

IN THE HIGH COURT OF SOLOMON ISLANDS

CIVIL JURISDICTION

Civil Case Number 60 of 2022

**IN THE MATTER OF KENNY TUAPA SPILLIUS; DECEASED OF TASAHE, HONIARA,
SOLOMON ISLANDS**

IN THE MATTER OF WILLS, PROBATE AND ADMINISTRATION ACT (CAP 33)

**IN THE MATTER OF THE APPLICANT, MS LANITA WALEANISIA SPILLIUS FOR
LETTERS OF ADMINISTRATION**

BETWEEN: LANITA WALEANISIA-SPILLIUS Spouse Applicant

AND: RINIA SPILLIUS AND PHILIP SPILLIUS Children Objectors

Date of Hearing: 24th August 2022 (Supplementary written submissions).

Date of Decision: 23rd September 2022.

Counsel; Mr. Radclyffe for Applicant.

Counsel; Mr. Taedi for the Objectors.

KENIAPISIA; PJ:

RULING ON APPLICATION FOR LETTERS OF ADMINISTRATION

1. Applicant, Ms Lanita Waleanisia Spillius (“LWS”), desires the Court to appoint her as the Administrator (“A”) of her deceased husband’s estate. Ms LWS’s late husband, died on 7/10/2021 intestate – meaning died without leaving a “will”. Ms LWS and the deceased got married on 28/07/2018. Applicant and deceased had two small children. One is about 2 years (Joseph Philip Spillius). The other about 8 years (Naiyah Elmah-Rose Spillius). In addition, the deceased husband also had 2 prior adult children from his previous marriage - Rinia Spillius and Philip Spillius – who are the objectors herein. Ms Rinia is 22 years. Mr Philip is 20 years.
2. Altogether the applicant plus the 4 children are dependants of the deceased. The deceased died intestate. The pertinent issue to resolve in this application is, “*Who should be appointed the A for the deceased’s estate?*”
3. The law is quite clear. Section 29 (1) of the Wills, Probate and Administration Act (Cap 33) – “the WPA Act”, provides that where the deceased died wholly intestate, the persons having benefit and interests, in the estate, shall be entitled to a grant of letters of administration, in the order of priority, that may be prescribed by Rules made under Regulation. The said Rules are the Grants of Probate and Administration (Order of Priority) Regulation 1996. Regulation 3.1(a) puts the surviving spouse at the top of the list of priority to anyone else.
4. The 2 adult objector children of the deceased opposed to Ms LWS being appointed as the A. Instead the 2 adult objector children want the Court to appoint them as A. The grounds of objection could be traced down to lack of trust. The 2 adult children whilst acknowledging that

the applicant, Ms LWS, is their step-mother; they do not have trust in her ability to look after them, upon encountering a broken relationship with their step-mother. The 2 adult children described (in evidence) the broken relationship as going back to the filing of this application. The 2 adult children had mistrust in their step-mother because she failed to consult them before filing this application. And Ms LWS stopped communicating or talking with them, after filing this application.

5. The 2 adult children say that their father had left behind properties that he desired should benefit them. And they are concerned that if Ms LWS is granted the A, they doubted she will administer the properties to benefit them. They fear that if Ms LWS was given the A role, she will not treat them fairly in terms of benefits from the properties their deceased father left behind.
6. Counsel Taedi submitted that the broken relationship, mistrust and lack of proper consultation are special circumstances, amounting to incapability and bad character on the part of the wife applicant, thereby, necessitating change to the order of priority from the surviving spouse to the children. Mr. Taedi submitted the Court should not appoint Ms LWS as the A. Court should appoint the 2 adult children instead.
7. Court is of the considered view that there is a broken relationship between the applicant and her 2 adult children. But that is not a special circumstance that justifies the Court to circumvent from the list of priority in the Regulation. The children's main concern is that their entitlement to benefit from properties that their deceased father had left behind is not guaranteed if the applicant is appointed the A.
8. From the evidence, the following are properties that the deceased father left behind, without a "will" to guide the A in the administration and distribution of the properties, to the inheritance of the deceased's dependants: -
 - (i) Two Tasahe registered lands in joint ownership between deceased and his wife applicant – PN 191-007-430 and PN 191-007-431.
 - (ii) One Henderson registered land – Parcel Number not disclosed, because, it is yet to be transferred to the deceased father though the deceased father may have already paid for it. The deceased father got the Henderson land during the tenure of his employment with Our Telekom Company. But was not transferred, to the deceased, by the time of his death.
 - (iii) National Provident Fund (NPF) Savings – Amount not yet disclosed.
 - (iv) Money in Commercial Banks – ANZ and or Bred Bank – about \$633, 366.48.
9. Except for property 8 (iv), the other properties in 8 (i), (ii) and (iii) do not classify as estates of the deceased, according to Counsel Radclyffe. The children of the deceased are not entitled to know about those other properties, nor benefit from them. Court found great difficulty in comprehending why some properties left behind by the deceased do not form part of his estate. If that argument was made for purpose of succession law and properties transfer under the Land and Titles Act (Cap 133) then I have no issue with that – jointly owned registered land will transfer to the surviving joint owner – in this case the applicant wife. But the evidence before me suggested otherwise. The evidence suggested that the other properties above mentioned (8 i, ii, and iii) are not part of the deceased's estate. So, the children do not have a right to claim for them, nor benefit from them. I will cite the relevant evidence, at *Exhibit 1*: -

“Hi Tearo,

My client is happy that you have contacted me about this. She is concerned that Philip Senior is filling the childrens’ heads with a lot of false information. He attended court with them on 25/5/22 and made some outrageous comments about my client’s marital status. He has lost a son but he seems to ignore the fact that my client has lost her husband and her children their father. Sympathy and compassion are what is needed and not hostility and harassment. Philip Sr needs to understand that he is not a beneficiary and has no claim on the estate. Any money in NPF does not form part of the estate and will be dealt with by NPF according to law.

