IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(A) 35

Appellate Division / Civil Appeal No 107 of 2022

Between

WKR

… *Appellant*

And

WKQ

… *Respondent*

In the matter of HCF/CAVP 11/2022

Between

WKR

… *Caveator*

And

WKQ

… *Person Warning*

Appellate Division / Civil Appeal No 108 of 2022

Between

WKR

… *Appellant*

And

WKQ

… *Respondent*

In the matter of HCF/P 112/2022

In the Matter of an Application by WKQ

… *Applicant*

GROUNDS OF DECISION

[Probate and Administration — Foreign domicile grants — Resealing]
[Probate and Administration — Foreign domicile grants — Caveat]

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WKR
v
WKQ and another appeal

[2023] SGHC(A) 35

Appellate Division of the High Court — Civil Appeal No 107 of 2022 and Civil Appeal No 108 of 2022
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and Valerie Thean J
21 August 2023

27 October 2023

Valerie Thean J (delivering the grounds of decision of the court):

Introduction

1 On 10 January 2021, a man who was born in Mulhouse, France, died intestate in Málaga, Spain (the "Deceased"). AD/CA 107/2022 ("AD 107") and AD/CA 108/2022 ("AD 108") are two related appeals concerning the administration of his estate. The appellant in both appeals is the Deceased's father (the "Father"). The respondent contends she is the Deceased's wife. Her status is disputed by the Father, and we refer to her in these grounds of decision as "Mdm WKQ". The Deceased had two children with Mdm WKQ. The Deceased also had two other children, whose mother we refer to as "Mdm Y".

2 Litigation in other jurisdictions preceded the Singapore proceedings between the Father and Mdm WKQ. In June 2021, the Father applied in the Ajman Federal Court for the Deceased's Inheritance Certificate in the United

Arab Emirates ("UAE"). This application was contested by Mdm WKQ. The Ajman Federal Court ruled in favour of the Father and issued a decree on 27 September 2021 (the "UAE Court Decree") which stated that the Deceased's estate was to be divided as follows: (a) one-sixth to the Father; (b) one-sixth to the Deceased's mother; (c) one-eighth to Mdm WKQ; and (d) the remainder to the Deceased's four children in the ratio of 2:1 in favour of the male children. The UAE Court Decree also granted the Father administrative rights of the assets for the Deceased's four minor children, as well as guardianship over the four children. On 30 September 2021, Mdm WKQ filed an appeal against the UAE Court Decree. Her appeal was dismissed on 7 February 2022.

3 In the meantime, and without giving any notice to the Father, Mdm WKQ applied *ex parte* in Probate Case No 3163 of 2021 ("Probate Case 3163") to administer the estate of the Deceased in the Supreme Court of the Republic of Vanuatu on 21 September 2021, premised on the Vanuatu citizenship that the Deceased and she had acquired on 27 February 2019. Mdm WKQ obtained a grant of letters of administration in Vanuatu on 10 November 2021 (the "Vanuatu Grant"). Under the Vanuatu Grant, Mdm WKQ was entitled to one-third share of the Deceased's estate, and their two children were entitled to the remainder two-thirds of the estate in equal shares. In other words, the Father and the two children from Mdm Y were not given any share under the Vanuatu Grant.

4 On 22 February 2022, again without notice to the Father, Mdm WKQ filed an *ex parte* originating summons in the Family Justice Courts of Singapore, HCF/P 112/2022 ("P 112"), for the Vanuatu Grant to be resealed in Singapore. On 29 March 2022, the Father filed a caveat in HCF/CAVP 11/2022 ("CAVP 11"), and followed this with a summons for directions, HCF/SUM 123/2022 ("SUM 123") filed on 27 April 2022. In SUM 123, the Father sought a stay of

P 112 pending the conclusion of proceedings in Vanuatu challenging the Vanuatu Grant. On 24 November 2022, a Judge of the General Division of the High Court (Family Division) (the "Judge") dismissed SUM 123 and granted Mdm WKQ's resealing application in P 112.

5 AD 107 was the Father's appeal against what he framed as the Judge's decision to remove the caveat in CAVP 11. AD 108 was the Father's appeal against the Judge's decision to grant the resealing order in P 112.

6 We allowed both appeals on 21 August 2023 and directed Mdm WKQ to commence contentious probate proceedings which would involve the Father. We now furnish the full grounds of our decision.

Background

7 We set out the events leading up to the Judge's orders on 24 November 2022 in fuller detail. On 29 March 2022, the Father filed a caveat in CAVP 11 objecting to Mdm WKQ's resealing application in Singapore, on the following grounds:

> The Caveator is the Deceased's father and a rightful beneficiary of the Estate. The Caveator objects to application HCF/P 112/2022 to reseal the grant of probate from Vanuatu on the grounds [that] it was not lawfully obtained and the Applicant is not a lawful beneficiary.

8 On 27 April 2022, the Father then applied, by way of SUM 123 in CAVP 11, for a stay of proceedings in P 112 pending the conclusion of the proceedings in Vanuatu challenging the Vanuatu Grant. SUM 123 stated as follows:

> The Caveator applies for the following orders;
>
> 1. That the application in HCF/P 112/2022 to reseal the grant of probate from Vanuatu *be stayed until the*

> *proceedings contesting the grant in Vanuatu are concluded.*
>
> 2. Any further orders that the Honourable Court deems fit.
>
> 3. That there be costs in the cause.
>
> The grounds of the application are:
>
> 1. the Caveator is contesting the grant of probate in *both Vanuatu and the resealing in Singapore*.
>
> [emphasis added]

9 At the time when the Father filed SUM 123, there were no ongoing proceedings in Vanuatu contesting the Vanuatu Grant. Eight days later, on 5 May 2022, the Father filed Civil Case No 832 of 2022 ("Civil Case 832") in the Vanuatu Supreme Court to quash the Vanuatu Grant.

10 On 1 June 2022, the Father filed an affidavit dated 31 May 2022 in support of SUM 123. In his affidavit, he stated that the grounds of his challenge in Civil Case 832 were that: (a) the Deceased and Mdm WKQ were never married under the civil law or Sharia law in any jurisdiction; (b) Mdm WKQ had made a false declaration of marriage in Vanuatu; and (c) the Deceased was domiciled in UAE and not in Vanuatu.

11 On 11 August 2022, the Vanuatu Supreme Court struck out the Father's application in Civil Case 832 for non-compliance with court orders in relation to service, and for want of prosecution. The Vanuatu Supreme Court further stated that "the Claim was misconceived as the decision in [Probate Case 3163] should instead be challenged by way of appeal".

