IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(Probate Division)

Probate Case No. 39 of 2009

IN THE MATTER OF: **An application for Administration in the Estate of WAIA TENENE**

BETWEEN: **HARRY PAUL TENENE**
Applicant

AND: **MADELEINE TENENE and NOVY TENENE**
Respondents

Coram: *Justice D. V. Fatiaki*

Counsel: *Mr. G. Boar for the Applicant*
Mr. F. Tasso for the Respondents

Date of Decision: *24 September 2013*

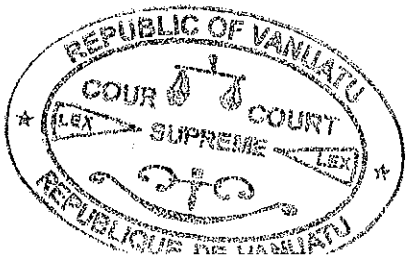
RULING

1. This long standing matter was commenced in August 2009 by an application by **Harry Paul Tenene** to be granted the right to administer the **Estate of Chief Waia Tenene** who died on 20 October 2007.

2. The basis on which the application was advanced (as deposed in the sworn statement filed in support) was: "*I am applying for administration because the deceased has mandated me during a custom ceremony held by the deceased at Erakor Village in the presence of our family members. Also I am a direct blood-line of the deceased.*" Quite surprisingly the applicant's birth certificate was not included in the application as might be expected.

3. Furthermore nowhere in the sworn statement does **Harry Paul Tenene** identify a direct kinship or parental relationship with the deceased other than the cryptic description: "*... bloodline of the deceased*" nor has the nature, purpose and effect of the deposed "*custom ceremony*" been explained albeit that it was witnessed by other (unidentified) "*family members*".

4. More disconcerting however, is the absence of any mention of whether or not the deceased was married or had surviving children. Notwithstanding that glaring omission Harry Paul Tenene deposes that "*... the persons entitled to the deceased's property are "Charley Alphonse"; "Pierre*



Wahanomone"; "Thora Harry" and "Paion Ruben" who are also cryptically described as *"direct bloodline of the deceased"* whatever that means.

5. Indeed, it is only in an undated File Note of the Acting Master referring the file to the Chief Registrar for allocation to a judge, that it is revealed that:

> *"deceased had 6 children, 2 sons now deceased*
> - *3 of the surviving daughters – see sworn statement of Harry Tenene*
> - *2 (Martha and Marilyn Tenene) refuse to give consent."*

6. Harry Paul Tenene also filed an additional sworn statement annexing what he deposed were *"family"* consents and approvals for him to administer the estate. The two (2) documents (in bislama) are (1) a Meeting Notice and (2) a representative appointment and together, the documents bears the names and signatures of seventeen (17) individuals including the 4 persons named in paragraph 3 above. Again no birth certificate was disclosed.

7. This additional sworn statement also did not disclose the total number of adult members who comprise the *"family"* of the deceased nor the total number and identities of the *"family"* members who attended the meeting held on 8 May 2009. Accordingly, there can be no measure of certainty as to whether or not Harry Paul Tenene had the support of the majority of the Tenene family in making his application.

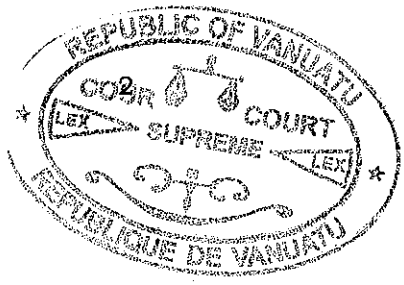
8. Be that as it may, the application for administration was advertised by way of public radio broadcasts on 18th, 19th and 20th November 2009 and a newspaper advertisement. The advertisement included a notice to anyone opposing the application to apply to the Supreme Court within 28 days **ie.** by end of December 2009.

9. On 25 November 2009 **Daniel Waia Tenene** filed a response in the Luganville Supreme Court opposing the application on the basis that he was *"... the only grandson of late Waia Tenene"*.

10. I also note that the Acting Master's Minute of 26 July 2009 records inter alia:

> *"... before the application by Harry Paul Tenene can proceed it will be necessary to obtain the consent of the surviving daughters of the Chief Waia Tenene."*

In this regard, despite the applicant's best efforts in August 2010 to obtain the three (3) surviving daughters consent to the application he was only able to obtain the written consent of one (1) daughter **Marie Tenene** as deposed and attached to his sworn statement dated 9 September 2010.



