

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 21/2061 SC/CVLA

BETWEEN: Romo Wine and Joshua Bori
Appellants

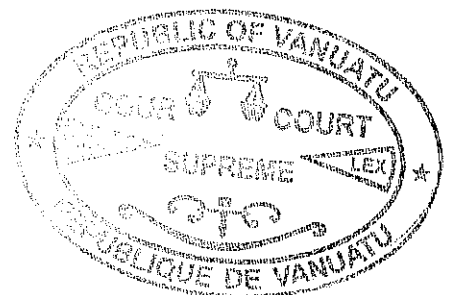
AND: Joseph Tawake Bori
Respondent

Date of Hearing: 8 October 2021
Before: Justice G.A. Andrée Wiltens
Counsel: Mr L. Tevi for the Appellants (absent)
Mr J. Vohor for the Respondent
Date of Decision: 19 October 2021

Judgment

A. Introduction

1. This is an appeal from a 24 February 2021 decision by the Deputy Master granting Letters of Administration to Mr Joseph Bori over his deceased mother's estate, namely that of late Joy Bori.
2. The Notice and Grounds of Appeal were filed late, on 13 April 2021.
3. There is accordingly also an application for Leave to file the Notice of Appeal out of time, together with an application for a stay of the grant of the Letters of Administration pending the outcome of the appeal.
4. Counsel were content that the appeal be dealt with "on the papers".
5. This is accordingly my judgment.

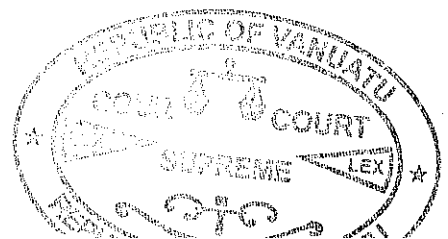


B. The Deputy Master's Decision

6. The grant of Letters of Administration followed an application by Mr Joseph Bori as the son of the deceased, supported by his sworn statement explaining his relationship with the deceased. In his application, Mr Bori asserted that he was the legal son of the deceased by virtue of having been adopted by the deceased on 19 February 2001. Mr Bori's mother passed away without leaving a will on 25 September 2020
7. Mr Bori's adoptive father passed away without leaving a will on 19 July 2016; and on 7 February 2020, his mother was granted Letters of Administration in respect of the father's estate. Between Mr Bori's mother being granted Letters of Administration and the time of her passing, she had little or no time to deal with the father's estate. The late father was Pastor Raynold Bori.
8. Accordingly, Mr Bori sought to administer both his late father's and his late mother's estates, and to inherit as the sole beneficiary.
9. Mr Joseph Bori produced the necessary Death Certificates in respect of his adoptive parents, as well as his Adoption Order and Birth Certificate. He further appended a List of Assets likely to be involved in the administrations, and a copy of the grant of Letters of Administration to his late mother.
10. The Deputy Master was satisfied that the required advertisements had been publicly broadcast on radio on 3 occasions, as required by the Probate and Administration Rules, Order 28 of 2003, with appropriate notice to those who might have an interest in the matter of the necessity to file a Response with the Court prior to 7 December 2020.
11. The Deputy Master recorded that there was no opposition to the application made known to the Court. Accordingly, the Deputy Master granted Letters of Administration to Mr Joseph Bori, but only in respect of his late mother's estate. No order was made in respect of Mr Joseph Bori's late father's estate.

