

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CIVIL DIVISION)

OA 3/2002

IN THE MATTER of the Will of **PAPEHIA**
WICHMAN

BETWEEN **RANGITAI**
WICHMAN of
Rarotonga, Motel
Worker
Applicant

AND **MATARII**
VAINERITUA of
Rarotonga, Executor
of the Will of the late
Papehia Wichman.
Respondent

Mr Arnold for Applicant

Matapakia Tutu Ina for Respondent

Date of hearing: 24 June 2002

Date of decision: 24 June 2002-07-01

DECISION OF GREIG CJ

This is an application for an account of the administration of an estate. There are in addition to the general application for an account some particular matters that are sought to be answered in the account by the Executrix.

The matter arises out of the estate of Papehia Wichman who died on 9 July 1995. Probate was granted to the Respondent the Executrix Matarii Vaineritua on 26 April 1996. In applying for that probate she swore that she would faithfully administer the estate and would whenever ordered to do so file in the Court and verify by affidavit a true full and perfect inventory of the whole of the estate facts and credits of the deceased. Furthermore by Rule 296 of the Code of Civil Procedure every executor or administrator within 12 months after the grant of probate must lodge such an account with the Registrar. As I understand it no such account has ever been filed in this estate.

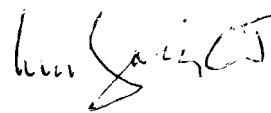
Questions arising out of this estate have already been before the Court in an application by this same applicant in relation to the devise or gift to her in the Will of the deceased. What has concerned this applicant at this stage in particular, apart I assume from the general absence of any accounting, is what appears to have been the sale of a part of the estate held under a lease which has 30 years remaining of its term. That sale or assignment of the lease is for the sum of \$20,000 to persons who I am told are the relatives of the Executrix but are not relatives at all of the deceased. The particular property in question forms part of a particular gift or arrangement in his Will that that house and its contents should be used and I quote, "as a family home for the benefit of my grandchildren which is not to be sold but be left as a heritage for them to live in peace." So that what appears to have been done by the Executrix is contrary to the terms of the Will.

Clearly there is jurisdiction to make an order in such a case as this and in face of what appears to be action contrary to the terms of the Will and the wishes of the deceased, it is appropriate that such an accounting should be done. The account will cover the period from the 26 April 1996 until now. That is a lengthy period and it will require accounting of the assets and

liabilities of the estate at the date of the death of the deceased in 1995 and everything that has been done in respect of the estate thereafter. In particular the accounting will have to show the receipts and payments and in effect the occupation of this land which is known as the 'Backpackers'.

Some of the particular matters that are sought in this application will of necessity be included in the accounting such, for example, as the first particular to give a full account as to the occupation by the Executrix's family of the 'Backpackers' but also, I would add, the occupation by any other persons and any rents that might have been received and paid out. Such matters however as what steps were taken to advertise the lodge for sale or to advise the beneficiaries really do not form part of an accounting such as this. As I said to Mr Arnold this is more like administering interlocutories and it maybe that that will have to come later. Clearly however the accounting will have to include, and I particularly require, what steps if any, the Executrix took to determine a fair and appropriate value or consideration for the transfer from herself to the assignees, whether at the sum of \$20,000 or any other figure.

I make an order therefore that the Executrix shall make a full and distinct account in writing of her administration of the estate to be verified by affidavit. Such accounting will take into account and give details of the matters which I have already mentioned. I order that she will have 21 days from today's date to complete that accounting. I reserve leave for her to apply for any extension of time but any such application would have to be supported by good reasons for any further extension. Costs will be reserved.



CHIEF JUSTICE