

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 1409 OF 2024

IN THE MATTER of Application for  
Letters of Administration in the  
Estate of the late **MAKENZIE  
TAMETA**

AND IN THE MATTER of Section 2.4  
and 2.5 of the Probate and  
Administration Rules 2003 and  
Section 6 and 7 of the Queen's  
Regulation No.7 of 1972

BETWEEN

**BELINDA MELKUM**

Applicant

AND

1. **MORSEN DAN**
2. **DAN SITU**

Respondents

**BEFORE:** Aurélie TAMSEUL

(Deputy Master)

**DATED:** 12<sup>th</sup> day of November, 2024

**ENTERED:** 12<sup>th</sup> day of November, 2024

**APPEARANCES:** Willie Kapalu counsel for the Applicant, Roger Rono counsel for the Respondent

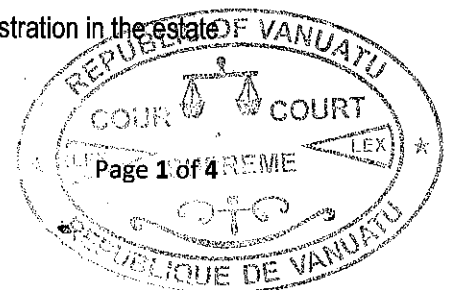
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Decision

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a. Introduction

1. The Applicant filed on the 7<sup>th</sup> May, 2024 an Application for Letters of Administration in the estate of her late husband Makenzie Tameta.



2. The Applicant caused an advertisement of the said Application on the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> July, 2024.
3. The Respondents, being the deceased brothers, filed on the 7<sup>th</sup> August, 2024 an objection to the letters of Administration being granted to the Applicant and that the Application should be dismissed in its entirety and that the Court shall grant the administration of late Makenzie Tameta to the Respondents, on the following grounds summarised as, to wit:
  - (i) That the Respondents are the only brothers of the deceased;
  - (ii) That the Applicant committed adultery;
  - (iii) That the Respondents are the primary caretaker of deceased children;
4. Each parties filed a written submission.

**b. Issues**

- (i) Who are the beneficiaries of the estate?
- (ii) What are the duties of an Administrator?
- (iii) Who is entitled to grant?
- (iv) Who, between the Applicant and the Respondents, has the capacity to Administer the estate?

**c. Consideration**

**Issue (i)**

5. The law clearly outlines the beneficiaries of an intestate estate. Where the legal requirement in section 6 (1) (a) (b) (c) is satisfied the chain of inheritance becomes absolute.

***“Succession to property on intestacy.***

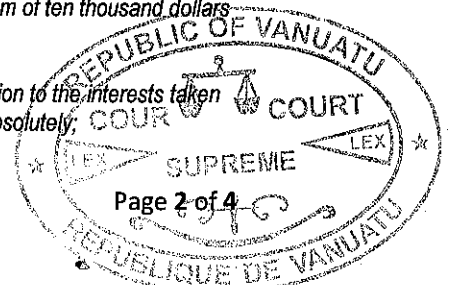
*6. (1) Subject to the provisions of the last preceding Part hereof, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Regulation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

*(a) if the intestate leaves a wife, or husband, with or without issue, the surviving wife or husband shall take the personal chattels absolutely, and –*

*(i) if the net value of the residuary estate of the intestate, other than the personal chattels, does not exceed ten thousand dollars the residuary estate absolutely; or*

*(ii) if the net value of the residuary estate exceeds ten thousand dollars, the sum of ten thousand dollars absolutely;*

*(b) if the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, take one-half of the residuary estate absolutely;*



(c) if the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a) of this subsection, taken one-third only of the residuary estate absolutely, and the issue shall take per stirpes and not per capita the remaining two-thirds of the residuary estate absolutely;"<sup>1</sup>

6. Therefore, the beneficiaries to the estate are absolutely the Applicant, being the wife, and all the children of the deceased.
7. The Respondents fall outside of the chain of inheritance thus not beneficiaries to the estate.

#### Issue (ii)

8. The duties of the Administrator are outlined as follows:

**"Succession to property on intestacy.**

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: ..."<sup>2</sup> [my emphasis]

9. The Court of Appeal in the case of *In re Estate of Molivono [2007] VUCA 22*<sup>3</sup> went further into detail in explaining the above mentioned, 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.

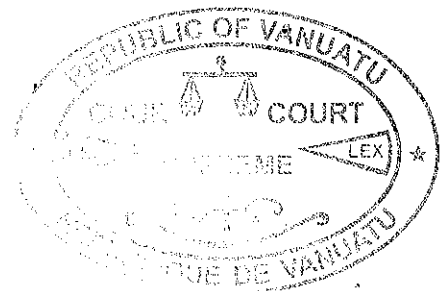
A person who is granted probate or administration is answerable to the Court for the proper exercise of the obligation which he or she has chosen to take up."

10. The law very clearly outlined the duties of an administrator and also provides for the mechanism which will hold an Administrator accountable if they fail to carry out their legal duties.

<sup>1</sup> Succession, Probate and Administration Regulation 1972

<sup>2</sup> Queens Regulation No.7 of 1972

<sup>3</sup> *In re Estate of Molivono [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)*



### Issue (iii)

11. The Applicant, being the deceased wife, falls under the priority of ranking as a person entitled to grant.

**"Persons entitled to grant.**

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 (My emphasis)**

**(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 (My emphasis)**

**(c) any other person, whether a creditor or not, if there is no person entitled to a 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."**<sup>4</sup>

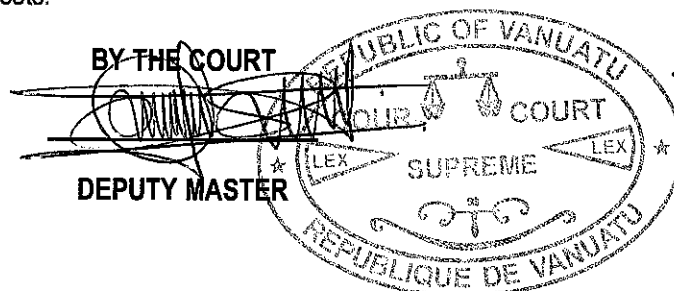
12. The Respondents raised the allegation of adultery on the part of the Applicant in an attempt to show that she should not be granted administration. The determination of adultery lies outside of my jurisdiction to decide and is not an element to be considered where the law is clear on the persons entitled to grant. The Respondents provided no order for dissolution of marriage between the Applicant and the deceased. Therefore, the status of the Applicant as the deceased wife remains intact.
13. The Respondents entitlement to grant will only be considered if there is no husband or wife. Where there is a wife, she takes priority over the Respondents.

### Issue (iv)

14. Neither party address the capacity to administer therefore consideration is based solely on the priority of ranking where the Applicant's right, as the persons entitled to grant, precedes the Respondents.

#### d. Result

1. The objection to the Applicant being granted letters of Administration is dismissed.
2. That the Administration in the estate of **Makenzie Tameta** late of Aniwa Island in the Republic of Vanuatu who died on the 30 November, 2023 is granted to Belinda Melkum.
3. That the sworn value of the estate is at VT 12,000,000.
4. That there is no order for costs.



<sup>4</sup> Queen Regulation No.7 of 1972