

BETWEEN: Kris Russet

Claimant

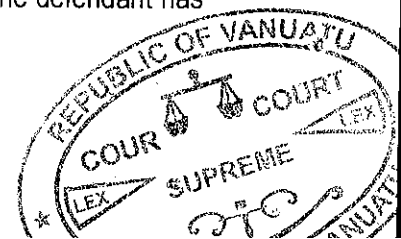
AND: Li Ya Huang

Defendant

Date of HEARING: 1st June 2020
Date of Decision: 4th June 2020
Before: Justice Oliver. A. Saksak
In Attendance: Mr Mark Hurley for the Claimant/Respondent
Mrs Marie Noelle F Patterson for Defendant/ Applicant

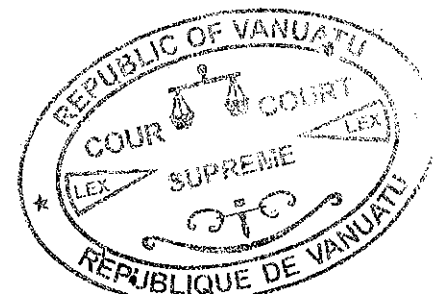
DECISION

1. The application to strike out the claim or stay the proceeding pending the hearing and the determination of the defendant's application for Letters of Administration is declined and is accordingly dismissed.
2. The applicant lists 13 grounds for the application which are narrowed down to 5 issues as follows-
 - 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?
3. The first ground in (a): Jurisdiction. The Court has unlimited and inherent jurisdiction under sections 28 and 65 of the Judicial Services and Courts Act [CAP 270] to hear the claimant's claim. Article 49 of the Constitution also gives this court such powers. The Claimant's claim is not about a will. It is instead about an existing pre- nuptial Agreement entered into by his late father and the defendant on 22nd September 2017 a day before their marriage on 23rd September 2017. It has nothing to do with the estate or probate case. What the defendant has



tried to do is mixed up the case with hers about the estate, thus causing the confusion in what is otherwise a simple straight forward case. What the defendant is doing is an abuse of process.

4. The second ground in (b): standing. The claimant clearly has standing. The defendant accepts the claimant is the sole offspring of the late Henri Edmond Marie Andre Russet pleaded in paragraph 1 of his claim, in paragraph 1 of her Defence filed on 16th March 2020.
5. Further in her submissions filed on 1st June 2020 the defendant acknowledges the claimant also as the beneficiary of Mr Russet's estate, along with the defendant at paragraph 16.
6. The third ground in (c) that the claim is premature, it is not. The validity of the pre- nuptial agreement which is now challenged by the defendant must be heard and determined first to pave way for the hearing and determination of the defendant's application for Letters of Administration. It is a logical and sensible approach.
7. The fourth ground in (d) about advisory opinion. The declaration sought is specifically for a declaration. It is not for an advisory opinion based on hypothetical question. The Court is satisfied the Claimant has a real interest in seeking this relief because it will be from the consequences of making the declaration that the issues of probate and estate of the deceased could be heard and resolved.
8. On the fifth ground: abuse of process. The Claimant's case is not an abuse of process. Rather it is the defendant's application that is an abuse of process.
9. I have considered the submissions made by Mrs Patterson in support of those grounds but I reject them. I have also considered the submissions and the various case authorities cited by Mr Hurley. I am persuaded by the submissions made by Mr Hurley and accept them.
10. I have considered the proposals made by Mr Hurley in paragraph 38 of his written submissions. My view is that this case will proceed to hearing first. Probate Case P1182/2020 will be stayed pending the determination of this case. The cases will however not be consolidated. The Probate case will remain with the Master.




11. The final orders are-

- a) The applications by the defendant are dismissed.
- b) Probate Case P1182/2020 pending before the Master be stayed pending the determination of this case.
- c) The defendant pays the claimant's costs of the application on the standard basis as agreed or be taxed.

DATED at Port Vila this 4th day of June 2020.

BY THE COURT


OLIVER.A.SAKSAK
Judge

