

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

Probate Case No. 3 of 2012

IN THE ESTATE OF:

YAKEULA LARRY AKE
Deceased

BETWEEN:

ERICK AKE
Applicant

AND:

DANIELLE BIDAL YAKEULA
Respondent

Coram: Mr. Justice Oliver A. Saksak

Counsel: Daniel Yawha for Applicant
Henzler Vira for Respondent

Date of Hearing: 20th October 2014

Date of Judgment: 24th October 2014

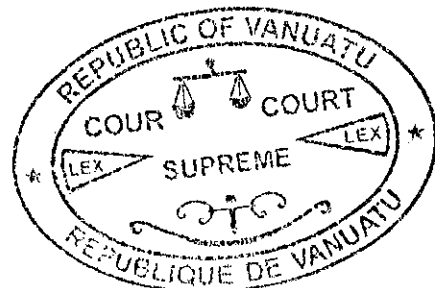
JUDGMENT

Introduction And Background Facts

1. The applicant is the brother of the respondent. He applied for grant of letters of administration on 1st February 2012. His sister responded on 27th March 2012 opposing the grant of administration on the grounds that she had been granted letters of administration on 24th September 1997 in Probate Case No.15 of 1997. Subsequently the applicant filed an amended application to revoke the administration on 11th August 2014. The application is made pursuant to section 24 of the Succession Probate and Administration Regulation 1972 (the Queens Regulation).

Reliefs Sought

2. The applicant seeks the following reliefs-
 - a) An order that the Letters of Administration granted to the respondent on 24th September 1997 be revoked.
 - b) An order granting Letters of Administration in the estate of late Larry Yakeula to the applicant instead.
 - c) An Order for costs, and
 - d) Such further orders the Court deems fit.



3. The grounds are contained in the application but the essential grounds are-
 - a) That the respondent as administratrix is a non-citizen and currently resides in New Caledonia.
 - b) Due to her current status, the respondent is unable to administer the estate properly,
 - c) She has failed in her legal duties to provide an inventory of the estate or any accounts thereof, and
 - d) She has continued to mismanage the leasehold property 11/0G21/030 and property taxes have accumulated and remain unpaid.

Evidence

4. The applicant filed his evidence in support of the application by sworn statement dated 20th August 2014.
The Responded filed a response on 12th September 2014.
5. The respondent filed evidence to support her response on the same date by the respondent herself and her sister Dominique Yakeula.
6. All these evidence were agreed by Counsel without challenge or objections.

Admissions And Defences

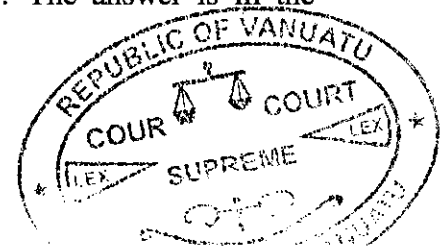
7. The respondent admits she lives in New Caledonia but maintains she has made arrangement with her Sister Dominique Yakeula regarding the property. She admits they have failed to pay taxes. And she denies any duty or obligation to pay rents because the property is a family property. She further denies that the property is ran down and needs maintenance and further that there are outstanding land rentals.

Issues

8. The issues appear to be in the main whether or not the respondent has failed her legal duties as administratrix to properly administer the estate of the deceased.

Discussions

9. The applicant has not challenged the validity of the Letters of Administration granted on 24th September 1997. And the Court is unable to ascertain whether this was an oversight or that it was purely deliberate on the applicant's part not to do so. But in the view of the Court this has to be the starting point.
10. The sworn statement of the respondent dated 27th March 2012 annexes as "DBY 1" a copy of the Letters of Administration granted by the Registrar on 24th September 1997 in Probate Case 15 of 1997. The issue is whether the Registrar had jurisdiction to grant letters of administration in favour of the respondent? The answer is in the negative.



11. Section 3 of the Queens Regulation states-

1. "Subject to the provisions of this Regulation and to any rules made here under the Court shall have jurisdiction in contentions and non-contentious probate matters and proceedings and in the granting or revoking of probate of wills and administration of estates of persons dying domiciled or leaving property in the New Hebrides.
2. The jurisdiction vested in the Court by the provision of the proceeding subsection shall, subject to any modifications effected by any rules made hereunder be in conformity with the law and practice in force in England on the 1st day of January 1964.
3. The Trustee Act shall apply in relation to all matters herein."

