

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 3067 OF 2024

IN THE MATTER of Application for  
Letters of Administration in the  
Estate of the late **IZONO CAROLINE**

AND IN THE MATTER of Rules 2.3  
and 2.5 of the Probate and  
Administration Rules 2003 and the  
Queens Regulation No.7 of 1972

BETWEEN

**MERMER ALAIN**

Applicant

AND

1. **NADINE ALATOA**
2. **JEAN PIERRE MERMER**

Respondents

BEFORE: Aurélie TAMSEUL

(Deputy Master)

DATED: 21<sup>st</sup> day of November, 2024

ENTERED: ~~11~~ <sup>14 February 2025</sup> day of ~~December, 2024~~

APPEARANCES: Roger Tevi counsel for the Applicant, Roger Rono counsel for the Respondents

PRESENT: Alain Mermer (Applicant), Nadine Alatoa (first Respondent)

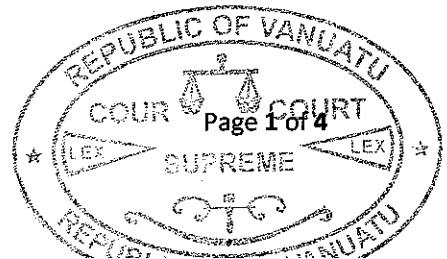
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Decision

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a. Introduction

1. The Applicant filed on the 26<sup>th</sup> September, 2024 an Application for Administration in the estate of Izone Caroline.



2. The Respondents filed on the 5<sup>th</sup> November, 2024 objecting to the Letters of Administration being granted solely to the Applicant wherein the former requested joint administration.
3. The Applicant and the Respondents are all children of the deceased.
4. The parties respectively filed written submission as follows, to wit:
  - I. Respondents filed submission on the 5<sup>th</sup> December, 2024; and
  - II. Applicant filed submission on the 9<sup>th</sup> December, 2024.

**b. Consideration of the facts and the law**

5. The Applicant's and Respondents' entitlement to grant of letters of Administration in the estate of the deceased follows that of the latter's husband or wife.
6. Where there is no husband or wife, the law allows for a grant to be made to one or not more than four next of kin in order of priority of entitlement under the Regulation.

***Persons entitled to grant.***

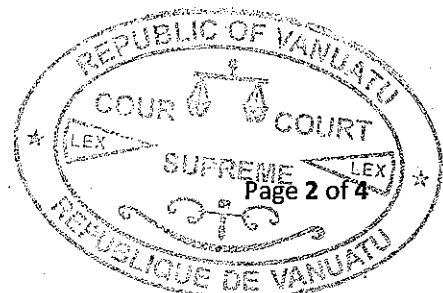
*7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than twenty-one years of age –*

*(a) the husband or wife of the deceased; or*

*(b) if there is no husband or wife **to one or not more than four or the next of kin in order of priority of entitlement under this Regulation in the distribution of the estate of the deceased; or (my emphasis)***

*(c) any other person, whether a creditor or not, if there is no person entitled to a grant under the preceding paragraphs of this section resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.*

7. Therefore, the children of the deceased stand in equal footing vis-a-vis each other under the persons entitled to grant. Furthermore, the legislation allows for a grant to be made separately or jointly in the entitlement ranking.
8. In this matter, where the Respondents claim a genuine fear of unfair distribution of the share of the estate, they submit that the best option would be for a joint administration as allowed in the legislation.
9. The Applicant in his submission confirms that all the parties, being the children of the deceased, are entitled to grant
10. For ease of understanding, it will be necessary to draw some attention to the duties of an Administrator in terms of the distribution of the remainder of the estate.



11. The duties of an Administrator are outlined in section 6 of the Queens Regulation No.7 of 1972, 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:-

(a) if the intestate leaves a wife, or husband, with or without issue, the surviving wife or husband shall take the personal chattels absolutely, and –

(i) if the net value of the residuary estate of the intestate, other than the personal chattels, does not exceed ten thousand dollars the residuary estate absolutely; or

(ii) if the net value of the residuary estate exceeds ten thousand dollars, the sum of ten thousand dollars absolutely;

(b) if the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, take one-half of the residuary estate absolutely;

(c) if the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, taken one-third only of the residuary estate absolutely, and the issue shall take per stirpes

and not per capita the remaining two-thirds of the residuary estate absolutely;

(d) if the intestate leaves issue, but no wife or husband, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely; ..."

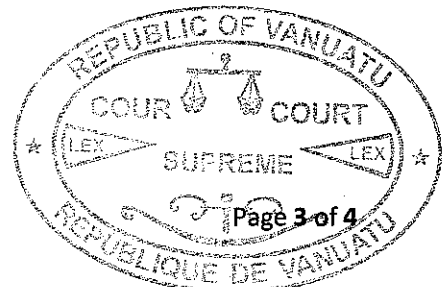
12. The Court of Appeal in the case of *In re Estate of Molivono*<sup>1</sup> further elaborated the above-mentioned section of the legislation and I quote:

"...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 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...." (my emphasis)

13. The parties are therefore reminded that the duties an Administrator is to determine what properties form part of the estate apart from any interest in custom land, pay all debts of the estate then ensure that what is left is distributed to the beneficiaries in accordance with the law.

<sup>1</sup> In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 ( 30 November 2007)



**c. Result**

1. That Administration in the estate of **Izono Caroline** late of Anambrou Area, Port Vila, Efate Island, SHEFA Province in the Republic of Vanuatu who died on 2 September 2021 is granted to **jointly** to Alain Mermer, Nadine Alatoa and Jean Pierre Mermer.
2. The sworn value of the estate is estimated is under VT 5,600,000.
3. That there is no order for costs.