12 On 26 August 2022, the parties appeared before an assistant registrar (the "AR") at a case management conference ("CMC") for CAVP 11. The court was informed that the Father's application in Civil Case 832 had been struck

out by the Vanuatu Supreme Court. The court adjourned the CMC and asked the Father to revert on whether he still intended to proceed with SUM 123.

13 On 31 August 2022, the Father informed the court by way of a letter that he intended to proceed with SUM 123 and that he would be appealing against the Vanuatu Supreme Court's decision to strike out Civil Case 832 in the Appeal Court of the Republic of Vanuatu ("Vanuatu Court of Appeal").

14 At a further CMC on 5 September 2022, the Father informed the court that there was an appeal in the Vanuatu proceedings. Mdm WKQ indicated that she was not aware of any pending appeal in the Vanuatu courts. The AR granted leave to the Father to file an affidavit in relation to the stage of proceedings in Vanuatu and whether the proceedings challenging the Vanuatu Grant had been concluded. The learned AR also limited the scope of the affidavit, expressly stating that "[SUM 123] is phrased in such a way that *inheritance laws and domicile are not relevant to whether proceedings are concluded*" [emphasis added]. The AR then directed that a hearing be fixed before the Judge.

15 Subsequently, on 19 September 2022, the Father filed an affidavit from his Vanuatu lawyer, one Daniel Kaukare Yawha ("Mr Yawha"), stating that: "[a]n application has been made to address the dismissal of [Civil Case 832] which would set aside the Supreme Court decision of [Probate Case 3163]".

16 However, no such appeal or application had been made. On 13 October 2022, the Father filed another affidavit from Mr Yawha dated 12 October 2022, explaining that: "The Application to address the dismissal of the [Civil Case 832] which would set aside the Supreme Court decision of [Probate Case 3163] was not filed as the presiding Judge was on bereavement leave at the time of intended filing". Mr Yawha attached to his affidavit a document titled "Notice

and Grounds of Appeal" dated 12 October 2022 which laid down the Father's grounds of appeal against the decision in Probate Case 3163.

17 On 18 October 2022, the parties appeared before the Judge for the hearing of SUM 123. The learned Judge admitted the affidavit from Mr Yawha dated 12 October 2022 and granted Mdm WKQ leave to file a reply affidavit from her foreign lawyer.

18 On 31 October 2022, Mdm WKQ's Vanuatu lawyer, Mr Mark Grant Fleming ("Mr Fleming"), filed a reply affidavit dated 27 October 2022. In that affidavit, he averred that the parties' Vanuatu lawyers appeared before Goldsborough J in the Vanuatu Supreme Court on 21 October 2022. Goldsborough J made clear that the Father was not entitled to appeal against the decision of the Vanuatu Supreme Court. When Goldsborough J was apprised of the fact that the Father had represented to the Singapore courts that a lawful appeal had been filed in Vanuatu, he warned in strong terms that this amounted to misconduct. Mr Fleming further averred that on 26 October 2022, Mr Yawha filed a Notice of Discontinuance in the Vanuatu Court of Appeal indicating that the Father had discontinued proceedings against Mdm WKQ in Vanuatu.

19 On 24 November 2022, the parties appeared before the Judge again for SUM 123 (the "24 November 2022 Hearing"). The Judge was apprised of the fact that the Father had discontinued his appeal in Vanuatu. The Father informed the court that he had just filed an application to intervene in P 112 in which he intended to raise matters relating to the Deceased's domicile. He also sought a further stay pending his intervention application. This was rejected by the Judge on the ground that SUM 123 only pertained to a stay pending the conclusion of the Vanuatu proceedings, which had already been concluded on 26 October 2022. Consequently, the Judge dismissed the Father's stay application in SUM

123 and granted Mdm WKQ an order in terms for her resealing application in P 112.

20 On 25 November 2022, the Father, by way of letter, requested further arguments before the Judge. He stated that the 24 November 2022 Hearing was confined only to SUM 123 and that the Judge should not have proceeded to adjudicate on P 112. The Father also stated that the issue of domicile was relevant in P 112 and that he was prepared to make submissions on this.

21 On 29 November 2022, the Judge rejected the Father's request for further arguments. On the same day, the Father filed HCF/SUM 366/2022 ("SUM 366") for leave to intervene in P 112.

22 On 2 December 2022, the Father filed HCF/SUM 371/2022 ("SUM 371") for leave to enter another caveat. The Father stated in his supporting affidavit for SUM 371 that, as a result of the Judge's decision in SUM 123, the caveat in CAVP 11 was removed. He further stated that the grounds of his application were that: (a) he was a rightful beneficiary of the Deceased's estate; (b) Mdm WKQ was not a beneficiary; (c) the Deceased was not domiciled within Vanuatu at the time of his death; and (d) the grant was not one that the Singapore court would have made.

23 On 9 December 2022, the Father filed AD 107 against the Judge's decision in CAVP 11. On 12 December 2022, the Father filed AD 108, this time against the Judge's decision in P 112.

The decision below

24 On 8 March 2023, the Judge issued his grounds of decision for P 112 and CAVP 11 in *In the Matter of an Application by WKQ and another matter* [2023] SGHCF 12 (the "GD").

25 In relation to SUM 123, the Judge reasoned that the Father had only sought to stay the resealing application "until the proceedings contesting [the Vanuatu Grant were] concluded". Given the discontinuance of the Father's appeal against the Vanuatu court's decision on 26 October 2022, the Vanuatu proceedings had already been concluded by the 24 November 2022 Hearing. Consequently, the Judge dismissed the Father's stay application in SUM 123.

26 With the dismissal of the stay application, the Judge noted that the Father sought to further stay the resealing application on the basis that he had just filed an application to intervene in the resealing application. The Judge did not grant the Father a further stay, reasoning that "[i]t would have been incongruous to stay the resealing application on account of an intervention application having been filed, when [he] had just dismissed [the Father's] stay application (for a stay until the conclusion of the proceedings challenging the Vanuatu Grant)" (GD at [25]).

27 In relation to P 112, the Judge referred to s 47(4) of the Probate and Administration Act 1934 (the "PAA") and considered that the threshold question in the context of a resealing application was whether the Deceased was domiciled in Vanuatu at the time of his death (GD at [34]).

28 In addressing the issue of domicile, the Judge first considered the relationship between the Deceased and Mdm WKQ. The Judge found that Mdm WKQ was the Deceased's lawful wife because: (a) the Deceased had regarded

Mdm WKQ as his wife in his application for Vanuatu citizenship; (b) the Vanuatu authorities regarded Mdm WKQ as the Deceased's wife when they granted her Vanuatu citizenship as the Deceased's spouse; (c) the UAE court regarded Mdm WKQ as the Deceased's wife in the UAE Court Decree; and (d) even the Father had acknowledged in the UAE proceedings that Mdm WKQ was the Deceased's wife (GD at [47]).

