

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 12

Probate No 112 of 2022

Caveat No CAVP 11/2022 (and Summons No 123 of 2022)

In the Matter of an Application by WKQ and
another matter

FOUNDATIONS OF DECISION

[Probate and Administration — Grant of letters of administration — Power of court to reseal foreign grant of letters of administration]

[Probate and Administration — Grant of letters of administration — Effect of reseal of foreign grant on caveats]

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[2023] SGHCF 12

General Division of the High Court (Family Division) — Probate No 112 of 2022, Caveat No CAVP 11/2022 (and Summons No 123 of 2022)

Andre Maniam J

18 October, 24 November 2022

8 March 2023

Andre Maniam J:

Introduction

1 This case concerns the administration of the estate of a man who passed away intestate on 10 January 2021. The applicant, Mdm “WKQ”, obtained a grant of letters of administration from the Vanuatu court¹ (“the Vanuatu grant”), on the basis that she was the deceased’s wife. By way of *ex parte* Originating Summons (Probate) HCF/P 112/2022 (the resealing application), on 22 February 2022 she applied for the Vanuatu grant to be resealed by the Singapore court.

2 On 29 March 2022, the deceased’s father Mr “WKR” (the caveator) filed a caveat – commencing caveat proceedings HCF/CAVP 11/2022 – asking that

¹ Foreign grant filed in HCF/P 112/2022 on 1 March 2022.

no grant be sealed in the deceased's estate without notice to the caveator. The caveat further stated:

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 it was not lawfully obtained and the Applicant is not a lawful beneficiary.

3 On 27 April 2022, the caveator then made a stay application, by way of HCF/SUM 123/2022 in HCF/CAVP 11/2022, for an order “[t]hat the application HCF/P 112/2022 to reseal the grant of probate from Vanuatu be stayed until the proceedings contesting the grant in Vanuatu are concluded”, on the ground that “the Caveator is contesting the grant of probate in both Vanuatu and the resealing in Singapore.”

4 I heard the stay application on 18 October 2022 and 24 November 2022 (the “November hearing”). By the time of the November hearing, the proceedings contesting the Vanuatu grant had been concluded against the caveator. As the stay sought was just “until the proceedings contesting the grant in Vanuatu are concluded”, I dismissed the caveator's stay application.

5 There being no stay, or pending stay application, the applicant invited me to deal with the resealing application; I did so and ordered that the Vanuatu grant be resealed.

6 The caveator filed appeal AD/CA 107/2022 in respect of the caveat proceedings HCF/CAVP 11/2022, and appeal AD/CA 108/2022 in respect of the resealing application HCF/P 112/2022. These are my grounds of decision.

What is the caveator appealing against?

7 AD/CA 108/2022 is the caveator’s appeal against my order that the Vanuatu grant be resealed.

8 It was, however, not clear what the caveator was appealing against by AD/CA 107/2022 in relation to the caveat proceedings. The notice of appeal states that the appeal is against the whole of my decision in HCF/CAVP 11/2022 given on 24 November 2022. What I decided in those proceedings that day, was that the caveator’s stay application be dismissed with costs.

9 At a case management conference on 14 December 2022, the assistant registrar asked the caveator’s counsel to clarify what AD/CA 107/2022 was about. The caveator’s counsel stated that the caveator was not appealing against the dismissal of the stay application, and would not seek to challenge my refusal to grant the stay; rather, the caveator was appealing against an express order that I had supposedly made for the removal of the caveat. However, I made no such order, and the caveat remains on the record.

10 Be that as it may, in these grounds of decision I will address the reseat of the foreign grant, the dismissal of the stay application, as well as the status of the caveat.

The stay application

11 The applicant obtained the Vanuatu grant on 10 November 2021, in Vanuatu Probate Case No. 3613 of 2021.

12 On 5 May 2022, the caveator filed Civil Case No. 832 of 2022 in Vanuatu to quash the Vanuatu grant. That was after the caveator had filed his

stay application on 27 April 2022 in the caveat proceedings, seeking a stay of the resealing proceedings until the proceedings contesting the Vanuatu grant were concluded. When the stay application was filed, there were no proceedings contesting the Vanuatu grant – those proceedings were commenced some eight days later.

