

BETWEEN: Li Ya Huang Russet
Appellant

AND: Kristian Russet
First Respondent

AND: John Warmington as Administrator in the
Estate of Henri E. Russet
Second Respondent

Date of Hearing: 14 May 2024

Coram: Hon. Chief Justice V. Lunabek
Hon. Justice J.W. von Doussa
Hon. Justice R. Asher
Hon. Justice D. Aru
Hon. Justice V.M. Trief
Hon. Justice E.P. Goldsbrough
Hon. Justice W.K. Hastings

Counsel: L. Raikatalau for the Appellant
M.J. Hurley for the First Respondent
M. Fleming for the Second Respondent

Date of Decision: 17 May 2024

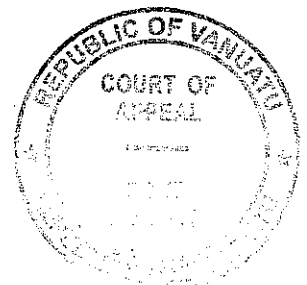
JUDGMENT OF THE COURT

1. Hopefully this judgement will conclude long-running litigation over the entitlement to, and distribution of, the estate of the late Henri Edmond Russet who died intestate on 17 December 2019. At the time of his death he was married to the appellant Mrs Li Ya Huang. He owned substantial assets.
2. The following early history of this litigation is taken from the reasons of Andrée Wiltens J in *Russet v Li Ya Huang* [2022] VUSC 244:

"History of Litigation"

(i) *Pre-Nuptial Agreement*

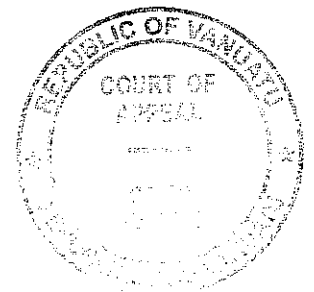
10. *The appropriate distribution of the estate was raised in Civil Case No 20/332, wherein Mr Russet (the present first respondent in this appeal), by Claim dated 13 February 2020, sought to enforce the pre-nuptial agreement entered into between the deceased and Ms Huang. Justice*



Saksak, in a decision of 4 June 2020, declined to strike out the Claim, or to stay the proceeding pending the outcome of the second litigation, Probate Case No. 20/1182, which had been filed by then. He also determined that the case dealing with the pre-nuptial agreement should be resolved first, prior; and, that the two cases should not be joined but remain separate.

(ii) Administration

11. The second litigation arose when Ms Huang applied, on 25 May 2020, for letters of administration of the deceased's estate in Probate Case No. 20/1182. Mr Russet opposed this, and sought instead that he be granted the right to administer the estate. Probate matters are ordinarily dealt with by the Master, but as legal issues were involved, the file was transferred to Justice Saksak. This case proceeded all the way to the Court of Appeal on a disputed preliminary issue.
12. Ultimately, on the urgings of the Court of Appeal, by consent, the Second Defendant, Mr Warmington, was appointed as an independent administrator. The issue of administration is no longer in dispute.
13. Although having filed a sworn statement in this litigation, and generously offered such assistance as the Court might seek, Mr Warmington has indicated that he will abide by the decision of the Court.
14. In the course of the litigation as to who should administer the estate, pursuant to section 42 of the Queen's Regulation No. 7 of 1972, a number of legal questions were posed to the Court by the contesting parties, and subsequently, also by Mr Warmington. The Deputy Master referred the legal questions to this Court, due to her lack of jurisdiction.
15. In a separate decision by Justice Saksak of 14 April 2021, 4 of the legal questions were addressed. The decision, which has not been appealed, held that:
 - The UK 1925 Estates Administration Act applies in Vanuatu;
 - Where there is conflict between the UK 1925 Estates Administration Act and Regulation 7 of the Queen's Regulation No.7 of 1972, Regulation 7 will prevail;
 - The pre-nuptial agreement entered into between the deceased and Ms Huang was not a testamentary document as it did not comply with the Wills Act; and
 - The pre-nuptial agreement does not override the application of Regulation 7 of the Queen's Regulation No.7 of 1972 or the 1925 Estates Administration Act.
16. Justice Saksak concluded that the pre-nuptial agreement was "...not valid and cannot have any validity to the administration of the estate...".