C. Appeal

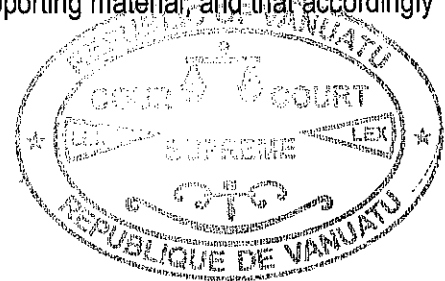
12. The application for Leave to file out of time is based on a lack of knowledge of the hearing of the application, and subsequently only learnt of the decision by the Deputy Master on 12 March 2021. The appellants then sought confirmation from the Court whether their Response to the Application for Letters of Administration, filed on 9 December 2020, had been considered. The appellants were apparently advised that the Court would investigate and report back, and the appellants subsequently received advice to the effect that the Court held no such Response to the application. The appellants at the same time saw fit to seek a stay to protect their positions. Hence the decision to appeal was made later than permitted, and was accompanied by the application for a stay.
13. The appellants maintain that they filed their Response to Mr Joseph Bori's application on 9 December 2020 in the Supreme Court. They have produced a copy of the Response with a Supreme Court stamp appended, which indicates that it was filed on 9 December 2020. The sworn statement by Mr Remo Wine filed in support is similarly stamped with the same date. Mr Joshua Bori's sworn statement, made the same day, is stamped, but the relevant date is absent.



14. Accordingly, due to the procedural irregularity, the first ground of appeal is that the appellants' Response and supporting material was not considered by the Deputy Master resulting in an error in the judgment.
15. The copy Response provided in support of this appeal asserts that Mr Joseph Bori was but one of three adopted sons of the deceased couple, and accordingly not the only son of the deceased. The appellants state that they were also adopted, through custom and family agreement. They maintain they were part of the deceased family at the time that Mr Joseph Bori was adopted. They accordingly claim to share inheritance, and further sought Letters of Administration for Mr Remo Wine on the basis that he is the eldest son.
16. There is support for these contentions from Mr Remo Wine's biological father who confirms his son Remo was adopted by the deceased couple from birth. In fact, as further evidence, it is asserted that the late Pastor Raynold Bori paid for Mr Remo Wine's bride price when he married.
17. Pastor Reuben Abel Manuake provided a sworn statement to the effect that he was part of Pastor Raynold Bori's family since 1983, and that Pastor Raynold Bori had adopted his biological son Mr Joshua Bori in 2000.
18. Lastly, Mr William Ronnie attested to be late Pastor Raynold Bori's uncle. He confirmed that three boys had been adopted by the deceased couple, namely Mr Remo Wine, Mr Joshua Bori and Mr Joseph Bori.
19. As a result of this material, the appellants' second contention on appeal is that the Deputy Master erred in not taking into account the competing claims of Mr Remo Wine and Mr Joshua Bori as adopted sons of the deceased couple.

D. Response

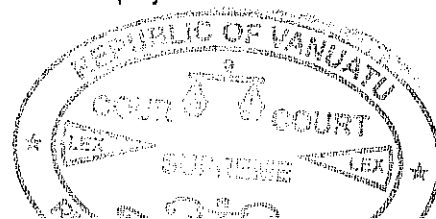
20. In opposition to the appellants submissions, Mr Joseph Bori has filed a further sworn statement and Mr Vohor has filed submissions.
21. Mr Joseph Bori reiterated that he was the only legally adopted son of the deceased. He accepted that during his childhood he had been raised together with Mr Joshua Bori, but stated that Mr Joshua Bori had not been legally adopted. There is no mention of Mr Remo Wine in relation to this aspect.
22. Mr Joseph Bori maintained that his parents had not at any time discussed with him that Mr Remo Wine and/or Joshua Bori had been adopted through custom ceremony; and he stated categorically that there had been no custom adoption ceremony performed.
23. Mr Joseph Bori also pointed to the fact that the appellants' Response was filed 2 days later than permitted by the notice he had caused to be broadcast over the radio, which he seemed to think was an insurmountable block for the appellants to overcome.
24. Mr Vohor also took that point – that the appellants' Response was filed late. He further insisted that the Court had not received the Response and the supporting material, and that accordingly there was no error by the Deputy Master.



25. Mr Vohor also submitted that the lack of Proof of Service of the Response on the appellants was fatal. Lastly, he submitted that although the appellants had "lived their lives with the deceased" they are nevertheless not entitled to inherit.
26. Mr Vohor relied on the authorities of *In re Estate of Raupepe Fidelia* [2013] VUCA 6 and *Tenene v Tenene* Probate Case No. 09/39. He submitted the cases were authority for the proposition that marriage and kinship, rather than customary law and practice were paramount when considering Letters of Administration. Accordingly, Mr Vohor submitted, Mr Remo Wine and Mr Joshua Bori could not be granted Letters of Administration or inherit as they were adopted by means of custom and not legally, if indeed they had been adopted at all. He submitted that only Mr Joshua Bori was legally part of the Bori family and therefore eligible to apply for letters of Administration and to inherit.

