

**BETWEEN:** LINDA TONY  
Applicant

**AND:** EDWIN BASIL  
Respondent

**Date:** 29<sup>th</sup> April, 2016  
**Delivered:** 12<sup>th</sup> May, 2016  
**Before:** The Master Cybelle Cenac-Maragh  
**In Attendance:** Jennifer La'au holding papers for  
Edward Nalyal for Applicant, Colin Leo  
for Respondent

**Present:** Linda Tony

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### JUDGMENT

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An Application to set aside the Administration of Edwin Basil granted by Justice Aru in the Estate of Tony Mark Tau on the 10<sup>th</sup> February, 2012 was filed on the 17<sup>th</sup> September, 2014. After numerous adjournments the matter finally came up for full hearing on the 29<sup>th</sup> April, 2016.

The Applicant's case, in short, is that she is the lawful wife of the deceased and therefore entitled, with first right, under the Queen's Regulation No. 7 of 1972, Section 7 (a) to be the administrator of her husband's Estate.

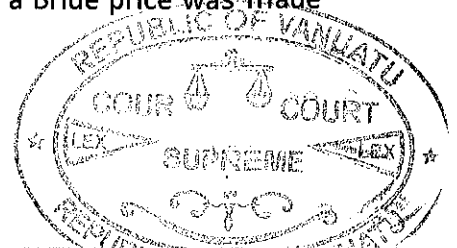
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#### Applicant's Submissions:

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In support of her case, the Applicant filed her sworn statement in support of her application on the 1<sup>st</sup> October, 2014, her sworn statement of the 27<sup>th</sup> October, 2014 in response to the statement of Mark Tu filed on the 9<sup>th</sup> October, 2014, a further sworn statement of 21<sup>st</sup> January, 2015, a further sworn statement of the 26<sup>th</sup> February, 2015, sworn statement of Agreth Taripoamata of the 12<sup>th</sup> February, 2015, sworn statement of Pastor Kami Lepiko of the 12<sup>th</sup> February, 2015, sworn statement of Abel Sate of the 12<sup>th</sup> February, 2015 and sworn statement of Chief Taripoamata dated the 27<sup>th</sup> October, 2014. They all attested to their attendance and knowledge of the custom marriage ceremony between the Applicant and the deceased.

The Applicant also produced, and put into evidence, a copy of her Kustom Marriage Certificate. The Applicant maintained that she was lawfully married to the deceased in custom and that the necessary obligations, such as the payment of a Bride price was made



to her mother. She stated that the late registration of the marriage certificate with the Malvatumauri Council was only done when it became necessary for the purpose of applying for probate of the deceased estate and that its non-submission to the court which resulted in her application being struck off was due to her lawyer's absence on the day of the hearing and his having not filed the said certificate within time. She indicated that the Respondent had no authority to have applied for administration, and since having been appointed administrator he has evicted her and her children from the matrimonial home she enjoyed with the deceased.

### **Respondent's Submission:**

In support of his case, the Respondent provided his sworn statement filed on the 10<sup>th</sup> December, 2014 in answer to the Application, together with a sworn statement of Tino Mark Tu filed on the 9<sup>th</sup> October, 2014 who held himself out as the adopted son of the deceased. The Respondent also produced sworn statement of Steve Namali filed on the 24<sup>th</sup> April, 2016 which stated simply, that he had been asked by the Applicant to issue a marriage certificate to her. He did not say whether he issued it or not. The first two statements addressed the issue of why the Applicant's Application for administration was struck out by the court and why the Respondent had applied for administration. He maintained that the custom marriage did not occur and/or was not valid, which assertion was supported by the evidence of Steve Namali.

The Respondent contends that this case turns on the validity of the marriage certificate of the Applicant.

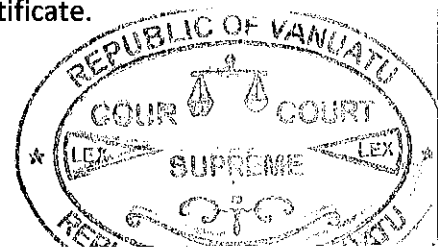
### **Decision**

In this jurisdiction it is sometimes a tricky affair to determine the validity or existence of a custom wedding where either a certificate is non-existent or the certificate is created long after the fact, as has been discovered to be the practice in this jurisdiction; from the registration of births, deaths and marriages. Often times, the existence of a custom wedding is realised through the sworn evidence of the persons in attendance and very often from the Chief of the Village who would have either been present or presided over the ceremony and been privy to the most essential element to validate the marriage-the Bride price.

