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IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 2210 OF 2020

IN THE MATTER of Application for
Letters of Administration in the
Estate of the late **FOGLIANI
MAURICE LOUIS**

AND IN THE MATTER of Rule 4.2
and 4.3 of the Probate and
Administration Rules 2003 and
Section 6,24,38 and 40 of the
Queen's Regulation No.7 of 1972

BETWEEN

CARINA FOGLIANI

Applicant/Beneficiary

AND

CORINA FOGLIANI

Respondent/ Administrator

BEFORE: Aurélie TAMSEUL

(Deputy Master)

DATED: 14th day of October, 2024

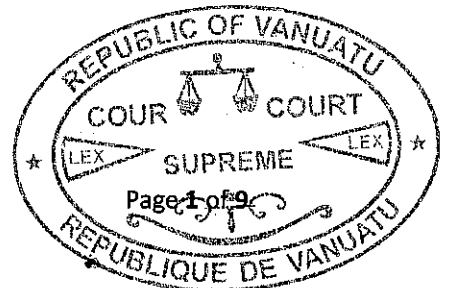
ENTERED: 14th day of October, 2024

APPEARANCES: Emelee Breeana and Marie Noelle Patterson counsel for counsel for the Applicant,
Adrew Bal counsel for the Respondent

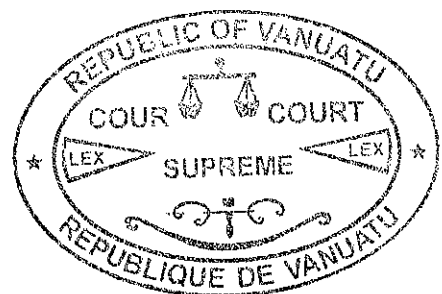
DECISION

a. Introduction

1. On the 14th October, 2020 this Court made an Order appointing Corina Fogliani (Mrs. Fogliani), Administrator in the estate of her late husband Maurice Louis Fogliani.



2. The estate of the deceased is comprised of the property Leasehold title No. 11/OF24/004 and the proceeds from the rent of a shop located within the said property.
3. Carina Fogliani (Ms. Fogliani), a beneficiary of the estate, initially filed documents to revoke the Administration grant on the ground that the deceased left a Will. The proceeding commenced with a hearing to determine the validity of the said Will. However, upon the calling of the first witness to the Will, who appeared confused and provided contradictory information, counsel on behalf of Ms. Fogliani withdrew their intention to prove the validity of the Will. Thus, the submission on the provisions in the Wills Act will not be considered herein.
4. Counsel, on behalf of Ms. Fogliani, then requested that the matter only proceed with the calling into account of the Administrator.
5. Ms. Fogliani calls Mrs. Fogliani into account on the basis that the latter has still not distributed her share in the remainder of the estate and that she has acted outside her Administrator legal duties.
6. Following examination and cross examination of the witnesses, each party filed a written submission.
7. In this decision, we will only consider matters relevant to the calling of an Administrator into account and consider if the Administrator failed in her legal duties.



b. **The law**

"Succession to property on intestacy.¹

6. (1) Subject to the provisions of the last preceding Part hereof, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, **shall hold the property as to which a person dies intestate on or after the date of commencement of this Regulation on trust to pay the debts, funeral and testamentary expenses of the deceased and to distribute the residue** as follows: -" (my emphasis)

"Court may revoke administration or order new or additional bond.²

24. The court may, at any time, upon the **application of any person interested in the estate** or of his own motion on the report of the Registrar -

(a) **revoke the administration already granted;** or (my emphasis)

(b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or

(c) order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable."

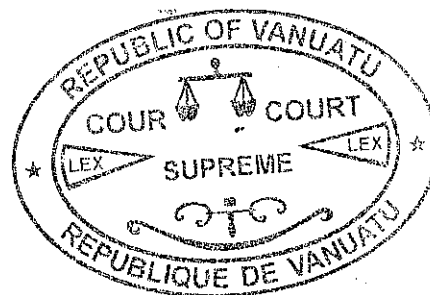
"Power to postpone distributions.³

38. A personal representative **shall not be bound to distribute the estate** of the deceased **before the expiration of one year from the date of grant of probate or administration** as the case may be." (my emphasis)

"Inventory and accounts.⁴

40. (1) Every person to whom probate or administration is granted may and shall if so required by the Registrar file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the court may order.