13 On 11 August 2022, Civil Case No. 832 of 2022 was struck-out for non-compliance with the Vanuatu court’s orders in relation to service, and for want of prosecution.² Further, the Vanuatu court stated, “the Claim was misconceived as the decision in Probate Case No. 21/3613 should instead be challenged by way of appeal.”³

14 At a case conference in the Singapore proceedings on 26 August 2022, the court was informed of the striking-out of the Vanuatu proceedings. At a further case conference on 5 September 2022, the caveator’s counsel informed the court that there was an appeal in the Vanuatu proceedings. The caveator then affirmed an affidavit on 16 September 2022 where he said (at para 33), “My counsel in Vanuatu *has since filed an appeal against the striking out*” [emphasis added]; the caveator also filed an affidavit from a Vanuatu lawyer, affirmed on 19 September 2022, which stated in para 34: “An application *has been made* to address the dismissal of Supreme Court Civil Case No. 832 of 2022 which would set aside the Supreme Court decision of Civil Probate Case No. 3163 of 2021.”⁴ [emphasis added]

² Applicant’s affidavit dated 24 August 2022, pages 19–20.

³ Applicant’s affidavit dated 24 August 2022, page 20.

⁴ Affidavit of Mr Daniel Kaukare Yawha (“Mr Yawha”) dated 19 September 2022, para 34.

15 In fact, *no such appeal or application had been made*, as confirmed in the further affidavit from the caveator’s Vanuatu lawyer affirmed on 12 October 2022, at para 4: “The Application to address the dismissal of the Supreme Court Civil Case No. 832 of 2022 which would set aside the Supreme Court decision of Civil Probate Case No. 3163 of 2021 *was not filed* as the presiding Judge was on bereavement leave at the time of intended filing.”⁵ [emphasis added]

16 In that affidavit, the caveator’s Vanuatu lawyer said that an appeal had been filed,⁶ exhibiting as “FDY1” a document dated 12 October 2022 (the same date the affidavit was affirmed) captioned “Notice and Grounds of Appeal” for a Vanuatu appeal.⁷ That document asked that the judgment in Civil Probate Case No. 3163 of 2021 be set aside, and that letters of administration be granted to the caveator instead.

17 At the hearing of 18 October 2022, I admitted that 12 October 2022 affidavit from the caveator’s Vanuatu lawyer, allowed a reply affidavit from the applicant’s Vanuatu lawyer to be filed, and adjourned the hearing.

18 It was only on 12 October 2022 that the caveator filed an application in Vanuatu for leave to appeal out of time; however, that application was then *discontinued* by the caveator on 26 November 2022. This was confirmed in the applicant’s Vanuatu lawyer’s further affidavit affirmed on 27 October 2022.⁸ He exhibited:

⁵ Mr Yawha’s affidavit dated 12 October 2022, para 4.

⁶ Mr Yawha’s affidavit dated 12 October 2022, paras 7 and 9.

⁷ Mr Yawha’s affidavit dated 12 October 2022, exhibit “FDY-1”.

⁸ Mr Mark Fleming’s affidavit dated 27 October 2022, paras 7–10.

(a) A letter dated 24 October 2022 from the caveator’s Vanuatu lawyer stating that the caveator’s application for leave to appeal out of time (filed on 12 October 2022) would be heard on 16 November 2022.

(b) A Notice of Discontinuance dated 26 October 2022 which was signed by the caveator’s Vanuatu lawyer and filed with the Vanuatu court. Addressed to the applicant, it stated (in relation to the caveator’s purported Vanuatu appeal), “The Appellant have [*sic*] discontinued this proceeding against you.”

(c) The Vanuatu court’s handwritten notes dated 27 October 2022 stating that “Applicant for leave to appeal has filed a notice of discontinuance...The application for leave to appeal is marked as withdrawn. There was never any appeal on foot so nothing to discontinue.” The court’s notes further record that “[c]ounsel both attended and confirmed the information and orders set out above.” (A copy of the Vanuatu court’s typed note was shown to me at the hearing on 24 November 2022, and thereafter provided by correspondence on 17 December 2022.) The applicant’s Vanuatu lawyer elaborated in para 9 of his affidavit that at that hearing on 27 October 2022, the caveator’s Vanuatu lawyer “confirmed the matter is closed meaning they will not be seeking to proceed further.”