E. Discussion

27. The appellants are granted leave to file the Notice of Appeal out of time. The explanation provided is credible and justification for their not acting within time while they continued with their legitimate inquiries. Further, there is a significant issue to be determined which is sufficient of itself to grant leave.
28. The authorities relied on by Mr Vohor do indeed confirm marriage and kinship as being paramount considerations in this discreet area of the law. However, there is no basis for the submission that customary adoptions are not lawful, as put forward by Mr Vohor. Indeed, reading paragraph 27 of the decision *In re Estate of Raupepe Fidelia* that is demonstrated by the Court of Appeal recording that Ms Alienza had a right to inherit:
- "The validity of the adoption of Raupepe Alienza is not in dispute. The evidence before the trial judge shows that the adoption took place in accordance with custom."
29. The evidence on this appeal is that Mr Remo Wine and Mr Joshua Bori were adopted by the deceased couple according to custom and family agreement – there is no real or substantial challenge to this. As well, Mr Joseph Bori was adopted by the deceased couple, legally. There were, in all, three sons of the family, all of whom were adopted.
30. All three sons are equally entitled to Letters of Administration on my reading of Regulation 7(b) of the Succession, Probate and Administration Regulations 1972, the Queen's Regulation.
31. The further aspect of importance, which neither counsel addressed, is the matter of inheritance. Those granted letters of Administration do not thereby acquire rights of inheritance: *In re Estate of Molivono* [2007] VUCA 22. Rights to inherit are laid down in Regulations 5 and 6 of the Queen's Regulation. Those who administer estates must fulfill a "solemn duty" and ensure that what is left, after all debts have been settled, is distributed in accordance with the rules laid down in the Queen's Regulation. Accordingly, there is no link between being granted Letters of Administration and the right to inherit.
32. The objection taken to the lateness of the Response being filed, 2 days beyond what was permitted by the broadcast Notice, is dismissed. The issue may have gained traction had the Deputy Master given her decision on 8 December 2021, but even then the equity of the situation



should prevail with Mr Remo Wine and Mr Joshua Bori's opposition being taken into account prior to a final determination. However, the Deputy Master did not focus her attention on the issue until February 2021. By then, the challenge had been well and truly filed with the Court, but somehow mislaid and not drawn to the attention of the Deputy Master.

33. Had the Response been drawn to the Deputy Master's attention there is no doubt she would have considered it, and likely decided the matter on a different basis.

F. Result

34. The appeal must be allowed. The material provided in and with the Response was inexplicably not considered prior to the final determination.

35. Further, the evidence points to all three sons having an equal claim to a grant of Letters of Administration. There is no valid basis to exclude the appellants from that.

36. As mentioned, Mr Remo Wine and Mr Joshua Bori sought that Mr Joseph Bori be displaced and the Letters of Administration be granted solely to Mr Remo Wine as the eldest of the adopted sons. To do so, would be in violation of what Mr Vohor adverted to, namely dealing with the issue on the basis of custom, which is impermissible. The sons have equal claims. The eldest son does not have a greater claim. This submission is rejected.

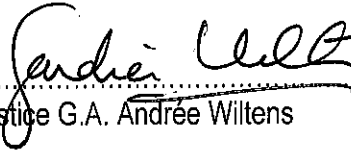
37. Letters of Administration are now granted to the three sons to together administer not just their late mother's estate, but also their late father's estate.

38. Care must be taken by the three administrators to, correctly and according to law, distribute the net assets of both estates. If inappropriate distributions occur, the administrators will be answerable to this Court.

39. Costs are to follow the event. If they cannot be agreed, they must be taxed by the Master and once set paid within 21 days.

Dated at Port Vila this 19th day of October 2021

BY THE COURT


Justice G.A. Andrée Wiltens

