

SUPREME COURT OF QUEENSLAND

CITATION: *In the Will of Tonia Anne Binsiar* [2026] QSC 235

PARTIES: **Devan Isaac Jack Brown and Lyndon Lewis Francis**
(Applicants)

FILE NO: 9339/26

DIVISION: Civil Jurisdiction

PROCEEDING: Application on the papers

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED EX TEMPORE ON: 10 September 2026

DELIVERED AT: Supreme Court at Townsville

HEARING DATE: 10 September 2026

JUDGE: Johnstone J

ORDER: **1. The application to be heard on the papers is refused.**
2. The application is adjourned to a date to be fixed.

CATCHWORDS: PRACTICE AND PROCEDURE – whether the application ought be dealt with on the papers – consideration as to matters relevant in determining as to whether an application should be dealt with on the papers.

SOLICITORS: Macrossan & Amiet Solicitors for the Applicants

[1] This is an application filed by, apparently, the adult children of Tonia Anne Binsiar. The fact that it took me about a minute to locate who the applicants were demonstrates that there is a problem with the application, in any event. The application was, purportedly, filed on the basis that it ought be heard on the papers. This is not a matter that is appropriate to be heard on the papers.

[2] Solicitors frequently file estate matters to be heard on the papers where there are factual issues to be resolved, and where the expectation from the solicitor is that the judge will traipse through, in this case, close to 100 pages of material to try and determine the correctness or otherwise of the various propositions put in the written outline.

- [3] In addition, six authorities have also been provided, as if when the judge is dealing with the matter on the papers, they also will all be read – presumably, in the judge’s spare time. It is about time solicitors realised that they are to bring a forensic mind as to whether a matter can be heard on the papers.

- [4] In addition, on Thursday the 6th of August, the solicitor for the applicants wrote to my Associate and said, in part, “Further, it was initially proposed that the application and supporting material be served on a Ms Krista Bagley and Mr Anthony Binsiar out of caution. Each of those individuals have sworn an affidavit relied upon by the applicants. Ms Bagley is named as having an interest in the estate under the informal will. And Mr Binsiar would have an interest on an intestacy. They both, however, provided a renunciation to the administration of the estate and otherwise do not wish to receive any benefit from the estate (as evidenced in their respective affidavits). This is being raised with the court because service copies of the material were only made available to us on Tuesday this week and there was insufficient time to effect service prior to it being listed.”

- [5] That paragraph is, obviously, a submission. It is inappropriate that a submission be put in an email addressed to my Associate. Regrettably, however, it gets worse. The solicitor then continued, and said, “Could you advise if his Honour is content to proceed to determine the matter on the papers tomorrow given the position in relation to Ms Krista Bagley and Mr Anthony Binsiar, or if his Honour would instead be content to adjourn the application by at least one week to allow service?”

- [6] It is inappropriate that a solicitor writes to the Court through an associate, asking questions of the judge in circumstances where they have filed an application which, on their submission, should be determined on the papers. It is for the solicitor to make decisions about the appropriateness of the course of conduct they propose to undertake and not for the judge to give advice prior to the application being heard on the papers, as to whether or not what the solicitor has done is sufficient. The court is not in a position to provide legal advice, in any way – or indeed, procedural advice. And the sooner solicitors remember that, the better.

- [7] Finally, one of the factors relied upon by the solicitor as justifying why the matter should be heard on the papers is said to be that the estate is simple and would appear modest.

The simplicity or modesty of the estate are not considerations relevant to the question as to whether or not it is appropriate the matter be dealt with on the papers.

- [8] Those who went to university and actually read cases will remember that the Balmain New Ferry Company case went to the Privy Council over one penny. Legal principle is not interested in the modesty or simplicity of the relevant prize. Legal principle is the only factor that should be considered when an application for a matter to be heard on the papers is filed. Accordingly, I refuse the application brought to be heard on the papers. And I adjourn the application to a date to be fixed.