

(Probate Division)

IN THE MATTER OF: THE ESTATE OF LATE DAVID  
BATU LIVO

Deceased

BETWEEN: ZAKI BATU LIVO

Claimant

AND: RACHEL VATARUL,  
ADMINISTRATOR OF DAVID  
BATU LIVO'S ESTATE

Defendant

Mr Justice Oliver A. Saksak  
Mrs Mandeng M. John – Clerk

Mr Tom Joe Botleng for Claimant  
Mr Britten Yosef for the Defendant

Date of Hearing: 8<sup>th</sup> September 2011  
Date of Judgment: 4<sup>th</sup> October 2011

## JUDGMENT

### Introduction

1. On 3<sup>rd</sup> June 2011, the Claimant filed his claim in this Court challenging the grant of letters of administration in the estate of late David Batu Livo on 27<sup>th</sup> November 2009. The Claimant is the eldest son of the late David Batu Livo, deceased. He did not challenge the defendant's application for letters of administration in 2009.

### Basis of Claims



2. The claim is made on the basis of allegations that –
- (a) The defendant had failed her duty as administrator of the deceased's estate by transferring or selling the estate property that were to be held on trust for the beneficiaries by her.
  - (b) The defendant had kept the sale proceeds to herself instead of ensuring a fair distribution of the proceeds to the beneficiaries of the estate.
  - (c) The defendant had breached her duties as administrator.

#### Reliefs Sought

3. The claimant therefore claims the following reliefs –
- (a) An order that the defendant be removed as administrator of the estate of late David Batu Livo.
  - (b) An order that the claimant be appointed sole administrator of his late father's estate.
  - (c) An order for damages against the defendant.
  - (d) An order for interests and costs.

#### Onus And Standard of Proof And Evidence By Claimant

- 4.1. The onus of proof rests on the claimant to prove all allegations on the standard of proof on the balance of probabilities. In an effort to achieve that the claimant relied on his two affirmed statements of 7<sup>th</sup> June 2011



(Exhibits C1 and C3) and of 5<sup>th</sup> August 2011 (Exhibit C2). He confirmed these in his oral examination-in-chief and was cross-examined on them by defence counsel.

#### Discussions On Claimant's Evidence

- 4.2. The evidence of the claimant in Exhibit C2 relates to his other claim in Civil Case No. 31 of 2011 and has no relevance to this claim. Therefore, those evidence are not admissible.

The evidence of the claimant in Exhibit C1 relates to his undertaking as to damages in support of an earlier application for restraining orders. As such, it has no direct relevance to the allegations made by the Claimant against the defendant. The only relevant evidence to assist the claimant to prove his allegations is contained in his affirmed statement of 7<sup>th</sup> June 2011 tendered as Exhibit C1. This evidence was produced by the claimant to support his urgent application for restraining orders and the claimant's claim in substance. At paragraph 6, the claimant has shown a valid transmission of Leasehold Title 04/3033/005 from the late David Batu Livo into the defendant's name "as the administratrix of the estate of the deceased DAVID BATU LIVO."

At paragraph 7, the claimant gives evidence of a revocation made on 24<sup>th</sup> May 2011 by the Chairman of Tabuemasana Land Tribunal and the Secretary of Santo Island Land Tribunal and Chairman of the Molimaimai. The revocation letter is annexed as ZBL2. This revocation is disputed by the defendant as not valid.

At paragraph 8, the claimant gives evidence of his being informed about a sale of Leasehold Title 04/3312/002 to one Adam Smith. But he has no documentary evidence to confirm such sale took place.

At paragraph 9, the claimant gives evidence that he is unable to provide any information in relation to the other Leasehold Titles transferred or sold



by the defendant blaming the defendant for non-disclosure of full statements of accounts and assets of the estate.

At paragraph 11, the claimant gives evidence of his braving information about monies received by the defendant from the sale of Title 04/3312/002 with which she has purchased motor vehicles, but he is unable to produce copies of the lease, blaming non-disclosure by the defendant.

### Defendant's Case

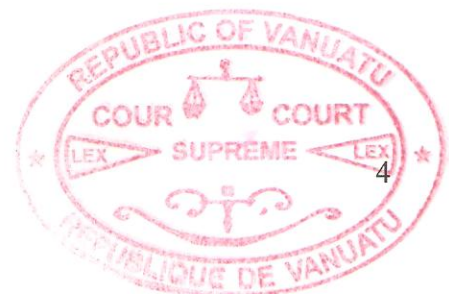
5.1. The defendant's defence asserted that –

- (a) The deceased's estate does not extend to the leases held on trust for the defendant and her beneficiaries. These are the four leasehold titles situate on Aore Island which have been transferred to the defendant's name as lawful proprietor of those properties.
- (b) The statement of claim of the claimant does not specify which properties are being challenged.
- (c) As lawful lessor of the properties in the four leasehold titles, the defendant is entitled to proceeds of sale over those four titles.

