

(b)

(c)

(d) *it is otherwise an abuse of the process of the Court;*

and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be."

Under O15 r 19 (2), no evidence is admissible in the hearing of the application.

3. This is a probate suit so it would appear that the application is proper, except for the grounds under which the strike out is based. In his opening submission, Counsel for the applicant contended that the probate application on a will of a Nauruan can only be made and be entertained by the Nauru Lands Committee. The Supreme Court, counsel submitted, does not have the jurisdiction to hear such an application for the grant.
4. The counsel's submission is premised on the provisions of section 3 (2) of the Succession, Probate of Administration Act 1976 and the combined effect of section 37 of the Act the Administrative Order No. 3 of 1938 and order 49 of the Civil Procedure Rules.
5. Section 3 (2) of the Succession, Probate and Administration Act states:
" (2) Except as expressly otherwise provided, this act does not apply to the will or estate of any person who at the time of his death is a Nauruan, unless he has a will which conforms with the requirements of the Wills Act 1837, the Wills Act Amendment Act 1852 and the Wills Act 1963, all being Acts of the Parliament of England in their application to Nauru, directed that this Act is to apply to his will and estate, in which event it shall apply only to this real estate outside Nauru and to his personal estate wherever situated."
6. Section 37 of the Act stipulates that until such time as the grant of the probate or the administration of the estate of the deceased, all real and personal estate of the person shall be vested in the Curator. Order 49 are rules that deal with probate proceedings in the Supreme Court. The Administrative Order No. 3 of 1938 only applies to the administration of the property of a person who dies intestate.

7. Counsel for the respondent submitted that the application for grant of probate is made pursuant to sections 32 and 36 of the Supreme Court Act 2018. Section 32 is of general application inviting all and sundry without qualification whilst section 36 empowers the Court to direct such necessary action as required for the purpose of the granting of the probate.
8. As to the argument of the jurisdiction of the Supreme Court, counsel argued that section 4 of the Succession, Probate and Administration Act recognizes the powers of the Supreme Court, albeit limited by section 3 (2), to hear and grant probates. In any case, sections 32 and 36 of the new Supreme Court Act, recognizes without reserve, the powers of the Supreme Court to entertain any application for grant of a probate.
9. The Court agrees with the respondent's arguments that there are no legal impediments preventing an application for the grant of a Probate to be filed in the Supreme Court either by the operations of section 4 of the Succession, Probate and Administration Act 1976 or, under sections, 32 and 36 of the Supreme Court Act 2018.
10. Section 4 specifically recognizes the jurisdiction of the Supreme Court to deal with applications for grant of probates of Wills in both contentious and non-contentious matters, subject to other provisions of the Act.
11. Section 3 of the Succession, Probate and Administration Act 1976 must be read in its totality. Section 3 (1) (2) read:

*“(1) except as otherwise expressly provided this Act applies only to the wills and estates of persons dying after the Commencement of this Act.
(2) except as expressly otherwise provided, this act does not apply to the will or the estate of any person who at the time of his death is a Nauruan, unless he has, by a will which confirms with the requirements of the Wills Act 1837, the Wills Amendment Act 1852 and the Wills Act 1963, all being Acts of the Parliament of England in their application to Nauru, directed that the Act is to apply to his will and estate, in which event it*

shall apply only to his real estate outside Nauru and to his personal estate whenever situated."

12. On the plain reading and application of the section 3 (1), the testator Sprent Dabwido, who died on 8 May 2019, died after the commencement of the Act in 1976 and therefore, the Act is deemed to apply to his will. However, the qualifying phrase under section 3(1) is "*except as otherwise expressly provided,*" meaning, unless it is specifically stated otherwise under any other sections of the Act, then the Act is deemed to apply to the will of any person who dies after 1976.
13. The only provisions of the Act that states otherwise is sections 3 (2) which states that the Act will not apply to the will of a person who at his/her death is a Nauruan. However, the Act will still apply if the deceased Nauruan:
 - (i) had made a will; and
 - (ii) the will meets all the requirements of England's Will Act 1837, the Wills Act Amendment Act 1852 and the Wills Act 1963; and
 - (iii) directed that the Act is to apply to his will.
14. All the three English enactments are adopted laws and deemed adopted Acts of Nauru under section 35 of the Interpretation Act 2011. These laws relate to the proper form and contents of a will to be valid. Whether these laws continue to apply to Nauru in view of section 113 of the Supreme Court Act 2018, was not argued before the court. In any case, the issue is mute.
15. The Will of the deceased in this case, appears to the Court to be in conformity with the provisions of the English enactments as they apply to Nauru and therefore the requirements under section 3 (2) is met, except the issue of the intention of the testator to have his will dealt with under the Act.
16. Arguments have not been advanced on whether there is a presumption of intention by the deceased of the application of the Act to his will. Even if it were successfully argued, the last limb of section 3 (2) would apply, that is, the will can only be invoked to deal with the deceased real estate property outside Nauru's Jurisdiction, but may nevertheless deal

Counsel has to satisfy the requirements of section 3 (2) of the Act, and whilst all other requirements appear to be satisfied the question of the intention of the testator is an issue. Section 37 of the Act is not relevant where in this case, the application has already been filed into Court and the grant is being awaited.

