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

Probate
Case No. 1007 of 2015

BETWEEN: **1. JEAN JACQUES GALINIE**
2. JEAN YVES GALINIE
Applicants

AND: **JOELLE GALINIE**
Respondent

Date: ***27th May, 6th and 7th June, 2016***
Delivered: ***18th November, 2016***
Before: ***The Master Cybelle Cenac***
In Attendance: ***Marie Noelle Patterson counsel for the Applicants, Felix Laumae counsel for the Respondent, Jean Jacques Galinie, Jean Yves Galinie, Joelle Galinie***

JUDGMENT

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1. There are two Applications before the court, both filed by the Applicants: (1) Application to remove Administratrix filed on the 17th June, 2015 with additional grounds filed on the 9th February, 2016 and (2) Application to Restrain Administratrix from selling the shares of the company Boulangerie filed on the 26th April, 2016.

Preliminary issue

2. I will first address a preliminary issue raised by the Respondent in her closing submissions of the 20th July, 2016 in which the integrity of the interpretation provided by the Clerk of Court was questioned. Due to the manner in which this issue was broached, I was unable to clarify what the exact issue that was being raised by the Respondent. For the avoidance of doubt I will address the two issues I believe the Respondent to be raising under this preliminary point. (1) She appears to question the evidence translated to the court by its clerk, and (2) that the clerk was not sworn as interpreter. I have considered the points and they fail on the following grounds:

   (i) At no time during the proceedings did counsel for the Respondent raise any issue regarding a misinterpretation of the evidence translated to the court. His preliminary issue does not reference any specific misinterpretations by the clerk.

(ii) Respondent counsel has made no reference to rule or law that necessitates the Clerk being sworn in and the court is aware of none.

3. As to paragraph 2 (ii) above I state the following. That the court is aware that there did exist a provision under the **Magistrates Court Rules of 1976 at Order 4, section 4 (4)** that did require an oath to be taken prior to any translation. There was no corresponding Supreme Court Act containing the same provision. By the **Civil Procedure Rules, No. 49 of 2002,** the aforementioned Magistrate's Rules were repealed[1] and the Civil Procedure Rules became the governing rules for both the Supreme Court and the Magistrates Court. The new rules no longer contained any such provision. In addition, the court refers to the case of **Gopal Reddy -v- The Police**[2] in which one of the three grounds of Appeal raised was that the interpreter had to be sworn at trial. Although the conviction in the said case was quashed, it was quashed on its preceding two grounds and not on the ground regarding the interpreter having to be sworn. On that point the presiding Judge had this to say, citing the case of **Police v Aryewumi**[3] as support for his position:

failure to swear an interpreter is not of itself an illegality involving the quashing of a conviction unless the court of trial was not satisfied that the interpretation was accurate." In other words, "only in certain circumstances will the non-swearing of an interpreter result in the quashing of a conviction.

I am satisfied, from my own recollection and notes, that the interpretation of the Clerk of Court was accurate. This is further supported by the fact that counsel for the Respondent himself raised no discrepancy during the proceedings of misinterpretation nor in his written submissions.

The overriding objective always being at the forefront of any matter before the court, I wish to say, as an aside, that the court takes an extremely dim view of preliminary issues being raised in the manner in which it was. That is, in closing written submissions which would negate any opportunity for the Applicants to respond, considering that any allowance on this preliminary issue could possibly invalidate the proceedings and affect the entire pool of evidence taken. Further, counsel for the Respondent, as an officer of the court first, was under a duty to draw such an oversight to the attention of the court immediately so that it could be remedied. The hearing of this matter lasted 3 days, and at none of the hearings was the matter raised.

Lastly, counsel has a responsibility to assist the court to further the overriding objective. By raising this matter at such a late stage would suggest a measure of bad faith by the Respondent, as it may appear to have been made at this juncture for the sole purpose of overthrowing the entire proceedings, by upsetting the evidence taken and frustrating the judgment of the court which, in itself, would be an abuse of

[1] Part 19 of the CPR 2002
[2] Appellate Jurisdiction (Hyne C.J.) July 16th 1953
[3] 1948, West Africa Court of Appeal

the court's process as it could have meant having to commence the matter all over, at the expense of all parties and the court.

I also wish to remind counsel that he owes a duty at all times to assist the court to bring a speedy resolution to matters by bringing to its attention all relevant facts and law even though it may not help his cause. In this particular instance counsel chose to raise a preliminary issue unsupported by facts or law and left the court to determine the issue in the absence of any aid. This is unacceptable practice before any court.

Now to the crux of the matter.