19 With the discontinuance of the caveator’s application for leave to appeal on 26 October 2022, as noted by the Vanuatu court on 27 October 2022, the caveator’s attempts to challenge the Vanuatu grant came to an end.

20 The caveator had only sought to stay the applicant’s application for resealing the Vanuatu grant “until the proceedings contesting the grant in

Vanuatu [were] concluded”. Those proceedings were concluded by the time of the November hearing before me. Accordingly, I dismissed the stay application.

The resealing application

Applicable legislation

21 Section 47 of the Probate and Administration Act 1934 (“the Act”) empowers the Singapore court to reseal letters of administration granted in certain foreign jurisdictions including Vanuatu. When so resealed, the letters of administration shall be of the like force and effect, and have the same operation in Singapore, as if they were granted by the General Division of the High Court to the person by whom or on whose behalf the application for sealing was made (s 47(2) of the Act).

22 Section 47(4) of the Act provides that “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.”

23 The caveator contended that: (a) the deceased was not domiciled in Vanuatu; and (b) the Vanuatu grant was not one “such as the General Division of the High Court would have made.” On the latter point, the caveator contended that the applicant was not the deceased’s wife, and consequently not a beneficiary of his estate – thus, the Vanuatu court should not have granted her letters of administration, and the Singapore court should not reseal the Vanuatu grant.

The ex parte application for resealing the Vanuatu grant

24 With the dismissal of his stay application imminent, the caveator sought to stay the resealing application further, on the basis that he had just filed an application to intervene in the resealing application, and could raise further matters for the court’s consideration relating to the deceased’s domicile – that intervention application was accepted as HCF/SUM 366/2022 filed on 29 November 2022. The caveator contended that the court should only proceed to deal with the resealing application if his intervention were not allowed. In effect, he was asking that the resealing application be stayed until the intervention application was dealt with.

25 It would have been incongruous to stay the resealing application on account of an intervention application having been filed, when I had just dismissed the caveator’s stay application (for a stay until the conclusion of the proceedings challenging the Vanuatu grant). Moreover, by the time of the November hearing, the applicant’s resealing application (made *ex parte* on 22 February 2022) had already been pending for more than nine months.

26 The caveator offered no explanation why he did not seek to intervene in the resealing application, at an earlier stage. Further, the assistant registrar had at a pre-trial conference (“PTC”) on 5 September 2022 observed that the stay application was for a “stay until proceedings contesting the grant in Vanuatu are concluded” and that the summons “is phrased in such a way that inheritance laws and domicile are not relevant to whether proceedings in Vanuatu are concluded.” Thus, the affidavit of foreign law that the caveator was given leave to file and serve was limited to “the stage of proceedings in Vanuatu and whether proceedings in Vanuatu are concluded”; the assistant registrar did *not*

give the caveator leave to include matters regarding domicile or inheritance laws in that affidavit of foreign law.

27 Despite what had happened at that PTC, the caveator did not seek to broaden his stay application beyond seeking a stay until the conclusion of proceedings in Vanuatu. Instead, the caveator filed and served an affidavit of foreign law (affirmed on 19 September 2022) that included matters regarding domicile and inheritance laws. In response, the applicant submitted that paragraphs 5 to 32 of that affidavit should be expunged and/or wholly disregarded.⁹ In those circumstances, the applicant did not seek leave to file a reply affidavit on those aspects.

28 Bearing in mind the history of the matter, I decided to deal with the applicant's *ex parte* application for resealing of the Vanuatu grant. In doing so, I recognised that an order made *ex parte* is, in principle, susceptible to being set aside, particularly if fuller evidence and submissions are later presented to the court. Since my decision, it appears that the caveator is headed in that direction, by pressing on with his intervention application.

The claimant's opposition to the resealing application

29 The claimant's opposition to the resealing application was stated as follows in the caveat: "The Caveator objects to application HCF/P 112/2022 to reseal the grant of probate from Vanuatu on the grounds it was not lawfully obtained and the Applicant is not a lawful beneficiary."

30 In the Vanuatu proceedings, the caveator contended that the Vanuatu grant was not lawfully obtained because the applicant had falsely represented to

⁹ Applicant's submissions, para 9.

the Vanuatu court that: (a) the deceased was domiciled in Vanuatu; and (b) the applicant was the deceased's wife. The same issues of the deceased's domicile, and whether the applicant was the deceased's wife, are relevant to the Singapore court's consideration of the applicant's resealing application under s 47 of the Act.