29 The Judge went on to find that it did not appear that the Deceased was domiciled somewhere other than Vanuatu at the time of his death, reasoning, *inter alia*, that the Deceased had included Mdm WKQ and their older child in his application for Vanuatu citizenship and that it was unlikely that the Deceased intended to settle in a country apart from his wife and children (GD at [52]). Consequently, the Judge allowed Mdm WKQ's application in P 112 and ordered that the Vanuatu Grant be resealed in Singapore.

30 Lastly, the Judge noted that it was unclear what the Father was appealing against in AD 107. The Judge noted that the Father's counsel had indicated that he was not appealing against the dismissal of the stay application in SUM 123, but against the Judge's order for the removal of the caveat in CAVP 11. The Judge held that he made no such order and that the caveat remains on the record but was "spent" in light of his decision in P 112 (GD at [8] and [9]).

Parties' arguments on appeal

31 In AD 108, the Father argued that the Judge had erred in granting Mdm WKQ's resealing application summarily without hearing further arguments on the Deceased's domicile and the lawfulness of the Vanuatu Grant. He said that the Deceased had obtained Vanuatu citizenship for tax residency purposes, and that the Deceased had never entered Vanuatu. The Father also contended that

Mdm WKQ had procured the Vanuatu Grant by committing fraud on the Vanuatu court, by means of the following:

(a) Mdm WKQ did not inform the Vanuatu court of the UAE Court Decree which had identified the beneficiaries of the Deceased's estate and their respective shares;

(b) Mdm WKQ falsely declared to the Vanuatu court that she was married to the Deceased to obtain the Vanuatu Grant as the Deceased's lawful wife;

(c) Mdm WKQ did not disclose to the Vanuatu court the Deceased's assets in Singapore, the UAE, and Spain; and

(d) Mdm WKQ had been charged and sentenced to one-year imprisonment by the Algerian court for relying on forged documents and false information in the Vanuatu proceedings and she had refused to surrender to the Algerian authorities.

32 In AD 107, the Father argued that the Judge, by granting Mdm WKQ's resealing application in P 112, must be taken to have ordered the caveat to cease to have effect. The Father then argued that the Judge had erred in removing the caveat without giving him an opportunity to raise arguments on the Deceased's domicile and/or the lawfulness of the Vanuatu Grant.

33 Mdm WKQ argued that the Judge was correct in granting her resealing application. As SUM 123 was a specific application that only contemplated a stay of P 112 until the conclusion of the Vanuatu proceedings, and the Vanuatu proceedings had concluded by the time of the 24 November 2022 Hearing, the

Judge was entitled to grant an order in terms for her resealing application in P 112.

34 In relation to the Father's allegations of fraud, Mdm WKQ argued that these allegations should have been raised in Vanuatu to challenge the Vanuatu Grant. Given that the Father had failed to set aside the Vanuatu Grant in Vanuatu, Mdm WKQ argued that he should not be allowed to have a second bite of the cherry in Singapore.

35 On the issue of the Deceased's domicile, Mdm WKQ argued that the Judge was correct in finding that the Deceased was domiciled in Vanuatu. Mdm WKQ reasoned that the Deceased was a Vanuatu citizen from 18 February 2019 and was holding a Vanuatu passport issued on 27 February 2019. The Deceased had also included Mdm WKQ and their older child in his application for Vanuatu citizenship, which Mdm WKQ argued was evidence of his intention to reside in Vanuatu with her and their children.

The issues in their proper legislative context

36 SUM 123 was the Father's application to stay the Singapore proceedings pending his contest in Vanuatu. It was not disputed that these Vanuatu proceedings had concluded by the time the Judge dealt with these matters on 24 November 2022, and there was no appeal from his decision to dismiss the stay. The appeals arose out of the Judge's order to grant the resealing application in P 112.

37 Both parties in the court below had proceeded on a confused understanding of the applicable law and rules. We therefore requested the parties, by way of a letter dated 7 August 2023, to address us on, *inter alia*, the proper application of the Family Justice Rules 2014 ("FJR") to the present case.

We deal with these fundamental issues first, before we turn to the issues in the appeals.

Applicable law

38 Section 47 of the Probate and Administration Act 1934 (the "PAA") empowers the Singapore court to reseal letters of administration granted in certain foreign jurisdictions. The relevant parts of s 47 are reproduced below:

> **Power of court to re-seal**
>
> 47.—(1) Subject to subsections (3) and (4), where —
>
> (a) a court of probate in any part of the Commonwealth has, either before, on or after 25 February 1999, granted probate or letters of administration in respect of the estate of a deceased person; or
>
> (b) a court of probate in a country or territory, being a country or territory declared by the Minister under subsection (5) as a country or territory to which this subsection applies, has, on or after a date specified by the Minister in respect of that country or territory (referred to in this section as the relevant date), granted probate or letters of administration in respect of the estate of a deceased person,
>
> the probate or letters of administration so granted, or a certified copy thereof, sealed with the seal of the court granting the same, *may*, on being produced to and a copy thereof deposited in the General Division of the High Court, be sealed with the seal of the Family Justice Courts.
>
> (2) Upon sealing under subsection (1), the probate or letters of administration shall be of the like force and effect, and have the same operation in Singapore, as if granted by the General Division of the High Court to the person by whom or on whose behalf the application for sealing was made.
>
> (3) Before the probate or letters of administration is sealed with the seal of the Family Justice Courts, the General Division of the High Court may require such evidence as it thinks fit as to the domicile of the deceased person.

