

**IN THE MATTER OF: AN APPEAL FROM PROBATE CASE
BEFORE THE MASTER OF THE
SUPREME COURT OF THE REPUBLIC
OF VANUATU FOR AN APPLICATION
FOR LETTERS OF ADMINISTRARION IN
THE ESTATE OF LATE LEA KAPERE**

**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.07 OF 1972.**
ERICK KAPERE
Appellant

Before: *Justice Aru*

Counsel: *Mr. B. Livo for the Appellant*

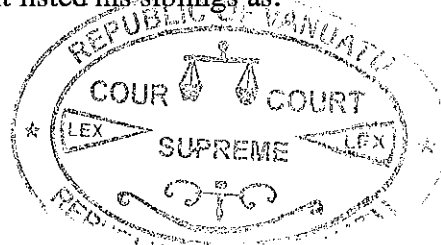
JUDGMENT

Introduction

1. These are the reasons for the orders issued on 2 May 2018. The matter is an appeal from a decision of the Master on 14 June 2017 striking out the appellants Application for letters of Administration.

Background

2. On 29 April 1985 Cooke CJ who was then the Chief Justice granted letters of administration over the appellant father's estate to the appellant's mother and the appellant. The estate was valued at VT1, 095, 260.
3. On 17 November 2008 the appellant's mother passed away
4. On 15 April 2016 the appellant filed his application for letters of administration over his mother's estate. In the application the appellant listed his siblings as:-
Janine Kapere

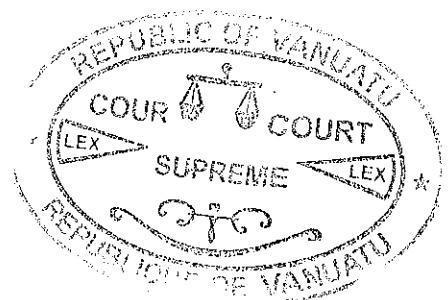


Remo Kapere
Evelyn Kapere

5. On 10 June 2016, the Master conducted the first review of the file in the absence of the appellant or counsel and directed that the appellant file consents of his siblings to his application .A further review was done in the same manner noting that the sworn statements were not filed and directed that failure to file will result in the application being struck out .
6. On 4 August 2016 Remo Kapere, the appellant's brother filed a sworn statement giving his consent to the appellant obtaining letters of administration. Mr Livo also on the same date filed a memorandum informing the Court of the delay and the fact that Remo Kapere's sworn statement was only then filed. The court was further informed that Janine Alilulu who was married and was living at Lamap on Malekula was difficult to contact. Evelyn Virele who was also married was then living in Central Pentecost and was also difficult to be contacted. The memo was filed in view of the difficulties encountered in complying with the Master's orders.
7. On 13 September 2016 a further review was done again in the absence of counsel extending time to file the sworn statements noting that none had been filed. Again directing that if the sworn statements are not filed the application will be struck out.
8. On 3 November 2016 a further memo was filed by Mr Livo to the same effect and seeking more time to be able to comply with the orders. With the memo Mr Livo also attached draft sworn statements they prepared for Janine Alilulu and Evelyn Virelele in support of the appellants application for letters of administration.
9. On 12 December 2016 Evelyn Virelele and Janine Ailulu filed their sworn statements giving their consent to the appellant obtaining the letters of administration.
10. On 2 May 2017 a further review was done by the Master again in the absence of counsel and noted that the previous orders were not complied with. It was further ordered that if the sworn statements were not filed by 30 May 2017 the application will be struck out.
11. On 14 June 2017 in the absence of counsel the Master ordered that the application be struck out for non-compliance with her orders and the application was struck out (the Struck Out Order).
12. The Struck Out Order states:-

"ORDER

UPON this matter coming up for review without hearing;



*AND the court having indicated in its last Order of 2 May 2017 that failure to comply would result in the matter being struck out;
AND said order having been served on counsel Brian Livo with PSO for the Applicant and there having been non compliance
IT IS HEREBY ORDERED
That the Application is struck.*

BY THE COURT"

Appeal

13. Mr Livo submits that the relief he is seeking is for the Court to set aside the orders of the Master and to hear the application de novo as provided under s.42 (4) of the Judicial Services and Courts Services Act [CAP 270] as amended which states :

"A person may appeal to a judge of the Supreme Court against a decision of the Master or a deputy Master under paragraph 3a) and b) . The appeal is to proceed by way of hearing de novo and the judge's decision on appeal is final."

14. The grounds advanced by the appellant are that it was wrong of the Master to require the appellant's siblings to file their consents before the application for letters of administration was heard .Secondly the appellant says that no notices for hearings/conferences were issued and counsel was not heard before the matter was struck out. Finally the appellant says that no opportunity was given to counsel to explain the difficulty encountered in obtaining the sworn statements before the matter was struck out.
15. As to ground one, it was submitted that there is no legal requirement that when an applicant applies for letters of administration of his mother's or father's estate, his siblings must first give their consent in writing before the application is heard. The Probate and Administration Rules (the PAR) require that once an application is filed it must be advertised. Rule 2.5 provides:-

"Advertisement

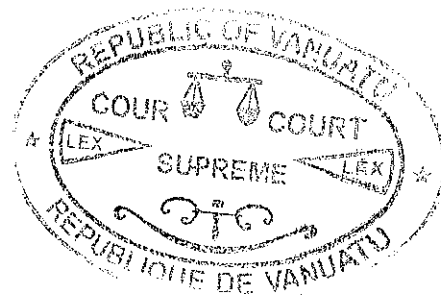
2.5 (1) After an application has been filed, the applicant must cause an advertisement to be broadcast on the radio in the area where the deceased lived and carried on business.

