

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

Civil Appeal
Case No. 24/2116 SC/CIVA

BETWEEN: Regina Ephraim
Appellant

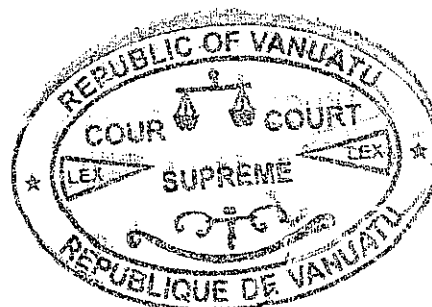
**AND: Delvina Tari Tanghna Kweviramaru
Lini Bani**
Respondent

Date: 20 January 2025
Before: Justice V.M. Trief
Counsel: Appellant – Mrs K.B. Karu
Respondent – in person

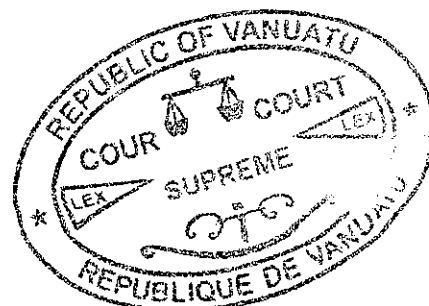
JUDGMENT

A. Introduction

1. This is an appeal against the decision of the Deputy Master dated 12 June 2024 in which she declined to remove the Respondent Delvina Tari Tanghna Kweviramaru Lini Bani as Administrator of the estate of Rinnie Lini Bani (deceased) and to appoint the Appellant Regina Ephraim in her place: Regina v Bani [2024] VUSC 284.
2. Ms Ephraim is the biological daughter of the deceased and her mother Carole Ephraim. After her parents divorced on 3 August 2012, Ms Ephraim and her mother continued to live at the deceased's leasehold property title no. 11/OF31/055 at Fresh Water 2 area in Port Vila (the '055 lease') which the deceased had been registered proprietor of since 28 July 1994. The deceased obtained a loan from the National Bank of Vanuatu Limited ('NBV'), secured by a mortgage registered over the 055 lease on 5 June 2007.



3. Ms Ephraim and her mother Carole continued to live on the 055 property while the deceased relocated to Luganville, Santo and on 1 April 2013, married Ms Bani's mother. He, Ms Bani's mother and Ms Bani lived at leasehold property title no. 03/OJ94/053 at Luganville, Santo (the '053 lease').
4. The deceased defaulted on his loan with the NBV leading to the NBV being granted power of sale orders over lease 055 on 16 June 2015. On 5 October 2019, the deceased died.
5. On 8 September 2020, the Supreme Court granted letters of administration of the estate of to Ms Bani. The same orders recognised that the Ms Ephraim and her younger sisters were beneficiaries of the estate.
6. On 21 September 2023, the NBV issued a notice of demand to the administrator of the deceased's estate that if the VT4,598,278 owed to the bank was not paid, it would exercise its power to sell the property.
7. On 27 October 2023, the NBV issued a notice to quit to the administrator of the deceased's estate for vacant possession of the 055 lease.
8. This prompted Ms Ephraim to file her application seeking the removal of Ms Bani as administrator of the deceased's estate.
9. By the application filed on 7 February 2024, Ms Ephraim sought orders to summon Ms Bani to give an account of her duties as Administrator of the estate and if the Court found that she had failed in her duties as Administrator, to remove Ms Bani as Administrator and appoint Ms Ephraim in her place. Ms Bani had allegedly failed in her duties as Administrator because she had not settled the debt owed to the NBV and even though on 13 December 2023, Ms Ephraim and her mother paid VT850,000 to the NBV and continued to pay the loan, Ms Bani had refused to consent to Ms Ephraim obtaining refinancing of the loan. There was also no suggestion from Ms Bani to sell the 053 lease to either pay off the loan and/or share the money with the beneficiaries of the estate.
10. In response, Ms Bani submitted that Ms Ephraim and her mother Carole knew of the deceased's loan and even though they continued to live on the 055 loan after Carole and the deceased divorced, they did not assist the deceased to repay the loan. Further that Ms Bani could not repay the debt as the estate does not have income therefore she accepted that the NBV take possession of the 055 lease property. Ms Bani also submitted that selling the Santo 053 lease property would not benefit all the beneficiaries of the estate.



