

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal Case No. 10 of 2014

**IN THE MATTER OF AN APPLICATION FOR BARNABE MELTEKLESI
LETTERS OF ADMINISTRATION IN THE
ESTATE OF :**

Deceased

**BETWEEN: ENOCK MELTESALE AND
PIERRE MELTESALE**
Appellants

AND: ROCKY MELTEKLESI
Respondent

Coram: Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Raynor Asher
Hon. Justice Daniel Fatiaki
Hon. Justice Oliver Saksak
Hon. Justice Stephen Harrop
Hon. Justice Mary Sey
Hon. Justice Dudley Aru

Appearances: Eric Molbaleh and John Taiva Wingy for the Appellants
John Timakata for the Respondent

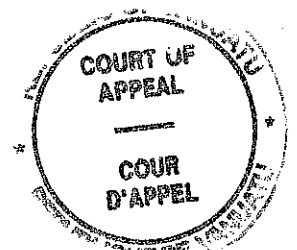
Date of Hearing: Thursday 17 July, 2014

Date of Judgment: Friday 25 July, 2014

REASONS FOR DECISION

Introduction

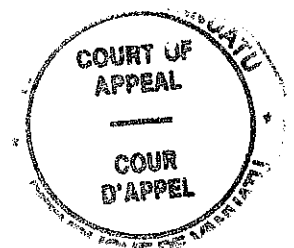
1. Barnabe Melteklesi ("Barnabe") died intestate on 17 July 2006. On 20 October 2006 the Supreme Court granted letters of administration of his estate to the respondent, Rocky Melteklesi ("Rocky") who was Barnabe's nephew (son of his sister) and, it appears, his customarily adopted son. The sworn value of the estate was less than Vt2.5 million. It



7. The appellants dispute that Rocky was properly adopted by Barnabe. There is however a letter dated 2 August 2006 which may well have been put before the Supreme Court in October 2006 (that remains uncertain because the probate file was apparently lost in the Courthouse fire in 2007) in which Rocky's parents Ephrem and Emilienne Melvirlani certified that Barnabe had customarily adopted their son Rocky since birth. Rocky was born in 1953.

Discussion

8. At the hearing of the appeal, after discussion between the Court and Mr Molbaleh, the appellants accepted that the application for leave to appeal against Rocky's appointment was misconceived. That is because the information before the Court suggests that Rocky has proceeded to administer the estate and has largely if not totally completed his duty of getting in the assets and selling them. What the appellants are really complaining about is that he has not thereafter distributed the proceeds of sale in a manner consistent with his obligations under regulation 6 of the Succession, Probate and Administration Regulations 1972 ("the Queen's Regulation"). Mr Molbaleh accepted after this was pointed out by the Court that there is no practical point in changing the identity of the administrator after the administration has been completed. Rather, the appellants ought to be instigating an enquiry by the Supreme Court as to whether that administration has been properly undertaken.
9. On the face of it, and without Rocky having yet had any opportunity to comment, it appears that the estate may not have been properly administered.
10. Given Sabine's survival of Barnabe, and Barnabe's parents pre-deceasing him, she should have received his personal chattels, the sum of \$10,000 and, depending on whether Rocky is properly treated as Barnabe's son for succession purposes, either one-third or all of of his residuary estate. This much is clear from regulations 6(1)(a), (b),(c) and (g). Following Sabine's death the appellants, their two siblings and their three half sisters ought to have received these assets or the proceeds of their sale.
11. If Rocky were legitimately adopted then he would be entitled to a share of two- thirds of the residuary estate. However there is sworn evidence before the Court indicating that he may have received all of it. Enock Meltesale says that the sale of the property to Mr Sileye



Result

18. Mr Molbaleh accepted that the appropriate course, as suggested by the Court, was for this Court to refer the file to the Supreme Court so that a Judge may make an order under rule 4.2 of the Probate and Administration Rules directing Rocky to file accounts in respect of Barnabe's estate. The mandatory requirements for such accounts are set out in rule 4.3.
19. It would then be a matter for Mr Molbaleh to keep in touch with the Supreme Court as to progress in that regard and depending on the contents of the accounts to decide what if any action his clients may wish to take.
20. The Court did not consider that any award for costs was appropriate and Mr Timakata accepted that, having not spent much time on the case after being instructed so recently.
21. The Court urged Mr Molbaleh and Mr Timakata to discuss this situation so as to see whether a satisfactory resolution might be reached without formal steps being taken.
22. The formal orders of the Court were:
 - 1) The application for leave to appeal out of time is dismissed.
 - 2) There is no order for costs.
 - 3) The Court of Appeal file is referred to the Chief Registrar of the Supreme Court for reference to a single Judge of that Court with a view to an order being made by the Supreme Court under rule 4.2 that Rocky file accounts detailing his administration of this estate.

Dated at Port Vila this 25th day of July, 2014

ON BEHALF OF THE COURT


Chief Justice Vincent Lunabek

