

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO.2719 OF 2017

IN THE MATTER of the Application
to revoke Administration on the
Estate of the late Timothy Viretaita

IN THE MATTER of Section 2.3 and
24 (a), (b), (c) of the Succession,
Probate and Administration
Regulation No. 7 of 1972

OZTOME BULE

Applicant

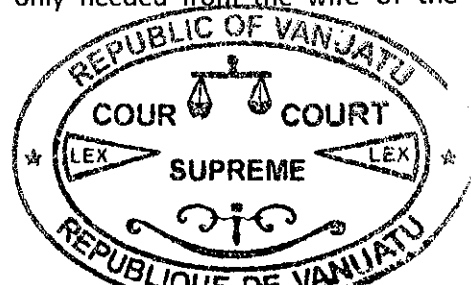
Hearing: Monday 20th August, 2018
Before: Master Cybelle Cenac
Delivered: 31st day of August, 2018
In Attendance: Pauline Kalwatman counsel for the Applicant

JUDGMENT

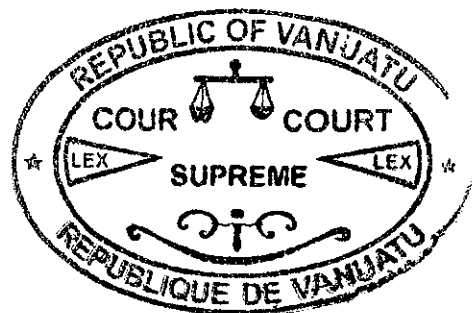
Headnote

Application for Letters of Administration - consent of siblings required -
section 7 of Queens's Regulations

1. This matter came up for determination without hearing on the 20th August, 2018. Pauline Kalwatman as counsel for the Applicant filed an Application on the 22nd May, 2018 to vary in part order 1 of the review order of the 22nd May, 2018 to exclude the siblings from filing their consent statement. This Application is dealt with on the papers. In support of the Application counsel for the Applicant referred to Appeal Judgment of Justice Aru of the 4th May, 2018 in the matter of the Estate of Lee Kapere [2018] VUSC44.
2. The Court accepts the argument of counsel that the consent of the siblings is not required but not for the reason laid out in the Application. The Court finds that its order of the 22nd May, 2018 was erroneously made and is thus withdrawn by the Court. The Court accepts that for the purpose of this Application consent is only needed from the wife of the deceased.



3. Notwithstanding, the Court would wish to add, that in spite of Appeal Judgment of Justice Aru ~~it will continue, in the interest of Justice, to request the consent of siblings when~~ deemed necessary. The Court does not see its present approach as a departure from the Judgment of His Lordship, accepting that there is not a specific clause in the Queens Regulation addressing the provision of consent. The Judgment of Justice Aru is confined to that specific finding and does not delve into a purposive interpretation of Part 6 & 7 of the Regulations, His Lordship being without this Court's reasons for the said Order.
4. This Court is of the opinion, that in spite of a non- specific clause in the Queens Regulations dealing with provision of consent, an interpretation of Part IV, Section 7, dealing with priority of grants allows this Court, in its inherent jurisdiction to request any consents deemed necessary. The Court says this for the following reasons:
- 1) The Queens Regulations providing for priority of grant would mean, that if the first person in order of priority is unable, unwilling or cannot apply for administration, the Applicant must inform the Court by way of sworn statement from that person indicating why they have not made an Application and giving their consent to the present Applicant so that the Court is not left to pursue them to ascertain their reasons for not applying.
 - 2) The Court generally request consent of siblings where one or more siblings have applied for the grant. Section 7 (b) of the Queens Regulations provides that children of the deceased, in the absence of a spouse are entitled to apply for the grant. If a grant is made to children only, they will be given, by virtue of S6 (d) of the Queens Regulations the whole of the estate absolutely. The Regulations do not recognize one sibling as having a greater right over the other to apply for administration. It therefore follows that any of the siblings can apply. In considering the Application, the Court is entitled to call upon persons who are able to either attest to or object to the suitability of the Applicant, and if objecting, are free to put themselves forward for consideration. There is no better means for this Court to make this determination than by requesting the consent of siblings.
 - 3) Section 2.5 of the Probate and Administration Rules requiring advertisement of an Application, requesting any interested persons to file a response or objection within a specified period of time operates similarly to the Court requesting consent, in that, all interested persons, including siblings or other relations can come forward to lay their objections before the Court. Therefore, the Court's request for written consents merely operates to achieve the same outcome, save that by such specific request the Court is assured that the necessary persons are notified of the Application.



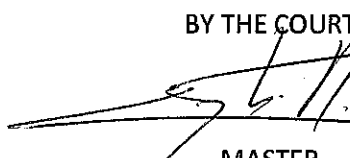
- 4) While the Court sits removed and unmoved by the happenings of the outside world so that bias may not enter into its judgment, the Court is not oblivious to or ignorant of what may socially exist in the jurisdiction in which it sits.

The Court takes judicial notice of the fact that many persons in Vanuatu entitled to inherit under the estate of the deceased are oftentimes denied that right due to lack of understanding on the part of the Administrator that he or she is not entitled to the whole of the estate of the deceased or by deliberate attempt of the administrator to conceal that right from other beneficiaries. The one certain way in which the Court can be assured the beneficiaries are and have been notified of pending Applications is to secure the consent of those beneficiaries.

- 5) The Inherent Jurisdiction of the Court allows it, for judicial convenience and justice to exercise its discretion in a way that is most fair in the circumstances and for all parties concerned.

5. The Court hereby orders as follows:

1. That Application to vary order 1 of the 22nd May, 2018 is granted and consent from the siblings is withdrawn.
2. That consent of wife to be obtained via telephone with a translator of her dialect both to be sworn in before the Island Court Clerk in Central Pentecost.
3. That hearing to take consent of wife is listed for the 6th September, 2018 at 9:00 a.m. before the Deputy Master. Counsel for the Applicant to be present before the Court and the wife are to be present via telephone.

BY THE COURT

MASTER