3. Then followed the proceedings which culminated in the judgment of Andrée Wiltens J in 2022. It was there held at [134] that the substantial farming operation at Tagabe which had been operated by the deceased was held by way of an equitable constructive trust in favour of Mr Russet by the deceased at the time of his death and it must now in law be passed to the Administrator as an asset of the estate, for the Administrator to ultimately distribute the entirety of it to Mr Russet on the winding up of the Administration.

4. However the judge found at [132] that Mr Russet held the farming operation subject to the deceased's promise to Mrs Huang to provide for his widow beyond his lifetime. In the result it was adjudged:

134. *The farming operation at Tagabe, and all that it includes by way of land, dwelling houses, fixtures and chattels is to be distributed to Mr Russet on the winding up of the administration.*

135. *Mr Russet is to observe and comply with the deceased's wishes and make appropriate arrangements so that:*

(a) *Ms Huang is permitted to reside in the main homestead on the farm at Tagabe so long as she remains single or unmarried;*

(b) *All the costs associated with the running and maintaining of the homestead are to be met out of the Tagabe farming operation earnings; and*

(c) *Ms Huang is to also receive a monthly allowance of VT 300,000 from the Tagabe farming operation's earnings."*

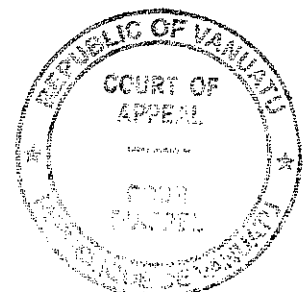
5. The decision of Andrée Wiltens J went on appeal: *Li Ya Huang v Russet* [2022] VUCA 32. The Court of Appeal at [181] upheld the finding in the Supreme Court that the Tagabe farming enterprise was held by the deceased subject to a constructive trust in favour of Mr Russet and therefore did not fall into the deceased's residuary estate. Paragraph [134] in the judgment below was not disturbed. However, the Court of Appeal at [182] held that the monthly allowance of VT300,000 to Mrs Huang could not be sustained, and the order at [135(c)] was set aside.

6. Following the Court of Appeal decision the Administrator filed an application for directions under section 42 (1) of the Succession, Probate and Administration Regulation No. 7 of 1997 which states:

"The Court may make such order with reference to any question arising in respect for any will or administration, or with reference to the application of any estate which a personal representative may have in hand, or as to the residue of the estate, as the circumstances of the case may require."

7. The administrator posed six issues on which he sought advice and direction, in particular:

- a. Prado Vehicle ownership
- b. Costs of the Administrator
- c. Bank Accounts
- d. 5,000 shares in the Quarry Business



- e. Personal drawings by Mr Russet
- f. Distribution of chattels

8. This application blossomed into a full scale contest before Saksak J between Mrs Huang and Mr Russet over several of the issues. The parties filed evidence and cross-examined each other on their evidence. The Court heard evidence from the Administrator, then from Mrs Huang remotely by video-link, and from Mr Russet over a period of two days. Objections were raised and ruled on as to parts of sworn statements. The Court allowed some objections and disallowed others. Finally, the Court received both oral and written submissions. In written reasons the Judge made the following rulings:

Issue 1 – The Prado Vehicle

7. *Although the evidence by the First Respondent (Mrs Huang) was that the vehicle was bought for her use, it was and remained the property of the deceased as it was registered in his name. At no point in time did the First Respondent produce any evidence that it was transferred into her name so she could claim title and entitlement to it. The Court prefers the evidence of Mr Russet that the Prado vehicle has been use for the farming operations of Tagabe Farm and as such, it remains a part of the Farm.*

Issue 2 – Legal and Administrator's costs

8. *This issue relates to the costs of the Administrator and his right to indemnity costs, and the costs of the farming operations relating to the constructive trust....*
10. *It is my view that the Administrator is entitled to both his legal and Administrator's costs to be apportioned or divided between the Estate costs and the Farming costs. His legal costs should be assessed from 28th March 2023 when the application for direction was filed. His Administrator's cost should go back further in time to his appointment as Administrator of the Estate....*

Issue 3 – Bank Accounts

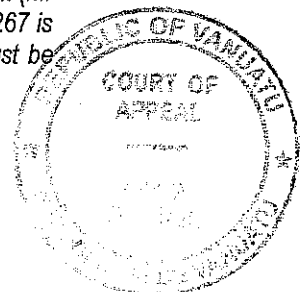
12. *At the hearing this became a non-issue.*

