

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

Civil
Case No. 23/2299 SC/CIVL

IN THE MATTER OF: Letters of Administration in the Estate of late
Willie TOA NGWELE
Deceased

AND IN THE MATTER OF: Section 24 of the Queen's Regulation No. 7 of
1972

BETWEEN: **RONALD RONNY MIKE NGWELE**
Applicant

AND: **KEITHA ROBYNE ANNESLEY LAURIE**
First Respondent

AND: **DANIEL JOHN**
Second Respondent

Before: *Hon. Acting Justice Oliver A. Saksak*

In Attendance: *Brian Livo for the Applicant*
Roger Tevi for the First and Second Respondents

Date of Hearing: *27th October 2023*

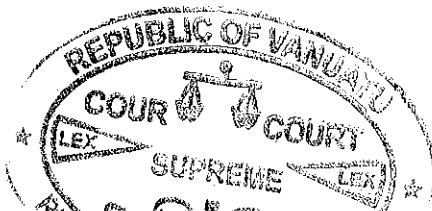
Date of Judgment: *31st October 2023*

JUDGMENT

1. The Applicant applied on 30 August 2023 seeking an order "to revoke the Letters of Administration" granted on 1 February 2023.
2. The application is made under Rule 24(9) of the Succession, Probate and Administration Regulation 1972 which provides:

"Court may revoke administration or order new or additional bond

24. The Court may, at any time, upon the application of any person interested in the estate or of his own motion on the report of the Registrar –

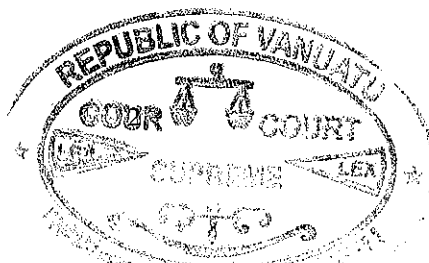


- (a) Revoke the administration already granted; or
- (b) N/A;
- (c) N/A".

3. The applicant also seeks orders that administration be granted instead to him, and that he be paid his costs of the application.

4. The application is made on the following grounds:-

- That the applicant is the biological son of the deceased and is a beneficiary of his late father's estate;
- On 23 March 2016 the Court in Civil Case 38 of 2013; Keitha Robyne Annesley Laurie (as claimant) v Willie Toa Ngwele awarded judgment against the defendant (the deceased) the sum of VT4,000,000 together with interest at 10% per annum;
- Despite making some efforts to pay the judgment sum, the deceased failed and the matter was listed before the Deputy Master on 10 April 2022. Accordingly orders were issued for the payment of the judgment debt together with costs to the Claimant;
- The defendant passed away on 10 April 2022;
- The claimant then applied for letters of administration which was granted to her on 1 February 2023;
- The deceased was the legal proprietor of lease title 12/0912/365;
- The claimant and administratrix resides at all material times in Springwood, Queensland in Australia and was not in Vanuatu in 2022 and/or 2023. Somehow or other an application for transmission was lodged in the name of the first respondent over title 12/0912/365 which was allegedly signed by the second respondent;
- The second respondent acted without any special letters of administration or proper legal authority pursuant to Section 33(1) of 1972 Regulation;
- The Lands Department caused the registration of the transmission over lease title 12/0912/365 on 25 April 2023 in favour of the second respondent;
- On the same date (25 April 2023) the Lands Department registered the transfer of lease tile 12/0912/365 from the first respondent to the second respondent for NIL consideration because it was claimed in the application that it was a family transaction;



- That the application for registration of transmission and transfer of lease were obtained by fraud and mistake;
- That the deceased has two other cases over which the administration of the estate has a duty to settle but the current Administratrix has failed her duty to do so;
- That the first respondent as administratrix of the estate of the deceased has failed her duties to deal with the estate to settle the judgment debt in CC38 of 2013;
- That she has failed as Administratrix of the estate of the deceased to perform her duties according to law, and instead has transmitted and transferred lease title 12/0912/365 for NIL consideration to the second respondent, thus causing loss to the estate of the deceased and non-satisfaction of a valid judgment of the Court.