Chronology of Events

4. Emile Galine, father to the Applicants and Respondent died on the 9th June, 2010 wherein Letters of Administration were applied for by the Respondent on the 17th December, 2010 and granted by the court on the 4th December, 2013. The Applicants thereafter applied to the court to remove the Respondent as Administratrix on the 17th June, 2015 and a further Application for the Respondent to give an Inventory and Account of the Estate was filed on the 25th June, 2015, followed by an Application to restrain the Respondent from selling the shares of the company Boulangerie filed on the 26th April, 2016.

5. The issues to be decided by this court are as follows:
   (i) Are the Applicants beneficiaries to the Estate of Emile Galinie?
   (ii) What makes up the Estate of Emile Galinie?
   (iii) Is the Respondent accountable to the beneficiaries of the Estate?
   (iv) What is the role and responsibility of an Administrator?
   (v) Has the Respondent acted reasonably in all the circumstances to secure the Estate of the deceased?
   (vi) Did the Respondent act expeditiously to divest herself of the Estate to the beneficiaries?
   (vii) Did the Applicants contribute to any delay in the disposition of the Estate?
   (viii) Has the Respondent acted in such a way as to justify her removal as Administratrix?

(i) Are the Applicants beneficiaries to the Estate of Emile Galinie?

6. As trite an issue as this seems to the court, there appeared, during the course of this matter, some hesitation on the part of the Respondent as to the entitlement and beneficial interest of the Applicants in all the Estate of Emile Galinie and I choose to clarify this issue now.

7. Much seemed to have been made by counsel for the Respondent that Noelle Galinie was the eldest child of the deceased and therefore the one entitled to apply for administration. **Part IV, section 9 of the Queens' Regulations** provides:

"The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than twenty-one years of age-

(a) The husband or wife of the deceased; or
(b) If there is no husband or wife to one or not more than four of the next of kin in order of priority of entitlement .....in the distribution of the estate of the deceased.....

8. In this case the deceased had left no living wife[4] and therefore his heirs remaining would have been his three children.[5] Therefore, all the estate of the deceased devolved to his three children: Jean Jacques, Jean Yves and Joelle Galinie, equally, with neither one able to claim priority over the other by virtue of age or gender.

9. Further, as their mother was no longer living, either or all of the three children were equally entitled to apply for administration of the Estate save that if any one or two applied the court would have to request that the written consents[6] of the others be given for that one to proceed with the Application uncontested. This means therefore that the consent of both the Applicants would have been required by the court unless waived. I will address the matter of the consents and the court's waiver later on in the judgment.

(ii) What makes up the Estate of Emile Galinie?

10. There did seem to be, on the part of the Respondent some confusion[7] as to what constituted the Estate of the deceased. Based on the documents and the evidence taken the court is satisfied that the Estate of Emile Galinie is made up as follows:
    (i) Residential Leasehold Title 11/OG21/040[8]
    (ii) Residential Leasehold Title 11/OH23/005[9]
    (iii) Shares in company Boulangerie Joelle La Parisienne Limited,[10] that is, 600 shares under Declaration of Trust and 620 shares in the company owned by the deceased.[11]

11. Therefore, pursuant to the admission of the Respondent in her sworn statements at paragraph 9 (i) & (iii) above, she acknowledged that the heirs of the deceased were entitled to shares in the said company. Further, the judgment of Justice Saksak[12]

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[4] Section 6(a) of the Queens Regulations No. 7 of 1972
[5] Ibid, subsection (d)
[6] Ibid, Section 7(c)
[7] Sworn Statement in support of Application for Administratrix to give Inventory and Account of the Estate of Late Emile Galinie, para. 6(a) dated 11th March, 2016

[8] Application for Administration with sworn statement of Joelle Galine, Attachment B. filed on the 17th December, 2010
[9] Supra, fn. 7, para. 10(a)
[10] Ibid, subsection (c) and Supra, fn. 8
[11] Civil Case No. 46 of 2014, Judgment of Justice Saksak of the 26th September, 2014, paras. 20(b) & (a) respectively
[12] Ibid

established the shares of the Applicants to the 600 and the 620 shares in the company.

12. It must be noted that the aforesaid shares constitute a bakery with land and building attached as assets of the company, making up its share capital. This means that each of the parties is entitled to a 1/3 share of both the residential properties and a 1/3 share of the business formerly known as Boulangerie Milo Parisienne Limited but now known as Boulangerie Joelle La Parisienne Limited.

(iii) Is the Respondent accountable to the beneficiaries of the Estate?

13. As Administratrix, though holding the legal interest to all the estate the Respondent remains accountable[13] to the beneficiaries of the Estate to whom the remainder of that estate ultimately devolves to. She has a common law duty to keep them abreast of what she is doing to satisfy all debts and to eventually pass over the remainder of the estate (if any) in a timely manner. If this were not so, it would mean that Administrators would have free reign to manage or mismanage an estate to the detriment of its beneficiaries.

