

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

CIVIL APPEAL CASE No. 30 OF 2017

BETWEEN: **DOMINIQUE YAKEULA and DANIELLE
YAKEULA**
Appellants

AND: **ERIC YAKEULA AKE**
Respondent

Coram: **Hon. Chief Justice Vincent Lunabek
Hon. Justice John Mansfield
Hon. Justice Ronald Young
Hon. Justice Mary Sey
Hon. Justice David Chetwynd
Hon Justice Paul Geoghegan**

Counsel: **Mr J Ngwele for the Appellants
Mr D Yawha for the Respondent**

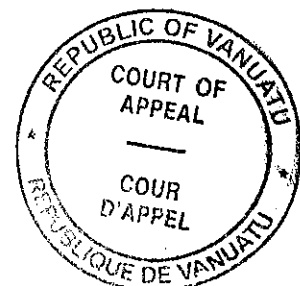
Date of Hearing: **29 March 2017**

Date of Judgment: **7 April 2017**

JUDGMENT

1. This appeal concerns the estate of the late Lari Ake Yakeula, sometimes known as Larry Ake Yakeula, who died intestate in 1997. The deceased was the mother of six children including the named appellants and the respondent. Some of the six children have since died, including we learnt at the appeal, the first named appellant Dominique Yakeula ("Dominique").

2. Following the mother's death the second named appellant Danielle Bidal Yakeula ("Danielle") applied for and was granted Letters of Administration. In 2012 the respondent, apparently unaware of the grant to his sister, also applied for a grant of Letters of Administration. The application was opposed and, when the earlier grant was discovered, the respondent asked the Court to revoke that grant and to appoint him as administrator. In October 2014 the Court (in Probate Case 3 of 2012) revoked the grant to Danielle and appointed the respondent as administrator.

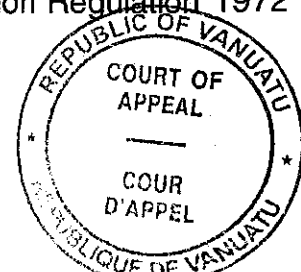


3. It is said the only remaining asset of the late Lari Ake Yakeula's estate is a leasehold property located at Fatumaru Bay in Port Vila. It would appear that the late Dominique and her family have lived in that property since 1997. Danielle also stayed at the property when she visited Port Vila from Noumea. As administrator, the respondent asked his sisters to pay rent on the property. They refused and so the respondent commenced proceedings to evict them and their families. The respondent also sought damages from the appellants for "loss of rental". As administrator he was obliged to do so to protect the estate from loss or diminution of value. He applied for summary judgment and following an initial adjournment to allow negotiations, the Court granted the application on the basis that there was no real prospect of the claim being defended. The Court granted an eviction order against the appellants requiring them to vacate the property in 28 days and an order for damages to be assessed. A further conference was ordered (presumably to give directions about assessment of damages) but that was overtaken by the filing of the appeal. The Court below made no order for costs so the estate will bear its own costs which means, effectively, the beneficiaries will share the costs. It is against the whole of that decision the appeal is made.

4. There is no doubt and indeed no dispute that upon the death of the late Lari Ake Yakeula her six children were entitled to take *per stirpes* her entire estate. In simple terms, as she died intestate the six children were entitled to equal shares of their mother's estate. It was not entirely clear from the evidence and submissions whether any of those children died leaving issue, meaning grandchildren of Lari Ake Yakeula, but if there are such issue they would be entitled to their deceased parent's share of the estate. That share would be distributed according to any will the deceased parent left or according to the rules of intestacy applicable to the parent.

5. There is no dispute that the appellants and the respondent were each entitled to at least one sixth of their mother's estate. The appeal is put on the basis that as beneficiaries of the estate the appellants, "have a lawful right to reside at the property" and therefore the judge in the Court below was wrong to determine the respondent was entitled to evict them from property which forms part of the estate. Alternatively, they argue that the respondent as administrator is obliged to call a meeting of the beneficiaries of the estate (or in case of deceased beneficiaries, the deceased siblings of the beneficiaries) and for the beneficiaries to decide (presumably by majority vote) how the estate is to be dealt with. That proposition is erroneous.

6. The appeal can be disposed of shortly. Counsel for the appellants was unable to point to any legal right that entitled beneficiaries to occupy estate property to the detriment of the administrator's obligation to call in, collect and distribute the deceased's estate. Indeed, any such right would make a nonsense of the provisions of the Succession, Probate and Administration Regulation 1972



No 7 of 1972 (United Kingdom) which applies in Vanuatu by virtue of Article 95(1) of the Constitution. Rule 6 of the Regulation requires that:-

“...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:-

(d) if the intestate leaves issue, but no wife or husband, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely;”

In order to do that the Regulation earlier provides at Rule 5:-

“Notwithstanding anything to the contrary contained in any laws in force in New Hebrides at the date of commencement of this Regulation, the property of an intestate dying on or after the date of commencement of this Regulation shall be distributed in accordance with the provisions of this Regulation, and no person shall have any right, title, share, estate or interest in such property except as provided in this Regulation.”

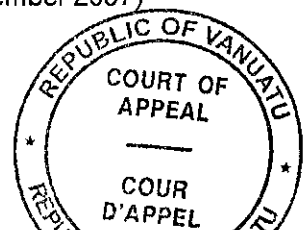
Those obligations have been explained in *Re Estate of Molivono*¹.

7. There is no right which allows a person as beneficiary to unilaterally decide to occupy estate property simply because that person is a beneficiary. In those circumstances an administrator is perfectly entitled to require vacant possession and if that is not given voluntarily, to take proceedings for eviction. It is no defence to such proceedings to say because I am a beneficiary I have a right to occupy estate property. The appeal must fail.

8. The evidence before the primary judge showed that Danielle, whilst administrator, and Dominique as occupier of the house, had each paid expenses of the estate, including for its maintenance and repairs. It also indicated the respondent as administrator had paid certain expenses which related to the administration of the estate, although from his own resources. The proper expenses paid by each of them as expenses of the estate will, of course, have to be brought to account. In the case of Dominique and Danielle that would not include expenses such as for services (electricity water gas etc) which would commonly be borne by a tenant. That accounting will have to be done before the net proceeds of the estate are distributed.

9. We also note that, as the respondent acknowledges, a beneficiary may remain in the house of the deceased if they agree to pay to the respondent, as administrator, an appropriate rental and properly reside there as a good tenant. Also, any beneficiary is entitled to offer to buy the house from the administrator. The administrator may accept that offer if all the beneficiaries (including the

¹ *In re Estate of Molivono* [2007] VUCA 22; Civil Appeal Case 37 of 2007 (30 November 2007)



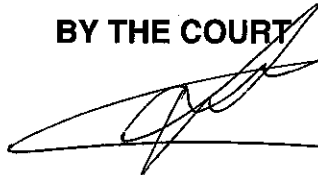
administrator) agree. In either case the rent and the purchase price should be for fair market value unless all the beneficiaries agree otherwise.

10. The appeal is dismissed. That of, course, does not dispose of the matter because there still remains the Supreme Court order for damages to be assessed. The case will now be returned to the Supreme Court so that the question of damages can be dealt with. The conference ordered by the judge will need to be relisted. Given the comments made in this appeal the parties may want time to consider their position to avoid any further loss to the estate before they request a new date.

11. In regard to costs, the respondent is entitled to his costs of the appeal paid by the appellants and we fix those costs at VT50,000.

DATED at Port Vila this 7th day of April 2017

BY THE COURT



Hon. Vincent LUNABEK
Chief Justice.

