

CF

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(PROBATE)

PROBATE CASE NO. 2485 OF 2019

IN THE MATTER of
Application for Letters of
Administration in the Estate
of the late **NAUNGA**
STEPHEN SALING

AND IN THE MATTER of
Section 2.3 and 2.5 of the
Probate and Administration
Rules 2003 and Section 6
and 7 of the Queen's
Regulation No.7 of 1972

- 1. MARIAN STEPHENS**
- 2. KELLY STEPHENS**

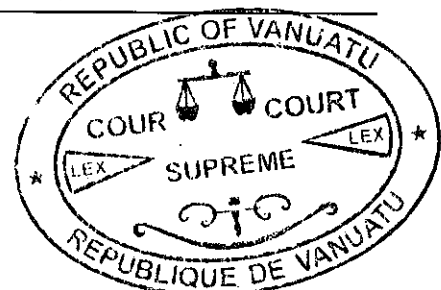
Applicants

OLI STEPHENS

Respondent

Date of Hearing: 3rd September, 2020
Delivered: 18th September, 2020
Before: Deputy Master Aurelie Tamseul
Appearances: Colin Leo counsel for the Applicants
Philip Fiuka counsel for the Respondent

JUDGMENT



Headnote

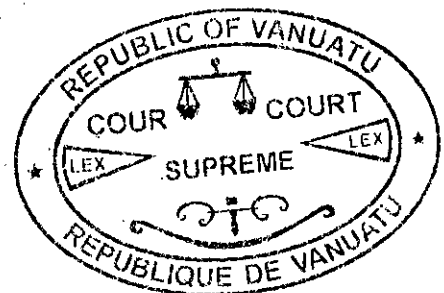
Validity of a Will

A. Introduction

1. This matter is to determine the Validity of a Will dated 17th August, 2018 purportedly executed by the late Saling Stephens.
2. The said Will was attached to the Response filed by the Respondent in objection to the Application for Letters of Administration.
3. The Applicants then filed an Application to determine the Validity of the said Will produced by the Respondent on the basis that they have a similar copy which they discovered in the locked cabinet in the deceased office which was neither dated nor signed by the deceased.

B. Issue

4. The Court has before it two Wills to consider, to wit:
 - (i) The one containing the signatures of the two witnesses but unsigned and undated by the deceased; and
 - (ii) The other, allegedly signed and dated by the deceased, before the two witnesses
5. This judgment is written to ascertain whether the Will presented by the Respondent and purportedly executed by the deceased is valid.



C. The Applicants' case

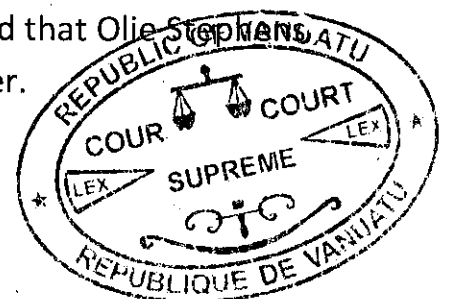
6. The Applicants case is that the deceased never signed the Will put forward by the Respondent and therefore the signature could only be a forgery.
7. Together with their own evidence, the Applicants presented two (2) additional witnesses to the Court in support of their challenge to the Will.

8. Witness 1

9. Marian Stephens is the First Applicant and legitimate daughter of the deceased and worked as his firm's Accountant and Office Administrator.
10. She informed the Court that she had found a copy of the Will in her father's locked cabinet which had been signed by the two witnesses, Alsina Peter and Olie Stephens, but not dated nor signed by her father.
11. She went on to say that the evidence of Alsina Peter that the Will was typed on the 17th August, 2018 to which she appended her signature on the same date is incorrect as the office log shows that she was on sick leave on the said date.
12. She states further that Olie Stephens had been employed by her father to construct a sink at their family home at around that time and he never entered her father's office on the 17th August, 2018.

13. Witness 2

14. Bezai Aki had been a legal intern in the deceased firm.
15. She supports the evidence provided by Ms. Stephens that Alsina Peter had indeed been absent on the 17th August, 2018 and that Olie Stephens had not been to the deceased firm on that date either.



16. Witness 3

17. Kelly Stephens is the Second Applicant and legitimate daughter of the deceased. She informs the Court that she believes her father never signed the Will.

