

IN THE SUPREME COURT OF TONGA  
PROBATE JURISDICTION  
NUKU'ALOFA REGISTRY

PA 6 of 2013

*Scan & file*

Solicitor General

*[Signature]*  
28/08/14

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IN THE MATTER OF      **VILIAMI PO'ULI TUPOU deceased.**

**Mrs P. Tupou for the Applicant: Ane Po'uli Tupou**

**RULING**

[1] On 7 May 2013 the Applicant applied for letters of administration in respect of the estate of her late husband Viliami Po'uli Tupou. The application stated that the deceased:

“owned and had as his properties on the date of his death assets worth \$5,600.00”

[2] In paragraph 8 of the standard supporting affidavit, the Applicant deposed:

“that the estate concerned is Lease No.5114 at Halaleva, Tongatapu.”

*rec'd 26/08/14*  
*[Signature]*

In paragraph 9 the Applicant deposed :

“that I caused a proper valuation of the Lease to be undertaken and I attach hereto a true copy of that valuation...”.

[3] Exhibit A to the affidavit was a certificate from the Acting Secretary for Lands, Survey and Natural Resources which revealed that the lessee of Lease 5114 was Viliami Po'uli Tupou, that the rental to the lessor Government of Tonga was \$45.00 per annum and that the lease would expire on 14 January 2041.

[4] The valuation report is Exhibit 1 to the affidavit. This report reveals that the unimproved value of the land comprised in the lease is estimated to be \$40,600. From this sum \$35,000.00 had been deducted for “reclaiming and gravel fillings” resulting in a final figure of \$5,600. for the unimproved value of the land.

[5] The cover page of the valuation report depicts what appears to be on rather attractive 3 or 4 bedroom wooden house built on the land. Upon receipt of the report and the Applicant's affidavit I asked Mrs Tupou to justify excluding the value of the house from the deceased's estate.

[6] Mrs Tupou relied on Section 16 of the Probate and Administration Act (the Act) which states that:

“the widow shall inherit the dwelling house on the town allotment ... whether the deceased left a will or not but

the rest of the property of an estate shall be divisible according to Schedule 1 hereto”.

[7] In my opinion the wording “but the rest of the property of an estate” leaves no doubt at all that the dwelling house is to be regarded as part of the estate, albeit a part reserved for the widow. In my opinion Section 16 provides no ground for excluding the dwelling house from the estate.

[8] Section 3 of the Act requires:

“the Court [to] ascertain the value of the property of the deceased as correctly as the circumstances allow.”

In the present circumstances I am of the opinion that the Applicant’s suggestion that the value of her late husband’s estate did not exceed \$5,600. is not acceptable. On the basis of the information before me, I decline to authorize letters of administration to issue. This decision may of course be reviewed if further and credible information is supplied.

[9] Before leaving the matter I wish to refer to PA 15/12 In the matter of Filimone Kata Fie’eiki deck. In that ruling I held that, contrary to past practice, it was fundamentally wrong to calculate the value of an estate by taking into consideration the rent payable multiplied by the number of years remaining to the lessee. In my opinion that approach fundamentally confuses the value to the lessor with the value to the lessee. I described this question as an important issue

and hoped that the matter would be taken on appeal for final clarification. That has yet happen.

DATED: 2 August 2013.



  
M.D. Scott  
CHIEF JUSTICE

N. Tu'uholoaki  
2/8/2013.