(My underlining for emphasis)

12. Section 4 provides for Duties of Registrar as follows-

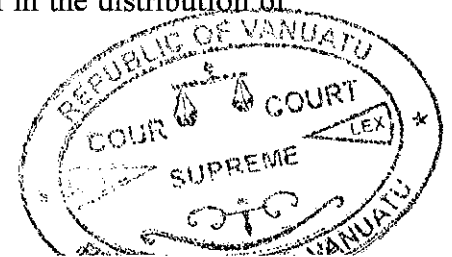
"The Registrar shall, subject to the rules made hereunder, perform such duties in reference to proceedings in the probate jurisdiction of the Court, and such other duties, as may be prescribed by the rules." (My underlining for emphasis)

13. From those foregoing legal provisions, it is clear the power to grant letters of administration vests only with the Court. The registrar does have some duties but the registrar has no power to issue or order a grant of probate or letters of administration.

14. The "Court" is defined in section 2 as meaning "the High Court of the Western Pacific or a judge thereof". The equivalent today is the Supreme Court of Vanuatu and a judge thereof. The registrar who granted, the administration in 1997 was not a judge of the Supreme Court. Therefore clearly she lacked the jurisdiction to have done so.

15. Another legal impediment was that the applicant was and is not a resident in Vanuatu. The respondent has admitted she is not resident in Vanuatu. Section 7 of the Queens Regulation provides for persons who are entitled to grant of administration. It states-

1. "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 or 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 a grant under the proceeding paragraphs of this section resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid when duly cited fails, when duly cited to appear to apply for administration”.

(My underlining for emphasis)

16. Subsection (C) envisages that the entitled persons in (a) and (b) must (a) be “resident” in Vanuatu and (b) be “fit to be” granted administration.

17. Where an entitled person is not resident in Vanuatu, he or she must appoint a power of attorney pursuant to section 29 of the Regulation. It states-

“29. Where an executor or any person entitled to probate or administration is out of the jurisdiction but has some person within the jurisdiction appointed under power of attorney to act for him, administration may be granted to such power of attorney, but on behalf of the person entitled, but on behalf of the person entitled thereto, and on such terms and conditions as the Court thinks fit.

Provided that nothing in this Regulation shall prevent the Court from granting probate to an executor who is out of the jurisdiction”

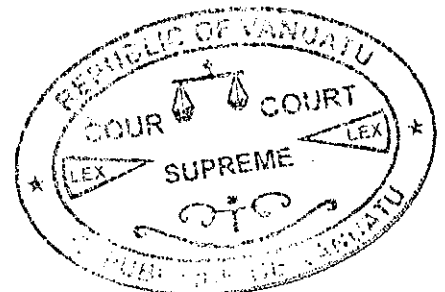
(My underlining for emphasis).

18. There is no evidence by the respondent or by her sister Dominique Yakeula that shows the respondent has appointed Dominique Yakeula as her power of attorney.

19. I am satisfied from the evidence of the applicant by his sworn statement filed on 20th August 2014 that the respondent failed in her legal duties as administratrix of the deceased’s estate by-

- a) Withdrawing all monies held in the deceased’s bank account and distributing to each siblings instead of properly managing it by creating a family trust or opening an invest-bearing account,
- b) not producing any records of the account to her other brothers and sisters,
- c) not contributing to the maintenance of the family house and property,
- d) not contributing to maintain the graves of the deceased members of the family, and
- e) not paying the outstanding property taxes.

20. For the foregoing reasons, I am satisfied the applicant has established that the respondent has failed and/or neglected to perform her legal duties as administratrix under the grant of administration dated 24th September 1997 to the required standard of proof.



21. Accordingly judgment is entered in favour of the applicant. He is entitled to the following Orders-

- a) The Letters of Administration dated 24th September 1997 is hereby revoked.
- b) Letters of Administration is hereby granted in substitution to Erick Ake as annexed.
- c) The response of the respondent is hereby dismissed.
- d) There will be no Order as to costs.

DATED at Port Vila this 24th day of October, 2014.
BY THE COURT


OLIVER.A.SAKSAK
Judge