While the law specifies that an administrator is accountable to the court it does not specifically attribute a similar right to a beneficiary. Notwithstanding this omission, it could not be the intention of the law that an administrator remain unaccountable to the beneficiaries as they have a right under **section 36 of the Queens' Regulations** to ask for the removal of the administrator or under **section 40** for the Registrar to require the administrator to account which could be done in two ways: by the Registrar of his own motion or upon application by the beneficiaries to him. If the Court and Registrar[14] have the jurisdiction to call for inventory and account, how much more then would a beneficiary who has a direct interest in the estate, particularly where there may be a belief that the estate is being mismanaged or there has been undue delay in securing and carrying out the wishes of the deceased.

(iv) What is the role and responsibility of an Administrator?

14. The role of an Administrator is a voluntary and honorary one and attracts no remuneration for the carrying out of the office. All that an administrator can claim are reasonable expenses incurred in the course of dealing with the estate.[15] It is a responsibility assumed under oath that the administrator will act according to law and give an account if called upon to do so by the court. Failure to act in either of those two circumstances could attract a fine or imprisonment. The very magnitude of the task before an executor/administrator and the seriousness with which it is to be assumed can be seen under the Wills Act[16] which provides:

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[13] The Administration of Estates Act 1958, section 21
[14] Supra, fn. 1, Section 40(1)
[15] Trustee Act 1925 (UK), section 30 (2); "A trustee may reimburse himself for or pay or discharge out of the trust property all expenses reasonably incurred in or about the execution of the trusts or powers."
[16] Section 24 of the Will's Act, Cap. 55

Any executor who –

(a) wilfully deals with an estate, or any part thereof vested in him in a manner not authorised by the will or by the court; or

(b) wilfully disobeys or fails to carry out any order or direction given to him by the court in relation to the will; or

(c) wilfully fails satisfactorily to account to the court for any such estate,

shall, without prejudice to any other proceedings to which he may be liable under the Penal Code or otherwise, be guilty of an offence and on conviction therefor shall be liable to a fine not exceeding VT 20,000, or to a term of imprisonment not exceeding 6 months, or to both such fine and imprisonment.

It goes on further to provide;[17]

Any person who wilfully interferes with, appropriates, deals with or disposes of, or in any way uses the whole or any part of the estate of a deceased testator otherwise than for the purpose of preserving such estate or in accordance with the instructions of an executor or an order of the court shall be guilty of an offence and on conviction therefor shall be liable to a fine not exceeding VT 50,000, or to a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment.

In none of the dealings of the administrator with the estate must he/she do anything that is likely to diminish its value.

15. The first thing which an administrator must do is to collect the assets of the deceased as soon as possible after receiving the grant. In fact, the Applicant is expected under statute to undertake this task even prior to the grant, as full details of the estate must be disclosed to the court.[18] This is so as to avoid any loss to the estate that might occur due to delay and lead to the personal liability of the administrator. Once this has been done the administrator has both a common law and a fiduciary duty to preserve the assets for the benefit of the beneficiaries.

    An administrator's duty is similar to that of a trustee under trust law, save that the administrator has the power of sale except where precluded.[19] The Respondent acknowledged and was therefore aware of her duty to collect the assets as evidenced by her sworn statement of the 11th March, 2016.[20]

16. Secondly, the value of the estate must be determined.

17. Thirdly, the debts of the Estate must be paid in full.

18. Fourthly, any remaining properties, if unable to be divided equally between the beneficiaries must be sold and the monies distributed.

[17] Ibid, section 27

[18] Hughes on succession Law in the South Pacific by Robert A. Hughes and Helen J. Menard, 2nd ed., p. 280 and Probate and Administration Rules 2003, section 4.2

[19] Ibid, p. 280-281

[20] Supra, fn. 4, para. 5

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19. Finally, a full account of the dealings with the estate must be given to the beneficiaries.

(v) Has the Respondent acted reasonably in all the circumstances to secure the Estate of the deceased?

20. The court is of the opinion that the Respondent has not acted reasonably in all the circumstances to secure the estate of the deceased for the following reasons:

    1. Application for grant of administration was filed by the Respondent about 6 ½ months after the death of her father. In that period, prior to filing, the Respondent had more than sufficient time to determine what made up the estate of her father. Based on the information available to the court as to what constituted the estate it could not have taken nearly 4 years to have been finalised. For such orderly kept affairs by the deceased, under the management of Barrett & Partners as secretary to the company it would have taken no less than 2 weeks to a month. The Respondent, in her statement in support of her Application for administration named only one residential property owned by her father and shares of the company with no specification as to how many shares those were.

