

BETWEEN: Maturine James
Claimant

AND: Kalsuaki James
Defendant

Date of Decision: *8th June 2021*
Before: *Justice Oliver.A.Saksak*
Counsel: *Mr Godden Avock for the Claimant (ceased Acting)*
Mrs Mary Grace Nari for Defendant

DECISION

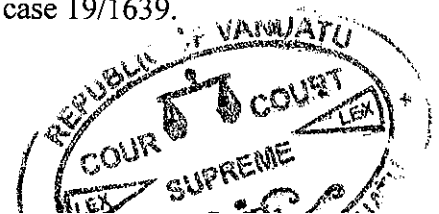
1. The claimant's claim and proceeding are hereby struck out.

Reasons

2. The claimant has no standing to institute this proceeding against the defendant.

History

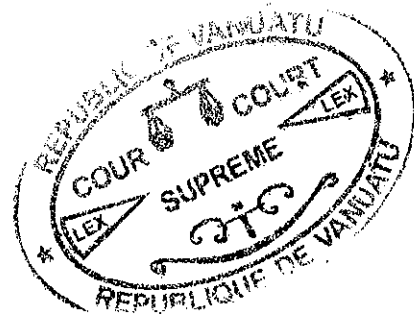
3. The claimant filed her claim on 13 November 2017 pursuant to the grant of letters of administration to her on 22nd February 2013 pursuant to a will purportedly made in her favour as beneficiary, on 3rd April 2009.
4. The claimant sought orders that (a) the defendant refund all rent moneys, (b) the defendant be evicted from the property, and (c) costs of this proceeding.
5. The defendant disputed the claim. He filed a defense and counter-claim on 16th April 2018. In his counter-claim the defendant asserted that the grant of letters of administration to the claimant was made without his knowledge and consent.
6. He sought orders that the letters of administration granted on 22nd February 2013 be declared null and void and that he be granted letters of administration instead. He also sought costs.
7. Numerous conferences have been held over the years where directions were issued to progress the case to hearing. There were attempts of settlement which failed.
8. On 28th June 2019 the Court stayed this proceeding by application made by Mrs Nari on the basis the defendant had filed separate proceeding challenging the administration of the estate in Probate case 19/1639.



9. Two applications in Probate Case 19/1639 were heard together by Aru J. These were an application granted for an order of revocation of administration granted to the claimant in 2013 and the other was for an order granting administration to the defendant.
10. On 3rd September 2020 Aru J granted orders (a) revoking the Administration granted to the claimant in 2013 and (b) granting administration to the defendant.
11. Mrs Nari filed a memorandum on 18th May 2021 attaching a copy of the judgment in Probate Case 19/1639 dated 3rd September 2020. She submitted as a result of the judgment, the claimant in this proceeding has no standing and sought orders accordingly.
12. Mr Avock filed a notice of ceasing to act for the claimant on 28 May 2021.

Discussion

13. The claimant has had the judgment in Probate Case 19/1639 since September 2020. At no point in time has she or her lawyer taken any steps to advise the Court of the judgment and to file a notice to discontinue the proceeding.
14. There has not been any appeal against the judgment of 3rd September 2020.
15. It has been some 7 months since and the claimant has taken no steps to ensure her proceeding continues.
16. Part 9 of the Civil Procedure Rules No.4 of 2002 makes provision for ending proceedings early. Rule 9.10 gives the Court power to strike out a proceeding without notice if there has been no steps taken in the proceeding (by the claimant), for 6 months.(See Rule 9.10 (2) (d).
17. The Court exercises this power to strike out this proceeding.
18. I accept the submissions of Mrs Nari that the claimant now has no standing to continue with her claim in this proceeding as a result of the Court's judgment of 3rd September 2020.
19. The defendant filed a defence which included a counter-claim. However the reliefs he sought were the same reliefs he sought in Probate Case 19/1639 which have been granted.
20. In the circumstances it is not necessary to go to hearing on the counter-claim. It is accordingly dismissed.
21. That brings this proceeding to its end. The file is to be closed.
22. There is no order as to costs. Each party is to bear its own costs.



DATED at Port Vila this 8th day of June 2021

BY THE COURT

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[Signature]

Oliver.A.Saksak

Judge