### Defendant's Evidence

5.2. The defendant gave oral evidence on oath confirming her evidence by sworn statements dated 5<sup>th</sup> August 2011 and of 6<sup>th</sup> September 2011 (Exhibits D6 and D7). She was cross-examined by Mr Botleng. She called 5 other witnesses namely:

- (a) Willie Tavuti – He confirmed his sworn statement of 5<sup>th</sup> August 2011 (Exhibit D1) and was cross-examined by Mr Botleng.



- (b) Paul Sope – He confirmed his sworn statement of 28<sup>th</sup> July 2011 (Exhibit D2) and was cross-examined on it by Counsel for the claimant.
- (c) Paul Hakwa – He confirmed his sworn statement of 3<sup>rd</sup> July 2011 (Exhibit D3) and was cross-examined.
- (d) Tom Rasu – He confirmed his sworn statement of 29<sup>th</sup> July 2011 (Exhibit D4) and was cross-examined.
- (e) Peter Moli – He confirmed his sworn statement of 26<sup>th</sup> July 2011 (Exhibit D5) and was cross-examined by counsel, Mr Botleng.

#### Issues

6. The claimant was given 14 days from date of hearing to file and serve final written submissions. As at 20<sup>th</sup> September 2011, no such written submissions had been filed by the claimant. The defendant filed their written submissions on 26<sup>th</sup> September 2011. They raise three issues as follows –
- (a) Did the defendant fail in her duty as administrator?
  - (b) Is the claimant entitled to all the properties of his deceased father as a beneficiary?
  - (c) Does the claimant have standing to file claim under the Queens Regulation 1972?

#### Discussions

- 7.1 The Court will deal first with the second issue of whether the claimant is entitled as beneficiary to all of his deceased father's properties?

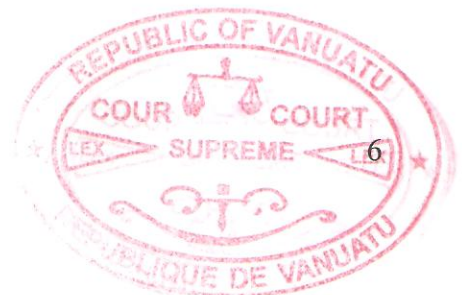


7.2 The defendant submitted that the claimant did not specify in his pleadings which properties he is referring to exactly. The Court accepts and agrees with that submission. The pleadings at paragraphs 1 and 5 of the claim are vague and lack better particulars. Further, there is no evidence by the claimant to show those properties of the deceased to which the claimant is a beneficiary. The only evidence of relevance and assistance to the Court is that of the defendant herself in her sworn statement of 6<sup>th</sup> September 2011 (Exhibit D7). The defendant deposes to two lists of properties of the claimant's father. The first list shows properties, real and personal, located on Mavea Island to the total value of VT43,600,000. It is her evidence that her grant of letters of administration in 2009 does not extend to or cover these properties as she agrees these are properties the claimant and other descendants of the deceased are entitled to. The second list shows properties held under leasehold titles located on Aore Island. These are –

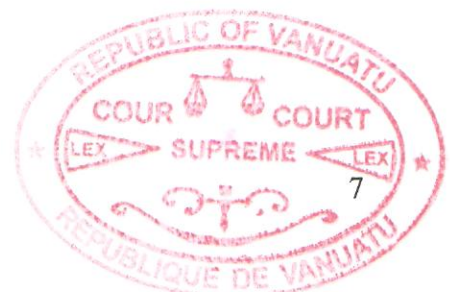
- (i) Purumamasa Island – Title 04/3312/003;
- (ii) Perol Plantation – Title 04/3033/002;
- (iii) Aore Island Ltd – Title 04/3033/005; and
- (iv) Adam Smith – Title 04/3312/002.

The defendant submits that over these properties, the claimant has no entitlement as beneficiary.

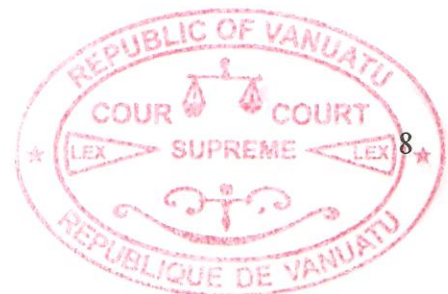
7.3 For the claimant to claim beneficiary over these titles, he first has to show to the Court that his deceased father was the custom land owner of those lands within those titles. The claimant has not and cannot show evidence to that effect. He relies on the 1982 Declaration by the Minister of Lands which shows that David Batu Livo is named as custom owner representative representing the persons who had interests in lands within those titles. That declaration in no way a declaration as to customary ownership. The principle is clearly spelt out by the Court of Appeal in Valele Family v. Touru [2000] VUCA 3.



