

(Probate Division)

**IN THE ESTATE OF:      LATE RAUPEPE FIDELIA**

Deceased

**BY:                              RAUPEPE DIDIER**

Applicant

**AND:                             FREDY WASS**

Respondent

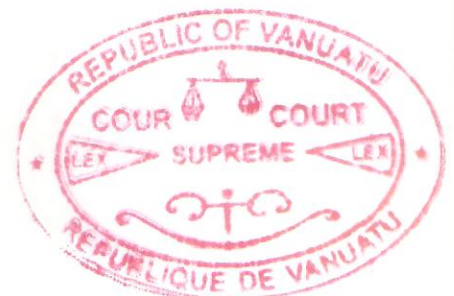
Mr Justice Oliver A. Saksak

Mr Eric Molbaleh for the Applicant  
Mr James Tari for the Respondent

Date of Hearing:      26<sup>th</sup> July 2012  
Date of Decision:    24<sup>th</sup> August 2012

## **JUDGMENT**

1. The applicant is the "husband" of the deceased. The respondent is the brother of the deceased's father Roger Wass.
2. The applicant filed his application for administration dated 16<sup>th</sup> December 2011 on 29<sup>th</sup> May 2012 together with a sworn statement in support dated also on 29<sup>th</sup> May 2012. Attachment B to the sworn statement requires an inventory of the deceased property. However, the property is not identified and its value is not provided. Fees of VT50.000 were paid by the applicant.
3. The applicant advertised in the Daily Post and over the radio three times on 17<sup>th</sup>, 24<sup>th</sup> and 31<sup>st</sup> December 2011.



4. On 10<sup>th</sup> January 2012, the respondent filed a response opposing the grant of administration to the applicant and asserted that administration should be granted instead to him. On 17<sup>th</sup> July 2012, the respondent filed two sworn statements in support of his response from himself and the other from Cyrilo Palaud.
5. When the Court called the case for the second conference on 26<sup>th</sup> July 2012, both Counsel were present and sought an adjournment with directions that –
  - (a) The applicant file further statement in relation to the adopted child together with written submissions within 14 days.
  - (b) The respondent file responses and written submission in response within a further 14 days thereafter.
  - (c) A decision be made by the Court based on the evidence and submissions required.
6. On 9<sup>th</sup> August 2012, the applicant filed a statement in compliance with direction in (a) above. However, he did not file any written submissions.
7. On 20<sup>th</sup> August 2012, the respondent filed four statements from himself, Chief Tarisa Eloi and Fatima Ierket. And on 22<sup>nd</sup> August 2012, the respondent filed written submissions in response.
8. One of his statements of 20<sup>th</sup> August 2012 reveals that on 11<sup>th</sup> May 2012 the Public Service Commission endorsed an LPO Payment Confirmation that the death benefits of late Fidelia Wass in the sum of VT917.280 be released to the applicant. The applicant has not replied to that assertion but if it is in fact true, then it is highly improper for him to have done that, unless it can be shown that he was the deceased's nominee entitled to those benefits.
9. The respondent has raised two issues for the Court in his written submissions as follows:-



1. Whether the applicant is capable of administering the estate of Fidelia?; and
2. Whether the applicant is legally married to late Fidelia Raupepe?

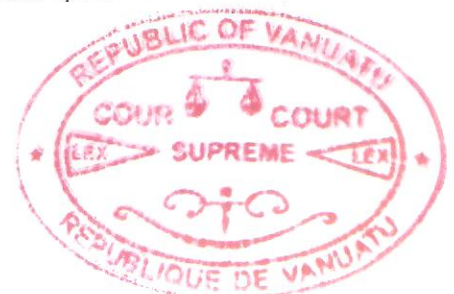
10. In answer to the first issue, the answer is in the negative for the following reasons:-

- (a) The applicant has not specified the estate to which his application relates by not completing Attachment B.
- (b) The applicant has been paid the death benefits of the deceased without first obtaining administration pursuant to his application which could amount to a fraudulent action on his part.
- (c) The applicant went away overseas when the deceased was very sick and remained out even after her passing.
- (d) The applicant never paid bride price in respect of the deceased in accordance with custom practices of their community or area.
- (e) The community chiefs and elders have decided against the grant of administration to the applicant but have endorsed that the benefits of the deceased be allocated for the benefit of Family Wass and Family Naova.

11. In answer to the second issue, from the evidence before the Court, it must be answered in the negative for the following reasons:-

- (a) There is no evidence by the applicant in rebuttal that the purported marriage has been registered.
- (b) There is no evidence by the applicant in rebuttal that section 4(c) and section 6 of the Marriage Act were complied with.

12. For the reasons given, the Court hereby dismisses the application by the applicant. The Court however agrees and decides that the respondent Freddy Wass is the proper person to be given administration of the deceased's estate. The estate to which this grant of administration relates are specified in paragraph 4 of the sworn statement of Fatima lerket, but with the exception of Alenzor, who



shall remain in the care of protection of the applicant until she has attained the age of 18 years.

13. There will be a separate Administration Order issued by the Court in favour of the respondent.

14. There will be no order as to costs.

DATED at Luganville this 24<sup>th</sup> day of August 2012.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