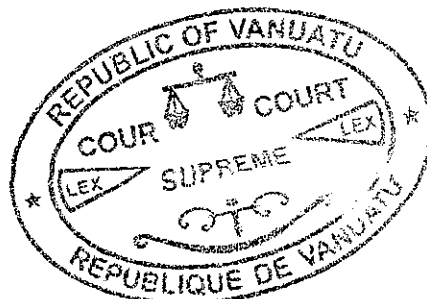
11. The matter proceeded to hearing before the Deputy Master. The Deputy Master held in Regina v Bani [2024] VUSC 284 that Ms Bani as the Administrator and the beneficiaries were not personally liable to pay for the debts of the estate; the debts were to be paid from the properties of the estate. Further, that the NBV obtained power of sale orders over the 055 lease prior to the deceased's death therefore Ms Bani's duties under the grant of letters of administration 'are subsequent to the sale of [the 055 lease] property.' She held that the deceased being the named borrower could not approve the request to refinance. Furthermore, the deceased's estate was held on trust to comply with the law therefore allowing Ms Ephraim to refinance would jeopardise the interest of all the beneficiaries. Accordingly, Ms Ephraim's application was declined and Ms Bani was ordered to urgently liaise with the NBV to sell the property to allow her to complete administration.
12. On 10 July 2024, Ms Ephraim appealed against the decision of the Deputy Master, on the following grounds:
 - i) The Deputy Master erred in law by not considering the failures of the Administrator of the estate Ms Bani; and
 - ii) The Deputy Master erred in fact and in law by placing too much weight on the Default Judgment entered against the deceased to sell the 055 lease and not considering the facts that there are two properties that need to be sold to settle the estate debt and share the residue amongst the beneficiaries.
13. On 13 August 2024, Ms Bani filed submissions in response. She submitted that there are not two properties for sale, but that the only property to sell is the 055 lease which is subject to the deceased's mortgage with the NBV. Further, that discussions were already underway with the NBV to sell that property and pay back the deceased's loan.

B. Discussion

14. The first ground of the appeal was that the Deputy Master erred in law by not considering the failures of the Administrator of the estate Ms Bani.
15. Section 6 of the Succession, Probate and Administration Regulation No. 7 of 1972 (UK) (the 'Regulation') provides as follows as to the duties of an administrator of an estate:

6. (1) *Subject to the provisions of the last preceding Part hereof, the administrator on intestacy... 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) ...



16. The Court of Appeal held as follows as to the duties of an administrator in *In re Estate of Molivono* [2007] VUCA 22 at p. 4:

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 [No. 7 of 1972]. It provides for the executor or administrator no rights of ownership or personal benefit.

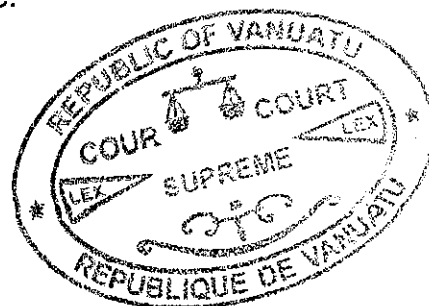
A person who is granted probate or administration is answerable to the Court for the proper exercise of the obligation which he or she has chosen to take up.

...

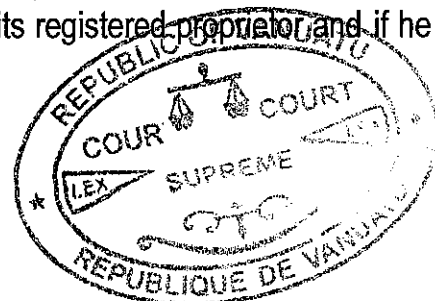
When someone dies the first question must be whether any assets of that deceased person require to be administered by will or under a grant of administration. If the answer is yes an application must be made. Those carrying out this task must ensure that before there is any distribution of any realized assets the debts and obligations of the deceased person are identified and met.