- 7.4 When the defendant applied for letters of administration in 2009, she attached a list of inventory of the estate of David Batu Livo over which she intended to have administration. This list is attached as RV1 to her sworn statement of 6<sup>th</sup> September 2011 (Exhibit D7). The properties are within leasehold titles 04/3033/002; 04/3312/003; 04/3312/002 and 04/3033/005. The estimate value of those properties are VT1,318,300,000. On 27<sup>th</sup> November 2009, administration was granted to the defendant over the estate of the deceased to the value of VT1,318,300,000.
- 7.5 The basis for the defendant applying in 2009 for administration specifically over the four titles on Aore Island is that she was the recognized and declared custom owner of those lands within those titles. The first declaration was made in 1981 by a Joint Land Committee. Chief Tom Rasu was the Secretary and Chief Paul Hakwa was the Chairman of that Committee. Both gave evidence by sworn statements and orally (see Exhibits D3 and D4) that at the hearing, the late David Batu Livo was not a claimant. He acted only a spokesman for the defendant on her authority to act in that capacity for and on behalf of her and her children until they reached maturity. Those evidence have not been rebutted or challenged by the claimant. The decision of the Committee of 1981 was endorsed by Supernatavuitano Council of Chiefs on 15<sup>th</sup> June 2005. When the matter was brought before the Area Land Tribunal in 2010, the Land Tribunal on 20<sup>th</sup> October 2010 upheld the decision of the Council of Chiefs and of the Committee that the defendant is the custom land owner of those lands located within those four titles. That decision has been recorded, registered and accepted by the Customary Lands Unit by letter dated 15<sup>th</sup> November 2010. (see Exhibit C2 Annexure ZB2). The claimant has no evidence that he challenged the validity of that decision at any time thereafter (from 15<sup>th</sup> November 2010) up to a period of 6 months.



- 7.6 For the foregoing reasons, the Court must accept the defendants' submissions in relation to this issue that a resulting trust arose, and answer the issue as follows: As concerns, lands situated within Leasehold Titles 04/3312/003; 04/3033/002; 04/3033/005 and 04/3312/002, the claimant has no beneficiary entitlements or interests whatsoever.
8. The second issue is whether the defendant failed in her duty as administrator of the deceased's estate? Relying on the foregoing discussions, the defendant had no such duty to the claimant and therefore the issue must be answered in the negative.
- 9.1 The final issue is whether the claimant has standing to file his claim under the Queens Regulation 1972.
- 9.2 The defendant submits that the claimant has no standing because the Queens Regulation 1972 has been specifically repealed under Rule 5.4 of the Probate And Administration Rules.  
Rule 5.4 provides for Repeal as follows –  
*"The succession, Probate and Administration Rules No. 1 of 1974, made under the Queens Regulation, are repealed."*
- 9.3 The Probate and Administration Rules are issued under the Judicial Services and Courts Act No. 54 of 2000 and the Queens Regulation No. 7 of 1972 which is Succession, Probate and Administration Regulation 1972.
- 9.4 From those provisions, it is clear that it is not altogether correct to submit that the Queens Regulation of 1972 has been repealed. Only Rules No. 1 of 1974 have specifically been repealed. The submissions of the defendant in relation to this issue are rejected.





9.5 The claimant therefore has standing to bring his claims.

Properties Not Subject to Administration Order

10. Before coming to the conclusion, the Court has through the evidence of the defendant (Exhibit D7) identified two properties, apart from the customary real and personal properties on Mavea Island, that need to be subject to further application. These are (a) a Toyota Hilux Reg. 5663 and (b) Several Bank Accounts. The Court will not determine these in this proceeding because of lack of better particulars. Applications must be filed in the usual way in accordance with the relevant Rules.

Conclusion

11.1 The Conclusion of the matter is that the claims of the claimant lack merit and substance and therefore cannot succeed.

11.2 All orders sought are refused.

11.3 The claimant's claims are dismissed in its entirety.

Costs

12. The defendant is entitled to her costs of and incidental to this action to be paid by the claimant on the standard basis as agreed or determined by the Court.

DATED at Luganville this 4<sup>th</sup> day of October 2011.

BY THE COURT

  
OLIVER A. SAKSAK  
Judge