The only witnesses who were cross examined by counsel for the parties were the Applicant and Respondent, Chief Taripoamata and Steve Namali.

The Applicant produced 4 witnesses to corroborate her version of the facts; that there was a ceremony that was valid upon the passing of the Bride price to her mother. She also provided a Kustom marriage certificate from the Malvatumauri Council as evidence of the existence of a wedding.

The Respondent, conversely, offered very little by way of contradiction to this evidence except that of Tino Mark who asserted that the Applicant was not married to his father and that her application was struck off for want of producing her marriage certificate.



Steve Namali under cross-examination stated that the certificate the Applicant had produced was fraudulent because it was not his signature on the document as the Applicant had stated and that the form used had, at the time of the creation of the certificate been replaced by a new form that was different. Those differences he stated were:

1. the Applicant's certificate had the picture of a canoe while the new one had no canoe,
2. that there was no border on the old form but there is a border on the new form, and
3. the current stamp was different.

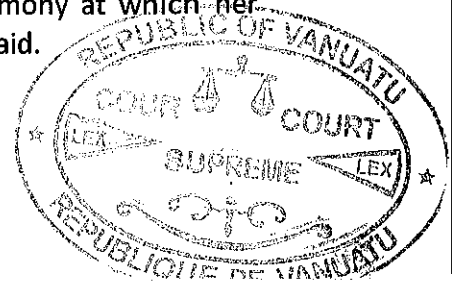
I note that the new form and the matter of his signature referred to in his oral evidence was not mentioned in his sworn statement and neither was the alleged new form put into evidence before the court. The Respondent's case, being so heavily reliant on the voracity of the marriage certificate of the Applicant and the deceased, one would have thought that any discrepancy would have been immediately tackled, not only in the sworn statement of Mr. Namali but also corroborated by another member of the Council. I wonder at this new evidence of Mr. Namali which was so lately put forward and only came out under cross-examination.

I did not find the evidence of the Respondent compelling. His only explanation for having applied for administration was that he was doing it for his nephew Tino Mark whose application for administration, incidentally, was also struck out by the court. His evidence revealed that as administrator he has done nothing to the benefit of the heirs of the deceased and everything to his sole benefit. By his own admission he took a loan against the property of the deceased for VT1.7 million to purchase a piece of land at Mele Claims Hill which he registered in the name of his daughter Christian Basil and having paid the land rents owed against the deceased property he caused it to be registered in his name as he believed the probate granted to him gave him the land. At no time did he even mention any part of the Estate being passed to Tino Mark, whom he said he applied on behalf of and who he represented, in his application, to be an heir of the deceased. It seems quite clear that the Respondent has assumed the benefit of the entire Estate to himself and his daughter to the exclusion of any and all heirs of the deceased.

In that light I am not surprised that his evidence was contradictory on the matter of the validity of the marriage. He first asserted that it was not invalid, when asked by the court whether his absence as Chief of the village of the deceased made the marriage unlawful. At the insistence of his counsel that he did not understand the question it was put to him by his lawyer two more times, at which time he back-pedalled and stated that his absence made the ceremony invalid. I believe that he did understand the question as posed by the court and he answered accordingly, that his absence did not invalidate the marriage. He offered no further evidence by way of witnesses regarding the existence or validity of the marriage.

I am inclined to accept and believe the evidence of the Applicant for the following reasons:

1. She produced ample witnesses to vouch for the wedding ceremony at which her deceased husband was present and that a Bride price had been paid.