18. She states that on the 6th August, 2019 she had been sitting next to her father's sick bed when he received a call from Ms. Ileen Johnson, the mother of the beneficiaries stated in the Will. She said that she observed that her father had been very disturbed by the call and had hung up.

19. She further added that following the call her father received a text message from telephone No. + 678 710 7169 which reads "ok gd, plz do the will".

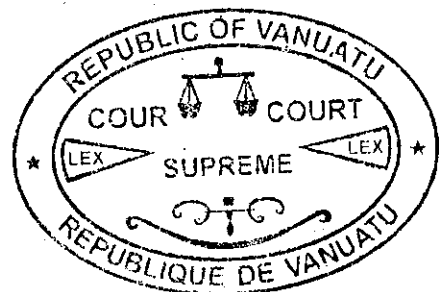
20. To support her statement she referred to her sworn statement filed on the 11th May, 2020 attaching screenshots of the said text message.

21. Witness 4

22. Leisandre Robertson had been a secretary in the deceased Santo Office since 2000.

23. She states that one of the property titles, No. 03/OJ94/001 in the Will had been bought by the deceased around 2008 for his granddaughter Joy Salannie Stephens.

24. During cross examination, she stated that she was personally present when the deceased arrived in the office with his granddaughter and told her that they will go to the Lands Department to register a property he had bought for her.



25. She further stated that the Lands Office is located next to the deceased office in Santo and that she had seen the deceased enter the office with his granddaughter.

26. To support her evidence, she referred the Court to her sworn statement filed on the 15th June, 2020 attaching a copy of the Lands Record Registration which is registered in the name of ***"Saling Stephens as trustees for Joy Salannie Stephens"***.

D. Respondent's Case

27. Together with his evidence the Respondent presented two (2) additional witnesses in support of his objection.

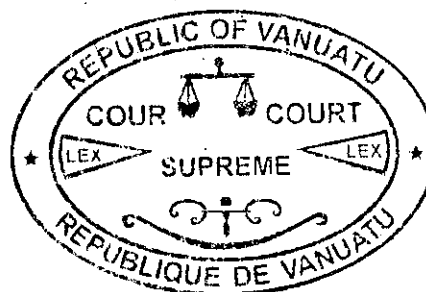
28. Witness 1

29. Ileen Johnson is the biological mother of the beneficiaries named in the Will.

30. She informed the Court that the deceased hand-delivered to her a copy of the Will on the 28th December, 2018 in the presence of the two beneficiaries.

31. During cross examination, she confirmed that her telephone number is + 678 710 7169 and accepted that she indeed sent the text message to the deceased on the 6th August, 2019 requesting him to prepare a Will.

32. She further added that the text message was in relation to the deceased property in Vila and not in Santo. She said that the deceased had not wanted to prepare a Will therefore she needed to remind him to do so.



33. Witness 2

34. Olie Stephens is the brother of the deceased. He informed the Court that he signed the Will on the 17th August, 2018 in the office of the deceased.

35. During cross examination, he stated that Alsina Peter signed the Will first, followed by himself, and then given to the deceased to sign.

36. Witness 3

37. Alsina Peter had worked as secretary in the deceased firm from 2012-2019.

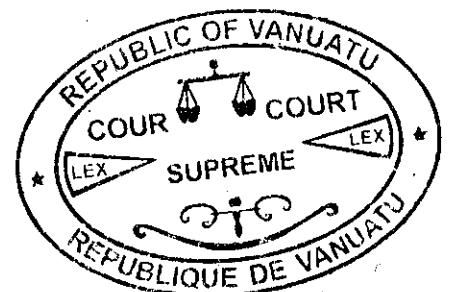
38. Under cross-examination, she informed the Court that on the 17th August, 2018 she typed the said Will in the office of the deceased, signed it, handed it to the Respondent to sign, then gave it to the deceased to sign.

39. When counsel for the Applicant showed her the Log book and indicated that she had been on sick leave on that day, she accepted that she was indeed in fact absent on the 17th August, 2018.

