

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

Civil  
Case No. 20/1773 SC/Civil

**BETWEEN:** Kristian Russet  
Claimants

**AND:** Li Ya Huang  
First Defendant  
John Warmington  
Second Defendant

*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr H, Heuzenroeder with Mr M. Hurley for the Claimant  
Mr A. Jenschel with Ms L. Raikatalau for the First Defendant  
Mr M. Fleming for the Second Defendant  
*Date of Decision:* 5 May 2022

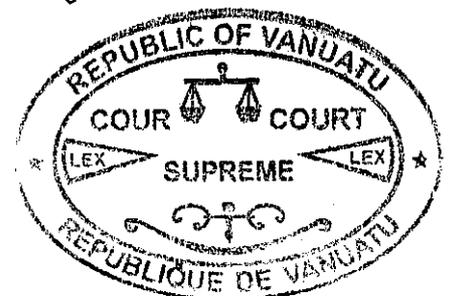
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**Decision as to Application or otherwise of French Law to Case**

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A. Introduction

1. This Claim, between son and widow, involves different understandings of who should inherit the deceased's estate, in the circumstance of there being no last will and testament setting out the deceased's wishes.
2. The dispute arose following the death of Henri-Edmond Marie Andre Russet ("the deceased") on 17 December 2019.
3. At the time of his death the deceased was married to Ms Li Ya Huang ("Ms Li"), the Defendant in this proceeding. They were married on 23 September 2017, having previously lived together for approximately 18 months prior to that. The couple had no children together.



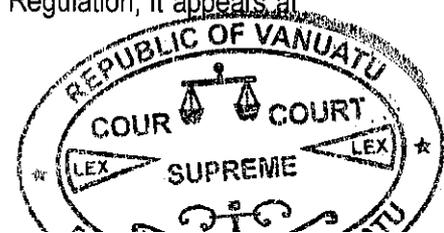
4. At the time of death, the deceased had substantial assets, the largest of which was the farming operation at Tagabe, not far from Port Vila. That was where the deceased and Ms Li resided at the date of his death.
5. The leasehold interest in the land had been purchased by the deceased's paternal grandfather in 1938. Over time, the farm was handed down from grandfather to father, and then to the deceased. The property had been held by the Russet family for 79 years at the time of the deceased's death.
6. Kristian Russet ("Mr Russet"), the Claimant, is the deceased's only progeny. He is the son of the deceased's previous marriage to another which ended in divorce in 1984. In 2009, Mr Russet returned to Vanuatu from Australia with his wife and child, to commence to work on the deceased's farm operation as the Operations Manager. He continues in that role today.
7. At the date of his father's death, Mr Russet and his family resided in a second home on the farm property.

B. The Claim

8. Mr Russet's claim seeks for this Court to rule that the entire farming operation should pass to him, not Ms Li, the deceased's lawful wife at the time of his death.
9. His claim is based firstly on the proposition that an equitable constructive trust exists in his favour due to promises made to him by the deceased, coupled with the history of keeping the farming operation in the family over several generations. He maintains he acted in the belief that the operation would pass to him on his father's death, and it is contended that he acted in accordance with that belief and contrary to his interests by leaving Australia and taking up the farm managerial post.
10. This first aspect of the Claim cannot be determined without first hearing the evidence.
11. Secondly, in the alternative, the Claim pleads the long history of the Russet family as a Francophone family in Vanuatu is indicative that the disposition of the deceased's estate should be governed by the provisions of the French Code Civil, as provided for in Article 95 of the Constitution of the Republic of Vanuatu.

C. Issue

12. Whether the alternative basis for the Claim has validity is the present issue for determination, as that proposition is not accepted by Ms Li. It is contended on her behalf that English law, in the form of the Queen's Regulation 1972, ought to govern the disposition of the deceased's estate.
13. It is not challenged that both the Code Civil and Queen's Regulation cover the situation where the distribution of an intestate estate is in issue.
14. It is not difficult to see why the issue is of importance to the parties. Without making any decision on the point, at first glance it appears that pursuant to the Code Civil, Mr Russet would inherit 75% of the property of the deceased absolutely, and Ms Li would be entitled to a usufructuary life interest of the other 25%. On the other hand, under the Queen's Regulation, it appears at



first glance that Ms Li would be entitled to (i) the deceased's personal chattels, (ii) \$10,000, and (iii) one-third of the residuary estate absolutely. The balance of the assets would pass to Mr Russet.

15. Given that the scope of evidence to be presented at trial is dependent on the outcome of this issue, it was agreed with counsel that this issue be the subject of a pre-trial determination.
16. It was agreed that counsel would present short written submissions, and that the Court would produce a judgment ahead of the trial so that the scope of the evidence to be adduced could be properly monitored.
17. This is my decision on this issue.

D. Contentions

18. I summarise the arguments presented, in truncated form and excluding agreed matters.
19. For Mr Russet, it was submitted that there are no relevant authorities on the point. It was contended that the issue devolved to a choice of which law was to apply; and that due to the dominance of Francophone interests, the provisions of the Code Civil should be used to determine the inheritance dispute.
20. For Ms Li, it was contended that the Code Civil was foreign law, which had to be pleaded and proved. It was contended further that by embarking on earlier litigation in the way counsel had presented matters to the Court, Mr Russet should be held to have submitted to the application of the Queen's Regulation to determine the matter. Further it was contended that the "substantial justice" test was applicable.

