

639

IN THE SUPREME COURT )  
OF THE TERRITORY OF )  
PAPUA AND NEW GUINEA )

H.P. 15 of 1971 (P).  
CORAM: CLARKSON, J.  
Moresby  
1st September, 1971.

In the matter of THE WILL AND ESTATE  
OF JAMES ALBERT WILLIAM HARRIS

1971  
Sept. 1  
IN  
CHAMBERS  
PORT  
MORESBY  
Clarkson, J.

The testator died on 27th February 1970 at Port Moresby leaving a will made two days earlier. Letters of Administration with the will annexed were granted on 18th June 1970 to the Public Curator. There was an intestacy as to part of the estate and it appears probable that the overall result - as agreed by counsel before me - is that subject to any order in these proceedings, the applicant the lawful widow of the deceased, would receive some \$5,200.00 being the proceeds of an insurance policy in respect to which there was an intestacy and which are not liable to be made available for payment of the deceased's debts. The net balance of the estate when properly marshalled to pay death duty and executors commission amounts to about \$26,300.00 which passes under the will to the sole beneficiary Margaret Helen Harris who is also known as Margaret Helen Green.

The applicant then 31 years and the deceased then 27 years were married in 1957 in Queensland. The marriage was childless. The applicant had previously been married. In fact the applicant and the deceased had been living together as man and wife since 1949 and the applicant's first marriage was not dissolved until 1954. The deceased worked on the Snowy River Scheme until September 1958 and thereafter the couple lived and worked together in Darwin. By arrangement the applicant received no money for maintenance from the deceased. His earnings as a waterside worker were good but he had liabilities to meet in respect of two cars he had purchased and the applicant was earning wages as a barmaid. The applicant was supplied with quarters where, for most of the time the deceased lived with her.

The deceased came to Port Moresby in November 1964 and the applicant followed in December of that year but apparently stayed for only a month. In April 1965 the applicant joined her husband at Akoma where he was producing copra and managing a trade store. The applicant assisted her husband in this business in somewhat trying conditions

until December 1965. The applicant by agreement then returned to Darwin and supported herself until November 1966 when she rejoined her husband in Port Moresby. During that period the deceased was working and trading in the Daru area. After an overseas trip early in 1967, the couple went to Angoram in June 1967 for a short time. The deceased then returned to Daru and the events are described by the applicant as follows: "It was not possible for me to join him on the boat and it was agreed that I should return to Sydney whilst he was building up his finances and could obtain accommodation for me to return. My husband obtained overdraft accommodation from the Bank of New South Wales from the bank at Port Moresby sufficient to pay me air ticket to Sydney and I then returned to Sydney. Until March 1968 my husband sent to me an amount of \$100.00 every four or five weeks and in his correspondence to me complained that I was not going to work. I told him that I was not well enough to work. In March, 1968, I wrote to my husband and requested an amount of \$100.00 towards my maintenance and he sent me this amount. I received no other money until I made another request of him in September, 1968 and received the sum of \$100.00. I did not receive any indication from him that he had accommodation for me in New Guinea nor had he requested me to return to cohabit with him prior to his death."

In the meantime, in about March 1968, deceased, unbeknown to the applicant, commenced to live with Margaret Helen Harris (the beneficiary) and this relationship continued until deceased's death.

From early 1968 until 1970 the deceased and the beneficiary operated a trade store at Balimo.

The beneficiary had previously been married but that marriage had been dissolved in July 1967. Neither the applicant nor the beneficiary has any substantial asset. Apparently each is able at present to support herself. Each, at different times, assisted the deceased to carry on business in the primitive and difficult conditions in which he chose to work.

The applicant is the lawful widow of the deceased. Her relationship with the deceased commencing in 1949 was a somewhat loose one which appears to have met the parties wishes. When they were together, the applicant's earnings were at least partly used to help support herself. When she

asked for money, after regular payments ceased in 1968, she received it from the deceased.

I think it proper to conclude that whilst in fact the parties lived apart for the last two years of the deceased's life, there was no renunciation by her of the marriage bond and that she was not guilty of conduct disentitling her from any relief to which she might otherwise be entitled. If the applicant has been left without proper maintenance, it is in this court's discretion to make such provision as the court seems proper having regard to all the circumstances of the case. As I have already said, the applicant is probably entitled to receive some \$5,200.00. After due consideration I have concluded that this provision is insufficient. The applicant through her counsel has agreed to relinquish all claims against the estate if an order is made in her favour for a sum in excess of \$5,260.00 being the expected proceeds of the insurance policy.

There may be some argument as to the existence of a partial intestacy or as to the persons entitled. I think the simplest way to do justice is to order that having regard to all the circumstances of the case, on the applicant completing a release by her of all claims against the estate, such release being at the expense of the estate and in such form as the Public Curator may reasonably require, the applicant receive a lump sum of \$10,000.00 from the estate to be paid firstly from the proceeds of the National Mutual Life insurance policy and secondly from the net proceeds, held by the Public Curator as representing the balance of the estate.

The normal direction required by section 11 of the Ordinance will be made.

The applicant and the Public Curator are entitled to costs as between solicitor and client out of the estate. Liberty is reserved generally to apply.