E. Discussion

40. Neither party having provided an expert to assist the Court in determining the authenticity of the signature of the deceased on the Will, the Court is left to determine the issue based solely on the credibility of the evidence put forward by both sides, that is:

- (i) Is it more likely than not that the Will of the 17th August, 2018 was signed by the deceased ; and
- (ii) If it was signed by the deceased did it satisfy the conditions under the Wills Act to be a valid Will.



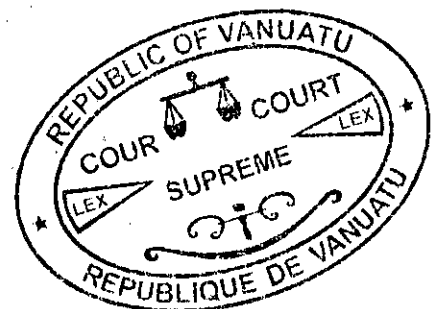
44. I do not accept the evidence provided by Ileen Johnson for the reason that:

- (i) This witness stated during her cross examination that the deceased had hand-delivered to her a copy of the Will on the 28th December, 2018. Yet on the 6th August, 2019, some 8 months later, she calls the deceased and sends him a text message to remind him to prepare a Will.
- (ii) She stated during her cross-examination that the deceased had told her that he will prepare a Will for properties in Port Vila and not the properties in Santo.
- (iii) If she truly had in her possession a copy of the Will on the 28th December, 2018 why was it necessary to remind the deceased on the 6th August, 2019, 8 months after that fact that he needed to prepare a Will.

F. Finding

45. I cannot know what, if anything, the deceased hand-delivered to Ms. Johnson. What I can be sure of, based on all the evidence, is that the deceased could not have produced a Will signed by him, in the presence of the witnesses to Ms. Johnson. I can only find therefore that the Will produced by the Respondent is not valid, no acceptable proof having been provided that Mr. Stephens could have signed this Will.

46. Having found that the deceased could not have signed the Will dated 17th August, 2018 there is no necessity for the Court to determine issue at paragraph 40 (ii) aforementioned.

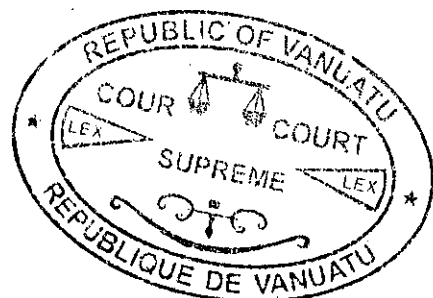


41. I do not believe the evidence of Olie Stephens and Alsina Peter for the following reason:

- (i) Olie Stephens stated in his sworn statement filed on the 30th September, 2019 that on or around 17th August, 2018 the deceased made a Will giving his two lease properties in Luganville Santo to his two sons.
- (ii) However, at paragraph 4 of his joint sworn statement with the witness Alsina Peter filed on the 23rd June, 2020 they stated that *"we strongly believe that the Will was executed on that day, **supposed to the 15 or 16 August 2018**, when we attended work, but Saling Stephens (late) wrote 17 August 2018 instead. Late Saling Stephens got the date wrong"*.
- (iii) During cross examination he stated that the Will had indeed been signed on the 17th August, 2018 by the deceased and the two witnesses.
- (iv) Both Ms. Peter and Mr. Stephens joint evidence is contradictory to the evidence given in Court, where they both swore that the Will was indeed signed on the 17th August, 2018, yet had earlier stated, in their joint sworn statements, that it was about the 15th or 16th August, and that in fact it was Saling Stephens who wrongly dated the Will.

42. I do not believe the above to be true, on the basis that Marian Stephens had proved to the Court that Alsina Peter had not attended work on the 17th August, 2018 which Ms. Peter's accepted. The conclusion then is that she could not have signed the Will.

43. Therefore, I could not accept the evidence of Olie Stephens nor Alsina Peter that the Will had been signed in the deceased office on the 17th August, 2018 or at all.

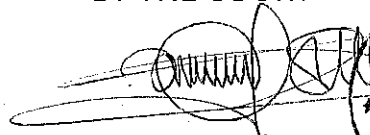


47. The Court will proceed to determine the Letters of Administration as filed.

48. That the Applicants are entitled to costs of their Application which I assess to be VT 30,000.

49. That this matter is listed for review without hearing on the 7th October, 2020.

BY THE COURT



DEPUTY MASTER

