

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of The High Court of Solomon Islands (Bird J)
COURT FILE NUMBER:	Civil Appeal Case No.6 of 2024 (On Appeal from High Court Civil Case No.648 of 2020)
DATE OF HEARING:	13 October 2025
DATE OF JUDGMENT:	31 October 2025
THE COURT:	Muria P Gavara-Nanu JA Morrison JA
PARTIES:	LIUA'S TRADING LIMITED (TRADING AS LIUA'S BOTTLE S) -V- SOLOMON ISLANDS TOBACCO COMPANY LIMITED
ADVOCATES:	
APPELLANT:	E. Olofia
RESPONDENT:	P. Afeau
KEY WORDS:	
EX TEMPORE/RESERVED	RESERVED
ALLOWED/DISMISSED	DISMISSED
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JUDGMENT OF THE COURT

Introduction

1. On 30 October 2024 the President, sitting as a Single Judge of this Court, heard and determined an application by the appellant for an extension of time to apply for leave and for leave to appeal out of time. The President granted the Orders extending time to apply for leave, as well as, leave to appeal out of time. The leave to appeal out of time was conditional on the appellant depositing into Court the amount of \$4,008,359.36 being the judgment sum ordered by the judge in the High Court. That sum was to be paid within 21 days from 30 October 2024.
2. Before the Court, there is also the respondent's application to strike out the appellant's Notice of Appeal for, failure by the appellant to comply with the condition imposed by the Single Judge of the High Court, that the appellant deposit the judgment sum of \$4,008,359.36 within 21 days of the Single Judge's order. In their most logical and proper order, we feel that the renewal application should be considered first.

Background

3. To appreciate the background of this application, we feel that it is relevant to recap on the circumstances leading to the primary Judge's decision to strike out the appellant's defence, striking out counterclaim and ordering judgment to be entered against the appellant. The following chronology of event are relevant:
 - a. On 7 June 2021 a default judgement was entered against the appellant.
 - b. On 5 August 2022, the default judgment was set aside by the Court on application by the appellant and was ordered to file a defence.
 - c. On 25 January 2023, the appellant filed a defence and a counter-claim.
 - d. On 14 March 2023 the respondent filed a Request for further and better particulars.
 - e. On 2 May 2023, the matter was called for mention. Counsel for the appellant asked for further time to file further and better particulars. The judge gave further extension of time to 16 May 2023 to the appellant to file further and better particulars.
 - f. On 30 May 2023, the case was again called for mention. Counsel for the appellant failed to appear in Court. The appellant had again failed to file further and better

particulars. Consequently, the Court (Bird J) made an UNLESS Order on 30 May 2023 and perfected on 1 June 2023 in the following terms:

“Unless the defendant files and serves its full and complete response to the claimant’s request for further and better particulars filed an amended statement of claim served on 14 March 2023, by 6 June 2023, the defendant’s defence and counter-claim filed on 10 November 2022 and its and its amended claim and counter-claim filed on 25 January 2023. Are struck out forthwith”

- g. On 6 June 2023, the appellant filed further and better particulars.
 - h. On 7 June 2023, the case was again called for mention. Counsel for the appellant had not yet filed full and complete disclosure and asked for further 7 days to comply with the Court Order. The judge gave Counsel until 21 June 2023 to comply.
 - i. On 11 July 2023, the matter was again called for mention. Once again the appellant failed to comply with the Orders of the Court.
 - j. The case was listed for hearing on 17 July 2023. At the hearing, Mr. Afeau submitted that the *Unless Order* required that if the appellant failed to comply with the Order, the appellant’s defence and counter-claim should be struck out.
 - k. Counsel for the appellant agreed that the appellant did not provide full disclosure. Consequently, the learned primary judge struck out the appellant’s defence and counter-claim and ordered judgment to be entered in favour of the respondent in the terms of its claim.
4. In view of the numerous defaults on the part of the appellant, it is hardly surprising that the learned Judge struck out the appellant’s defence and counter-claim and entered judgment for the respondent. The appellant cannot claim that it has been prejudiced by the order of the primary Judge. The affidavit of Mereang Liva O’Brien provides no justification for appellant’s defaults in this case.
 5. Copies of the primary Judge’s Order was served on the appellant by counsel for the respondent on 22 August 2023, 20 September 2023 and 3 October 2023, but there was no response from the appellant or its lawyers. *See Mr Primo Afeau’s Letter dated 7 November 2023 attached to Mereang’s affidavit and in Annexure “MLO 3”*. There were steps available for the appellant to take after being served with the Order of the Court. Nothing had been done by the appellant.
 6. Then there was the complaint that the *Unless Order* was made in the absence of the appellant’s solicitors and as such the order was capable of being set aside. While that might

be so, there were no steps taken at all by the appellant to seek the setting aside of the order. That Order was made on 30 May 2023.

7. The appellant's lax approach to its case and its continuing defaults, did not end in the Court below. The appellant's Notice of Appeal to this Court, was issued on 5 February 2024, some 6 months after the primary judge made the Order in the High Court. The appellant's legal representatives were aware of the requirement to appeal within time, yet did nothing.
8. The appellant only moved after judgment was entered and after execution was imminent. Such conduct justifies the imposition of protective conditions and the respondent was entitled to take the necessary action to enforce the judgment.
9. It was on 30 October 2024 that an application was made to the President, sitting as Single Judge of this Court, to enlarge time to apply for leave to appeal and for leave to appeal against the primary judge's order of 9 August 2023. That was more than a year later. Time was enlarged and leave to appeal was also granted on the condition that the judgment sum of \$4,008,359.36 be paid into Court within 21 days from 30 October 2024.
10. Being aggrieved by the Single Judge's decision, the appellant filed this application for the Full Court to rehear its application pursuant to section 19(g) of the *Court of Appeal Act* and rule 18(3) of the *Court of Appeal Rules*.

