

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Probate
Case No. 20/1182 SC/PRBT
Case No. 21/1773 SC/ CIVL

N THE ESTATE OF: JOHN WARMINGTON
Administrator/ Applicant

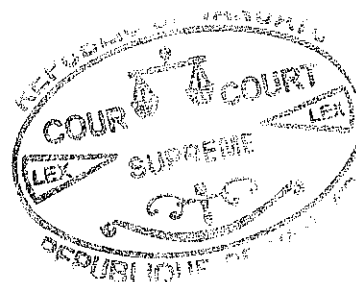
BY: LIYA HUANG RUSSET
First Respondent

AND: KRISTIAN RUSSET
Second Respondent

Date of HEARING: 16th and 21st November 2023 and 28th November 2023
Date of Decision : 14th December 2023
Before: Judge Oliver A Saksak
In Attendance: Mr Mark Fleming for the Administrator
Mrs Marie F Patterson and Ms Laniana Raikatalau for First Respondent
Mr Mark Hurley for Second Respondent

DECISION

1. The Administrator of the estate of the deceased filed an application for directions on 28th March 2023 under section 42 (1) of the Succession, Probate and Administration Regulation No. 7 of 1997. It states:
" The Court may make such order with reference to any question arising in respect for any will or administration, or with reference to the Application of any estate which a personal representative may have in hand, or as to the residue of the estate, as the circumstances of the case may require."
2. There were 6 key issues namely:
 - a. Prado Vehicle ownership
 - b. Costs of the Administrator



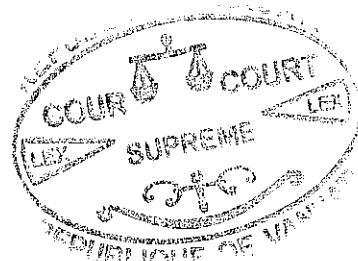
- c. Bank Accounts
 - d. 5,000 shares in the Quarry Business
 - e. Personal drawings of Kris Russet (Second Respondent)
 - f. Interim distributions.
3. As the parties filed evidence and intended to cross-examine each other on their evidence, the Court heard evidence from the Administrator, then from the First Respondent remotely by video-link, and from the Second Respondent over a period of 2 days.
 4. Objections were raised and heard in relation to parts of the First and Second Respondents sworn statements. The Court allowed some objections and disallowed certain parts of the sworn evidence of the First and Second Respondents.
 5. The Court then heard oral submissions in relation to the written submissions filed by counsel for the First and Second respondents on 28th November 2023.
 6. I have considered the remaining evidence, and the submissions by Counsel in deciding the issues raised by the Administrator. I will deal with each issue raised only in brief as follows:-

Issue 1- The Prado Vehicle

7. Although the evidence by the First Respondent was that the vehicle was bought for her use, it was and remained the property of the deceased as it was registered in his name. At no point in time did the First Respondent produce any evidence that it was transferred into her name so she could claim title and entitlement to it. The Court prefers the evidence of Mr Russet that the Prado vehicle has been use for the farming operations of Tagabe Farm and as such, it remains a part of the Farm.

Issue 2 – Legal and Administrator’s costs

8. This issue relates to the costs of the Administrator and his right to indemnity costs, and the costs of the farming operations relating to the constructive trust.



9. For this issue, it is my view that the latter case of Williams v Central Bank of Nigeria [2014] AC 1189 provides the right approach and solution, which is that a constructive trustee does have all the rights and obligations of an actual trustee.
10. It is my view that the Administrator is entitled to both his legal and Administrator's costs to be apportioned or divided between the Estate costs and the Farming costs. His legal costs should be assessed from 28th March 2023 when the application for direction was filed. His Administrator's cost should go back further in time to his appointment as Administrator of the Estate.
11. It is common knowledge that from 22nd July 2021 the Administrator was to remain neutral. In view of the ongoing disagreements between the First and Second Respondents it became necessary for the Administrator to file the applications seeking directions on 28th March 2023. It was at the making of the Respondents, therefore he is entitled to his legal and Administration costs for that period to date.

Issue 3- Bank Accounts

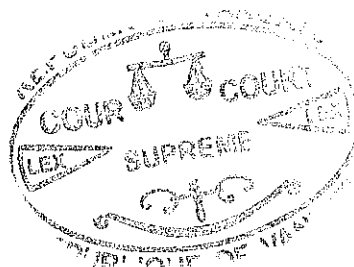
12. At the hearing this became a non-issue.

Issue 4 -The 5,000 shares

13. This issue has already been resolved by the decision of Wilens J in Russet v Huang & Anor [2021] VUSC 244 in paragraph 95 as upheld by the Court of Appeal in paragraph 181. The quarry business is part of the business operations of the Tagabe Farm, therefore the shares are an integral part of the business.

Issue 5- Personal withdrawals by Second Respondent

14. I find there was overwhelming evidence against the Second Respondent in relation to this issue. I accept that the amount of VT 4,441,267 is the amount owing by the Second Respondent to the estate which must be recovered.



Issue 5- Chattels

15. For this issue, I am of the view that paragraph 134 of the Supreme Court Judgment as upheld by the Court of Appeal in paragraph 181 of its judgment is conclusive on the issue.

16. The Administrator is entitled to his costs of and incidental to this application on an indemnity basis against the Estate.

DATED at Port Vila this 14th day of December 2023.

BY THE COURT

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Hon. Oliver A Saksak
Judge

