

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 2167 OF 2024

IN THE MATTER of Application for  
the Probate of the Last Will and  
Testament of the late **TABISUE  
THOMAS**

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

BETWEEN

CLEMENT NOEL

Applicant

AND

REMY TUSAI

Respondent

BEFORE: Aurélie TAMSEUL

(Deputy Master)

DATED: 26<sup>th</sup> day of March, 2025

ENTERED: 26<sup>th</sup> day of March, 2025

COUNSEL: Roger Tevi counsel for the Applicant

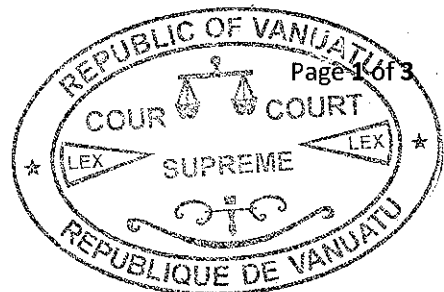
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Decision

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a. Introduction

1. The Applicant filed on the 6<sup>th</sup> August, 2024 an Application for Letters of Administration in the estate of the deceased.



2. In the sworn statement filed on the same date in support, paragraph 8, the Applicant states that the estate of the deceased consists of 3 plantations at Unmet area in northwest Malekula, i.e.
  - (i) A coconut plantation known as Alnawei plantation;
  - (ii) Another coconut plantation known as Lamurhapu plantation;
  - (iii) A coconut and cocoa plantation known as plaklilu plantation.
3. Counsel confirmed that the said area is a customary land where the Applicant claims the deceased estate lies.
4. Remy Tusai filed on the 14<sup>th</sup> November, 2024 a Response objecting to the grant being made to the Applicant on the basis that the coconut plantation claimed to be part of the estate are planted on his customary land for the use the deceased during his lifetime when he served at the church therein. The Respondent added further that at the date of death of the deceased the coconut plantation returned to him. Therefore, the Respondent submits that the said plantations do not part of the deceased estate.
5. Counsel was then required to file a written submission to explain their understanding of the purposes of applying for letters of administration in the estate of the deceased. Furthermore, counsel had been required to file submission on the extend of power under letters of administration and if the said power extends to the administration of customary entitlements.
6. Counsel filed on the 24<sup>th</sup> March, 2025 a submission stating his client's position vis-à-vis letters of Administration regarding customary land.

b. **Law**

7. The duties of an Administrator are outlined in the legislation, and I quote:

***“Succession to property on intestacy.***

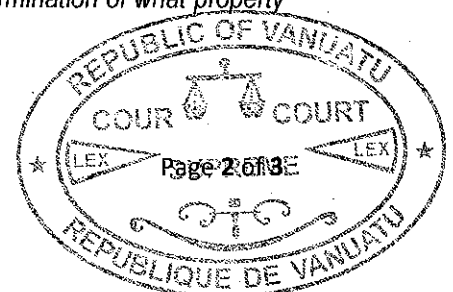
6. (1) *Subject to the provisions of the last preceding Part hereof, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, **shall hold the property as to which a person dies intestate on or after the date of commencement of this Regulation on trust to pay the debts, funeral and testamentary expenses of the deceased and to distribute the residue as follows: -...”**<sup>1</sup>*

8. An elaboration of the extend of the power to administer the estate under a Letters of Administration is clearly outline in the case of *In re Estate of Molivono*<sup>2</sup> and I quote:

*“...The second point to be made about this litigation is that the granting of probate or administration does nothing to determine ultimate ownership of the personal property of the person who has died. Not only in this case but in others as well we have seen suggestions that the grant of the right to administer an estate meant there was a determination of what property*

<sup>1</sup> Succession, Probate and Administration Regulation 1972, URL: [www.pacii.org.vu](http://www.pacii.org.vu)

<sup>2</sup> In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 ( 30 November 2007)



was owned by the estate and also governed its future ownership. 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 7. 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...."

**c. Discussion**

9. The Applicant, in their submission filed on the 24<sup>th</sup> March, 2025 agrees that the three plantations referred to herein as part of the estate are on a customary land which cannot be administered under a grant of Letters of Administration.
10. Thus, the plantations of coconut and cocoa the Applicant claims to form part of the estate, not being registered in the name of the deceased, could not be administered under a grant of Administration.
11. Therefore, the filing of the Application for Letters of Administration had been futile.

**d. Finding**

1. The Application for letters of Administration is dismissed.
2. This file is now closed.

