IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 3497 OF 2023

IN THE MATTER of Application for Letters of Administration in the Estate of the late **LINI BANI RINNIE**

AND IN THE MATTER of Section 2.3and 2.5 of the Probate and Administration Rules 2003 and Section 6 and 7 of the Queen's Regulation No.7 of 1972

BETWEEN

EPHRAIM REGINA

Applicant

AND

DELVINA TARI TANGHNA KWEVIRAMARU LINI BANI

Respondent

BEFORE: Aurélie TAMSEUL

(Deputy Master)

DATED: 12th day of June, 2024

ENTERED: 12th day of June, 2024

Decision

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a. **Introduction**

1. This matter is dealt with on the papers only.

2. On the 8th September, 2020 this Court granted Letters of Administration of the estate of Lini Bani Rinnie to Delvina Tari Tanghna Kweviramaru Lini Bani in **PRBT 23/3497.**

3. The Applicant filed on the 20th December, 2023 an urgent Application for disclosure and to remove Delvina Tari Tangha Kweviramaru Lini Bani as Administrator.

4. The Court listed the matter on the 19th March, 2024 for a first conference to address the irregularities in the Application filed. Counsel on behalf of the Applicant made an oral Application to amend their Application which was granted. The said amended Application was filed on the 7th February, 2024.

5. The Respondent filed on the 9th April, 2024 a response to the Application.

b. The Law

"Distribution of estate of intestate.

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."[1]

"Succession to property on intestacy.

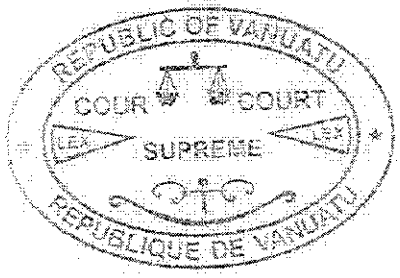
[illegible]

"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
(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
(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."[3]

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

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
(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."[4]



[1] Succession, Probate and Administration Regulation 1972
[2] Succession, Probate and Administration Regulation 1972
[3] Succession, Probate and Administration Regulation 1972
[4] Succession, Probate and Administration Regulation 1972

> ***"40. Inventory and accounts.***
>
> *(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."*[5]

c. **Applicant's case**

6. The Applicant's grievance before this Court relates to **property title No. 11/OF31/055** ("the property") registered in the name of the deceased therefore forming part of the estate. The Applicant and her mother are currently living on "the property".

7. The Applicant submits that "the property" is presently under mortgage displaying an uncleared accumulated unpaid interest of VT 4,598,278 and is referred to as annexure "***ER-2***" in her sworn statement in support filed on the 20th December, 2023.

8. The Applicant attached to her application a "notice of demand" referred to as annexure ***"ER-3"*** which was addressed to the Administrator of the estate to pay the above-mentioned unpaid interest.

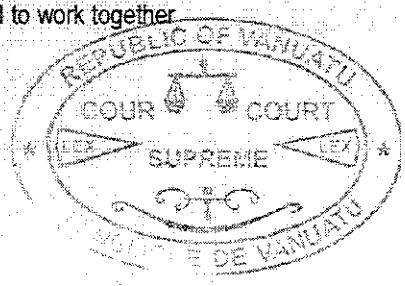
9. The Applicant submits that together with her mother they have attempted to service the loan and paid VT 850,000 on the 13th December, 2023 towards the arrears. Proof of the said payment is referred to as "***ER-4.***

10. The Applicant as a beneficiary to the estate submits that she applied for refinance of the loan and has attempted to get consent from the Respondent but to no avail. Proof of said attempt is referred to as annexure "***ER-5".*** She submits that the Administrator has refused to give her consent.

11. The Applicant submits that the Bank issued a notice to quit which is referred to as annexure "***ER-6".***

12. The Applicant accepts that the Bank has a power of sale over "the property" and it is her position that the Administrator gives her consent to refinance the loan to avoid the sale and preserve "the property".

13. The Applicant submits that she does not wish to be a joint-administrator with the Respondent because the whole reason for coming to Court is because the latter disagreed to work together with the former to settle the debt of the estate by re-financing.



