

**IN THE SOLOMON ISLANDS COURT OF APPEAL**

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| <b>NATURE OF JURISDICTION:</b> | Appeal from Judgment of The High Court of Solomon Islands (Bird J)                            |
| <b>COURT FILE NUMBER:</b>      | Civil Appeal Case No. of 48 of 2023<br>(On Appeal from High Court Civil Case No. 370 of 2020) |
| <b>DATE OF HEARING:</b>        | 17 October 2025   |
| <b>DATE OF JUDGMENT:</b>       | 31 October 2025   |
| <b>THE COURT:</b>              | Muria P<br>Gavara-Nanu JA<br>Morrison JA  |
| <b>PARTIES:</b>                | ATTORNEY GENERAL<br>-V-<br>NELSON NAOAPU  |
| <b>ADVOCATES:</b>              |   |
| <b>APPELLANT:</b>              | N. Ofanakwai  |
| <b>RESPONDENT:</b>             | D. Marahare   |
| <b>KEY WORDS:</b>              |   |
| <b>EX TEMPORE/RESERVED</b>     | RESERVED  |
| <b>ALLOWED/DISMISSED</b>       | ALLOWED   |
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## JUDGMENT OF THE COURT

1. The respondent was employed as Commissioner of Lands until his employment terminated by the Public Service Commission on 23 January 2020.
2. The Commission issued a Show Cause notice on 18 June 2019 to which the respondent responded. The Permanent Secretary advised of his intention to terminate the respondent's employment on 4 September 2019, effective from that date.
3. The Permanent Secretary also advised that the respondent could exercise his right of appeal from the decision to terminate his employment. The respondent did so on 10 September 2019.
4. The Commission's decision on the appeal was notified to the respondent by letter on 31 January 2020. The letter relevantly stated:

“The Public Service Commission “the Commission” in its 4<sup>th</sup>/2020 meeting held on 23<sup>rd</sup> January considered on your appeal against termination.

...

Since you denied all charges with no evidence to substantiate them, the Commission was not satisfied with the grounds of appeal and therefore had decided to:

DISMISSED the appeal and;

...

Accordingly, I convey this to you.”

5. On 31 July 2020, the respondent filed a Claim for Judicial Review of the decision to terminate. There were delays caused by amendments and applications to strike out. The Amended Claim for Judicial Review (directed at the Commission's decision to dismiss the appeal) was filed on 30 September 2022.
6. A Chapter 15 Conference was held by the learned primary judge on 12 August 2023. The Ruling was handed down on 11 September 2023. The only contested issue was whether

there had been undue delay in making the claim: r. 15.3.18(c). The learned primary judge found that there was no undue delay because:

- (a) the Commission's decision was made on 23 January 2020;
- (b) the decision was notified to the respondent on 31 January 2020;
- (c) R. 15.3.8 of the Civil Procedure Rules 2007 provided: "The claim for a quashing order must be made within 6 months of the decision";
- (d) and:

"If you relate this to normal courts processes, the decision of 23 January 2020 could be seen as an *ex tempore* decision. The decision conveyed by letter dated 31 January 2020 is the published decision. In light of that distinction, I am of the view that the commencement date of the decision of the Second Defendant commences on 31 January 2020. Having held that view, I am further of the view that the claim for judicial review of the Claim filed against the First and second Defendants on 31 July 2020, was filed within time in accordance with r. 15.3.8 of the CPR. Subsequently, there is no undue delay in the filing of this claim."

- 7. The appellants challenge that finding, contending that r. 15.3.8 is clear and requires the claim to be filed within 6 months of the day the decision was made, not notified. The respondent seeks to uphold the decision below on the basis that the 6 months ran from the day of notification, namely 31 January 2020.

### **Consideration**

- 8. Rule 15.3.8 is in clear terms: <sup>1</sup>

"The claim for a quashing order must be made within 6 months **of the decision**".

- 9. Several features about the rule should be noted immediately:

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<sup>1</sup> Emphasis added.

- (a) the rule is mandatory in that the claim “**must be made**” within a specified time;<sup>2</sup>
  - (b) the rule provides a very long period to make a claim; six months (about 180 days) is generous when compared to other well-known time periods, e.g for appeals, 30 days; and
  - (c) the claim must be made within 6 months “**of the decision**”; there are no words that suggest the time might run from when a decision is notified.
10. Read according to its terms, the rule requires that the 6 months run from the date of the decision itself, not when it is notified. In *Visaki v Vunagi*,<sup>3</sup> this Court came to the same conclusion.
11. There is no injustice to a claimant by that construction of the rule. The time period is measured in months, not days. By any measure 6 months is a very generous period.
12. We reject the contention that the letter dated 31 January 2020 set the date of the decision. That letter informed the recipient of several things:
- (a) the decision to dismiss the appeal was made at the meeting which took place on 23 January 2020;
  - (b) the Commission dismissed the appeal on 23 January 2020; and
  - (c) the letter conveyed “**this**” to the recipient; the subject matter of the word “**this**” was the fact that the decision to dismiss the appeal was made on 23 January 2020.
13. Accordingly, the recipient of the latter could have been in no doubt that the decision, to which r. 15.3.8 applied, was made on 23 January 2020.
14. The claim for Judicial Review was not filed until 31 January 2020, more than seven days beyond the six months. It was out of time.

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<sup>2</sup> *Harry v Attorney-General* [2017] SBCA 13 at [22].

<sup>3</sup> [2016] SBCA 14 at [12]-[16].

15. No application for an extension of time was made, and none is foreshadowed. There is no need to explore any related issues.

16. The decision of the learned primary judge was in error and must be set aside. The claim was out of time and should not proceed to trial.

17. **Result**

- 1, The appeal is allowed.
2. Set aside the orders made on 11 September 2023.
4. The judicial review claim in CC 370 of 2020 is struck out pursuant to r. 15.3.20, with costs.

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Muria P

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Gavara-Nanu JA

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Morrison JA