Issue 4 – The 5,000 shares

13. *This issue has already been resolved by the decision of Wiltens J in Russet v Huang & Anor [2021] VUSC 244 in paragraph 95 as upheld by the Court of Appeal in paragraph 181. The quarry business is part of the business operations of the Tagabe Farm, therefore the shares are an integral part of the business.*

Issue 5 – Personal withdrawals by Second Respondent

14. *I find there was overwhelming evidence against the Second Respondent (Mr Russet) in relation to this issue. I accept that the amount of VT4,441,267 is the amount owing by the Second Respondent to the estate which must be recovered.*



Issue 6 – Chattels

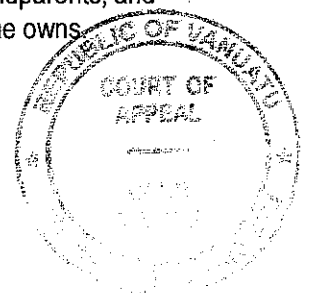
15. *For this issue, I am of the view that paragraph 134 of the Supreme Court Judgment as upheld by the Court of Appeal in paragraph 181 of its judgment is conclusive on the issue."*

MATTERS NOW BEFORE THIS COURT

9. Following the rulings of Saksak J, Mrs Huang filed a notice of appeal seeking to overturn the ruling that the chattels are part of the farming operation. When written submissions were filed by her in support of the appeal, her challenge had been extended to the Prado contending that it was her vehicle, not part of the farming operation.
10. Mr Russet's response to the appeal seeks to uphold the Prado ruling in his favour, and raises a cross appeal against the ruling that he must repay the estate personal drawings.
11. Neither the appeal nor the cross-appeal contest the ruling about the Administrator's costs, the bank accounts or the 5,000 quarry shares. However, before the appeal and cross-appeal were listed for hearing the Administrator filed an application seeking further directions from this Court under s.42 of the Succession, Probate and Administration Regulations. An application of this kind direct to the Court of Appeal rather than first to the Supreme Court is irregular but in the circumstances of this long running litigation the Court accepts the application and will deal with it. The Administrator is seeking directions to enable him to finally wind up his administration and distribute substantial monies held by him. He is anxious to avoid incurring further administrative expenses.
12. This Court is anxious to deal with all the outstanding issues at the one hearing, deciding the appeals and giving directions to the Administrator on the other issues raised by him.
13. The matters requiring our attention now are:

The Chattels

14. The ruling under challenge is to the effect that applying [134] of Supreme Court judgement, upheld by the Court of Appeal, all the chattels are part of the farming operation. Mrs Huang complains that no attempt has been made in any of the rulings to apportion the chattels to those connected to the farming operation and those of a personal nature that she needs to furnish and make liveable the main homestead which is available for her residence under [135]. She argues that she is entitled to the chattels in the homestead which should be classified as personal chattels which pass to her under r.6 of the Queens Regulations. She argues that she needs the furniture that has been identified by her in a schedule before the Court, but it seems to us obvious that she would also need a wide range of lesser items to make the homestead liveable, including items commonly in use on a day to day basis – things like crockery, cutlery, cooking utensils, linen, towels and so on. There is force in this argument, but it immediately raises questions about how to make the division between farming chattels and personal chattels. The argument has brought a response of a different kind from Mr Russet that also has force. He says some of the contents of the house have always been his - some by inheritance or gift from grandparents, and some as items moved into the homestead for safekeeping from other properties he owns.



15. To resolve these competing contentions would require yet more litigation, more evidence and more expense. The material presently before the Court does not permit it. If the appeal on this issue is decided by the Court accepting the arguments of either Mr Russet or Mrs Huang the losing party will remain dissatisfied with the result.
16. The argument over the chattels does not concern the Administrator as they are not items of monetary value that must be reflected in his final accounts. The estate can be wound up without a ruling about the chattels from this Court, but unless the issue is settled in some practical way now, arguments over chattels have the potential to remain a festering issue between Mr Russet and Mrs Huang.
17. In an attempt to impose a practical outcome on the parties, the Court pressured Mr Russet into identifying those items which he claims are sentimental family items he has inherited or are his from other properties we urged that he removes those items, whilst leaving everything else in the homestead for Mrs Huang.
18. The outcome of the Court's discussion with counsel for Mr Russet is that the chattels issue is to be resolved by him removing from the farmhouse and keeping for his own enjoyment the following items identified as follows on exhibit HLY4:

In the lounge room,	items. 1, 5, 23, and 25;
In the kitchen	items. 14 and 15;
Outside the house	items 1 (four items) and 2:
In the garage and laundry	item 2 (three items);
In the guest bedroom no 3	item 6 (two desks); and
In the master bedroom	items 231/9, 229/10 and 231/11.