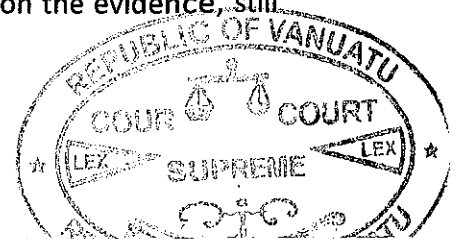
2. Her oral evidence never wavered in spite of counsel for the Respondent's attempts to unseat her by asking the same questions over and over in different ways.
3. The evidence of Chief Taripoamata under cross-examination was believable and consistent with his sworn statement and the evidence given by the Applicant under cross-examination.
4. Her evidence regarding the production of the marriage certificate and the reason why it was prepared so long after the death of her husband and her signature on behalf of her husband seemed honest and without guile.
5. She was able to offer a reasonable explanation as to the absence of the Respondent as Chief of her husband's village at the wedding ceremony.
6. There was no opposition to any of her witnesses save for Chief Taripoamata and therefore their evidence stands as uncontested.

The Respondent placed great emphasis on the validity and possible fraudulent character of the marriage certificate out of the Malvatumauri Council and it seemed to be his only lifeline in his effort to invalidate the marriage of the Applicant to the deceased. That being the case, I would have thought, particularly based on the evidence of Steve Namali regarding his non-production of the certificate and the fact that the signature shown to be his was in fact not, that some additional evidence would have been adduced to corroborate the evidence of Mr. Namali, that is, a current member of the Council who would be in a position to produce a register of marriage certificates issued, together with a new form to show the discrepancies between that produced by the Applicant and what should have been produced.

In spite of this lack, I will admit, that while the certificate does provide some evidence of the marriage, it was, for me, not the deciding factor. I say this because my time in this jurisdiction, presiding over matters of succession has revealed that most civil and other records are not produced simultaneously with the event and often times are done only on a needs basis, usually upon the death of a person. Consequently, such records could not be wholly trusted to contain information as accurate as would otherwise be available if it had been produced at the time of the event. Further, many, if not all of these records are produced without the requirement of corroborating evidence and merely on the information submitted by the applying party.

Taking notice of these facts within the special knowledge of the court I could not therefore heavily rely on the said certificate and I therefore use it merely as *some* evidence to go towards the believability of the Applicant. I was moved to believe her more on the basis of the evidence of her witnesses and herself and much less on the matter of the certificate. Had the certificate not been produced I would have still found for the Applicant.

I therefore find that the Applicant is in fact the lawful wife of the deceased under custom. Even if I was to have not found for the Applicant I would have, based on the evidence, still



revoked the administration to the Respondent as having unlawfully administered the Estate by assuming the sole benefit of it to himself and his daughter to the exclusion of all other heirs.

**My Order therefore is as follows:**

1. That the administration of the Estate of the deceased to Edwin Basil is hereby revoked under section 24(a) of the Queen's Regulation No. 7 of 1972.
2. That administration will be granted to the Applicant for herself and for the children of the deceased upon the filing of the birth certificates of all the children of the deceased before the next hearing.
3. That pending a grant being made to the Applicant the Estate of the deceased shall vest in the court for the purpose of accepting service of notices and proceedings and acting as nominal defendant under Section 8 of the Queens's Regulation No. 7 of 1972.
4. That Tino Mark is granted permission to file and serve proof of his adoption by the deceased by the 27<sup>th</sup> May, 2016. **Failure to file will mean that his inclusion in the Estate as an heir will not be considered.**
5. That the Respondent is to file and serve a full account of all his dealings with the Estate by the 31<sup>st</sup> May, 2016. **Failure to do so may result in the Respondent being brought before the court for contempt and fined or imprisoned.**
6. That the property transferred into the name of Christian Basil is now held on trust by her for the Estate of the deceased until such time as the order for administration is granted to the Applicant and a possible transfer to the new administrator is effected.
7. That this matter is scheduled for conference on the 9<sup>th</sup> June, 2016 at 10:30 a.m.

Counsel having both agreed at the conclusion of the hearing that costs would be in the amount of VT400, 000 to the successful party to be paid within 30 days of the delivery of the judgment, I hereby award costs of VT400, 000 to the Applicant to be paid by the Respondent by the 13<sup>th</sup> June, 2016.

**DATED at Port Vila this 12<sup>th</sup> day of May, 2016.**

**BY THE COURT**

  
**CYBELLE CENAC-MARAGH**  
**MASTER**

