

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

Probate
Case No. 19/1639 SC/PRBT

BETWEEN: KALSUAKY JAMES
Applicant

AND: MATURENE JAMES
Respondent

Coram: *Justice Aru*
Counsel: *Mrs. M. G. Nari for the Applicant*
Mr. G. Avock for the Respondent

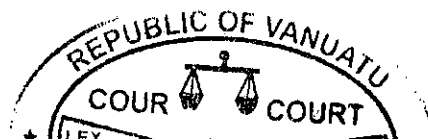
JUDGMENT

Introduction

1. Mr Kalsuaki James filed two applications, the first is to revoke an order for administration granted to his sister who is the respondent Ms Maturine James. The second is an application for administration to be granted to him. Both applications were heard together.

Background

2. The estate involved is a leasehold property title No 11/0G31/006 (the Property). There a number of dwellings on the Property for rent. The initial proprietor of the lease was Mr Jio James the father of the applicant and respondent.
3. Upon his passing, their mother the late Lucy James was appointed administrator of the estate. By transmission, she became the registered proprietor of the lease on 24 April 2008. She died on the 5 October 2012 and was survived by four (4) children namely:-
 - James Kalsuaki
 - James Maturine
 - James Larry ;and
 - James Anna.
4. Prior to Lucy James's death she signed a Will indicating amongst other things that upon her passing the Property will be freely transferred to her daughter Maturine James. Following her death on the 5 October 2012, the respondent applied and was granted



administration of the estate on 22 February 2013. By transmission the respondent became the registered proprietor of the lease on 7 March 2013.

5. Kalsuakli James applied but was unaware that administration had already been granted to the respondent.

Issue

6. The issue arising for consideration before me is whether the Will of Lucy James giving free transfer of the Property to the respondent was a valid Will.
7. The applicant says that he was overseas in 2013 when the respondent relied on the will to get orders for administration of the estate.

Law

8. The relevant law is the Wills Act [CAP 55]. Sections 4 and 5 provide for the form of a Will and the duties of witnesses and state as follows:-

“4. Form of will

A will may be in any form or language, but shall –

(a) be in writing;

(b) be signed or thumb printed by the testator at the foot of every page of the will and at the end of the will in the presence of at least two witnesses present at the same time.

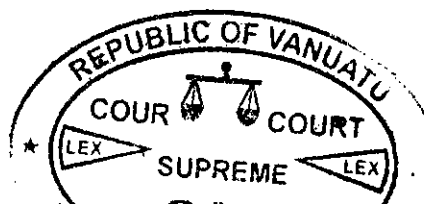
5. Duties of witnesses

(1) Every witness to a will shall witness the signature or thumb print of the testator by affixing his signature at the foot of every page and at the end of the will. The address or place of origin of every witness shall be written immediately opposite to his signature.

(2) A witness shall only affix his signature if the testator signs or thumb prints the will as provided by section 4, in his presence and in the presence of the other attesting witness or witnesses; and at least two witnesses shall attest this will in the presence of each other.”

Discussion

9. The above provisions of the Act provide that a Will may be in any form or language but it must be in writing and more importantly it must be signed by the testator at the foot of every page of the will and at the end of the will in the presence of at least two witnesses present at the same time.



10. Mr John Mark Bell deposes in a his sworn statement filed on 9 September 2019 that after he prepared the will and explained the contents to late Lucy James she signed and he countersigned as witness. It is apparent from Mr Bell's evidence that no one else was present with them. The mandatory requirement that at least two witnesses must be present at the same time to attest to the signing was not complied with.
11. The Will of late Lucy James is therefore not valid as it does not comply with the provisions of the Wills Act.

Result

12. The letters of administration granted to Maturine James is therefore hereby revoked. Administration of the estate of the late Lucy James is therefore granted to the Applicant Kalsuaki James.
13. In conclusion I should remind the parties of the obligations of an administrator as set out by the Court of Appeal **In re Estate of Molivono** [2007] VUCA 22 where the Court said:-

"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."

14. The applicant is entitled to costs to be agreed or taxed .

DATED at Port Vila this 3rd day of September, 2020
BY THE COURT

