

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 1627 OF 2024

IN THE MATTER of Application for
Letters of Administration in the
Estate of the late **ROSE-MOREN
MOSES OVA PRASAD**

AND IN THE MATTER of Section 2.3
and 2.5 of the Probate and
Administration Rules 2003 and
Section 6 and 7 of the Queen's
Regulation No.7 of 1972

BETWEEN

ELIZABETH PRASAD

Applicant

AND

1. **ANDRINA KL THOMAS**
2. **MARGARETH PEATO**

Respondents/ Administrators in the estate

BEFORE: Aurélie TAMSEUL

(Deputy Master)

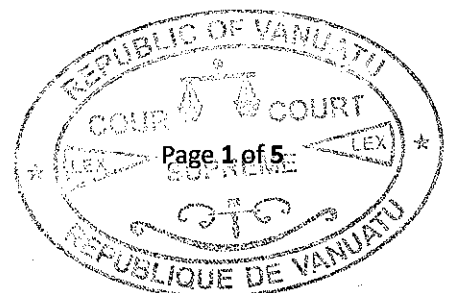
DATED: 19th day of February, 2025

ENTERED: 19th day of February, 2025

DECISION

a. Introduction

1. This decision is written based on the written submissions filed by the parties following to the hearing held on the 6th February, 2024 of the Application filed on the 15th November, 2024 to revoke the Administration in the estate of the deceased granted to the Respondents on the 7th October, 2024.



2. The said grant was entered subsequent to two previous grants being given to two Administrators being late Jack Kilu who was appointed Administrator on the 21 October 2022 subsequent to the passing of late Saling Stephen being the original Administrator appointed on the 15 May, 2006.
3. Elizabeth Prasad filed the Application on the basis that she fears the Respondents will not administer the deceased estate fairly and will exclude her from her share in the estate being the leasehold title No. 03/OI72/047.
4. Elizabeth Prasad seeks that the Administration be revoked from the Respondents and be granted to her. Alternatively, if the Administration is not revoked then that the first Respondent, not being a biological child of the deceased, be removed as Administrator and that Elizabeth Prasad be granted joint administration with the second Respondent.

b. The Law

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.

Duties of Administrator

"Succession to property on intestacy.

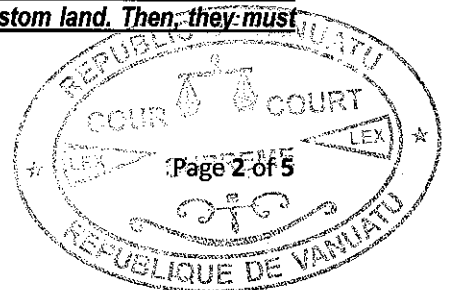
6. (1) Subject to the provisions of the last preceding Part hereof, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, **shall hold the property as to which a person dies intestate on or after the date of commencement of this Regulation on trust to pay the debts, funeral and testamentary expenses of the deceased and to distribute the residue as follows: -..."**

5. The Court of Appeal referred to the case of *In re Estate of Molivono*² to 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

¹ Succession, Probate and Administration Regulation 1972, URL: www.pacilii.org.vu

² In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



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...."

Period of Administration

"Power to postpone distributions.³

38. 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." (my emphasis)

"Court may revoke administration or order new or additional bond.⁴

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 (my emphasis)

(b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or

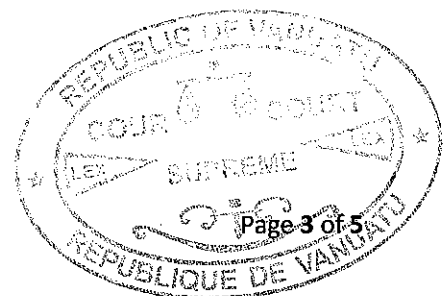
(c) order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable."

c. Discussion

6. A brief history of this matter indicates that there remains a family dispute between the parties, being half-siblings, which needs to be resolved. However, that is a separate issue which I will not delve into herein.
7. In dealing with an Application for revocation, the Court considers the actions of the Administrator to ascertain if there is maladministration which has affected the interest of the beneficiaries of the estate.
8. Elizabeth Prasad's Application for revocation lies in a fear of future events regarding the carrying out of the Administrators' duties. This fear is pre-emptive to prevent the Administrators from carrying-out their legal duties. Mrs. Prasad has not shown that the Respondents do not have the capacity to administer the estate but rather that they may not give her share therein.
9. Therefore, there is a need to address Mrs. Prasad's fear and in addition provide an elaboration on the difference between the duties of an Administrator and the right of entitlement.

³Queens Regulation No.7 of 1972

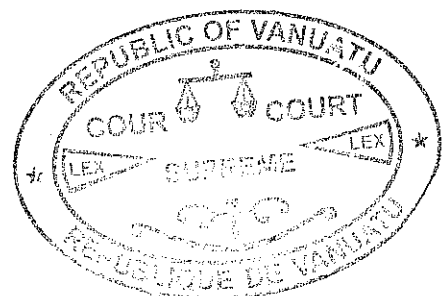
⁴ Queens Regulation No.7 of 1972



10. The Administrator's duties and responsibilities are given by the discretionary power of the Court to list of persons in Section 7, to administer the estate of the deceased. The said duties are not in any way a right to inherit the shares of the estate but merely a power to manage and distribute the deceased estate.
11. In Addition, the said Administrator's duties are clearly outlined in section 6 of the Queens Regulation⁵ and further elaborated in the case of *In re Estate of Molivono*⁶. Thus, when a person is appointed Administrator, they put themselves in a solemn duty to carry out the legal responsibilities outlined in section 6 of the *Queens Regulation*.
12. The right of entitlement is given by the legislation in Section 6 of the *Queens Regulation* to the beneficiaries.
13. It has been established, in the hearing held on the 6th February, 2025, that the first Respondent Andrina KL Thomas, is not the biological daughter of the deceased and under the law, she is not entitled to inherit the shares of the estate unless the priority of ranking of entitlement has all been exhausted. However, where the priority of ranking is exhausted, the inheritance becomes absolute.
14. Therefore, given the current circumstances, the only persons entitled to inherit the deceased estate are her biological children.
15. Andrina KL Thomas filed sworn statements deposing that she understands her legal duty as an Administrator and that should she fail to carry them out, she will be held accountable under the law.
16. Therefore, the Respondents Andrina KL Thomas and Margareth Peato, as Administrators have a legal duty to ensure that Elizabeth Prasad and her siblings get their legal share in the estate.
17. The Respondents are reminded that their duty is to complete administration and not to manage the estate indefinitely unless all the beneficiaries agree.
18. There is always the option of paying out shares, where necessary, which may be considered by the joint Administrators together with the beneficiaries in view of solving this family dispute once and for all.
19. The Legislation clearly states that an Administrator is not bound to distribute the estate before the expiration of one year from the date of grant.

⁵ Queens Regulation No.7 of 1972

⁶ In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



d. Finding

- i. The Application to revoke administration is not granted.
- ii. That the Respondents are urged to expedite the Administration of the estate and to complete administration before the 7th October, 2025.
- iii. Elizabeth Prasad has liberty to appeal this decision.
- iv. There is no order for costs.

