

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

Civil Appeal
Case No. 17/1336 SC/CIVA

IN THE MATTER OF: *The Estate of Kensie Ata Deceased*

BETWEEN: **Gideon Ata**
Appellant

Before: **Justice Chetwynd**

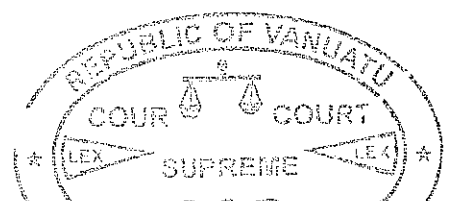
In Attendance: **Counsel - George Boar**

DECISION

- 1) This is an appeal from the decision of the Master dated 18th May 2017. The Order she made was the application (for a grant of Letters of Administration) was struck out for want of evidence.
- 2) The Appellant says the application should not have been struck out without him being given a chance to argue the issue.
- 3) The Probate and Administration Rules have been around for at least 14 years. Counsel are expected to know of the Rules and comply with them. They are not very complicated or onerous.
- 4) Rule 1.2 is headed **Purpose** and says:-

“The purpose of these Rules is to set out the procedure to be used in Probate and Administration proceeding brought in the Supreme Court.”

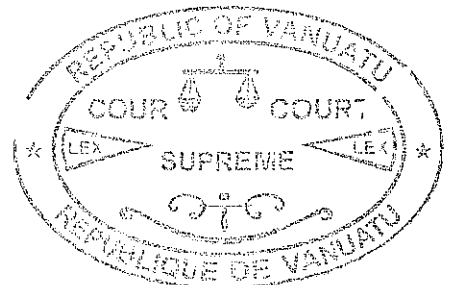
There is no question that probate and administration proceedings are bound by the Rules.



- 5) Rule 1.4 refers to the overriding objective found in the Civil Procedure Rules and Rule 1.4(2) says:-

“In particular, the Court must actively manage cases brought under these Rules....”

- 6) Rule 2.3 governs the procedure when an application for the grant of administration is before the Court. Rule 2.3(1) sets out in detail what must be done. The application must be in Form 3. Obviously the exact format need not be followed but as a bare minimum it must contain the information as set in Form 3.
- 7) Rule 2.3(1)(d) requires every application to, *“have with it a sworn statement by the applicant in support of the application.”* The sworn statement must be in Form 4. Again a sworn statement is unlikely to be rejected if it was not in the exact format of Form 4 provided it contained all the information referred to in Form 4.
- 8) The application must also be accompanied by a *“copy of the death certificate”* or other proof of death.” (Rule 2.3(1)(c).
- 9) When looked at overall, Rule 2.3 requires the applicant to follow a procedure. If the applicant does not follow what is set out in the Rules the Court can only reject the application.
- 10) The appellant in this case does not say he followed the requirements of the Probate and Administration Rules. He simply says he was not given the opportunity to address the Court. This overlooks the obvious; the application could not be accepted because it was defective in many material respects.
- 11) Given the obligations of the Court (see paragraph 5 above) I am not persuaded the Master was wrong in dismissing the application.



12) The Appeal is dismissed. Costs are not an issue in this appeal. I would only mention that the applicant would be entitled to make another application provided he and it it complied with the Rules.

DATED at Port Vila this 27th day of June, 2017.

BY THE COURT



D. CHETWYND

Judge