(2) The applicant must also do any other things reasonably necessary to bring the application to the knowledge of anyone who:

(a) is entitled to any property of the deceased; or

(b) may opposes the grant applied for; or

(c) is a creditor of the deceased.



(3) *The advertisement must:*

(a) *state that the applicant has applied for probate or administration of the estate of the deceased person, as the case requires; and*

(b) *give the applicant's name and address for service of documents; and*

(c) *state that anyone who is opposed to the probate or administration of the estate being granted to the applicant must file a Response in an office of the Supreme Court within the time stated in the advertisement; and*

(d) *state that if no-one files a Response, the Court will grant the probate or administration to the applicant;*

(e) *state that anyone who thinks they are entitled to property of the deceased, or that the deceased owed them money, must contact the applicant or his or her lawyer.*

(4) *The advertisement must be broadcast on 3 working days in the same week, at least once in a morning and once in an evening.*

(5) *The advertisement must:*

(a) *be broadcast in Bislama; and*

(b) *be in Form 7.*

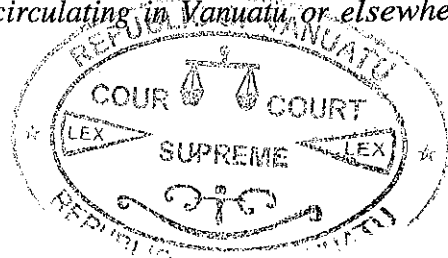
(6) *For sub rule (2) the applicant may, for example:*

(a) *cause the advertisement to be published in a newspaper circulating in Vanuatu or elsewhere; and*

(b) *cause the advertisement to be broadcast or published in English or French as well as Bislama."*

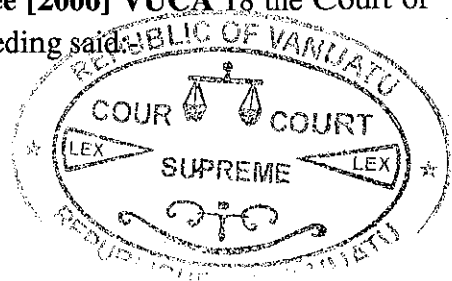
16. The applicant is required to broadcast the advertisement on radio. (sub rule 1) The requirements of what is to be included in the advertisement are set out in sub rule (3) and the advertisement must be "*broadcast on 3 working days in the same week, at least once in a morning and once in an evening and the advertisement must be broadcast in Bislama and be in Form 7.*" (sub rules 4) and 5).

17. The applicant is also required to do all things reasonably necessary to bring the application to the knowledge of anyone who is "*entitled to any property of the deceased or who may oppose the grant applied for*" (sub rule 2); He may "*cause the advertisement to be published in a newspaper circulating in Vanuatu or elsewhere*



and cause the advertisement to be broadcast or published in English or French as well as Bislama" (sub rule 6)

18. The two instances for advertisement are by radio in Bislama and by publication in the newspaper in English and French as well as Bislama. If no response is filed or served on the applicant, then after 28 days the applicant must file a sworn statement stating that the advertisement was broadcasted and giving details of the dates and times of the broadcast and attaching a copy of the text that the applicant believes was broadcasted. If the applicant did any other things to comply with sub rule 2.5 (2) he must also state what was done and attaching a copy of any information published.(rule 2.6)
19. There is no specific requirement that where an applicant applies for administration of the estate of a parent he must first obtain the consent of his siblings. The requirement for advertisement applies in my view to all cases of people applying for letters of administration.
20. As to the second and third ground, the reviews were done on the file on 10 /6/16, 13/9/16 and 2/5/17 before the matter was struck out on 14/6/17. No notices were issued to counsel to appear to explain the appellants difficulty in complying with the directions as explained in the two memorandums filed on 4/8/16 and 3/11/16 before the matter was struck out.
21. Mr Livo submits that by the time the second memorandum was filed, they were able to locate Remo Kapere on Tanna and brought him to Vila to swear his sworn statement giving consent and to file it. In the last memorandum the court was also informed of the difficulties in contacting Janinie Ailulu who was on South Malekula and difficult to reach and Evelyne Virelele who was on central Pentecost and also difficult to reach . Counsel did attach copies of two draft sworn statements of the two siblings yet to be sworn.
22. These were sworn with both siblings giving their consent and filed on 12/12/16 before the matter was struck out on 14/6/17. Mr Livo submits that the matter should not have been struck out without first affording the appellant an opportunity to be heard since he had filed all the sworn statements required before the matter was struck out. I agree with the submission. A strike out determines the application. In this case, the appellant had complied with the orders to file sworn statements from his siblings in good time. The final two were filed on 12 December 2016 six months before the application was struck out.
23. The matter as struck out in 14 June 2017.
24. In **Noel v Champagne Beach Working Committee [2006] VUCA 18** the Court of Appeal in referring to the power to strike out a proceeding said:



"..it has always been recognised that the jurisdiction should be exercised sparingly and only in a clear case where the Court is satisfied it has the requisite material.."

25. I am of the view that there was no reason to justify a strike out as all the sworn statements directed to be filed were filed on 12 December 2016. Secondly there is no specific requirement that where a person is applying for letters of administration over the estate of a parent, siblings must give their consent before the application is advertised.

Conclusion

26. The appeal will be allowed and the orders are:-

- i) Appeal allowed
- ii) Appellant to advertise his application ;
- iii) Following the advertisement the Appellant must file his sworn statement with evidence of the advertisement.
- iv) The matter is listed for mention before this court on 29 June 2018 at 2.00 pm.

**DATED at Port Vila this 4th day of May, 2018
BY THE COURT**



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D. Aru
Judge

