

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

**Civil Appeal**  
**Case No. 19/1260 CoA/CIVA**

**BETWEEN: Tom Simon**  
*Appellant*

**AND: Eric Ake Yakeula**  
*Respondent*

**Coram:** *Hon. Justice Daniel Fatiaki*  
*Hon. Justice John Hansen*  
*Hon. Justice Dudley Aru*  
*Hon. Justice Stephen Felix*

**Counsel:** *Mr. Andrew Bal and Mr. Jona Mesao for the Appellant*  
*Mr. Daniel Yawha for the Respondent*

**Date of Hearing:** 15<sup>th</sup> July 2019

**Date of Judgment:** 19<sup>th</sup> July 2019

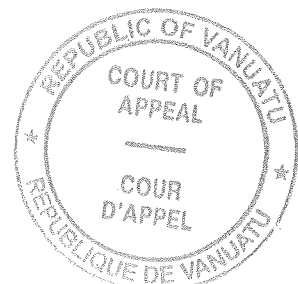
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**JUDGMENT**

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Introduction

1. Late Lari Ake Yakeula died intestate in 1997. Administration of her estate has been disputed by her children Mr Eric Ake Yakeula, the respondent and his two sisters namely Mrs Danielle Yakeula and late Mrs Dominique Yakeula, the appellant's mother. The other siblings are Francoise Yakeula and Eveline Yakeula.
2. The dispute has been ongoing for some time involving several proceedings before the Court below and this Court. At the centre of the dispute over the estate is a property under leasehold title 11/0G21/030 (the Property) located along the Fatumaru Bay in Port Vila. The two sisters had been living on the Property with their families.



## Background

3. Mrs Danielle Yakeula was originally given letters of administration on 24 September 1997 to administer the estate. On 24 October 2014 her appointment was revoked by the Court below and the respondent was appointed administrator.
4. On 22 December 2016 the respondent obtained orders in **Civil Case 182 of 2015** giving Dominique and Danielle Yakeula and their families 28 days to vacate the Property with damages to be assessed. We are now informed by Mr. Bal that his clients have vacated the Property but the damages are yet to be determined.
5. On 4 February 2019 the appellant, Mr Tom Simon applied for orders to revoke the appointment of Mr Yakeula as administrator of the estate. Saksak J on 29 April 2019 dismissed the application on the basis that it was premature as the assessment of damages is still pending before Court. This is the decision which is the subject of this appeal.

## The Appeal

6. The appeal seeks to set aside the decision of 29 April 2019 on two broad grounds. First that the primary Judge erred when he held that the application was *res judicata* when there was no final determination of the alleged failure by the respondent to administer the estate.
7. Second, that the primary Judge fell into error when he held that the application in **Probate Case No 761 of 2018** was the second attempt by the appellant to apply to revoke letters of administration granted to the respondent when the first application was made by Mrs Dominique Yakeula before she died.
8. The primary Judge in his reasons for dismissing the application said:-

*"2. This is the second application made by the applicant. The first was made in December 2016 and was dismissed on 7 June 2017.*

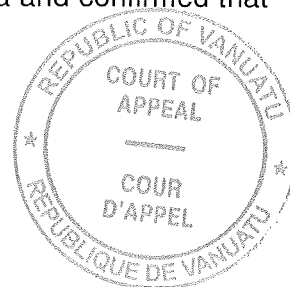
*3. This application is the second attempt and is misconceived and is an abuse of process. The matter is now res judicata.*

*4. The applicant has come to Court with unclean hands. There is a pending Civil claim against the applicant for damages. This claim has not yet been determined therefore it is improper for the applicant to put the wheel before horse in this case.*

*5. the reasons are sufficient to dispose of the application."*

## Discussions

9. In **Yakeula v Ake** [2017] VUCA 2, this Court in its decision of 7 April 2017 dismissed the appeal by late Dominique and Danielle Yakeula and confirmed that



the respondent Mr. Ake as administrator of the estate was "perfectly entitled to require vacant possession (of the Property) and if not given voluntarily to take proceedings for eviction". It went further to state that:-

*"...there still remains the Supreme Court order for damages to be assessed. The case will now be returned to the Supreme Court so that the question of damages can be dealt with."*

10. When Saksak J dismissed the appellant's application on 29 April 2019, those damages were yet to be assessed. The parties now confirm that the Property has now been sold for VT 20 million. It was settled in December 2018 and the funds paid into the estate's account.

11. On 7 December 2018, Mr Yahwa on behalf of the administrator by letter informed the appellant's solicitors of the Accounts of the Yakeula estate comprising the total expenses and remainder for distribution pending the assessment of damages in **CC182 of 2015**. There is no evidence in the file of any objection by the appellant to any item of the accounts disclosed or whether particulars were requested.

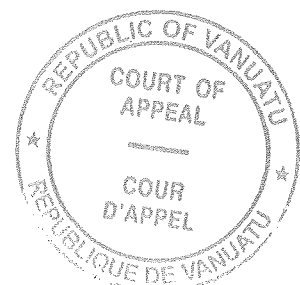
12. Most of the expenses relate to statutory fees regarding the transfer of lease and Port Vila Municipality rates and taxes which cannot be disputed. Two major items of expense stand out. First the respondent's refund of expenses amounts to VT 4, 924, 985. If particulars were requested these could easily be addressed. The other major item of expense is the solicitor client costs amounting to VT 4, 987,523. The same applies if there is an order to that effect.

13. During the hearing, a copy of a letter dated 20 December 2018 was handed up in Court by Mr Bal purporting to be a response to Mr Yahwa's letter of 7 December. Mr Yahwa denied receiving the letter. The substance of the letter was to advise that the appellant disagreed with the expenses in the accounts provided. No reference was made to any specific item. The letter indicated that for that reason, the appellant will apply to revoke the letters of administration.

14. The role of an administrator is clearly set out in **re Estate of Molivono [2007] VUCA 22** where the Court said:-

*"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..."*

15. There is no evidence before us that the respondent has breached his duties as administrator of the Yakeula estate. It is simply not enough to make the bare assertion that the administrator's expenses are too high. Details are required.



Result

16. The appeal will be dismissed and the matter returned to the Court below for damages to be assessed in **CC182 of 2015** if not agreed and a final account rendered before distribution. The respondent is entitled to costs on a standard basis to be agreed or taxed.

**DATED at Port Vila this 19<sup>th</sup> day of July, 2019.**

**BY THE COURT**

  
.....  
**Hon. Justice Daniel Fatiaki**