       It was not until her statement of the 11th March, 2015 that she acknowledged a second property 11/OH23/005, also at Tebakor, and said by her to be part of the family home. The court is therefore left to wonder why this property, so closely connected to the other, and part of the family home could have been omitted from her statement. Further, from the company documents and the Declaration of Trust of her father it was easily and quickly discernible the number of shares within the company. Even if the information was not available at the time of filing of her application for grant the court could never accept that it could take nearly 3 years to ascertain both the whereabouts of the aforesaid title and its valuation and valuation of the shares of the company. I note that the date of the valuation for title 11//OG21/040 was obtained on the 9th December, 2010 which suggests that the Respondent is quite capable of acting promptly when the need arises as I assume it was needed as an exhibit to her Application for Administration filed 8 days later. A valuation for the second property was only provided to her statement of the 11th March, 2016.

    2. Grant of administration was given by the court on the 4th December, 2013, and from then, till now, the Respondent has done little to secure the estate. By this, I point to the following:

       (i) By her own admission, under cross-examination she did not insure the premises of the deceased upon taking up administration and the estate had to bear the burden of damage to the properties after Cyclone Pam.

(ii) There was no evidence that the Respondent had done anything towards the upkeep of the building in which the Boulangerie business is housed though the business continued to run under her supervision and some of its proceeds could have been diverted to that purpose.

(iii) The evidence of the Respondent shows a dramatic increase in the shares of the company of an additional 1000 shares allocated to her deceased partner Franco Zuchetto. This increased share, allocated to a non-beneficiary, essentially diminishing the possible interest of all the beneficiaries from 740 shares each to 406.66 inevitably meant that controlling interest of the company rested with Franco Zuchetto. In a family run business of over 33 years, the Respondent had to know that this could prove detrimental to the beneficiaries and the business, in that its majority shareholder would have a greater say in the direction of that business. It is clear from the Articles of Incorporation[21] that the deceased intended his heirs to have controlling interest and the majority of shares unless they agreed otherwise.

(iv) The Respondent claims that there is a debt owed by the Estate yet the Applicants state that the debt is owed by the company and not the Estate. Nearly 3 years later the Respondent has not been able to clarify this matter so steps can be taken to have the debt paid off by the estate or serviced by the company.

(v) Since the granting of administration and the contest of her brothers shortly thereafter, a prudent administrator would have recognised the immediate issue as being one of discontent with her management of the estate and would have moved swiftly to pacify the Applicants by attempting to settle any matters at the earliest, without incurring exorbitant costs. There was no evidence that any attempts at settlement were ever initiated. At every turn the Applicants have had to invoke the power of the court to move the Respondent to act and to transfer to them what was rightfully theirs. These actions have therefore further depleted the estate and made it more difficult for the administrator, through her own fault, to collect the estate as she continually allowed it to be drawn into longwinded court battles.

[21] Article 6, para. 2; ".....they cannot be transferred to third parties outside the company only with the consent of a majority of shareholders representing at least three-quarters of the capital."

(vi) Did the Respondent act expeditiously to divest herself of the Estate to the beneficiaries?

21. For all the reasons aforementioned the court is of the opinion that the Respondent did not act expeditiously to divest herself of the estate.

    While the Administratrix has the discretionary power to refrain from distributing the estate before a year,[22] this discretionary power must be exercised judiciously. This means that an Administratrix can refuse to act during that year, if circumstances dictate. In this case, the Respondent went far beyond the one year allowance under statute, providing no reasonable explanation for the excessive delay and nearly 2 years later, her delay borders on abuse of that power.

(vii) Did the Applicants contribute to any delay in the disposition of the Estate?

22. While the Applicants did undertake certain action against the Respondent, I do not accept that it has been the cause of the delay in the Respondent passing the remainder of the estate to its beneficiaries as she claimed at paragraphs 4 and 8 of her statement of the 11th March, 2016. Until order of the court of the 18th April, 2016 in Enforcement Case 311 of 2016, restraining the Respondent from dealing with the estate in any way detrimental to the interests of the beneficiaries, in both Enf. 311 of 2016 and the present case, the Respondent was not restrained from continuing to deal with the Estate and carry out her responsibilities. Even following the said order, she was still able to act in ways that were not detrimental to the estate, such as, transference of the shares to the Applicants under the judgment of Justice Saksak. Further, knowing the reason behind the actions of her brothers, that they wanted their share given to them, it should have spurred her on to divest herself of the estate as quickly as possible for the avoidance of any further action. On the contrary, the court holds the view that the Respondent merely used the action undertaken by her brothers as an excuse to avoid completing her responsibilities.

(viii) Has the Respondent acted in such a way as to justify her removal as Administratrix?