> (4) *If it appears that the deceased was not, at the time of his death, domiciled within the jurisdiction of the court from which the grant was issued, the seal shall not be affixed unless the grant is such as the General Division of the High Court would have made.*
>
> …
>
> [emphasis added]

39 It is undisputed that Vanuatu is a Commonwealth jurisdiction, and that the Vanuatu Grant falls under s 47(1)(*a*) of the PAA. Pursuant to s 47(4) of the PAA, the court, in granting a resealing application, must first determine the issue of the deceased's domicile. If it appears that the deceased person is not domiciled in the jurisdiction where the foreign court had issued the grant, the court should not reseal the grant, unless the grant is one that would have been made by the Singapore courts. Section 47(2) of the PAA provides for the power of the court to require evidence of the deceased's domicile if it deems fit. In addition, even if the deceased person was found to be domiciled in the jurisdiction where the grant was issued, the court still retains the discretion in determining whether to reseal the foreign grant. The use of the word "may" in s 47(1) of the PAA, in contrast to the usage of mandatory language found elsewhere in the statute, suggests that the grant of a resealing application is discretionary (see *Jennison v Jennison and another* [2023] Ch 225 at [39]; *Dicey, Morris and Collins on The Conflicts of Law* (Lord Collins of Mapesbury gen ed) (Sweet & Maxwell, 16th Ed, 2022) ("*Dicey, Morris and Collins*") at paras 27-008 and 27-020 with reference to the Colonial Probates Act 1892 (c 6) (UK)). In Singapore, Taylor J took the same view of the wording of the section in the early case of *Re Syed Hassan bin Abdullah Aljofri Deceased; The Estate & Trust Agencies (1927) Ltd v Syed Hamid Bin Hassan Aljofri & 2 Ors* [1949] MLJ 198, when he rejected the executors' argument that a Johore probate should be re-sealed "as a matter of course", holding: "I do not accept this; the Court

has always a discretion to postpone or even refuse resealing in special circumstances" (at 200).

40 The procedural rules governing probate proceedings are found in Part 14 of the FJR. Pursuant to r 208(1) of the FJR, an application for a grant is to be made by *ex parte* originating summons. This rule is within Division 1, which deals with non-contentious probate proceedings, while Division 2 deals with contentious probate proceedings.

41 In the present case, the Father had filed a caveat in CAVP 11 pursuant to s 33 of the PAA which provides as follows:

> **Caveat**
>
> 33.—(1) Any person having or claiming to have interest may, at any time after the death of a deceased person and before probate or letters of administration have been granted to his estate, enter a general caveat, so that no probate or letters of administration shall be granted without notice to the caveator.
>
> (2) After entry of any such caveat no such grant shall be made until the caveator has been given opportunity to contest the right of any probate applicant to a grant.

42 The FJR further specifies how caveats are to be dealt with:

> **Caveats**
>
> 239.—(1) Any person may, at any time after the death of a deceased person and before probate or letters of administration

have been granted to his estate, enter a caveat if he wishes to —

> (*a*) ensure that no grant is made without notice to the person; and
>
> (*b*) be given an opportunity to contest the right to a grant.

…

(3) Except as otherwise provided by this Division, a caveat shall remain in force for 6 months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(4) The Registrar must maintain a record of caveats and on receiving an application for a grant, he must cause the record of caveats to be searched.

(5) The Registrar must not make any grant if he has knowledge of an effective caveat in respect of the grant.

…

(7) A caveator may be warned by the issue from the Registry of a warning in Form 58 at the instance of any person interested (called in this rule the person warning) which must state his interest and, if he claims under a will, the date of the will, and must require the caveator to give particulars of any contrary interest which he may have in the deceased's estate.

(8) Every warning referred to in paragraph (7) or a copy of the warning must be served on the caveator.

…

(11) A caveator having an interest contrary to that of the person warning —

> (*a*) may, within 8 days after service of the warning on him, or at any time thereafter if no summons and

> affidavit have been filed under paragraph (14), enter an appearance in Form 59; and
>
> (*b*) must serve on the person warning a copy of the appearance.
>
> (12) A caveator having no interest contrary to that of the person warning but wishing to show cause against the making of a grant to that person —
>
> (*a*) may, within 8 days after service of the warning on him, or at any time thereafter if no summons and affidavit have been filed under paragraph (14), enter an appearance in Form 59; and
>
> (*b*) must serve on the person warning a copy of the appearance.
>
> (13) A caveator who enters an appearance must, unless the Court gives leave to the contrary, file and serve a summons for directions before the expiration of 14 days after the time limited for appearing.
>
> …
>
> (16) Upon the issuance of a summons for directions under paragraph (13), the matter shall be deemed to be contested and the expenses of entry of such caveat, the warning thereof, the appearance and the issuance of the summons for directions shall be considered as costs in the cause.
>
> (17) In this rule, "grant" includes a grant by any court outside Singapore which is produced for resealing.

43 Sections 240 and 242 of the FJR further state as follows:

> **Contested matters**
>
> 240. Every contested matter must be referred to a Judge who may dispose of the matter in dispute in a summary manner or direct that the provisions of Division 2 of this Part are to apply.
>
> …
>
> **Effect of caveat, etc., upon commencement of probate action**
>
> 242. Unless the Registrar by order made on summons otherwise directs —
>
> …
>
> (*b*) any caveat in respect of which a summons for directions has been issued shall remain in force until the commencement of a probate action or the making of an order for the caveat to cease to have effect; and
>
> (*c*) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under section 20) until application for a grant is made by the person shown to be entitled to the grant by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under rule 241, shall cease to have effect.

44 From the above, we summarise the following key principles:

(a) A person who wishes to reseal a Commonwealth grant may apply to do so by an *ex parte* originating summons. Such a person must show evidence that the deceased was domiciled in the jurisdiction of the grant sought to be resealed (s 47 of the PAA, r 208(1) of the FJR).

(b) Even where domicile is proved, the court retains a discretion to refuse to reseal the grant. There may also be reasons for which others may wish to oppose the grant. A person interested who wishes to oppose the resealing of the grant may file a caveat (s 33 of the PAA, r 239(1) of

the FJR). Once filed, the caveat remains in force for six months and operates to prevent the making of a grant by the Registrar (rr 239(3) to 239(5) of the FJR).

(c) After a caveat has been lodged, any person interested may issue the caveator a warning which requires the caveator to state his interest and give particulars of any contrary interest which he may have in the deceased's estate (r 239(7) of the FJR). On such warning being served on him, the caveator must enter an appearance and file and serve a summons for directions (rr 239(11) to 239(13) of the FJR). Upon issuance of the summons for directions, the matter shall be deemed to be contested (r 239(16) of the FJR).

(d) The contested matter must then be referred to a Judge who may dispose of the matter in dispute in a summary manner, or direct that the matter proceeds to trial (r 240 of the FJR).

(e) If the court directs that the matter proceeds to trial, a "probate action" will be deemed to have been commenced and the provisions of Division 2 of Part 14 of the FJR will apply (r 240 of the FJR).

(f) A caveat in respect of which a summons for direction has been issued would "remain in force until the commencement of a probate action or the making of an order for the caveat to cease to have effect" (r 242(*b*) of the FJR).

(g) The commencement of a probate action operates to prevent the sealing of a grant, until an application for a grant is made by the person shown to be entitled to the grant by the decision of the court in the

probate action (r 242(*c*) of the FJR). This ensures that no grant is sealed until the final adjudication of the probate action.