The other daughters, **Madeleine** and **Martha Tenene**, flatly refused to even see him.

11. After numerous unsuccessful conference listings before the Acting Master of the Supreme Court, the response opposing the application was eventually "*... struck out pursuant to Rule 5.10 (2) (d) and 9. 10 (3) (a) & (b) of the Civil Practice Rules*" on 23 July 2010.

12. The file was thereafter placed before a judge (***Weir J.***) and, after several conferences in April 2011, Administration of the Estate of Chief Waia Tenene was formally granted to Harry Paul Tenene on 9 May 2011 (hereafter '*the grant*').

13. Given the above, it is unfortunate that the serious deficiencies in the applicant's evidence especially about the deceased's daughters refusing consent was not drawn to the attention of Weir J. when he granted administration to Harry Paul Tenene seemingly unopposed.

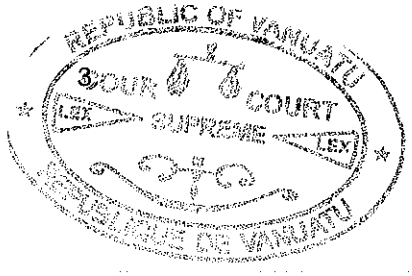
14. Fourteen (14) months later on 17 July 2012 the respondent, **Madeleine Tenene** and **Novy Tenene** of Erakor Village jointly applied to set aside the grant to Harry Paul Tenene. The application is supported by two (2) sworn statements. Madeleine Tenene deposed to being "*... the biological daughter of the deceased*" and Novy Tenene deposed to being "*... the grant* (sic) *son of Chief Waia Tenene*".

15. Both opposed the grant on the basis that Harry Paul Tenene did not consult with family members before applying for administration, and further, that Harry Paul Tenene was not of the deceased's "*bloodline*" as his biological father (Toa Harry) was from Ambae (***see:*** Harry Paul's birth certificate) albeit that his mother was a "*Tenene*" born at Erakor.

16. Inexplicably, the respondents and their counsel were unsuccessful in serving their application on Harry Paul Tenene or his counsel over the succeeding six (6) months and, eventually, on **18 February 2013** with a view to maintaining the status quo, this Court issued an injunction restraining Harry Paul Tenene:

> "*... from exercising his powers as administrator of the estate of Chief Waia Tenene in particular with regard to Lease Title No. 12/0913/022 and Lease Title No. 11/OE44/031*".

17. On 25 March 2013 Harry Paul Tenene filed a sworn statement opposing the application to set aside the grant, in which, he outlined the various steps he took to obtain the consent of the Tenene family members to his application to administer the Estate of Waia Tenene. He also expressed his surprise at the lateness of the application to set aside the grant. Again, no parental or family relationship was disclosed in the sworn statement.



18. The sole issue in this case is: who is entitled to the grant of letters of administration in the estate of Chief Waia Tenene?

19. To answer the question it is necessary to consider the applicable law and principles and that was recently identified by the Court of Appeal **In re Estate of Raupepe Fidelia** [2013] VUCA 6 where the Court said (at paras. 7 & 8):

> "*7. ... the relevant law of Vanuatu by which an application for administration is to be determined, ... is set down in the* ***Sucession, Probate and Administration Regulations 1972****, the Queen's Regulation, which prescribe who in order of priority is entitled to administration, and how an intestate estate is to be distributed.*
>
> *8. Regulation 7 which deals with grant of letters of administration provides:-*
>
> > *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 of the next of kin in order of priority of entitlement under this Regulation in the distribution of the estate of the deceased;*** *or*
> >
> > *(c) any other person, whether a creditor or not, if there is no person entitled to 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.*
>
> (my highlighting)

20. Plainly, the grant of letters of administration of an intestate estate (an introduced concept) is **not** governed by customary law and practices. Instead, it is determined in accordance with the prevailing applied written law, namely, the **Succession Probate and Administration Regulations 1972** which clearly establishes that "*marriage*" and "*kinship*" are primary considerations in a person's eligibility to apply for the grant of letters of administration of an intestate estate.

21. On the evidence and given the disjunctive order of persons enumerated above, **Regulation 7 (b)** is applicable in this case in so far as Chief Waia

Tenene died intestate and is not survived by a wife. There are however surviving "*next of kin*" of the deceased including Harry Paul Tenene who it turns out, is a full-blood nephew of the deceased being the son of Chief Waia Tenene's sister.