23. In all the circumstances the court is of the considered opinion that the Respondent has acted in a way that has been detrimental to the Estate:

    1. Too long a delay in securing the estate of the deceased without reasonable or justifiable excuse. Even though **section 38 of the Queen's Regulations** provides;

       "A personal representative shall not be bound to distribute the estate of the deceased before the expiration of one year from the date of grant of probate or administration as the case may be"

       and she was therefore under no statutory obligation to distribute the estate between 4th December, 2013 and 4th December, 2014, there was little

[22] Supra, fn. 1, Section 38 and Concise Law of Trusts, Wills and Administration in New Zealand, 5th ed., p. 262

justification for the delay and no justification nearly 2 years later for the continuing delay.

2. At paragraph 27 of her sworn statement of the 11th March, 2016 she stated that she undertook repairs to the Tebakor property. Of the 14 receipts provided, none but 5 appeared related to the said property, and 3 of those 5 appeared questionable to the court as a 'Tebakor' reference appeared to have only been scribbled on the receipt as an afterthought. Further, the unaudited accounts of the company call the integrity of these receipts into question. Consequently, the court has no idea whether the funds of the estate were used for its benefit or for the benefit of the Administratrix.

3. Immediately following the grant, in February, 2014 the Respondent assumed official management of the business at a salary of VT300, 000 per month. When asked under cross-examination whether she had advertised for a manager she said she did not. When asked who determined the salary of the manager she said she did. This was a clear financial benefit received by the Respondent flowing from her appointment as Administratrix.

4. Under cross examination the Respondent admitted to not insuring the properties of the estate thereby allowing the burden for repair to fall to the estate after cyclone Pam. She offered no explanation for this.

5. Under cross examination the Respondent claimed to have undertaken repair and/maintenance works to the commercial building housing the Boulangerie but was unable to substantiate this claim.

6. Under cross examination the Respondent was unable to offer any explanation as to why the shares of the company were increased from 1220 to 2220. By increasing the shares and transferring the lion's share to her partner she essentially diminished the shareholdership of the beneficiaries and consequently the Estate with which she was charged.

7. The Respondent provided no evidence that the earnings of the business were servicing the NBV debt. Exhibit JG10 to her sworn statement of the 11th March, 2016 reflects last loan payment as of the 6th October, 2009 by Boulangerie La Parisienne Limited.

8. From the outset, the Respondent acted in a way that caused her brothers to question her motives, thereby leading to legal action. Though she saw her brothers every day in the business she never informed them that she was intending to apply for administration of their father's estate. During the administration proceedings she never informed them that she had filed as required under the **Probate and Administration Rules 2003**:[23]

[23] Section 2.5 (2)

"The applicant must also do any other things reasonably necessary to bring the application to the knowledge of anyone who

(a) Is entitled to any property of the deceased; or
(b) May oppose the grant applied for; or
(c) Is a creditor of the deceased."

This provision falls directly after that requiring an applicant to advertise, which means that an applicant has the double duty to not only advertise but to also bring to the specific attention of persons she knows to be beneficiaries the fact of her application. The court's record reflects that the presiding Judge did in fact make a request for the consents of her two brothers to be obtained in spite of her evidence under cross examination that the court never made any such request: *"the court never asked me for my brothers consent."* She went on to admit under cross examination of her statement of the 27th May, 2016, paragraphs 4, 5, 6 & 7, in which she said there was more than one meeting with Muriel Vie and her brothers where she asked for their consent was not true and that there were in fact no other meetings with her brothers but the one: *"I did not ask them for their consent."*

By letter of the Chief Registrar of the 13th November, 2013 the Registrar sent a summary to the presiding Judge, Justice Fatiaki to strike out a number of matters. Included was PB50 of 2010, the Respondent's Application for Administration, wherein he pointed out that the judge's note of the 11th March, 2012 was a request for written consent from other family members, which, having not been filed, justified the request by the Registrar to strike out. After nearly 2 years and the consents having not been filed the court, through the Registrar was minded to strike out the Application. Having not informed her brothers of the Application in spite of her proximity to them she then proceeded to advertise the notice at a most questionable time. She placed the advertisements on the radio on the 23rd, 24th and 25th December, 2010. The fact that the court did not continue to insist upon the provision of the consents, meant that it accepted and believed the Respondent that her brothers refused to give their consent. Essentially, the Respondent misled the court in this regard.

While she did fulfil part of her obligation to advertise the Administratrix had to have done it in such a way as to be sure that it would be brought to the attention of as many persons as possible. She did not advertise in either French (the mother tongue of her brothers) and in Bislama as the rules provide.[24] It seems quite evident that the Respondent did everything possible to avoid her brothers obtaining knowledge of her application until after the fact. The court cannot accept that the Respondent was unable to personally inform her brothers or that her advertisement during the Christmas period, which included Christmas day was done with any other motive than the motive to deceive. The evidence of the Applicants was that they only became aware of the grant when their sister evicted them from the bakery. The Respondent did not contest this and in this matter I prefer the evidence of the Applicants over the Respondent.