17. The respondent submits that the application to the Supreme Court for the grant of the probate in the estate of the late Sprent Dabwido is made in accordance with Part 8 of the Supreme Court Act 2018, and specifically section 32 that states:

“32 Application for grant or revocation of probate or administration

- (1) Applications for grant of probate or letters of administration or for the revocation of such grants shall be made to the probate division of the Supreme Court.*
- (2) Any grant made by the Supreme Court shall be under the Seal of the Supreme Court.*
- (3) No grant shall be made by the Supreme Court where:*
- (a) There is a contention or until the contention is disposed of;*
 - and*
 - (b) A probate action or proceedings relating to the grant is determined by the Supreme Court.*

18. Section 36 of the Act gives the Supreme Court the power to summon the person named as the executor in a will to prove or renounce probate of the will and,

“...do such other things concerning the will as the Supreme Court has the power to order such a person to do immediately before the commencement of this Act.”

19. The provisions of section 32 of the Supreme Court Act are unambiguous. There are no qualifications nor are they made subject to other laws or enactments. The plain reading and interpretation of section 32 confers the right of any individual including a Nauruan, with or without a will, to apply for a grant or letters of administration to the Probate Division of the Supreme Court.

20. The only qualification to the grant is the limitation to the Supreme Court powers under sections 32 (3) of the Act that states:

“... (3) No grant shall be made by the Supreme Court where

(a) There is contention or until the contention is disposed of;

and

(b) A probate action or proceedings relating to the grant is determined by the Supreme Court.”

21. Counsel for the respondent submitted that this is a non-contentions probate application. There is no issue raised or challenge made that there was fraud, or undue influence or incapacity. It is a simple application for the appointment of Mathew Batsiua as the executor and trustee of the late Sprent Dabwido’s estate.

22. It seems to the Court that there is merit in counsel’s arguments in that the provisions of part 8 of the Supreme Court Act stands on its own and not subject to any limitations or restrictions imposed by any other enactments. Part 8 is not made subject to the Succession, Probate and Administration Act provisions and specifically as to the qualifications under section 3 (2) therein. In the absence of the saving provisions, and there being no specific mention of the revocation of the 1976 Act, the presumption in law is that section 3 (2), if not the Act itself, has been superseded by Part 8 of the Supreme Court Act 2018.

The Court is guided to this conclusion by section 39A of the Interpretation Act 2011 which stipulates as follows:

“S 39A *When a written law substituted for another*

A later written law is substituted for an earlier written law if:

(a) the earlier law is repealed or superseded; and

(b) the later law deals with the same subject as the law that has been repealed or superseded (whether it deals with the matter in the same way or differently, or and whether it deals only with the matter or with other matters also).”

23. Further, section 49 of the Interpretation Act, lends support in the meaningful reading of the above provisions stating:

“ 49. Interpretation to achieve the purpose of the law

(1) In interpreting a written law, the interpretation that would best achieve the purpose of the written law must be preferred to any other interpretation.

(2) The section applies whether or not the purpose of the written law is expressly stated in the written law.”

24. The transition and repeal sections of the Supreme Court Act do not have any relevant provisions to aid the Court and therefore offer little assistance.

25. If it was not the intention of the legislature for section 3 (2) of the Succession, Probate and Administration Act 1976, to be superseded by the Supreme Court Act 2018 and specifically, Part 8 thereof, then it is within its powers to rectify it. Until such time, the Court holds the view that Part 8 of the Supreme Court Act supersedes section 3 of the 1976 Act.

26. The process of the application for a grant of the probate or letters of administration in respect of the deceased estate is a legal procedure that the law provides for the orderly administration of real and personal properties of the deceased. The actual administration including the distribution of the estate is subject to the deceased’s wishes as set out in the testament or else to the inheritance law. It is also subject to the consent of appropriate statutory authorities in matters of real properties and interest affecting land as in the case of natives land the ownership of which including its inheritance, are subject to customary law.

27. There is finally the issue of whether the application to strike out the respondent’s application for grant, as an abuse of the Court’s process under Order 15 r19 (1) (d) is proper. In the Court’s view, given its findings that the respondent has a right to apply for the grant of the probate to the Supreme Court firstly, under the provisions of the Succession, Probate and Administration Act, albeit with limitations as acknowledged, subject to the Court’s view that section 3 (2) has been superseded by Part 8 the Supreme

Court Act 2018 and secondly, the right granted under Part 8 of the latter Act, that the application is, not in proper form. The proper procedure is to lodge a probate caveat under section 34 of the 2018 Act as also recognized under section 67 of the 1976 Act.

28. ORDER

The application to strike out the respondent's application for the grant of the probate in the estate of Sprent Dabwido to Mathew Batsiua is dismissed.

29. Costs in the cause.


Filmone Jitoko
Chief Justice