22. The "*order of priority*" where **Regulation 7(b)** applies is further to be determined, by reference to the order of persons to whom an intestate estate is to distributed. This, in turn, is governed by **Regulations 5 & 6** of the **Succession Probate and Administration Regulation 1972**. In particular, Regulation 6 sets out in eleven (11) paragraphs, **(a)** to **(l)**, the descending order of eligible applicants for the grant of letters of administration of an intestate estate.

23. In the absence of a surviving spouse or "*issue*" (children), the surviving parents and brothers and sisters of the whole blood or their surviving children are eligible to apply in that order. After them, come brothers and sisters of the half blood or their surviving children followed by grand parents, then uncles and aunts of the whole and half blood or their surviving children and finally, in the absence of any of the above-mentioned eligible persons, the State may claim the residuary estate as "*bona vacantia*". (***see:*** Regulation 6 of the Succession Probate and Administration Regulations 1972).

24. For present purposes it is only necessary to refer to **paragraph 6(d)** which entitles surviving children to administration of their deceased father's estate in priority to the much lower ranked, **paragraph 6(h)** which entitles "*brothers and sisters of the whole blood (and if deceased, their surviving children)*" to administration. This latter category is relevant to the eligibility of Harry Paul Tenene to apply to administer the estate of Chief Waia Tenene but, if and only if, his mother is deceased. Harry Paul Tenene's evidence lacks proof of this crucial fact and therefore the legal basis on which he may be entitled to seek administration of his late uncle's estate must be considered tenuous at best .

25. In light of the foregoing, there can be no doubt that **Madeleine Tenene** as a surviving biological daughter of Chief Waia Tenene has a prior and stronger claim under the applicable law to the grant of administration of the estate of her late father who died intestate. Furthermore, **Novy Tenene** traces his entitlement through his deceased father who was a full blood son of Chief Waia Tenene whereas, Harry Paul Tenene is linked to the deceased through his mother who is a full blood sister of the deceased. In short, Novy is a paternal grandson who would succeed to his father's entitlement, and Harry Paul is a maternal nephew of a lower bloodline once removed from Chief Waia Tenene.

26. I also note that Novy Tenene's father's name is "*Daniel Tenene*" who may or may not be one and the same person who had originally opposed the grant to Harry Paul Tenene (filed in the Santo registry on 25 November 2009) but in any event, the opposition was struck out under **Rule 9.10** of

the **Civil Procedure Rules** for non-appearance and want of prosecution and does not affect the present application.

27. I am also mindful that the principal assets of the estate are mainly comprised of real estate, including, the deceased's "*Private Home and Land at Erakor Village*" and two (2) valuable leasehold Titles No. **12/0913/022** at Eluaf Area and Title No. **11/OE44/031** being Erakor Hall with an estimated combined value of VT102,000,000 which latter assets would be governed by the provisions of the **Land Leases Act** [CAP. 163].

28. In my view the following propositions are settled and supported by the legislation and case authorities. Firstly, the grant of letters of administration is discretionary; secondly there is a legislated "*order of priority*" of the persons to whom administration of an intestate estate can be granted; thirdly a person entitled to the grant of administration of an intestate estate retains his/her entitlement until death or renunciation or if he/she fails to apply for administration when "***cited***" (ie. invited) by the Court; and fourthly, the grant of administration does not give the grantee any right to the benefits of the decased's estate which the grantee would not otherwise have under the law (*see:* **In re Estate of Molivono** [2007] VUCA 22).

29. For the foregoing reasons the application is granted and the grant of administration to Harry Paul Tenene dated 9 May 2011 is hereby recalled and revoked and the Court **DIRECTS** the issuance of a letter of administration of the Estate of Chief Waia Tenene in favour of **Madeleine Tenene** and **Novy Tenene** jointly upon their entering into a bond in accordance with **Regulation 21** of the **Succession Probate and Administration Regulations 1972**.

30. For completeness, the injunction granted on 18 February 2013 is hereby dissolved.

31. The respondents having succeeded in this application are awarded costs on a standard basis to be taxed if not agreed.

DATED at Port Vila, this 24th day of September, 2013.

BY THE COURT

D. V. FATIAKI
Judge.