[24] Probate and Administration Rules 2003, section 2.5 (6)(b)

9. The Respondent fervently pursued every action instituted by her brothers, and in none of her evidence did she allude to any attempt to settle these matters. A conciliatory approach would have ensured that there was no further depletion of the estate and it would have sped up its vesting to the beneficiaries.

10. Ignorance of the Respondent regarding the affairs of the business. When she was cross examined on the requirements under the company law to submit audits of the companies accounts to the Vanuatu Financial Services Commission when the annual turnover of the business is Vt20 million or more she was unaware of this requirement: *"I did not know I am obligated to file financial statements with the VFSC if the bakery makes more than VT20 million a year."* She also did not know if the shares ordered by Justice Saksak to be transferred had been done, she didn't know if the house was insured: *"I don't know if I have transferred the shares as ordered by Justice Saksak," "I don't know if I insured the house."* She also seemed unable to state definitively whether the loan with NBV was a loan of the company or the estate. This was a fact easily determined on the papers, that is, the mortgage documents and bank statements. The very bank statement provided by the Respondent was made out in the name of the Boulangerie and not the deceased Emile Galinie.

11. The Respondent has kept no accounts or bad accounts of the company's business transactions. Her own evidence reveals inconsistencies in the information which her Attorney communicated to counsel for the Applicants regarding the completion of these accounts: Letter of the 10th June, 2015 from Trans-Melanesian Lawyers; *"For your information our client is working with a chartered accountant in town to provide a full audited account of the estate of her late father which included shares in La Parisienne Limited. Once this is done we will advise your clients."* The promised accounts were never received and the court therefore infers they were never done. In her statement of the 11th March, 2016, para. 32, the Respondent states that she is contacting chartered accounting firms to provide financial statements for the estate, referring to a letter to said accountant dated the 14th August, 2015. Her evidence gave the impression that she was recently in contact with an accountant, not one almost 7 months earlier. When accounts were requested by the court by the 16th June, 2016 they were not supplied and an extension by her counsel was sought on the ground that more time was needed. In spite of her previous statements, no audited accounts have been provided to date and the evidence of Elizabeth Hawkes, chartered accountant regarding the numerous items for which information was required suggests a haphazard management of the business affairs of the company.

12. Wildred Dovo, Senior Registration Office of the VFSC in his sworn statement of the 19th May, 2016 stated that the Boulangerie has not been re-registered under the new **Companies Act**[25] as required. As Administratrix since December 2013, the Respondent had both the legal authority and the time to have complied, but

[25] No. 25 of 2012

she did not, and has no reasonable excuse for the breach. Consequently, the estate is in breach of the Act and will now be required to pay a penalty since the 6 month grace period has lapsed.

13. I refer to the very damning statements of Julie Elizabeth Hawkes, chartered accountant filed on the 27th June, 2016 and 22nd August, 2016 in which the following are highlighted:

- "There are no notes to the accounts nor any explanation on the basis on which the accounts are prepared.
- The accounts are not audited and there is no certificate from the person preparing the account.
- Accounts for the current year(2016) to date are also requested.
- This movement of VT9,787,096 means the owners 'shareholders took out of the business this amount of money during the year ending 31st December, 2015. Jean Jacques Galinie and Jean Yves Galinie have received none of this money. It can reasonably be assumed Joelle Galinie received all this money.
- A breakdown of the balance of (VT5,221,063) as at 31st December, 2014 is also sought as this could have been money paid to Joelle Galinie.
- The balance sheet shows a loan to Joelle Galinie of VT881,555. Details of the loan are sought.
- In the profit and loss account there is an expense line called unallocated cash expenses.....An explanation of what this expenditure is, is sought.
- Payments made to VNPF for employers contributions are usually 4% of wages and salaries. In the unaudited accounts for 2014 the percentage is 11.5% and in 2015 it is 18.4%. An explanation should be provided for this.
- Repairs and maintenance have increased from VT2, 008,661 in 2014 to VT6,238,488 in 2015 and explanation of this increase is sought.
- The liabilities of VT15, 934,747 comprises mostly legal fees and administrator fees. However, there is no detailed account for both liabilities. There is no bill of costs issued by the lawyer for the VT11, 085,822 as shown in the outstanding accounts."

There seem to be numerous inconsistencies and discrepancies and chasms in the accounts provided and demonstrate, either a complete lack of understanding of the running of the business or else there has been a misappropriation under the guise of mismanagement or ignorance. Either way, it demonstrates a patent lack of ability to manage the affairs of the estate.