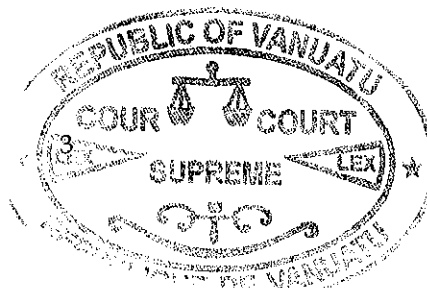
5. Section 33 of the 1972 Regulation states:

"Special Letters of administration if personal representative not within jurisdiction.

- (1) *If, at the expiration of three months for the date of grant of probate or administration of the will or estate of any deceased person, the personal representative is residing out of the New Hebrides (now Vanuatu), the Court may, upon the application of any creditor or person interested in the estate, grant to the applicant special letters of administration of the estate, grant to the applicant special letters of administration of the estate of such deceased person, with such limitation as to powers and duration as the Court may decide;*
- (2) *The applicant shall satisfy the Court that the personal representative is resident out of the jurisdiction, and that the applicant is thereby delayed in recovery or obtaining payment of moneys, or the possession of goods and chattels, or any other part of the estate to which he is by law entitled, or that the estate is liable to loss or waste".*

Discussion

6. Mr Tevi filed a short response to the application on 17 October 2023 opposing the application on grounds of delay and lack of opposition to the application for letters of administration by the first respondent.
7. Further, Mr Tevi argued the second respondent should never have been made a party to this application as allegations of fraud and/or mistake should be brought under Section 100 of the Land Leases Act as a separate proceeding.



8. At the hearing it appears Mr Livo conceded the second limb of the argument and informed the Court he would not be pursuing the allegations of fraud and mistake at this stage. He however pursued the allegation of failures of duty by the first respondent as administratrix of the estate of the deceased.
9. The issue is: whether or not the first respondent as Administratrix has failed her duty to deal with lease title 12/0912/365 to settle the judgment sum and/or distribute the estate according to law?
10. The sworn statement of the applicant annexes a copy of the judgment of the Court dated 23 March 2016 in favour of the first respondent as claimant for the sum of VT4,000,000 plus 10% interest per annum thereon (see Annexure "RR MN 02").
11. Annexure "RR MN 04" is a copy of the letters of administration dated 1 February 2023 and its value being VT8,200,000.
12. Annexure "RR MN 05" shows a copy of lease title 12/0912/365 registered in the deceased's name as lessee.
13. The value of that leasehold property is VT8,200,000.
14. When the first respondent was granted letters of administration on 1 February 2023, she was a judgment creditor in CC38 of 2013 to the sum of VT4,000,000 plus interest of 10% effective from December 2009.
15. From December 2009 to 16 March 2016 a period of 6 years at VT400,000 per year, the total amount of interest would be VT2,400,000.
16. Adding this amount to the principal debt of VT4,000,000 the total amount would be VT6,400,000.
17. The Administratrix's legal duty was to deal with lease title 12/0912/365 to recover her principal debt plus interest equivalent to VT6,800,000 and then distribute the balance of VT1,400,000 to the beneficiaries of the estate. That is on the basis that lease title 12/0912/365 was sold for VT8,200,000 as its market value or even more.
18. That did not happen. Instead from the clear evidence of the applicant, the first respondent first caused the lease title 12/0912/365 to her name, then later transferred it on the same date to the second respondent without compliance with Section 33 of the Regulation. She had failed in her legal duty as Administratrix of the estate of the deceased.
19. I am satisfied therefore that the application is properly made pursuant to Section 24(1) of the 1972 Regulations.



Result

- 20. The application is allowed and the grant of Letters of Administration made to the first respondent on 1 February 2023 is hereby revoked.
- 21. A new grant of Letters of Administration in the estate of late Willie Toa Ngwele, deceased is now made in favour of Ronald Ronny Mike Ngwele, the applicant.
- 22. I award the costs of this application to the applicant on the standard basis as agreed or taxed, as the offer of settlement by the applicant could have been accepted, but for the refusal by the respondents.

DATED at Port Vila, this 31st day of October 2023.

BY THE COURT



Hon. Acting Chief Justice Oliver A. SAKSAK