31 In the Singapore proceedings, the caveator also alleged that the deceased's Vanuatu citizenship (and that of the applicant) had been obtained using nomination forms bearing *forged* signatures of Mr "X" (the deceased's brother).¹⁰ This allegation was made in the caveator's affidavit dated 16 September 2022, but it was not made in the Vanuatu proceedings, not even in the "Notice and Grounds of Appeal" document dated 12 October 2022.¹¹ Moreover, that allegation was made in the last factual affidavit filed before the November hearing, and in the circumstances that allegation was not addressed by the applicant on affidavit.

32 The caveator abandoned his challenge to the *Vanuatu grant* (when he withdrew his application for leave to appeal out of time), and moreover the caveator never challenged the deceased's *Vanuatu citizenship* in the Vanuatu courts. Indeed, on 27 July 2022 the caveator's solicitors wrote to court, enclosing an affidavit of the caveator's Vanuatu lawyer dated 11 July 2022, para 4(a) of which stated the lawyer's instructions that the deceased "*was a Vanuatu citizen* who was domiciled in the United Arab Emirates during his lifetime" [emphasis added]. (The assistant registrar ultimately did not give leave for that affidavit to be filed.)

¹⁰ Caveator's affidavit dated 16 September 2022, paras 7.4.3 and 7.5 and pages 38–44.

¹¹ Mr Yawha's affidavit dated 12 October 2022, exhibit "FDY-1".

33 In any event, I was not prepared to summarily accept that Mr X’s signatures on the citizenship nomination forms had been forged, or, if they were, that the applicant was implicated in that.

Did it appear that the deceased was not domiciled in Vanuatu?

The threshold question of domicile in resealing applications

34 Under s 47(4) of the Act, the threshold question of domicile in resealing applications is whether “*it appears* that the deceased was not, at the time of his death, domiciled within the jurisdiction of the [foreign] court from which the grant was issued” [emphasis added]. If, however, it appears that the deceased was not domiciled within the foreign court’s jurisdiction at the time of his death, then the foreign grant can still be resealed if the grant is such as the General Division of the High Court would have made.

The parties’ positions on the deceased’s domicile

35 The deceased was born in France, had French citizenship, and France was his domicile of origin.¹² Both the applicant and the caveator were however agreed that, by the time of his death, the deceased was no longer domiciled in France.

36 The caveator’s Vanuatu lawyer cited *Mark v Mark* [2005] UKHL 42 at 37 for the proposition that “[a person’s] domicile of origin adheres to him until he actually settles with the requisite intention in some other country”.¹³ In that regard:

¹² Caveator’s affidavit dated 31 May 2022, para 9.

¹³ Mr Yawha’s affidavit dated 19 September 2022, para 28.

- (a) the applicant said that the deceased was domiciled in Vanuatu;¹⁴
- (b) the caveator said that the deceased was domiciled in the United Arab Emirates.¹⁵

37 The applicant cited various links between the deceased and Vanuatu:

- (a) Residence: the applicant gave the deceased’s address as “Port Vila (General), Port Vila Municipal Council, Efate Island, Shefa Province Vanuatu”. The Vanuatu grant likewise referred to the deceased as being “of Port-Vila, Vanuatu”.¹⁶ The applicant said the deceased was primarily living in Vanuatu prior to his death, despite his travels; she and the deceased owned a property in Port Vila, Vanuatu, and would live in the same when the deceased was not traveling.¹⁷
- (b) Citizenship:¹⁸ the deceased was a Vanuatu citizen from 18 February 2019 – the applicant exhibited the Vanuatu Government Citizenship’s Office and Commission’s certification of the Vanuatu citizenship for her and the deceased,¹⁹ and the Vanuatu citizenship application form (for the deceased, the applicant as his wife, and their elder child – who was then their only child), and related documents.²⁰

¹⁴ Applicant’s statement filed with her resealing application dated 22 February 2022.

¹⁵ Caveator’s affidavit dated 31 May 2022, para 14.

¹⁶ Applicant’s statement filed with her resealing application dated 22 February 2022.

¹⁷ Applicant’s affidavit dated 24 August 2022, paras 13, 45, 46.