14. Based on the accounts provided it would appear that there has been substantial pecuniary benefit gained by the Respondent as Administratrix in the personal loan obtained from the company of VT881,555, her employment as manager at a monthly salary of VT300,000, unaccounted for monies likely received by her in the amount of VT9,787,096, the transfer of 1000 shares to her partner which she would indirectly benefit from, administrator fees which are undetermined as it is masked with legal fees all amounting to VT15,934,747.

15. Muriel Vie in her statement filed on the 26th May, 2016 gave evidence that in a meeting of the 16th October, 2014 where she sat in as secretary of Credit Facilities Limited to take the minutes at which Franco Zuchetto, Felix Laumae and the Respondent were all present, Ms. Galinie stated that the 620 shares owned

by her father would not be distributed but would be retained by her personally. To her statement she attached an unsigned copy of the minutes of the meeting which she stated the Respondent later refused to sign. I believed and accepted the evidence of Muriel Vie as honest and a true account of what happened in that meeting. The fact that the minutes were unsigned did not affect my belief in her credibility.

My belief in the credibility of Muriel Vie was corroborated by the fact that this decision by the Respondent was taken less than one month after the judgment of Justice Saksak to transfer the shares. Her state of mind regarding the retention of those 620 shares was clearly demonstrated through that act.

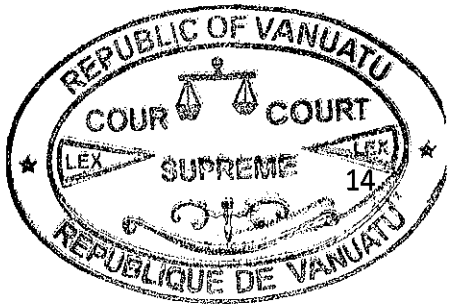
16. The change of name from Boulangerie Milo La Parisienne Limited to Boulangerie Joelle La Parisienne Limited after receiving administration, coupled with the appropriation of the 620 shares tends to show an intent of purpose, that is, that the Respondent intended to assume full ownership of the business and deny the remaining beneficiaries any share in that part of the estate.

In support of his argument as to the proper role of an administrator, counsel for the Respondent referred to the case of the **Estate of Molvono**[26] in which he quoted the learned Judge that *"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..... 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 the Queen's Regulations 7.* ***It provides the executor or administrator no rights of ownership or personal benefit.***" [my emphasis]. This case did little to help the Respondent in establishing her capability as Administratrix and went more towards underlining the solemnity of the duty before her and her failure to live up to that duty.

Conclusion

Notwithstanding the above, I could not err on the side of the Respondent because I did not find her nor her witness Kenneth Loloa credible. I found the Respondent's evidence to be inconsistent and her dishonest. She admitted under oath to having caused Karol, a person in her employ to sign as secretary on company documents filed with the companies Registry, though she was not the secretary of the company, an act that could be said to amount to a fraud. Her witness Kenneth Loloa at paragraph 5 and 6 of her statement of the 25th February, 2016 stated that *"annual return for 2015 reflected compliance by [the Respondent] with judgment/order made by the court to assign shares according to the deed of trust."* To her statement she attached exhibit KL2 which was an unfiled Return of Allotments and which, by the evidence of Wilfred Dovo of the 19th May, 2016 was a non-existent document with their Registry as the Registry had on file only an annual return for 2014.

[26] (2007) VUCA 22, Civil Appeal Case 37 of 2007



The Respondent was unable to justify any of her actions and the inconsistencies in her evidence regarding the preparation and provision of the accounts made her even more so. By letter of her lawyer of the 10th June, 2015[27] that *"our client **IS** working with a chartered accountant in town...."* the Respondent admitted, under cross examination, that she did not in fact have an accountant on the 10th June, 2015: *"I did not have an accountant on the 10th June. I wasn't working with one at the time."*

The production of photographs dated 2012 exhibited to her statement of the 11th March, 2016, paragraph 25, exhibit JG8 as proof of the Applicants use of the family home as a meeting place for drug users/smokers was unsubstantiated. Further, at paragraph 18 and 24 of the aforementioned statement, she stated that the photographs were taken *"when [she] took possession following order of Justice Aru."* The order of Justice Aru was made on the 5th September, 2014; nearly 2 years after the photographs were taken. I could not therefore accept the photographs as credible evidence and her account of events as true.

The most incriminatory evidence against her came from Muriel Vie who gave evidence that the Respondent, in a meeting of the 16th October, 2014 indicated that she would be retaining the 620 shares. This fact was compounded by the evidence of Elizabeth Hawkes who provided an assessment of the accounts of the estate as being incomplete, and highlighted numerous discrepancies, and finally, the evidence of Wilfred Dovo on the transfer of 1000 shares to her partner.