45 We add that in determining whether to summarily dispose of a contested matter under r 240 of the FJR, the court should apply the test for summary judgment applications and consider whether the caveator had raised any serious question that ought to be tried. As stated by the Court of Appeal in *Lim Oon Kuin and others v Ocean Tankers (Pte) Ltd (interim judicial managers appointed)* [2022] 1 SLR 434, "the threshold for granting summary judgment is a high one, and it must be clear that there is no real substantial question to be tried further" (at [30]). It will therefore not be sufficient for the caveator to provide a mere assertion in an affidavit of a given situation as the basis of his objection, or make assertions in his affidavit that are equivocal, lacking in precision, inconsistent or inherently improbable (*M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 at [19]; *Ma Hongjin v SCP Holdings Pte Ltd* [2018] 4 SLR 1276 at [32]).

The issues in the appeal

46 Having set out our analysis on the applicable law, we turn to consider how it applied to the present case. A person who wishes to reseal a grant should file an *ex parte* application. Mdm WKQ did so. The Judge assumed his order for resealing was an *ex parte* order, commenting that it could be set aside if fuller evidence and submissions were presented to the court at a later time (see GD at [28]). This was also an assumption made by Mdm WKQ, as reflected in her submissions in the appeals. However, while Mdm WKQ initially filed the application for resealing *ex parte*, the Father thereafter filed a caveat. Mdm WKQ issued the Father a warning pursuant to r 239(7) of the FJR and the Father then entered an appearance to the warning and issued a summons of directions

(SUM 123), presumably pursuant to rr 239(11) and 239(13) of the FJR. The summons for directions having been issued, *the matter would then be effectively considered under the FJR to be contested* (r 239(16) FJR). Both parties filed their affidavits and written submissions for SUM 123 and appeared *inter partes* before the Judge at the 24 November 2022 Hearing.

47 Pursuant to r 240 of the FJR, the Judge had two options in adjudicating the contested probate matter. He was empowered to deal with the matter summarily or to give directions to commence a probate action. However, the matter was clouded by the fact that SUM 123 merely sought a stay of P 112 until the proceedings contesting the Vanuatu Grant were concluded. While SUM 123 did state that the Father was contesting the grant of probate in both Vanuatu and the resealing application in Singapore, it did not clarify whether the latter was based solely on the contest in Vanuatu. Accordingly, at the hearing, the Judge dismissed SUM 123 because the Vanuatu proceedings were no longer alive. He then granted Mdm WKQ an order in terms for her resealing application in P 112. The Judge stated that he decided to "deal with the applicant's *ex parte* application for resealing of the Vanuatu Grant", saying that "an order made *ex parte* is, in principle, susceptible to being set aside" (GD at [28]). In the circumstances, although the Judge thought that he was dealing with P 112 on an *ex parte* basis, he was in fact dealing with it on an *inter partes* basis and the Judge must be taken to have dealt with the matter summarily when he ordered a resealing of the Vanuatu Grant. An appeal would be the only method to set aside the order. In relation to CAVP 11, r 242(*b*) of the FJR expressly states that the caveat would remain in force until the commencement of a probate action or the making of an order for the caveat to cease to have effect. Given that the Judge had summarily dismissed the Father's objections in granting the resealing order, he had effectively ordered the Father's caveat in

CAVP 11 to cease to have effect. Consequently, the Father was also entitled to appeal against the Judge's decision in CAVP 11 by way of AD 107.

48 AD 107 and AD 108 were therefore integrally related. The question on appeal was whether the Judge's summary order should be upheld, or the contested issues sent for trial.

49 Returning then to the parties' arguments, the contested issues that the Father contended required a trial were the following:

(a) The Deceased's domicile. This was a matter to be considered by the Court under s 47(4) of the PAA.

(b) The lawfulness of the Vanuatu Grant. This was relevant to the exercise of the Court's discretion under s 47(1) of the PAA.

Our decision

50 In our view, the parties' affidavits below raised triable issues as to both the Deceased's domicile and the lawfulness of the Vanuatu Grant. The Judge should not have disposed of the matter summarily without the benefit of fuller evidence at trial. We explain below.

The Deceased's domicile

51 In determining the domicile of a person, the following principles set out in *Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR(R) 765 ("*Peters Roger*") are instructive:

(a) Everyone acquires at birth a domicile of origin; the father's domicile if he is legitimate and born within the father's lifetime, and the

mother's if he is illegitimate or born after the father's death (*Peters Roger* at [16]). The domicile of origin stays with him until he acquires a domicile of choice or of dependence (*Peters Roger* at [17]).

(b) The domicile of choice is a conclusion or inference that the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. Therefore, a domicile of choice is acquired by the combination of residence (physical presence in that country) and intention of permanent or indefinite residence (*Peters Roger* at [18] and [19]).

(c) Where a person's intention is clear, any residence, however short, suffices to establish a domicile of choice. The determination of whether the person had the requisite intention to reside permanently or indefinitely in the country of residence is a highly factual inquiry (*Peters Roger* at [21] and [24]).

(d) A person abandons his domicile of choice in a country if he ceases to reside there and no longer has the intention of permanent or indefinite residence there. Both requisites must be satisfied. Upon the abandonment of his domicile of choice, a person's domicile of origin revives unless he acquires a new domicile of choice (*Peters Roger* at [25]).

52 As the applicant in P 112, Mdm WKQ bore the burden of proof to satisfy the court that the Deceased was domiciled in Vanuatu at the time of his death. She averred that the Deceased applied for Vanuatu citizenship together with her and their older child, and that they became Vanuatu citizens on 18 February 2019. She further averred that she and the Deceased jointly owned a

matrimonial property in Port Vila, Vanuatu, in which they lived together prior to his passing. Mdm WKQ accepted that the Deceased would go on business trips to Ajman, UAE and that he owned an apartment in Ajman. However, she said that the Deceased would always return home to Vanuatu after his business trips and that he would stay in hotels on his trips to Ajman.

53 The Father's case was that the Deceased was domiciled in the UAE at the time of his passing. The Father averred that the Deceased was a long-term resident of Ajman, UAE and owned an apartment and a hotel business in Ajman. The Father said that the Deceased also owned a logistics company in Algeria with his brother, Mr "X", and the Deceased travelled between Ajman and Algeria for his business ventures. The Father further averred that the Deceased had obtained his Vanuatu citizenship solely for tax residency purposes and that the Deceased was never domiciled in Vanuatu. Importantly, the Father asserted that both the Deceased and Mdm WKQ had never entered Vanuatu using their Vanuatu passports.