Applicable Law

11. Section 19(g) of the *Court of Appeal Act* provides that the powers of the Court may be exercised by a Single Judge, but if any party is aggrieved by the exercise of such power he shall be entitled to have the matter determined by the Court.
12. Rule 18(3) of the *Court of Appeal Rules* states:

"A party aggrieved by the determination of the judge may, by notice of application filed within seven days of service of the notification under paragraph (2) upon him, apply to have the matter heard and determined by the full court."

13. The application having been filed within seven days of the Single Judge's order is therefore properly before the Court.

Nature of the Rehearing

14. The rehearing under section 19(g) of the Act and rule 18(3) of the Rules is a **de novo** hearing. See also rule 21(1). It is to “*have the matter heard and determined*” by the Full Court. That can only mean the “*matter*” which was heard and determined by the Single Judge and now to be renewed before the Full Court. Any application for renewed hearing by the Full Court presented as an appeal against the ruling of the Single Judge of this Court is plainly incompetent: *Africanhills Ltd & Onyenso Emeka v Bred (Vanuatu) Ltd*¹. In *Attorney General -v- Levers Solomon Ltd*² this Court refused to consider the respondent's application under the rule 18(3) of the Court of Appeal Rules expressed as an application to the Full Court when it was in fact an appeal against the Order of the Single Judge of this Court. See also *Omex Limited -v- Success Company Ltd*³.
15. The Full Court in the present case will exercise its own discretion afresh on the appellant's renewed application for leave and extension of time.

Arguments of the Parties

16. Applicant's Submissions

Counsel for the applicant contends that the condition requiring deposit of \$4,008,359.36 is **oppressive and excessive**, effectively denying the applicant access to the appellate process.

17. It was argued that the applicant does not seek to delay enforcement but merely to be heard on the merits. Requiring payment of the entire judgment debt, it is submitted, would **stifle the appeal** and is contrary to the principle of proportionality.

Respondent's Submissions

18. Counsel for the respondent maintains that the Single Judge properly exercised his discretion in imposing the condition. The requirement serves to protect the respondent's interest in the judgment debt and to guard against dissipation of assets.

¹ [2024] SICOA-CAC 60 of 2023 (1 August 21024);

² [2024] SBCA 22, SICOA-CAC 58 of 2023 (14 October 2024);

³ [2024] SBCA 6, SICOA-CAC 16 of 2013 (9 May 2024);

19. It is further argued that the appeal appears weak on the merits and that the condition was a justifiable safeguard against frivolous or dilatory appeal such as the present one.

Analysis and Determination

20. Rule 11 of the Court of appeal Rules provides for the imposition of the special conditions on an appeal by the court or a judge. This is set out in rule 11(4):

“(4) Notwithstanding the generality of the foregoing, the court or a judge may at any time impose such conditions precedent on an appeal or the continuation thereof as the Court sees fit, in the interest of justice, to impost”.

21. The Court acknowledges that the discretion to impose special conditions on an appeal includes upon the grant of leave to appeal. This is well recognized. See *Wilson v Church*⁴; *Sango Bay Estates Ltd v Dresdner Bank AG*⁵. See also *Bako –v- Rozo*⁶ *Maka –v- Malaita Customary Land Appeal Court*⁷.
22. Such discretion, however, must be exercised judicially, bearing in mind that conditions which are unduly onerous or have the practical effect of stifling an appeal are inconsistent with the principles of justice and access to appellate process.
23. The Court accepts that there may be circumstances, such as evidence of asset dissipation or vexatious litigation, where a substantial deposit may be warranted. However, no such evidence has been presented here. We therefore exercise our discretion afresh in such a way as to achieve fairness to the parties by requiring some security measures which protect the respondent and without denying the applicant’s statutory right to appeal. Lord Lindley MR similarly expressed such a balancing principle in *Procon Ltd -v- Provincial Building Ltd*⁸ when ordering security for costs:

“the principle to be applied is that security ought not to be illusory nor oppressive – not too little nor too much.”

⁴ [No. 2] (1879) 12 Ch. D 454;

⁵ [1971] 1 WLR 1469;

⁶ [2012] SBCA 2; CA-CAC 420 of 2011 (30 March 2012);

⁷ [2022] SBCA 30; SICOA-CAC 6 of 2020 (4 November 2012); and

⁸ [1984] 1 WLR 557.

24. The Court therefore concludes that the conditional requirement of payment of the entire judgment debt is too burdensome and in the circumstances of this case, the new condition should be set out below.

Strike out Application

In view of the Full Court's decision which varies the condition imposed by the Single Judge, the basis of the respondent's application for striking out no longer exists. Consequently, the appellant cannot be said to be in default any longer since the Full Court having reheard the matter *de novo*, substituted new conditions.

26. The respondent's application to strike out the appellant's Notice of Appeal can no longer be on foot and must be dismissed.

27. Having heard the applications, the Court makes the following Orders:

1. (a) The applicant to deposit the sum of \$30,000.00 as security for costs and pay \$1,000,000.00 of the judgment sum into Court within 30 days from the date of this Order.
- (b) The other orders made by the Single Judge of the Court to remain as they are.
2. The respondent's application to strike out the appellant's Notice of Appeal is dismissed.
3. Each party to bear its own costs.

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Muria P

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Gavara-Nanu JA



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Morrison JA