There was a vein of perfidy rampant throughout the evidence of the Respondent and I therefore could not accept her account of events as true.

On the contrary, I preferred the evidence of the Applicants which was consistent and steady throughout and they gave a believable account of all the matters within their knowledge. They pointed to and proved specific breaches and acts of their sister which they disapproved of as being contrary to her role.

By contrast, the Respondents written and oral evidence appeared to have one purpose, to castigate and lay blame on the Applicants and divert the court's attention from her administration of the estate. She accused her brothers of appropriation of funds, yet no evidence was produced to substantiate this claim nor any evidence that she was even pursuing an action to retrieve the alleged missing funds. This tends to raise a doubt in the mind of the court as to her own belief in that story and leads the court to further question her integrity and motives. Her evidence reveals little to establish her suitability as Administratrix in defence of the Applicants application. There appeared to the court to be a continuous thread of grave dishonesty in the conduct of the Respondent, demonstrated in her clear intent to appropriate a substantial part of the estate to herself by the award of 620 shares, the donating of 1000 shares to her deceased partner (for which the court takes judicial notice, she has applied to be appointed Administratrix of),[28] with what appears to the court to have been for the intention of retaining controlling interest in the company, the continued breach of court orders of two judicial officers to transfer shares of the estate to

[27] Sworn statement of Jean Yves Galinie of the 26th April, 2016, exhibit JY3
[28] PB 70 of 2015; Estate of Franco Zuchetto

the Applicants and the changing of the name of the business to reflect her's. But for the intervention of the Applicants to demand accounts of the estate and to have their rightful share awarded to them I do not believe that the Respondent had any intention to have ever relinquished her hold of the estate. Judging by the great financial benefits she has reaped it would behove her to distribute the estate especially as she could offer no reasonable explanation for her having garnered to herself such substantial sums.

My order is as follows:

1. That I find the Respondent to be in breach of both her common law and fiduciary duty to the estate by appointing herself as manager of the Boulangerie, obtaining a financial benefit therefrom, increasing the shares of the company to 1000 shares contrary to Article 6, paragraph 2 of the Articles of Incorporation and transferring the said shares to her partner, obtaining a personal loan of VT881, 555, unaccounted for administrator fees and unaccounted for sums in the amount of VT9, 787,096. Consequently, the Application to remove Administratrix is granted.

2. That consequent on (1) above, Application to restrain Administratrix from selling shares of the company Boulangerie is automatically resolved.

3. That the court grants administration to the Applicants with immediate effect.

4. That the Respondent is to work together with the Administrators for the purpose of providing accurate information and documents to a chartered accountant or auditor so as to provide a full audited account to the court before 28th February, 2017 at 4 p.m.

5. That the court appoints accountant is Martin St. Hilaire of AGC accountants, P.O Box 1276 who will undertake to provide a detailed account of all the activities undertaken by the Respondent in the name of the company as Administratrix, including all monies paid to the Respondent as manager, Administratrix and in her personal capacity.

6. That all documents held by the Respondent and her counsel in relation to the company is to be handed over to counsel for the Administrators within the next 7 days.

7. That the transfer of 1000 shares to Franco Zuchetto is deemed unlawful and the companies register is to be rectified accordingly.

8. That the current shares of the company are 2219.

9. That the NBV debt is a debt of the company and not of the estate of Emile Galinie.

10. That the 620 shares are to be distributed equally to the heirs of Emile Galinie by the 25th November, 2016.

11. That a valuation of the residential properties of the deceased are to be undertaken and provided to the court by the next hearing.

12. That a full bill of costs for all legal fees incurred from the 17th December, 2010 to the 18th November, 2016 is to be filed and served by the Respondent by the 17th February, 2017. **That failure to file may result in a wasted costs order being made against the Respondent.**

13. That bill of costs is to be taxed on the 23rd February, 2017 at 10 a.m.

14. That this matter is listed for review on the 28th February, 2017 at 4 p.m.

15. That counsel for the Applicants is to file and serve bill of costs by the 7th December, 2016.

16. That the Respondent is file and serve any objection to the bill of costs by the 13th January, 2017.

17. That costs order of the 28th April, 2016 in Enf. Case 311 of 2016 is to be born personally by the Respondent and not the estate.

18. That any further personal liability falling to the Respondent will be determined after submission of the audited accounts and taxed bill of costs.

DATED at Port Vila this 18th day of November, 2016.

BY THE COURT

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CYBELLE CENAC-MARAGH
MASTER

REPUBLIC OF VANUATU COUR COURT LEX SUPREME LEX REPUBLIQUE DE VANUATU