¹⁸ Applicant’s affidavit dated 24 August 2022, paras 12, 13, 42, 43, 46.

¹⁹ Applicant’s affidavit dated 24 August 2022, pages 50–51.

²⁰ Applicant’s affidavit dated 24 August 2022, pages 36–45.

(c) Passport: the deceased had a Vanuatu passport²¹ issued on 27 February 2019, and the applicant cited the deceased’s Vanuatu passport number as his identification number;²² the applicant and their elder child also had Vanuatu passports issued the same date;²³ their younger child too had a Vanuatu passport, but that was issued on 20 January 2021, after the deceased’s death.

(d) Marriage certificate: the applicant exhibited her Vanuatu marriage certificate, titled “Registration of Marriage”²⁴ – that referred to the marriage between the deceased and the applicant as having been celebrated on 25 April 2014 at Sain Pedro, Spain by one Mr “Y” according to Islamic rites; there was a “declaration” date of 12 March 2021 (after the deceased’s death on 10 January 2021).

(e) Children’s birth certificates: the applicant exhibited the Vanuatu birth certificates for her two children, titled “Registration of Birth” –

(i) their elder child’s certificate²⁵ stated “parents married”, with 5 December 2019 as the date of “declaration” by “parents”;

(ii) their younger child’s certificate²⁶ likewise stated “parents married”, but it had 16 February 2021 (after the deceased’s death) as the date of “declaration” by the applicant.

²¹ Applicant’s affidavit dated 24 August 2022, page 26.

²² Applicant’s statement filed with her resealing application dated 22 February 2022.

²³ Applicant’s affidavit dated 24 August 2022, pages 25 and 63.

²⁴ Applicant’s affidavit dated 24 August 2022, page 24.

²⁵ Applicant’s affidavit dated 24 August 2022, pages 56.

²⁶ Applicant’s affidavit dated 24 August 2022, pages 61.

38 The caveator, however, asserted that the deceased was domiciled in the UAE rather than Vanuatu:

(a) Residence: the deceased was at some point a long-term resident of Ajman, UAE; he had a UAE residence permit and resident identity card.²⁷ He owned a property in Ajman, and in Spain.²⁸ The caveator said the deceased had told him that he had obtained tax residency in Vanuatu due to the liberal tax laws there²⁹ (but in a later affidavit the caveator said the deceased merely mentioned looking for a tax haven and “[a]t no point did the Deceased mention about Vanuatu”).³⁰

(b) Citizenship: the nomination forms for Vanuatu citizenship were purportedly signed by the deceased’s brother Mr X as a witness, but the caveator said that signature was forged – he exhibited a statement from Mr X confirming this.³¹ Moreover, the application for the applicant’s citizenship was on the basis that she was the deceased’s wife, but the caveator said that was false.³²

(c) Passport: the caveator said that the deceased and the applicant had never entered Vanuatu with their Vanuatu passports (issued on 27 February 2019), and once they had become Vanuatu citizens (on 18

²⁷ Caveator’s affidavit dated 31 May 2022, paras 10–12, pages 17–18.

²⁸ Caveator’s affidavit dated 31 May 2022, paras 12 and page 19, paras 20–21.

²⁹ Caveator’s affidavit dated 31 May 2022, para 15.

³⁰ Caveator’s affidavit dated 16 September 2022, para 9.4.

³¹ Caveator’s affidavit dated 16 September 2022, paras 7.4.3 and 7.5 and pages 38–44.

³² Caveator’s affidavit dated 31 May 2022, paras 7–8, 16–19, 41–46 and pages 82–89; Caveator’s affidavit dated 16 September 2022, paras 11–12, 20–21.

February 2019) they could not obtain visas to enter Vanuatu on another passport.³³

(d) Marriage certificate: the declaration date was 12 March 2021, after the deceased's death;³⁴ the caveator said there was no record in Spain of such a marriage, the name of one of the purported witnesses was incorrectly spelled and he had declined contact with the caveator and his family, and the other purported witness could not be found and the caveator believed he did not exist.³⁵ Further, the marriage was supposedly celebrated before Mr Y on 25 April 2014 in Sain Pedro, Spain, but there is a record of the applicant telling the Algerian court (that was conducting certain investigations) that Mr Y was instead a Vanuatu employee.³⁶

(e) Children's birth certificates: the caveator maintained that the deceased and the applicant were never married, and that their Vanuatu citizenships had been wrongly obtained.³⁷

What was the relationship between the deceased and the applicant?