(2) The order of the court allowing any account shall be prima facie evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, except so far as it is shown by some person interested therein that a wilful or fraudulent error, omission or entry has been made in such account."



¹ Queens Regulation No.7 of 1972

² Queens Regulation No.7 of 1972

³ Queens Regulation No.7 of 1972

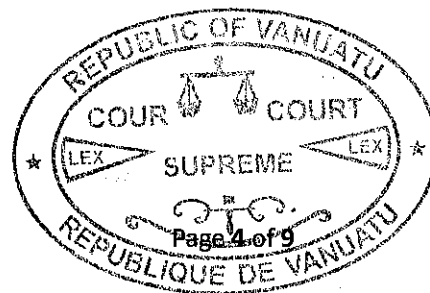
⁴ Queens Regulation No.7 of 1972

c. Mrs. Fogliani's case and submission

8. Mrs. Fogliani submits that upon grant of administration, she maintained the property leasehold title No. 11/OF24/002 and that she used the proceeds from the rental shop affixed to the said lease title to pay for the property maintenance expenses and for her personal use in terms of food.
9. She provided an inventory of accounts outlining receipts of payments relating to expenses, maintenance and debts of the estate equivalent to the total amount VT 12,074,614.
10. She stated that she has still not given Ms. Fogliani's share in the remainder of the estate.
11. Mrs. Fogliani submits that she maintained the property and the shop and that she did not fail in her duties as an Administrator and must retain the grant of administration of the estate.

d. Ms. Fogliani's case and submission

12. Ms. Fogliani submits that for almost four (4) years following the grant of administration, she has still not received her 2/3 share from the remainder of the estate.
13. She submits that the actions of Mrs. Fogliani, in receiving the proceeds from the rental shop and using part of it for her personal sustenance, amounted to maladministration.
14. Ms. Fogliani provided a submission outlining the maintenance of the property where she disputes the VT 12,074,614 submitted by the Administrator. Ms. Fogliani submits that, according to their assessment, the expenses towards the maintenance of the estate only amounted to VT 644,374.
15. Ms. Fogliani further submits that Mrs. Fogliani's acted in contradiction to her Administrator's duties when she failed to distribute the shares of the estate.



16. Ms. Fogliani additionally submits that Mrs. Fogliani failed in her Administrator's duties when she did not pay the property Land Rent.
17. Thus, Ms. Fogliani requests that the grant of administration made on 14th October, 2020 in favour of Mrs. Fogliani be revoked.
18. Ms. Fogliani submits that she should be appointed Administrator. However, if her request for appointment is not granted then Julie Elizabeth Hawkes, a third party, should be appointed Administrator, in the place of Mrs. Fogliani, in order to complete the Administration of the estate.

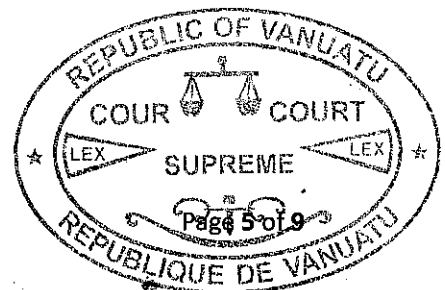
e. **Discussion**

19. The Administrator provided an inventory of accounts which does not reflect the requirement on the form of accounts outlined in **Rule 4.3** of the ***Probate and Administration Rules 2003***.
20. It is apparent that there is a misunderstanding, from Mrs. Fogliani, relating to the duties of an Administrator.
21. Therefore, we need to re-address the issue to allow for a basic understanding of the nature and scope of the duties of an Administrator as outlined in section 6 of the ***Queens Regulation No.07 of 1972*** and eloquently explained in the decision of "***In re Estate of Molivono***"⁵ (Molivono) and I quote:

