

**IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 20/1570 CoA/CIVA

BETWEEN: LI YA HUANG
Appellant

AND: KRIS RUSSET
Respondent

Coram: *Hon. Chief Justice V. Lunabek*
Hon. Justice B. Robertson
Hon. Justice J. Mansfield
Hon. Justice D. Aru
Hon Justice G. Andrée Wiltens
Hon. Justice V. M. Trief

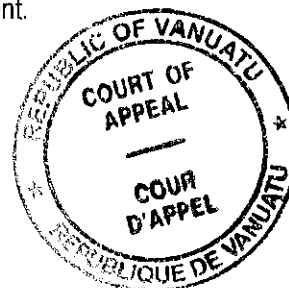
Counsel: *Mrs M.N.F Patterson for the Appellant*
Mr. M. Hurley for the Respondent

Date of Hearing: *14th July 2020*

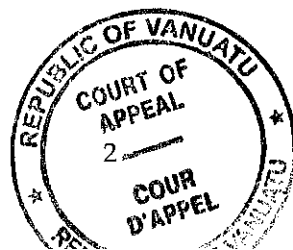
Date of Judgment: *17th July 2020*

MINUTE AND DIRECTIONS

1. On 4 June 2020 Saksak J dismissed an application for an order to strike out or stay a proceeding in Civil Case 332/2020 in which Henri Edmond Russet sought a declaration that a prenuptial Agreement was valid and enforceable, pending the determination of an Application for Letters of Administration in P1182/2020.
2. On 22 June 2020 the Judge was persuaded to grant leave to appeal that decision.
3. The relevant facts are not controversial.
4. Henry Edward Marie Andre Russet died on 17 December 2019 without having made a will.
5. On 23 September 2017 he had married Li Ya Huang.
6. On 22 September 2017 they had signed a prenuptial agreement.
7. Ms Huang has challenged the validity of that agreement.
8. Kris Russet is the only child of the deceased.



9. Both the widow and the child have rights in respect of the estate under the Administration Succession and Probate Regulations. Obtaining a grant of letters of administration is a purely administrative role and has no rights to property attaching to it. Frequently there is assumed to be an advantage to be gained by being appointed to undertake an administration but that is a fallacy. In this case there would be sense in the grant being to some independent and objective person or entity under section 7[c] to avoid conflict or perceptions thereof. That person would only be responsible for the due administration of the estate and would be free from any personal interest in the assets of the estate.
10. In the Supreme Court there were initially 13 grounds advanced in support of the application to strike out or stay the application which has been filed but these were narrowed to 5:
- a) Whether or not this Court has jurisdiction to hear this claim?
 - b) Whether or not the Claimant has standing?
 - c) Whether or not the claim is premature?
 - d) Whether or not the claimant is seeking the Court's advisory opinion? and
 - e) Whether or not the claim is an abuse of process being one with no reasonable cause of action?
11. There can be no question but that the Court has jurisdiction under both the Constitution and the Judicial Services and Courts Act [CAP 270] to deal with the matters in dispute.
12. Mr Russet undoubtedly has a proper and genuine interest in what happens to his father's estate but there must be a question mark over the propriety of the present application in which Mr Russet seeks a declaration about the validity of an agreement to which he is not a party.
13. There are serious competing interests which will have to be determined. We are persuaded that allowing the probate case to proceed immediately would provide the opportunity to get an independent person involved as the Administrator who would be able to represent the estate in ongoing litigation.
14. It is arguable whether the better way forward would be for Li Ya Huang to institute proceedings against the estate for a declaration that the prenuptial is not valid, or for the Administrator to amend the present application and seek a declaration about the prenuptial agreement. If Ms Huang is successful, the administration regime will routinely operate. If she is not successful there will have to be a determination as to what effect the agreement has on the rights which she would otherwise have.
15. After some dialogue the Court adjourned to enable counsel and their clients to review their situation and assess a way forward. Thereafter we were informed that all agree to John Warmington being granted administration of the estate in P1182/2020.



16. There is no need for any stays or strikeouts if all involved quietly focus on the necessary steps in a logical order.
17. This is more than a modest estate but all the participants need to be vigilant to ensure that a substantial part is not swallowed up in legal fees as they engage in non-productive litigation instead of calmly moving through each necessary step.
18. The appeal to this Court is adjourned sine die as the current steps are in any event unhelpful. Neither the widow nor the son should be dealing in any way with any of the assets of the estate in any manner whatsoever. That is the task of John Warmington who will have the grant for the administration of the Estate.
19. Either party may bring the matter on should circumstances change.
20. The issue of costs is to be dealt with by the Supreme Court Judge as part of the hearing of the substantive claim.

DATED at Port Vila this 17th day of July, 2020

BY THE COURT

