

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

Civil
Case No. 15/182 SC/CIVL

BETWEEN: Eric Yakeula Ake
Claimant

AND: Dominique Yakeula, Danielle Yakeula
represented by Tom Simon as administrator
of the Estate of Dominique Yakeula and as
representative of Danielle Yakeula
Defendants

Coram: Justice Dudley Aru

Counsel: Mr. D. Yawha for the Claimant
Mr. J. Ngwele for the Defendants

RESERVED JUDGMENT

Introduction

1. Summary judgment in this matter was entered on 22 December 2016. An appeal against the decision was unsuccessful and the matter was returned for assessment of damages. The parties consented to the matter being determined on the papers once submissions were filed.

Background

2. The background is adequately set out in the Court of Appeal judgment in **Yakeula v Ake [2017] VUCA 2**. The claimant and defendants are siblings disputing the estate of their mother, the

..... late Lari Ake Yakeula, sometimes known as Larry Ake Yakeula, who died intestate in 1997. The deceased was the mother of six children including the named appellants and the respondent. Some of the six children have since died, including we learnt at the appeal, the first named appellant Dominique Yakeula ("Dominique").

Following the mother's death the second named appellant Danielle Bidal Yakeula ("Danielle") applied for and was granted Letters of Administration. In 2012 the respondent, apparently unaware of the grant to his sister, also applied for a grant of Letters of Administration. The application was opposed and, when the earlier grant was discovered, the respondent asked the Court to revoke that grant and to appoint him as administrator. In October 2014 the Court (in Probate Case 3 of 2012) revoked the grant to Danielle and appointed the respondent as administrator.



It is said the only remaining asset of the late Lari Ake Yakeula 's estate is a leasehold property located at Fatumaru Bay in Port Vila. It would appear that the late Dominique and her family have lived in that property since 1997. Danielle also stayed at the property when she visited Port Vila from Noumea. As administrator, the respondent asked his sisters to pay rent on the property. They refused and so the respondent commenced proceedings to evict them and their families. The respondent also sought damages from the appellants for "loss of rental".

3. The main issue is whether the claimant is entitled to recover damages for loss of rental. The claimant claims loss of rental to be VT 7,200,000 and continuing at VT 40,000 per month.
4. The Court of Appeal on returning the matter said at [] 7,8 and 9 as follows:-

There is no right which allows a person as beneficiary to unilaterally decide to occupy estate property simply because that person is a beneficiary. In those circumstances an administrator is perfectly entitled to require vacant possession and if that is not given voluntarily, to take proceedings for eviction. It is no defence to such proceedings to say because I am a beneficiary I have a right to occupy estate property. The appeal must fail.

The evidence before the primary judge showed that Danielle, whilst administrator, and Dominique as occupier of the house, had each paid expenses of the estate, including for its maintenance and repairs. It also indicated the respondent as administrator had paid certain expenses which related to the administration of the estate, although from his own resources. The proper expenses paid by each of them as expenses of the estate will, of course, have to be brought to account. In the case of Dominique and Danielle that would not include expenses such as for services (electricity water gas etc) which would commonly be borne by a tenant. That accounting will have to be done before the net proceeds of the estate are distributed.

9. *We also note that, as the respondent acknowledges, a beneficiary may remain in the house of the deceased if they agree to pay to the respondent, as administrator, an appropriate rental and properly reside there as a good tenant. Also, any beneficiary is entitled to offer to buy the house from the administrator. The administrator may accept that offer if all the beneficiaries (including the administrator) agree. In either case the rent and the purchase price should be for fair market value unless all the beneficiaries agree otherwise.*

(emphasis added)

5. The claimant relies on the following sworn statements: -

- Sworn statement of Eric Ake filed on 12 May 2016
- Sworn statement of Erick Ake filed on 24 May 2017

6. The defendants also filed sworn statements in response and rely on the following:

- Sworn statement of Tom Simon filed on 5 September 2022
- Sworn statement of Dominique Yakeula filed on 2 November 2015



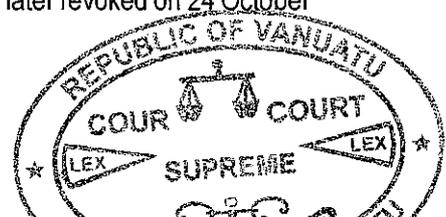
- Sworn statement of Dominique Yakeula filed on 9 June 2016