"...The second point to be made about this litigation is that the *granting of probate or administration does nothing to determine ultimate ownership of the personal property of the person who has died.* Not only in this case but in others as well we have seen suggestions that the grant of the right to administer an estate meant there was a determination of what property was owned by the estate and also governed its future ownership. Obtaining probate or administration is placing on an individual an extraordinarily solemn duty. *It is the duty first to call in and collect all the properties of the deceased person apart from any interest in custom land. Then, they must pay all the debts of the estate. Their solemn obligation is to ensure that what is left is distributed either in accordance with the terms of the will or in accordance with the rules laid down in Queen's Regulations 7. It provides for the executor or administrator no rights of ownership or personal benefit...*"

22. Mrs. Fogliani, under cross-examination, agreed that she has still not given Ms. Fogliani her share in accordance with the Queens Regulation No.07 of 1952.

⁵ In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



23. The Court of Appeal in the **Molivono** case, stated further that, and I quote:

"A person who is granted probate or administration is answerable to the Court for the proper exercise of the obligation which he or she has chosen to take up".

24. Let us now consider the period of delay in the distribution of the estate to determine if the Administrator has properly exercised her legal obligation.

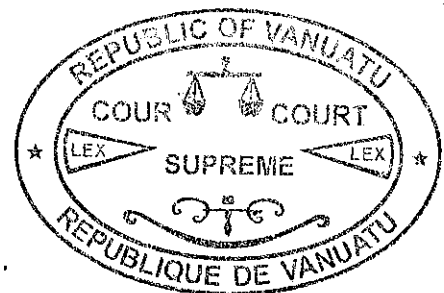
25. Section 38 of the **Queens Regulation No.7 of 1972** states that a personal representative shall not be bound to distribute the estate of the deceased **before the expiration of one year from the date of grant of probate or administration** as the case may be.

26. Mrs. Fogliani confirmed during cross-examination that she currently still resides on property leasehold title No. 11/OF24/002 and has taken no steps to distribute the shares of the estate to Ms. Fogliani.

27. In the case of **Galinie v Galinie [2016] VUSC 191**, the then Master of the Supreme Court discussed the issue of the period of Administration, and I quote:

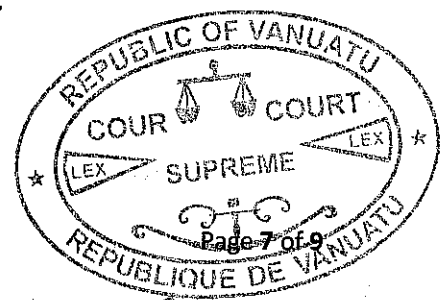
"While the Administratrix has the discretionary power to refrain from distributing the estate before a year,¹²² this discretionary power must be **exercised judiciously. This means that an Administratrix can refuse to act during that year, if circumstances dictate. In this case, the Respondent went far beyond the one-year allowance under statute, providing no reasonable explanation for the excessive delay and nearly 2 years later, her delay borders on abuse of that power...**"⁶

28. In light of the above-mentioned case and of the fact that Mrs. Fogliani provided no valid reasons to justify the delay in distributing the remainder of the estate, her action amounted to an improper exercise of her legal obligation.



⁶ Galinie v Galinie [2016] VUSC 191; Probate Case 1007 of 2015 (18 November 2016); URL: <http://www.paclii.org/cgi-bin/sinodisp/vu/cases/VUSC/2016/191.html?stem=&synonyms=&query=galinie>