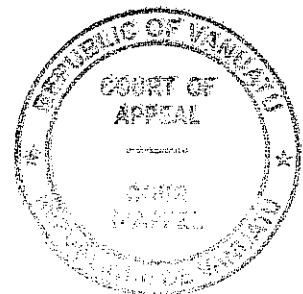
The Prado and the repayment of VT4,441,276

19. Extensive evidence and cross examination took place in the lower Court relating to these items. Essentially for both items it was the word of Mr Russet against that of Mrs Huang or the other way about. We have considered the submissions of both parties which argue why they should have been the successful litigant but there is no striking documentary or independent evidence that helps decide credit. The outcome on each issue depended on which of the parties the judge preferred. This is the type of case where it is important for an appellate court to pay particular respect to the views of the trial judge who has seen and heard the parties give their evidence. We are not persuaded that the finding of the judge on either topic should be disturbed. Accordingly, the appeal against the finding that the Prado is owned by Mr Russet as part of the farming operation is dismissed as is the cross-appeal against the ruling that Mr Russet must repay the sum of VT4,441,276.

Treatment in the accounts of the monthly payments made to Mrs Huang under [183(c)] of the Supreme Court judgment until it was set aside by the Court of Appeal.

20. After an explanation was given in Court by the Administrator about the proposed treatment of this item in the final accounts the parties agreed there was no issue requiring the Court's attention.

Shares in two companies



21. These shares held by the estate comprise 167 shares of 3,303,002 issued shares in Vanuatu Abattoirs Ltd and 2 shares of 76,197 shares in Ballande Vanuatu Limited. The parties agree that there is little or no value in these shareholdings. The name of the first company suggests it is related to farming activities. We consider the shares should be transferred to Mr Russet.

Recent Administrator's costs including costs relating to the Distribution Deed.

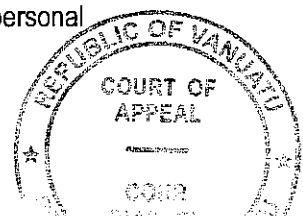
22. Both Mr Russet and Mrs Huang agree that these costs of the Administrator should be met by the estate.

Redemption of Mrs Huang's interest arising under [135(a)] of the Supreme Court judgement.

23. This issue was raised for the first time by Mrs Huang after this Appeals Session commenced on 6 May 2024. It was first raised before the Court after the hearing of this appeal commenced.
24. Mrs Huang has advised Mr Russet and the Administrator that she is now contemplating making an application under s.47A of the Administration of Estates Act 1925 UK to redeem her life interest in the homestead granted by the order in [135 (a)] of the Supreme Court, upheld by the Court of Appeal at [185]. Section 47A provides:

"(1) Where a surviving husband or wife is entitled to a life interest in part of the residuary estate, and so elects, the personal representative shall purchase or redeem the life interest by paying the capital value thereof to the tenant for life, or the person deriving title under the tenant for life, and the costs of the transaction; and thereupon the residuary estate of the intestate may be dealt with and distributed free from the life interest."

25. Order [135] provides that Mrs Huang *"is permitted to reside in the main homestead of the farm at Tagabe so long as she remains single or unmarried"*. Mrs Huang contends that this order is a life interest in the homestead charged against the residuary estate of the deceased and if she elects to have it redeemed her application should be considered before the estate is wound up and the residuary estate distributed.
26. The Administrator seeks the advice of the Court as to how he should now proceed.
27. Mrs Huang's application immediately foreshadows a host of questions. Is the UK Act one of general application such that it could be part of the inherited law of Vanuatu under Article 95(2) of the Constitution? Is the interest held by Mrs Huang under [138(a)] a life interest within the meaning of s.47A? If the UK Act can apply in Vanuatu, is s.47A over-ridden by the Queens Regulations No. 7 of 1972? If so, is the proposed claim for redemption now out of time under the limitation period specified in s.47A (5) or otherwise barred by the principle in *Henderson v Henderson* (1843) 67 ER 313?
28. Mr Russet contends that the UK Act is not one of general application and in any event is overridden by the Queens Regulation and that time has defeated any claim that may have existed.
29. However, in our view the proposed claim must fail for another reason without the need to answer any of these questions. The right of a surviving wife to elect under s.47A to have the personal

