d) Jean Dennis Savoie, biological child of Andre Savoie and Rebecca Godden;
  - e) Armand Guy Bryce Savoie, biological child of Armand Galinie and Elizabeth Galibert;
  - f) Felicieenne Mapso Savoie, biological child of Andre Savoie and Shelly Georges, and
  - g) Felicieenne Alice Mapso Savoie, Sylvie Ala's biological daughter.
32. The proceedings are transferred to the Deputy Master for issuance of Final Grant Order.
33. Costs are reserved.

**DATED at Port Vila this 31<sup>st</sup> day of March 2022  
BY THE COURT**

*UM Trief*

.....  
Justice Viran Molisa Trief