54 The Judge held that "it did *not* appear to [him] that the [Deceased] was not domiciled in Vanuatu" [emphasis in original] (GD at [52]). The Judge reasoned that the Deceased had sought and obtained Vanuatu citizenship, whereas there was no evidence that he sought the same status in the UAE, but only of a long-term resident (GD at [52(d)]). Furthermore, the copy of the Deceased's residence permit adduced by the Father suggested that the Deceased's long-term resident status in the UAE expired after 23 April 2019, shortly after he had obtained Vanuatu citizenship (GD at [52(d)]). The Judge was also persuaded by the fact that the Deceased had obtained Vanuatu citizenship together with Mdm WKQ and their elder child, and that it was unlikely he intended to settle in a different country from Mdm WKQ and his children (GD at [52(f)]). The Judge was also of the view that it was possible that

the Deceased and Mdm WKQ had entered Vanuatu on other passports, as we elaborate later.

55 We respectfully disagreed with the Judge's conclusion for the following reasons.

56 First, the Father exhibited a copy of the Deceased's Resident Identity Card in the UAE, which expired on 6 May 2022. It therefore had not expired but remained valid at the time of the Deceased's death.

57 Second, a domicile of choice is determined by the twin criteria of both residence (physical presence in the country) and intention of permanent residence (*Peters Roger* at [18] and [19]). The Father suggested that the Deceased had never entered Vanuatu. In support of this, the Father adduced a copy of an immigration search in Vanuatu which suggested that the Deceased and Mdm WKQ had never entered Vanuatu (the "Immigration Search"). The Immigration Search is reproduced below:

> RE- CERTIFICATION OF VANUATU ENTRY AND DEPARTURE INFORMATION RECORDS FOR [Mdm WKQ] AND [the Deceased].
>
> [Mdm WKQ], holder of Vanuatu Passport No. [XXXXXXX] and [the Deceased], holder of Vanuatu passport No. [XXXXXXX], have gained Vanuatu Citizens[hip] through the Vanuatu Development Support Program (VDSP).
>
> They have been issued Vanuatu passports on the 27th of February 2019, and have since then never used their travel documents for any entries in to the country. *According to our [border] management system, there are no records shown of them arriving or departing Vanuatu. They have never been to Vanuatu.*
>
> [emphasis added].

58 The Immigration Search was signed off by one Mr Jeffrey Markson, the Director of the Vanuatu Immigration and Passports Services and stamped with

the relevant stamp from the Vanuatu authorities. We were of the view that the Immigration Search was *prima facie* evidence that Mdm WKQ and the Deceased had never entered Vanuatu. The Immigration Search also indicated that Mdm WKQ and the Deceased had gained their citizenship through the Vanuatu Development Support Program, which the Father argued was a scheme under which any applicant could receive Vanuatu citizenship if they had made certain contributions to the Vanuatu government.

59 The Judge reasoned at [52(b)] of the GD that:

> [T]he caveator's Vanuatu lawyer asserted that the deceased and [Mdm WKQ] had never entered Vanuatu on their Vanuatu passport issued on 27 February 2019. He further asserted that once they had become Vanuatu citizens on 18 February 2019, they could not have obtained visas to enter Vanuatu on another passport. *These assertions still left open the possibility that, prior to 18 February 2019 (ie, before obtaining Vanuatu citizenship and Vanuatu passports), the [Deceased] and [Mdm WKQ] had entered Vanuatu on other passports and visas; and that they might have stayed on thereafter, or re-entered, using the passports and visas they already had. …*
>
> [emphasis added]

60 On her part, Mdm WKQ did not challenge the findings in the Immigration Search. More importantly, she did not allege that either the Deceased or she had entered Vanuatu on another passport. Accordingly, it was not for the Judge to make a finding on this possibility.

61 Third, Mdm WKQ did not adduce evidence of any property held by the Deceased in Vanuatu. When she applied for the Vanuatu Grant, she declared that the only property that the Deceased had was cash at an "estimate gross value of VT$1,000,000" (equivalent to approximately S$11,000). In her affidavit dated 24 August 2022 filed in CAVP 11, Mdm WKQ admitted that the Deceased did not have any bank accounts in Vanuatu. This was curious if the

Deceased habitually resided there. On the other hand, she contended that she and the Deceased owned a matrimonial property in Port Vila, Vanuatu in which they lived together with their children, and yet she did not supply its address or evidence of ownership. In her supporting affidavits dated 24 March 2022 and 24 August 2022 filed in P 112 and CAVP 11 respectively, she stated that her address to be "PO Box XXXX, Ras Al-Khaimah, United Arabs Emirates" instead of providing the address of her alleged matrimonial home in Vanuatu. Even in her application for the Vanuatu Grant before the Vanuatu Supreme Court, she used her lawyer's address, "Pacific Partners Lawyers, PO Box XXXX, Port Vila, Vanuatu" instead of her residential address in Vanuatu. There was therefore a complete absence of information regarding the alleged matrimonial property to support Mdm WKQ's narrative that she had lived together with the Deceased in Vanuatu. Nor had she declared the alleged matrimonial property in Port Vila as a property of the Deceased's estate in her application for the Vanuatu Grant. We therefore respectfully disagreed with the Judge's surmise (which was not Mdm WKQ's case) that "perhaps [Mdm WKQ] simply did not regard their home to be part of the [Deceased's] estate as she had jointly owned it with him" (GD at [52(c)]). In any event, this was a contentious issue.

62 Fourth, adding a further twist to the list of jurisdictions in which the Deceased could have been domiciled, the Father had adduced the birth certificate of the Deceased's and Mdm WKQ's older child issued by the general consulate of France in Madrid on 13 February 2017. In that birth certificate, it was stated that the child was born in January 2017 in Málaga, Spain. Importantly, the birth certificate also stated that the Deceased and Mdm WKQ were domiciled in Spain at that time and that the parties' residential address was in Málaga, Spain. This document, on its face, appeared to suggest that the

Deceased's domicile of choice, as of 13 February 2017, was Spain. If that was the case, the burden was on Mdm WKQ to prove that the Deceased had abandoned Spain as his domicile of choice and acquired a Vanuatu domicile of choice by 10 January 2021. However, neither Mdm WKQ nor the Father accounted for the fact that the Deceased appeared to be residing in Spain up until February 2017, and neither addressed the issue of when his domicile had changed either to the UAE or Vanuatu.

63 In the circumstances, the Judge ought not to have made a summary determination as to the Deceased's domicile.

The lawfulness of the Vanuatu Grant

64 The Father also argued that Mdm WKQ had procured the Vanuatu Grant by committing fraud on the Vanuatu Supreme Court. The Father raised a series of allegations concerning Mdm WKQ's dishonest conduct in the Vanuatu proceedings (see [31] above). One of the Father's main allegations was that Mdm WKQ had falsely declared that she was the Deceased's wife when she had never been lawfully married to the Deceased. The contentions the Father advanced on the lawfulness of the Vanuatu Grant engaged two issues: first, as a matter of law, whether such grounds could engage the discretion of the Singapore court not to reseal the Vanuatu Grant; and second, if so, whether there was sufficient factual basis for us to conclude that such a decision ought not to have been made summarily.