The case was adjourned to 9:30am on 7/6/22 to give them time to get legal advice. The Registrar said that if the objection is maintained she will refer the case to a judge for a full hearing on a date to be fixed.

I attach a copy of my client’s application for Letters of Administration and her sworn statement. I also attach a copy of Philip senior’s letter to the court and my reply.

You will see that my client acknowledges that Philip Jr and Rinia are beneficiaries of their father’s estate along with my client and her kids with the deceased. They need to understand that the fact that a person is appointed administrator of an estate doesn’t mean the assets belong to her. If she is granted Letters of Administration my client will administer the estate according to law and all the beneficiaries will receive their legal entitlements. The deceased didn’t leave a will so the intestacy rules apply. My client, as the lawful widow, is first in line to be appointed administrator. There are no valid grounds for objecting to her appointment.

The only asset in the estate is money in the ANZ accounts. The Bank won’t disclose the amount until an administrator has been appointed. Philip and Rinia will be entitled to a share in that money along with the other beneficiaries. The registered land was purchased by the deceased and my client as joint owners. As you will be aware on the death of one joint owner the survivor becomes the sole owner. The property is charged to the Bank and my client has to make repayments. Those properties do not form part of the estate and Philip and Rinia have no claim to them. Before he died Telekom agreed to sell a parcel of land to him as he worked for Telekom. The transfer wasn’t completed before he passed away. After he died Telekom agreed to transfer title to my client. That land is therefore not part of the deceased’s estate.

I hope that when they understand the true position that any objection to my client being appointed administrator will be withdrawn. Any objection will be a waste of time and will result in legal fees being incurred which will only reduce the value of the estate.

I have no objection to you making the above available to the children and any lawyer they choose to instruct.

If you have any queries please let me know.

Regards,

Andrew Radclyffe ” (My underlining).

10. There can be no shadow of doubt that the properties or much of the properties deceased left behind do not belong to the dependants of the deceased, like his 2 adult children, because the ownership status of those properties will by law, be now transferred to the surviving spouse, to the exclusion of the children in terms of ownership and hence the corresponding benefits accruing to the dependent children. That is the injustice position advanced in submissions on behalf of the applicant. Court does not find any basis in law to justify applicant’s position, certainly not under the WPA Act.
11. To the contrary, for the benefit of doubt, Probate means – “The entire process of administering a dead person’s estate and involves organising their money, assets and possessions and distributing them as *inheritance* after paying taxes and debts¹”. If deceased left a “will” he will name the A person to administer his estate. Here there is no “will”. So, Court has to appoint an A. This means that all the properties/assets/estate left behind by the deceased will be looked after by the A for the *inheritance* or *benefit of deceased’s dependants*, in this case, the *wife applicant* and *all 4 children*. Consistent with this pronouncement, the estate of the deceased are all of the 4 properties mentioned in (8) (i) - (iv) above. All those properties are estates of the deceased by virtue of Section 3 of the WPA Act. The said Section 3 broadly defines estate of a deceased to include goods, chattel, money and registered interest in land under Lands and Titles Act (Cap 133).

¹ Google search definition for Probate.

12. Ms LWS will be appointed as the A of the deceased's estate. She will administer the estate of the deceased according to law for the benefit or inheritance of the dependants. Dependants are all the 4 children and Ms LWS. Administering the properties according to law means, the A must first discharge the loan obligations, tax and other debts over the Tasahe land properties or other properties, before administering or distributing those 2 Tasahe land properties or other properties for the benefit of the dependants. The other properties like monies in Banks and NPF will also be administered according to law (NPF Act) for the benefit of the dependants (*Section 35 (2) read with Section 30, 32, 33 and 34 of Solomon Islands National Provident Fund Act (Cap 109)*). Applicant has no issue with distributing bank monies to the children. The applicant is also a beneficiary to the bank monies. Applicant's issue is that the other properties besides Bank monies (ANZ and or BRED Bank) are not part of the estate of the deceased. Hence the 2 children objectors, do not have any claim over those other non-bank money properties. Court rejected this submission as alluded to above, on the basis that it is not justifiable in law (repeat and reaffirm paragraphs 8, 9, 10 and 11).
13. This Court maintains an ongoing role in the administration of estates of deceased persons. For the administration powers vested in the A is given by authority of this Court. And if any beneficiary is unhappy about the administration and distribution of benefits from the estate left behind by the deceased, they are entitled to come back to this Court, to ensure the administration is done according to law, to the benefit of the deceased's dependants. *Section 16 and 69 of the WPA Act* provides for the Court's ongoing role in the administration of estates, by the A. Section 16 allows for application to revoke the appointment of an A or for applications to be made for second or subsequent grant of A. Section 69 placed duty on the A to look after the properties of the deceased, account to the Court for deceased estate inventory and or the Court may even call for surrender of the A grant.
14. Accordingly; Court will grant A role to Ms LSW to administer the estate of the deceased according to law, to benefit all the dependants of the deceased. Dependants of the deceased are the 4 children and Ms LWS. Estate of the deceased are all the properties named in 8 (i) – (iv) above. Parties will meet the bulk of their own costs. Only \$10,000.00 of the deceased's estate may be used to meet cost relating to this application. The 2 Tasahe properties are currently not free as they are servicing loans from the Banks. The 2 adult children must not interfere with the A's role over Tasahe properties, to ensure the loans are cleared. After the loans are cleared the A is accountable to the dependants in terms of benefit and or distribution (inheritance of the deceased's property).


THE COURT
John A. Keniapisia
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JUSTICE JOHN A KENIAPISIA
PUISNE JUDGE