39 In addressing the issue of domicile, it was relevant to consider the relationship between the deceased and the applicant. Were they:

(a) married and living together in Vanuatu (as the applicant said); or

³³ Caveator's affidavit dated 16 September 2022, para 14; Mr Yawha's affidavit dated 19 September 2022, para 25 and exhibit "DY2".

³⁴ Caveator's affidavit dated 31 May 2022, para 41.

³⁵ Caveator's affidavit dated 31 May 2022, paras 41–43.

³⁶ Mr Yawha's affidavit dated 19 September 2022, para 17 and exhibit "DY1".

³⁷ Caveator's affidavit dated 16 September 2022, para 10; caveator's affidavit dated 31 May 2022, paras 41–46.

(b) unmarried and living in separate homes, neither of which were in Vanuatu (as the caveator said)?

40 The deceased regarded the applicant as his wife – he had represented that to the Vanuatu authorities in his application for Vanuatu citizenship, and in the application for his elder child’s Vanuatu birth certificate (see [52(f)] below).

41 The Vanuatu authorities too regarded the applicant as the deceased’s wife: they gave her Vanuatu citizenship as the spouse of the deceased (the principal candidate for citizenship), and issued their elder child a Vanuatu birth certificate stating, “parents married”. The Vanuatu court likewise regarded the applicant as the deceased’s wife: the Vanuatu grant described the deceased as a “married man” in the Vanuatu grant, and the applicant as his wife, and letters of administration were granted to her.

42 The Vanuatu court was not the only foreign court to regard the applicant as the deceased’s wife: so too did the UAE courts in proceedings contested between the caveator and the applicant, for the UAE inheritance certificate in relation to the deceased’s estate.

43 What the caveator said about those UAE proceedings was both telling, and troubling:

The Federal Court in Ajman granted a share to [WKQ] as I had acknowledged her as the Deceased’s wife under Sharia law. For clarity, my failure to acknowledge [WKQ] would mean that the children would be deemed illegitimate and would not be able to inherit from the Deceased’s estate. I did not want that status for the Deceased’s children but they are and remain illegitimate.

44 Put bluntly, the caveator said that in relation to the UAE proceedings he had *falsely* acknowledged the applicant as the deceased’s wife; he did so in order

that the UAE court would regard her children as legitimate; consequently, the UAE court regarded the applicant as the deceased's wife, and her children as legitimate (and the applicant and her children as beneficiaries of the deceased's estate).

45 Having taken the position in relation to the UAE proceedings that the applicant was the deceased's wife, and having obtained an order from the UAE court on that basis, the caveator then turned around and contended in the Singapore proceedings that in truth the applicant was *not* the deceased's wife, and her children were *illegitimate*.

46 This was compounded by the caveator's conduct in relation to the Vanuatu proceedings: by discontinuing his application for leave to appeal out of time, the caveator gave up any remaining opportunity to challenge the Vanuatu grant.

47 In summary:

- (a) the deceased regarded the applicant as his wife, and had represented this to the Vanuatu authorities;
- (b) the Vanuatu authorities and the Vanuatu court regarded the applicant as the deceased's wife;
- (c) the UAE court regarded the applicant as the deceased's wife; and
- (d) the caveator (in relation to the UAE proceedings) acknowledged the applicant as the deceased's wife – but he says this was a false position that he took so that the UAE court would regard her as the deceased's wife, and consequently regard her children as legitimate.

48 The parties did not make submissions on whether the foreign courts' decisions regarding the applicant as the deceased's wife, or the caveator's conduct in acknowledging her as the deceased's wife in relation to the UAE proceedings, might stand in the way of the caveator contending to the contrary in the Singapore proceedings (for instance, because of estoppel or abuse of process). In the circumstances, I simply regarded the evidence in relation to the foreign proceedings as part of the body of evidence before me.

49 The caveator's acknowledgment of the applicant as the deceased's wife was an admission against his interest, for if the applicant were regarded as the deceased's wife, and her children as legitimate, the applicant and her children would be regarded as beneficiaries of the deceased's estate; the caveator's share in the deceased's estate would consequently be reduced.