Submissions

7. The Claimant submitted that the defendants were negligent and failed in their duty of care to administer the property for the best interest of all the beneficiaries. That they were negligent in their failure to pay rent despite the demand for rent issued on February 2015.
8. The claimant relied on **Bulememe v Republic of Vanuatu** [2022] VUCA 10 and **Republic of Vanuatu v Suta** [2024] VUCA 45 to support their submissions that the defendants owed a duty of care to the claimant and were negligent in performing that duty. As a result, the claimant submits that he is entitled to the following: -
 - a) Rental arrears of VT 70,000per month from February 2015 till December 2023 totalling 105 months and 30 days amounting to VT7,490,000
 - b) 82,000VT payment for outstanding land rent
 - c) 91,000VT payment for outstanding property tax
 - d) 28,000VT payment for valuation report
 - e) 2,000,000 VT expenses paid to maintain estate value
9. The defendants on the other hand submit that the claim for rental arrears dating back to 1997 is without basis as there was no rental agreement with the claimant that they would pay rent for residing in their family home. Furthermore, it was argued that the claimant only became administrator of the estate on 24 October 2014. Prior to 2014, Danielle Yakeula as the administrator then did not demand rent from the claimant.
10. The defendants submitted that the claimant's duty as administrator was to settle the debts and distribute the residue of the estate in equal shares to the beneficiaries but not to enrich himself. Furthermore, it was submitted that the claimant sold the property for VT 20 million and failed to distribute the proceeds to all the beneficiaries including the defendants.
11. It was also submitted that the evidence relied on by the claimant consisted largely of Invoices but not receipts of actual payments made. Similarly, the claim for rental arrears was not supported by any agreement to pay rent and ignores the family relationship between the parties. It was submitted that the claimant failed to prove any negligence on the part of the defendants therefore the claim for damages must be rejected and dismissed and the claimant be ordered to provide a full accounting of the estates assets and to disburse the funds to the beneficiaries.

Discussions

12. The issue of damages returned by the Court of Appeal for determination only relates to the claim for loss rent which was pleaded in the claim and nothing else. The other damages claimed which were not pleaded in the claim are therefore rejected. In addition, the submissions relating to negligence of duty are also rejected as these were not pleaded.
13. The only issue is whether the claimant is entitled to seek VT 7,200,000 as loss of rental at VT 40,000 per month. Dominique Yakeula says she had been living on the property with their mother and looked after her until her passing in 1997. When Danielle Yakeula became administrator of the estate on 24 September 1997, she did not demand any rent from her siblings who resided on the property. The grant of administration to Danielle Yakeula was later revoked on 24 October



2014 and on the same date the claimant was appointed administrator. Prior to 24 October 2014, the claimant lacked jurisdiction to claim loss of rental as he was not the administrator. The claim for eviction was filed on 21 August 2015, a period of 10 months from the date the claimant became administrator. The defendants as beneficiaries could only remain on the property if they agree to pay rent to the administrator. There is no evidence of any agreement to pay rent at VT40,000 be it verbal or written. Rent was demanded by letter in February 2015. The defendants responded through their lawyer refusing to pay rent on 2 July 2015. The claimant says the defendants did not want to pay rent so he filed his claim seeking orders against the defendants to vacate the property which was granted on 22 December 2016 giving the defendants 28 days to vacate the property.

14. The claimant as administrator was entitled to seek eviction from the property when no agreement was reached regarding payment of rent. Therefore, there was no basis to maintain a claim for loss of rental.
15. Tom Simon deposes that the property has now been sold by the claimant for VT 20 million which is not denied by the claimant. That being the case the claimant is now mandated to distribute the residue of the estate to all the beneficiaries including the defendants. The Court of Appeal at [] 4 and 5 said:-

"4. There is no doubt and indeed no dispute that upon the death of the late Lari Ake Yakeula her six children were entitled to take per stirpes her entire estate. In simple terms, as she died intestate the six children were entitled to equal shares of their mother's estate. It was not entirely clear from the evidence and submissions whether any of those children died leaving issue, meaning grandchildren of Lari Ake Yakeula, but if there are such issue they would be entitled to their deceased parent's share of the estate. That share would be distributed according to any will the deceased parent left or according to the rules of intestacy applicable to the parent.

5. *There is no dispute that the appellants and the respondent were each entitled to at least one sixth of their mother's estate....."*

Result

16. The claim for loss of rental is therefore dismissed.

DATED at Port Vila this 14th day of November, 2025

BY THE COURT

Dudley Aru
Judge