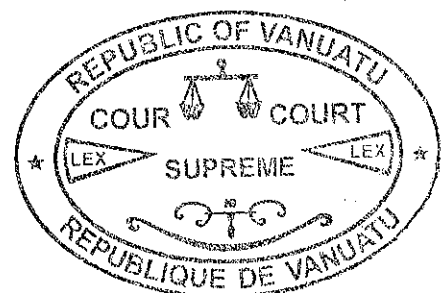
29. In not distributing the estate, did Mrs. Fogliani's actions jeopardise the value of the estate?
30. Counsel, on behalf of Ms. Fogliani, provided pictures and a home report which indicated that the property is in good condition, well maintained and that there are minimal damages noted after the passage of the twin cyclones on or about March 2023.
31. In addition, the two witnesses called in by Ms. Fogliani confirmed, in their cross-examination, that the property was well-kept and that they were involved in a maintenance project of the said property under the supervision of a third party.
32. Furthermore, the Administrator increased the shop's rental and allowed additional commercial activities, such as a Kava bar and a road Market, into the property. These actions caused improvements on the land which will positively affect the value of the estate resulting in an increase in the beneficiaries' shares.
33. The Administrator alleged to have suffered financial loss in maintaining the estate. However, Mrs. Fogliani provided no valid reasons to justify the delay in the distribution of the estate resulting in her need to maintain the property for almost four (4) years. Thus, had Mrs. Fogliani completed Administration pursuant to section 6 of the **Queens Regulation No.07 of 1972**, she would not have suffered financial loss which is a result of her own unjustified excessive delay.
34. During cross-examination, Mrs. Fogliani provided vague responses regarding the payment she claimed to have made in the estate and appeared unsure about the figures outlined in the spreadsheet of her own inventory of account. Consequently, the determination of the costs of the estate will be considered based on the assessment provided by the counsel on behalf of Ms. Fogliani.
35. Ms. Fogliani submits that Mrs. Fogliani's action in making a deal with the shop tenant to take goods from the shop, the payments of which were deducted from the rental monies, amounted to maladministration.
36. Mrs. Fogliani provided no reasons to justify her actions in using the estate monies towards her personal needs.



37. During the proceeding counsel made remarks of each other's conduct but for which I reserve my comments. I would rather encourage counsel to use the proper channel to raise their concerns regarding issues of professional conduct where they are convinced the said conduct contradicts lawyer's code of ethics.
38. Counsel are reminded to consider the Court's direction prior to filing documents. The reading of myriads of filed documents containing peripheral or irrelevant information to the issue is time consuming and is not a good use of the Court's time.


f. **Finding**

1. Mrs. Fogliani has unreasonably and excessively prolonged Administration and failed to distribute the remainder of the estate following the grant made by this Court on the 14th October, 2020.
2. The request to revoke Mrs. Fogliani as the current Administratrix of the estate is granted.
3. The request to appoint Ms. Fogliani as the Administratrix is not granted.
4. The request to appoint Julie Elizabeth Hawkes as Administratrix is granted.
5. This appointment of Julie Elizabeth Hawkes is suspended until the 14th January 2025.
6. Julie Elizabeth Hawkes has 12 months to complete Administration and provide the Court with an inventory of Accounts in the form outlined in **Rule 4.3** of the ***Probate and Administration Rules 2003***.
7. Counsel on behalf of Ms. Fogliani is requested to prepare orders for the appointment of Julie Elizabeth Hawkes as Administratrix and submit to Court for endorsement.



8. Julie Elizabeth Hawkes, in carrying out her duties under section 6 of the **Queens Regulation No.07 of 1972**, must take into account all actions from both parties towards the estate as of the 14th October, 2020 to the date of this decision and where justified note it as a debt to the estate which will be considered upon the distribution of each beneficiary's share.
9. The fees of Julie Elizabeth Hawkes services are to be paid personally by Ms. Fogliani.
10. Mrs. Fogliani, who currently resides on the lease title No. 11/OF24/002, has until the 14th January, 2025 (a period of three (3) months) to give vacant possession of the estate to allow the Administratrix to complete administration.
11. The current arrangement regarding the collection of the shop's rental is to be maintained until after the expiry of the suspension period of the appointment of the Julie Elizabeth Hawkes.
12. The Shop rental proceeds, from the date of this decision until the 14th January, 2025, are to be used solely for the maintenance of the shop upon request from the tenant.
13. The debts of the estate are assessed in the amount of VT 644,374.
14. Costs in favour of Ms. Fogliani assessed in the amount of VT 150,000 to be paid by the Respondent within 28 days.

BY THE COURT



DEPUTY MASTER