50 I noted that the caveator had raised issues about whether there had truly been a civil marriage between the deceased and the applicant, whether as stated on the Vanuatu marriage certificate,³⁸ or at all.

51 On the state of the evidence before me at the November hearing, however, I accepted that the applicant was the deceased's wife, as had been accepted by the deceased, the Vanuatu authorities and the Vanuatu court, the courts UAE court, and the caveator himself in relation to the UAE proceedings. This in turn had a bearing on the issue of domicile (see [52(e)] and [52(f)] below).

³⁸ Caveator's affidavit dated 31 May 2022, page 40.

Conclusion on the deceased's domicile

52 On the material before me, it did *not* appear to me that the deceased was not domiciled in Vanuatu:

(a) Vanuatu proceedings: the most appropriate court to decide whether the Vanuatu court had made the Vanuatu grant based on false information, was the Vanuatu court; but the caveator, by discontinuing his application for leave to appeal out of time, had given up any remaining opportunity to convince the Vanuatu court of that (despite the confidence the caveator and his Vanuatu lawyer had earlier expressed regarding the prospects of challenging the Vanuatu grant).

(b) Residence in Vanuatu (entering Vanuatu): the caveator's Vanuatu lawyer asserted that the deceased and the applicant had never entered Vanuatu on their Vanuatu passports 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 the applicant 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. The caveator's Vanuatu lawyer's assertion that Vanuatu citizens cannot obtain visas for use with other passports, was based on a reference to the Vanuatu Immigration Act No. 17 of 2010, but he did not set out or even cite the relevant sections. This contention also results in the odd situation that from 18 to 26 February 2019, when the deceased and the applicant were Vanuatu citizens but had yet to obtain Vanuatu passports, they could no longer use their other passports to obtain a visa to enter

Vanuatu, although they could have done so before obtaining Vanuatu citizenship. I could not conclude from the caveator's Vanuatu lawyer's assertions and the letter he had obtained from the Vanuatu Department of Immigration, that the deceased and the applicant had never entered Vanuatu at any time – they may well have done so using other passports.

(c) Residence in Vanuatu (staying in Vanuatu): the applicant said that she and the deceased owned a property in Vanuatu, and lived there when the deceased was not travelling.³⁹ She did not however declare that as property of the estate in her application for the Vanuatu grant (but only cash savings of an estimated or known value of VT1,000,000)⁴⁰ – perhaps she simply did not regard their home to be part of the deceased's estate as she had jointly owned it with him.

(d) Residence in UAE: the caveator said that the deceased had long-term residency in Ajman, UAE, and so the deceased bought an apartment there.⁴¹ In response, the applicant said that the deceased did not stay in the UAE apartment, but in hotels.⁴² The caveator then said it was an unsubstantiated aspersion to say that the deceased was staying in hotels, but even if he were, the deceased had made more attempts to have roots in UAE as compared to other jurisdictions including Vanuatu.⁴³ The fact remains that the deceased sought and obtained Vanuatu citizenship, whereas there is no evidence that he sought the same status in UAE, but only that of a long-term resident. Moreover, the copy of the

³⁹ Applicant's affidavit dated 24 August 2022, paras 15, 45, 46.

⁴⁰ Applicant's affidavit dated 24 August 2022 page 33.

⁴¹ Caveator's affidavit dated 31 May 2022, para 12.

⁴² Applicant's affidavit dated 24 August 2022, para 15.

⁴³ Caveator's affidavit dated 16 September 2022, para 16.

deceased's residence permit exhibited by the caveator had an expiry date of 23 April 2019,⁴⁴ just after the deceased obtained his Vanuatu citizenship and passport in February 2019, and some time before his death in January 2021. There is no documentary evidence that the deceased had long-term resident status in the UAE after 23 April 2019. The applicant said the deceased stayed with her; the caveator did not similarly claim that the deceased stayed with him – indeed, the caveator did not claim to reside in the UAE; he apparently resided in France.