65 On the first issue, the Judge was of the view that the Vanuatu court should be the court that determines whether the Vanuatu Grant was lawfully obtained, and that the Father, by discontinuing his appeal in Vanuatu, had given up any remaining opportunity to set aside the Vanuatu Grant (GD at [46]).

Consequently, the Judge summarily dismissed the Father's objections on the lawfulness of the Vanuatu Grant. The implication of the Judge's decision was that the Singapore court would not consider allegations of fraud in a resealing application under s 47 of the PAA.

66 The Judge's view reflects a general position. Section 47 of the PAA acknowledges that the court of the deceased's domicile has jurisdiction and is competent to decide upon the validity of the will of a testator of the same domicile and the succession to his personal estate (Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (Butterworths Asia, 1993) ("Tan Yock Lin") at pp 583–584). Thus, the foreign court's determination will often be conclusive, notwithstanding that it has proceeded upon any misapprehension of the law, or that not all of the facts were brought before the foreign court (Tan Yock Lin at p 621; *Dicey, Morris and Collins* at para 28-006, citing *Re Trufort* (1887) 36 Ch D 600).

67 Nevertheless, and as we have outlined at [39], the words of s 47(1) of the PAA also make clear that the Singapore court has a discretion to refuse to reseal a foreign grant. The issue was whether special circumstances applied so as to engage the discretion of the court not to grant the resealing.

68 In the present case, the Father's contentions raised the issue of fraud. While the Vanuatu proceedings had drawn to a close, it must be noted that the Father's challenge in Vanuatu failed on procedural grounds and that his contentions of fraud had not been tested there. In the context of enforcement of foreign judgments, it is well-established that the Singapore court will refrain from enforcing a foreign judgment if it is shown that the plaintiff had procured the judgment by fraud. As the Court of Appeal held in *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515 ("*Hong Pian Tee*") at

[12] (and cited by the Court of Appeal again in *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 at [14]):

> Quite apart from the arrangements under the [Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)] or the [Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed)], it is settled law that a foreign judgment *in personam* given by a foreign court of competent jurisdiction may be enforced by an action for the amount due under it so long as the foreign judgment is final and conclusive as between the same parties. *The foreign judgment is conclusive as to any matter thereby adjudicated upon and cannot be impeached for any error, whether of fact or of law*: *Godard v Gray* (1870) LR 6 QB 139. In respect of such an action, an application for summary judgment may be made on the ground that the defendant has no defence to the claim: *Grant v Easton* (1883) 13 QBD 302. *The local court will only refrain from enforcing a foreign judgment if it is shown that the plaintiff procured it by fraud, or if its enforcement would be contrary to public policy or if the proceedings in which the judgment was obtained were opposed to natural justice*: see *Halsbury's Laws of England* vol 8(1) (Butterworths, 4th Ed) (1996 Reissue) paras 1008–1010.
>
> [emphasis added]

69 Where a defendant alleges that a plaintiff had procured a foreign judgment by fraud, the Singapore court, in determining whether to enforce the foreign judgment, will examine whether the fraud in question constitutes intrinsic or extrinsic fraud. The distinction between the two types of fraud has been comprehensively explained by the Court of Appeal in *Ong Han Nam v Borneo Ventures Pte Ltd* [2021] 1 SLR 1248 ("*Ong Han Nam*") at [49]:

> Broadly speaking, foreign judgments will not be recognised if they had been procured by one of two types of fraud. The first is extrinsic fraud (*eg*, bribery of a solicitor, counsel or witness, or collusion with a representative party to the prejudice of beneficial interest … *This type of fraud may be simply pleaded without any special restriction.* The second type of fraud is intrinsic fraud (*eg*, fraud which is 'imputed from alleged false statements made at the trial, which were met by counter-statements by the other side, and the whole adjudicated upon by the Court and so passed on into the limbo of estoppel by the judgment'…) *Foreign judgments can only be challenged on the ground of intrinsic fraud if 'fresh evidence has come to light*

> *which reasonable diligence on the part of the defendant would not have uncovered and the fresh evidence would have been likely to make a difference in the eventual result of the case' …* The distinction between the two types of fraud has been variously described as fraud going to the jurisdiction of the court (extrinsic fraud) and fraud going to the merits of the judgment (intrinsic fraud); perjury during discovery (extrinsic fraud) and perjury at trial (intrinsic fraud); or fraud taking place outside trial (extrinsic fraud) as opposed to within trial (intrinsic fraud) …
>
> [emphasis added]

70 Therefore, both extrinsic fraud and intrinsic fraud are potential grounds on which the Singapore court may refuse to enforce a foreign judgment, with the only difference being that for allegations of intrinsic fraud, there is an additional requirement that the defendant must adduce fresh evidence of fraud and show that it could not have been obtained with reasonable diligence at trial. The rationale behind this additional requirement is grounded in the principles of finality and the comity of nations. This is because where an allegation of fraud has already been wholly adjudicated upon by the foreign court, the Singapore court will generally not reopen the issue of fraud and pass judgment on an issue already determined by the foreign court, unless there is "fresh evidence" which could not have been considered by the foreign court at trial (*Hong Pian Tee* at [27]–[28]; [30]).

71 The above analysis is useful to our examination of the variety of different fraud contentions that the Father raised in the present case. The resealing of a foreign grant involves similar considerations of comity and finality as does the enforcement of a foreign judgment. A like approach should be adopted for resealing applications where an executor or administrator seeks to reseal a foreign grant of probate or letter of administration in Singapore.

72 On this premise, we turn to the contentions made by the Father. His primary contention was that the Deceased and Mdm WKQ were not married, and this was a matter relating to the jurisdiction of the Vanuatu Court. Mdm WKQ relied on a Vanuatu extract of her marriage certificate with the Deceased (the "Vanuatu Certificate") in the Vanuatu proceedings to prove her marriage in Spain on 25 April 2014. The Father contended that the Vanuatu Certificate was obtained by fraud and in using the certificate, Mdm WKQ had committed fraud on the Vanuatu court.