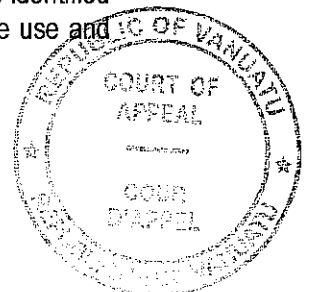


representative purchase or redeem a life interest arises only where the surviving wife is "entitled to a life interest in the part of the residuary estate" of the deceased. In the present case the interest which Mrs Huang holds in respect of the homestead is not such an interest. The interest ordered in her favour under [135(a)] is an equitable interest awarded as an incident of the constructive trust in favour of Mr Russet over the Tagabe farm. It is an obligation imposed on Mr Russet, or until distribution on the Administrator, not on the residuary estate. The order in [135(a)] is explained by the reasons of the Supreme Court at [131]–[132] which we repeat:

"[131] The entire farming operation at Tagabe, held by way of an equitable constructive trust by the deceased at the time of his death, must now in law passed to the Administrator as an asset of the estate, for the Administrator to ultimately distribute the entirety of it to Mr Russet.

[132] However, equity's resolution must be limited to the bare necessity. Accordingly, I find that Mr Russet holds the farming operation subject to the deceased's promise to Mrs Huang to provide for his widow beyond his lifetime. Equity requires Mr Russet to respect the deceased's wishes in that regard - he is bound by the deceased's promissory estoppel. If Mr Russet attempts to assert otherwise, Mrs Huang is able to use this as a shield to prevent disentitlement."

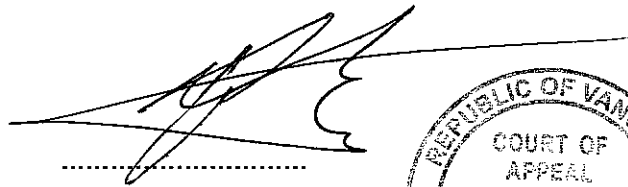
30. Accordingly, we find, and so advise the Administrator that the proposed claim by Mrs Huang cannot succeed, and he may disregard it for the purpose of distributing the deceased's estate.
31. Although we have ruled against the possibility of a claim by Mrs Huang under s.47A, she does have an interest in the homestead enforceable against Mr Russet once the distribution happens. That is an interest that could be protected by a caveat over the leasehold interest covering the homestead, and it is an interest that she could sell to Mr Russet if the parties can reach agreement. That would be a sensible course to end the obvious bitterness between them over the continuing interest of Mrs Huang in the homestead and its contents.
32. Mr Russet and Mrs Huang acknowledge that the Administrator is entitled to his costs of and incidental to the matters now before the Court of Appeal to be charged against the estate.
33. The Court is grateful for the assistance given in this matter by counsel for each of the parties.
34. The formal orders of the Court are:
 1. The appeal against the order in the Court below as to the Prado vehicle is dismissed;
 2. The cross appeal against the order for repayment by Mr Russet of VT4,41,267 is dismissed;
 3. The Administrator may distribute the estate notwithstanding the dispute between Mrs Huang and Mr Russet over chattels;
 4. The Court notes the acknowledgement of Mr Russet that on taking the items identified in paragraph [18] of these reasons, Mrs Huang is to retain for her exclusive use and enjoyment all other chattels in the homestead;



5. The shares in Vanuatu Abattoirs Ltd and Ballande Vanuatu Ltd are to be transferred to Mr Russet;
6. The Administrator is entitled to his costs of and incidental to the matters before this Court; and
7. No order as to costs as between Mr Russet and Mrs Huang.

DATED at Port Vila, this 17th day of May, 2024

BY THE COURT



Hon. Chief Justice Vincent Lunabek