(e) Deceased's residence, relative to residence of the applicant and their children: the caveator's contention that the deceased's domicile was UAE implies that the deceased intended to settle in a country apart from his wife and children – I consider that unlikely especially given his inclusion of the applicant as his spouse, and their elder child, in his application for Vanuatu citizenship. The caveator does not say that the applicant and her children were resident in UAE, only that the deceased was resident there, and travelled there, because of his work. In this regard, the applicant said that the caveator was aware that she had married the deceased, and that they were living together with their children as well, and that the caveator would drop by their house from time to time to spend time with the deceased and the children (this may have been a reference to a home in Spain, where they were residing in 2017,⁴⁵ rather than Vanuatu).⁴⁶ The caveator's response was simply to “not admit” what the applicant had said; he maintained that the deceased had not spoken (to him) about being married, the deceased lived

⁴⁴ Caveator's affidavit dated 31 May 2022, page 17.

⁴⁵ Applicant's affidavit dated 24 August 2022, page 18.

⁴⁶ Applicant's affidavit dated 24 August 2022, para 21.

separately from the applicant, and the applicant had her own home in Spain, rather than a family home with the deceased. The caveator does not however say that the deceased was domiciled in *Spain* (and neither does the applicant say this).

(f) Vanuatu citizenship: even if the signature of Mr X as a witness on the Vanuatu citizenship nomination forms were forged (as he asserts), the fact remains that the deceased had sought and obtained Vanuatu citizenship. Furthermore, the deceased was the principal candidate for Vanuatu citizenship, in his application he had named the applicant as his wife, and she had obtained Vanuatu citizenship on that basis. The deceased and the applicant represented to the Vanuatu authorities that they were married parents of their elder child (who was then their only child), and obtained a Vanuatu birth certificate for him. These are all indications of the deceased's intention to settle in Vanuatu with his wife and children.

53 On the evidence before me at the time of the November hearing, it did not appear that the deceased was domiciled somewhere other than Vanuatu; in particular, it did not appear that the deceased was domiciled in UAE (as the caveator contended). In the circumstances, it was open to me to order that the Vanuatu grant be resealed, and I did so.

54 In the circumstances, it was not necessary for me to decide whether, if it appeared that the deceased was *not* domiciled in Vanuatu, the Vanuatu grant should nevertheless be resealed as a grant "such as the General Division of the High Court would have made".⁴⁷

⁴⁷ Section 47(4) of the Act.

55 I would simply observe that insofar as that involves the issue of whether the applicant was the deceased's wife (and consequently a lawful beneficiary of his estate), I have addressed that issue at [39]–[51] above.

The caveat

56 As I stated above (at [8]–[9]), I made no order for the removal of the caveat. It was, however, the necessary consequence of my order in HCF/P 112/2022 that the Vanuatu grant be resealed, that the caveat would have ceased to have effect. Prior to that, the caveat had been effective in ensuring that the foreign grant would not be resealed without notice to the caveator: indeed, the caveator was represented by counsel at the November hearing when I ordered that the Vanuatu grant be resealed. After that point, however, the caveat would have been spent. The fact remains, though, that I never ordered that the caveat be removed – and that purported order is what the caveator says he is appealing against by AD/CA 107/2022 in relation to HCF/CAVP 11/2022.

The assets in Singapore

57 It was common ground that the deceased had money in bank account(s) in Singapore – the applicant said so in her statement accompanying the resealing application, and in his affidavit the caveator likewise referred to the deceased's having a bank account in Singapore.⁴⁸ However, neither the applicant nor the caveator knew how much money there was, when I queried their counsel about this at the November hearing. As such, they did not know the amount in dispute, or the value of the subject matter, in the Singapore proceedings. It would be sensible for them to seek to ascertain this: it may inform the future course of litigation between them in Singapore.

⁴⁸ Caveator's affidavit dated 31 May 2022, para 15.

Conclusion

58 I dismissed the caveator’s application for a stay of the applicant’s resealing application “until the proceedings contesting the grant in Vanuatu are concluded” – those proceedings were concluded by the time of the November hearing before me.

59 I then granted the applicant’s *ex parte* application for resealing of the Vanuatu grant, for it did not appear that the deceased was not domiciled in Vanuatu.

Andre Maniam
Judge of the High Court

Kulvinder Kaur, Nur Halimatul Syafheqah Binte Rosman, Marina Sani and Sam Kit Yhing Jessica (IRB Law LLP) for the applicant;
Mohamed Hashim Bin Abdul Rasheed and Sofia Bakhash (A Mohamed Hashim) for the caveator.