73 The Father first relied on the fact that the Vanuatu Certificate was obtained in Vanuatu on 12 March 2021, two months after the Deceased's death on 10 January 2021. The Father argued that the timing in which Mdm WKQ had obtained the Vanuatu Certificate cast doubt on its legitimacy. Mdm WKQ explained that the Vanuatu Certificate was merely an extract, not evidence of the actual solemnization of the wedding in Spain. However, Mdm WKQ was unable to produce her original marriage certificate that had been issued in Spain. We found this curious given that Mdm WKQ's Vanuatu lawyer, Mr Fleming, had stated in his affidavit that in order to obtain the Vanuatu Certificate, the original Spanish marriage certificate must have been provided to the Vanuatu authorities. Even in this appeal, neither Mdm WKQ nor her counsel offered any explanation for the absence of the Spanish marriage certificate.

74 Second, the Father argued that the Vanuatu Certificate itself contained false information. The Vanuatu Certificate stated that Mdm WKQ and the Deceased celebrated their marriage in Spain on 25 April 2014 and that their marriage was officiated by one "Juan Galan Cano". The Vanuatu Certificate further stated that there were two witnesses to the marriage, one "KI" and one "KK". The Father alleged that the marriage officiant who allegedly officiated the wedding was not an actual registrar in Spain, and the two alleged witnesses

were either uncontactable or fictitious. We noted that once again, Mdm WKQ did not deny or offer any response to address these allegations.

75 Third, the Father also adduced a certificate from the Department of Justice in Spain dated 29 April 2022 (the "Certificate of Celibacy") which suggested that there was no marriage celebrated by Mdm WKQ and the Deceased in Spain between 25 April 2014 and 11 February 2022. This directly contradicted the Vanuatu Certificate which stated that the marriage was celebrated in Spain on 25 April 2014 and officiated by "Juan Galan Cano". Mdm WKQ also did not offer any explanation for the Certificate of Celibacy.

76 Fourth, the Father alleged that Mdm WKQ had been convicted and sentenced to one-year imprisonment in Algeria for forgery and for providing false information in the Vanuatu proceedings. The Father further alleged that in the criminal proceedings in Algeria, Mdm WKQ had admitted that the Vanuatu marriage certificate contained falsities and that "Juan Galan Cano" was not a registrar in Spain. This was however only raised in the Father's Case on appeal. It may have taken place after the Judge's orders, given that the Father's case below was only that Mdm WKQ was facing criminal charges in Algeria. Once again, Mdm WKQ did not deny these allegations or offer any explanation. Instead, she countered with an allegation that the Father and the Deceased's brother, Mr X, also faced criminal prosecution in Algeria for forgery and for abetting forgery. The Judge dismissed the Father's allegations and found that Mdm WKQ was the Deceased's lawful wife for the reasons listed at [28] above.

77 In our view, Mdm WKQ's marital status was a matter suited for trial for the following reasons: (a) there was no evidence of Mdm WKQ's marriage certificate with the Deceased in Spain; (b) there was no explanation on Mdm WKQ's part as to the alleged falsities in the Vanuatu marriage certificate and

the results stated in the Certificate of Celibacy; and (c) there was uncertainty as to the reasons for the Father's concession in the UAE that Mdm WKQ was the Deceased's wife, and the absence of legal argument as to its effect on his allegation now made in Singapore that Mdm WKQ is not legally married to the Deceased. In our view, these were triable issues which could potentially have an impact on the Vanuatu court's jurisdiction in issuing the Vanuatu Grant. As for the alleged criminal proceedings against Mdm WKQ and against the Father, it was at present unclear how material these would be to the issues before the court in a resealing application.

78 The Father's second set of further allegations went to the merits of the Vanuatu Grant. The Father alleged that: (a) Mdm WKQ lied to the Vanuatu court that the Deceased only had VT$1,000,000 of cash (see [61] above) and no other assets; (b) Mdm WKQ deliberately omitted to mention that the Deceased had two other children; and (c) Mdm WKQ withheld information concerning the UAE proceedings and the UAE Court Decree which had identified the beneficiaries under the Deceased's estate. While these allegations appeared to be matters pertaining to the merits of the Vanuatu court's decision, we noted that these allegations were not tested in the Vanuatu courts. Mdm WKQ had made an *ex parte* application in the Vanuatu court to obtain the Vanuatu Grant without notice to the Father, and the Father's subsequent challenges failed on procedural grounds. Whether any of these matters reflected intrinsic or extrinsic fraud was another matter to be determined (see, for example, *Ee Hoong Liang v Panircelvan s/o Kaliannan and others* [2022] SGHC(A) 40 at [16]–[17]). Our decision was premised on the consideration that these issues ought not have been disposed of summarily.

Conclusion

79 For the above reasons, we allowed the Father's appeals in AD 107 and AD 108 and set aside the Judge's orders below. Under r 240 of the FJR, if the court directs that the matter proceeds to trial, it is open to the court to direct either the party who has warned the caveator or the caveator to file a writ, but it is usually the former (see Dr G. Raman, *Probate and Administration Law in Singapore and Malaysia* (LexisNexis, 4th Ed, 2018) at pp 128–129). In the present case, we were of the view that Mdm WKQ ought to establish her entitlement under s 47 of the PAA. Consequently, we directed her to file a writ in Singapore by 21 September 2023 to prove her entitlement to the resealing of the Vanuatu Grant, unless the deadline was extended by parties by agreement. Division 2 of Part 14 of the FJR would apply. The usual consequential orders were made.

80 Regarding costs, we ordered each party to bear his and her own costs of these appeals and of the hearing before the Judge. Neither party provided proper assistance to the Judge below. In respect of the appeal, the parties made relevant arguments only after we sent parties a list of issues on 7 August 2023 to consider. The Father's poor framing of the caveat in CAVP 11 and SUM 123 introduced unnecessary complexity. The Father's caveat in CAVP 11 only stated that he was challenging the lawfulness of the Vanuatu Grant but did not state that he was challenging the resealing application on the ground that the Deceased was not domiciled in Vanuatu at the time of his death. The Father's summons for directions in SUM 123 was also confusing in that he only sought a stay of proceedings pending the conclusion of the Vanuatu proceedings. While SUM 123 went on to state that he was contesting both the Vanuatu Grant in Vanuatu and the resealing application in Singapore, it was unclear whether the challenge to the resealing application in Singapore was based solely on the

contest in Vanuatu. The confusing manner in which the caveat and the summons for direction were framed made it difficult to ascertain what the Father was seeking in the proceedings below in Singapore and what his grounds of objections to the resealing application were. His applications to intervene in P 112 and his subsequent application for leave to file another caveat even before his appeals were decided, while not before us, were similarly misplaced. Once proceedings in Vanuatu came to an end, a careful reading of the FJR would have made clear to the Father the need to amend SUM 123 to state any grounds of objection to the resealing application that remained.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Valerie Thean
Judge of the General Division

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