(my underlining)

17. Accordingly, an administrator's duty is **first** to call in and collect all the properties of the deceased person. **Secondly**, they must pay all the debts of the estate. **Thirdly**, they must ensure that what is left is distributed to the beneficiaries of the estate in accordance with the rules laid down in the Regulation.
18. The first aspect of the Administrator's duty is to call in and collect all of the properties of the deceased person. The only properties of the deceased referred to are the 053 lease and the 055 lease. However, were there any other non-liquid assets? Were there any liquid assets? There was no evidence as to whether Ms Bani had identified all the assets and liabilities of the estate, and called in and collected all of the properties of the deceased.
19. In addition, both parties asserted that the deceased was the registered proprietor of the 053 lease however, no copy of the 053 lease was adduced into evidence. There is therefore no way to confirm that the deceased is the proprietor of the 053 lease. If the deceased is the proprietor of the 053 lease, then that property forms part of the deceased's estate and must then be called in and collected. There is no evidence as to what steps Ms Bani as Administrator has taken to 'call in and collect' the 053 lease.
20. The second aspect of the Administrator's duty is to pay the debts of the estate. The Deputy Master was correct that the beneficiaries of the estate do not have a duty to pay for debts owed by the estate. However, it was Ms Bani's duty as Administrator of the estate to pay the debts of the estate.



21. Is the debt owed to the NBV the only debt of the estate? Ms Bani did not address whether or not it was. It is therefore unknown if Ms Bani has identified all the liabilities of the estate, and what steps, if any, she has taken to pay them.
22. Ms Bani's position as to the NBV loan is that the estate could not repay it as the estate did not have any income. That is understandable however, the longer the debt remained unpaid, the greater the amount owed. It is therefore in the beneficiaries' interest for the debt to be repaid as soon as possible and any residue be distributed to them.
23. It is uncontradicted that on 13 December 2023, Ms Ephraim and her mother Carole paid VT850,000 towards the NBV loan but that Ms Bani has refused to consent to their obtaining refinancing of the loan even though refinancing would achieve payment of the debt owed to the NBV.
24. The Deputy Master stated in her decision that the deceased being the currently named borrower for the NBV loan could not approve the request to refinance. Furthermore, that allowing Ms Ephraim to refinance would jeopardise the interest of all the beneficiaries. This overlooks that Ms Bani as Administrator of the estate of the deceased can consent to refinancing of the loan, and that the interest of the beneficiaries has not been served by allowing the debt to the NBV to remain unpaid and therefore increasing over time.
25. Ms Ephraim's case was that Ms Bani refused to consent to her and her mother obtaining refinancing of the loan, and presumably taking over the 055 lease, whereas they could do so whilst Ms Bani and her mother take over the 053 lease.
26. Ms Bani has not discharged her duty to pay the debt owed to the NBV either by the NBV exercising its power of sale (rather than allowing the loan to accrue for four years since the deceased's death) or by consenting to Ms Ephraim and her mother obtaining refinancing of the loan.
27. For the foregoing reasons, Ms Bani failed in her duties as Administrator of the estate. She has had ample time in the four years since the deceased's death to call in and collect all of the properties of the deceased person, to pay all of the debts of the estate and distribute the residue to the beneficiaries but has demonstrably failed to do so. Accordingly, the first ground of the appeal has been made out.
28. The second ground of appeal was that the Deputy Master erred in fact and in law by placing too much weight on the default judgment entered against the deceased for power of sale over the 055 lease and not considering the facts that there are two properties that need to be sold to settle the estate debt and share the residue amongst the beneficiaries. As discussed above, there is no evidence as to the 053 lease to confirm whether the deceased was its registered proprietor and if he was,



whether Ms Bani had called in and collected the 053 lease. Further, Ms Bani has demonstrably failed in her duties as Administrator. The second ground of appeal has also been made out.

C. Result and Decision

29. The appeal is **allowed**.
30. The decision of the Deputy Master dated 12 June 2024 is **set aside**.
31. The letters of administration of the estate of Rinnie Lini Bani (deceased) granted to the Respondent are **revoked**.
32. Letters of administration of the said estate are **granted** to the Appellant. I reiterate that it is the Appellant's solemn duty to call in and collect all the properties of the deceased person, then to pay all the debts of the estate and to ensure that what is left is distributed either in accordance with the rules laid down in the Succession, Probate and Administration Regulation No. 7 of 1972 (UK). Time is of the essence given the passage of time since the deceased's death and the continuing increase in the debt owed to the NBV.
33. Costs must follow the event. The Appellant is to file submissions as to the quantum of costs sought and serve together with today's decision, and file proof of service, **by 4pm on 3 February 2025**. The Respondent is to file and serve submissions as to costs **by 4pm on 17 February 2025**. Any submissions in reply **by 4pm on 24 February 2025** then the Court will determine quantum of costs on the papers after that.

DATED at Port Vila this 20th day of January 2025
BY THE COURT


Justice Viran Molisa Trief