E. Discussion

21. Neither the Code Civil nor the Queen's Regulation are "foreign law".
22. Article 95 of the Constitution is apposite. It reads as follows:

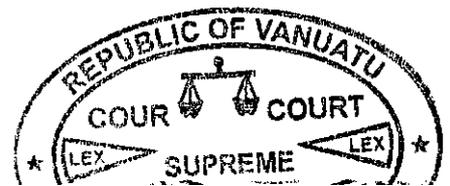
**95. Existing law**

(1) Until otherwise provided by Parliament, all Joint Regulations and subsidiary legislation made thereunder in force immediately before the Day of Independence shall continue in operation on and after that day as if they had been made in pursuance of the Constitution and shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.

(2) Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the Day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom.

23. In the authority of *Banga v Waivo* [1996] VUSC 5, the then Chief Justice, in discussing the laws applicable to divorce in Vanuatu, stated:

".... it is clear that under Article 95 of the Constitution, the French and English laws that applied on the day before the Day of Independence apply to everyone in Vanuatu, irrespective of Nationality and irrespective



as to whether they were Indigenous Ni-Vanuatu or not. **They were no longer French or English laws but they became the law of Vanuatu. All those English and French laws that still now apply in Vanuatu...** form part of the law of Vanuatu and apply to everyone in Vanuatu irrespective of creed, colour or Nationality." (my emphasis)

24. Counsel agree there is no post-independence legislation that has application to the distribution of an intestate estate. The only legislative assistance available to the Court is to be found in the Code Civil and the Queen's Regulation, but there is a marked difference of approach adopted resulting in quite different outcomes. How then is the Court to approach resolution?
25. This Court's jurisdiction to resolve litigation stems from Article 47 of the Constitution, which reads as follows:

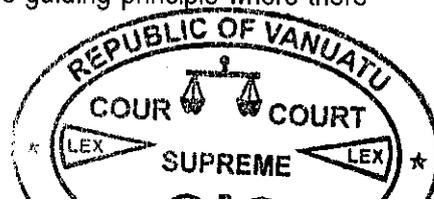
**47. The Judiciary**

(1) The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law. If there is no rule of law applicable to a matter before it, a court shall determine the matter according to substantial justice and whenever possible in conformity with custom.

26. I perceive the present issue is not one where there is no applicable rule of law, but one where there are two sets of rules which give quite different outcomes. On the face of it therefore, this is not an Article 47 situation where the "substantial justice" of the situation is determinative due to a lack of other legislative guidance. In support of this, I refer to the discussion by Justice Harrop in *In re MM, Adoption Application by SAT* [2014] VUSC 78 (at paragraph 21).
27. While prior to 1980, individuals ("optants") were able to choose under which provisions of the applicable laws to litigate matters, that has not been the case since independence. D'Imecourt CJ in *Banga v Waivo* put it bluntly, when discussing the resolution of conflict between French and English law in Vanuatu post-independence:

In events of conflict, the Courts have duty to resolve the matter and do substantial justice..... there is no right of election in the parties.

28. Accordingly, while Ms Li sought to bring earlier litigation under the Queen's Regulation, and Mr Russet currently seeks a ruling in his favour that the Code Civil should apply, neither can be permitted to advance their interests on the basis of personal choice to the disadvantage of the other. To do so would be to prefer one rule of law over another equally applicable rule of law without good cause to do so.
29. Nor do I read Article 95(2) as affording the Court any choice in preferring one over the other on some arbitrary basis.
30. Consequently, in my view, according to Vanuatu law, both the Code Civil and the Queen's Regulation must be considered as having application to this case.
31. Support for this view is to be found in *In re MM, Adoption Application by SAT* [2014] VUSC 78. The case followed the earlier authorities of *Banga v Waivo*, *Joli v Joli* [2003] VUCA 27 and *Montgolfier v Gaillande* [2013] VUSC 39.
32. Although Article 47 of the Constitution refers to adopting the "substantial justice" test where there is no rule of law applicable, I consider that test also must be the guiding principle where there



are conflicting rules – as D’Imecourt CJ obviously did (see paragraph 27 above). I do not consider the test applicable only where there is no other guidance.

33. Although the Civil Procedure Rules 2002 cannot override the provisions of the Constitution, I have regard to Rule 1.2 which sets out:

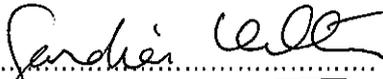
“The overriding objective of these Rules is to enable the courts to deal with cases justly.”

F. Result

34. In the event that the alternative basis of Mr Russet’s claim requires determination, the Court will approach the matter on the basis of what the substantial justice of the situation demands. In ascertaining that, the provisions of both the Code Civil and the Queen’s Regulation will be of relevance.

35. Costs will be in the cause.

Dated at Port Vila this 5th day of May 2022  
BY THE COURT

  
.....  
Justice G.A. Andrée Wiltens