[5] Succession, Probate and Administration Regulation 1972

d. Respondent's Case

14. The Respondent objects to the Application and requests that it be struck out.

15. The Respondent provided a brief history of the loan over "the property" which indicated that she is aware of the default Judgment entered the 16th June, 2015 over "the property" prior to the passing of the deceased on the 5th October, 2019. The Court takes judicial notice of the default judgment entered on the 16th June, 2015.

16. The Respondent submits that from 16th June, 2015 to prior to the passing of the deceased on 5th October, 2019 neither the Applicant nor her mother attempted to regularise the situation.

17. The Respondent that submits that the estate has no means to repay the debt therefore she is waiting for the bank to sell "the property" and upon receipt of the proceeds of sale she would carry out her duties under the law.

18. She informed the Court in the hearing on the 21st May, 2024 that she was approached by Bank officers to sort out the loan but she informed them that the estate has no means to repay and told them to proceed with the sale of "the property" and provide her with the remainder of the balance of sale if there is any once their debt is paid.

e. Reply

19. The Applicant in her reply made reference to the "the property" as being a matrimonial asset.

20. The Applicant submits that she wants to refinance the loan.

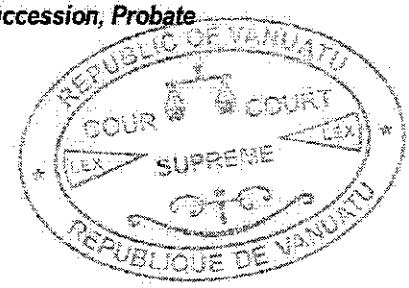
21. The Applicant further added that together with her mother they continue to pay the loan and given the Respondent's financial limitation, the way forward is that latter shares the property with the Applicant and agrees to her request to refinance.

22. The Applicant submits that the Respondent failed in her duties to properly administer the estate when she refused to give consent to the Applicant to refinance the loan.

23. The Applicants submits that the grant entered on the 8 September, 2020 be revoked and she be appointed the new Administrator of the estate.

f. Discussion

24. The duties of an Administrator are eloquently stated in section 6 of the ***Succession, Probate and Administration Regulation 1972.***



25. When a person dies, all his properties fall into the estate pool. In this particular case, because of the default Judgment, the Administrator's duty is to liaise with the Bank to have the property sold to pay of their debt and remit to her any proceeds of sale. Therefore, the Administrator obligation in carrying out her duties under the grant are subsequent to the sale of "the property".

26. The Respondent, as the Administrator, is not personally liable to pay for the debts of the estate The debts of the estate are to be paid by the properties of the estate.

27. The Applicant, as a beneficiary is only entitled to her share of the estate. As a beneficiary, it is not her duty under the law to pay for the loan arrears. The Letter of demand was addressed to the Administrator of the estate and not to the beneficiary.

28. It is unclear under whose instructions the Applicant and her mother acted to make the payment of VT 850,000 toward the loan on the 13th December, 2023. They put themselves in the unfortunate situation of paying for a debt that is not theirs to settle as pursuant to Section 6 of the ***Succession, Probate and Administration Regulation 1972***.

29. There was a mention of matrimonial property which I will not make a determination on based on issue of my limited jurisdiction.

30. Once could only refinance a loan that is in their name, or with the approval of the borrower, one could step in to refinance on their behalf. Unfortunately, the deceased being the currently name borrower, could not approve the request to refinance. Furthermore, once someone dies all their estate are held on trust for purposes of complying with the Law. Thus, allowing the Applicant to refinance would jeopardise the interest of all the beneficiaries.

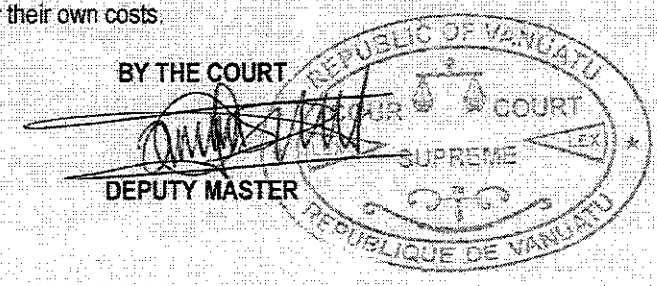
g. <u>Finding</u>

1. That Application to revoke the administration order entered on the 8th September, 2020 in **PRBT 20/394** is not granted.

2. That the Respondent is to urgently liaise with the Bank to sell the property to allow her to complete administration.

3. That each party to bear their own costs.

BY THE COURT



DEPUTY MASTER