

**IN THE SOLOMON ISLANDS COURT OF APPEAL**

<b>NATURE OF JURISDICTION:</b>	Appeal from Judgment of The High Court of Solomon Islands (Kouhota J)
<b>COURT FILE NUMBER:</b>	Civil Appeal Case No. of 50 of 2023 (On Appeal from High Court Civil Case No. 440 of 2020)
<b>DATE OF HEARING:</b>	20 October 2025
<b>DATE OF JUDGMENT:</b>	31 October 2025
<b>THE COURT:</b>	Muria P Gavara-Nanu JA Morrison JA
<b>PARTIES:</b>	JOHN MORIKANA AND OTHERS  -V-  WILLIAM SUMU AND OTHERS  ATTORNEY GENERAL
<b>ADVOCATES:</b>	
APPELLANT:	D. Marahare
RESPONDENT:	J. To'ofilu  H. Lapo
<b>KEY WORDS:</b>	
<b>EX TEMPORE/RESERVED</b>	RESERVED
<b>ALLOWED/DISMISSED</b>	DISMISSED
<b>PAGES</b>	1 - 6

## JUDGMENT OF THE COURT

1. This appeal stems from proceedings between the parties, commenced in the Malaita Local Court. That court handed down its decision on 20 April 2016.
2. In accordance with s 256(1) of the *Land and Titles Act (Cap. 133)*, any appeal from that decision to the Malaita Customary Land Appeal Court (CLAC) had to be filed “within three months from the date of such order or decision”.
3. Section 256(1) is pivotal to the outcome of this appeal. It provides:

### **“Appeals to and from customary land appeal courts**

- (1) Any person aggrieved by any order or decision of a local court given in exercise of its jurisdiction under section 254 or section 13(d) or (e) of the Local Courts Act may, within three months from the date of such order or decision, appeal therefrom to the customary land appeal court having jurisdiction.
4. A Notice of Appeal was filed on 2 July 2016. It is accepted that the Notice of Appeal was within the time limit imposed by s 256(1).
5. An Amended Notice of Appeal was filed on 25 March 2020. The appellants contend that it was filed on the same day as the CLAC hearing of the appeal (3 June 2020). That contention appears to be in error as the document bears the court stamp and date 25 March 2020.<sup>1</sup>
6. We pause to note that an earlier Amended Notice of Appeal was filed on 2 July 2016, within the three-month period.<sup>2</sup> It forms no part of the current appeal except in respect of a submission that was made as to the similarity of the grounds in that first Amended Notice of Appeal to the one filed on 25 March 2020. That issue may be put to one side.
7. The Amended Notice of Appeal was accepted by the CLAC and formed the basis upon which the appeal was conducted. The appeal was heard on 3 June 2020. The CLAC’s decision was announced orally on 5 June 2020, and the reasons were published on 15 June 2020. CLAC allowed the appeal and remitted the matter to the Local Court.

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<sup>1</sup> Appeal Book, page 60.  
<sup>2</sup> Appeal Book, page 43.

8. The appellants appealed to the High Court, challenging the CLAC's acceptance and reliance upon the Amended Notice of Appeal on the basis that it was filed out of time. The essential contention was that s 256 does not permit an amended notice of appeal to be filed out of time.
9. Kouhota J dismissed that appeal on 1 September 2023. After referring to *Filo v Toto*,<sup>3</sup> His Lordship said:

“I consider section 256(1) of the LTA is more concerned with the time for filing an appeal as opposed to the particulars of the appeal including any amendments to the appeal. In that respect as long as the Original appeal was filed in time there is no rule about amending the Appeal grounds. I therefore consider that there is no restriction on amending the grounds of appeal so long as an original appeal has been filed in time.”
10. The appellants challenge His Lordship's decision, contending that it was in error. The contention is, once again, that s 256(1) does not permit an amended notice of appeal to be filed outside the three-month period. That contention is articulated thus:
  - (a) there is nothing in s 256(1) that confers any discretion upon the CLAC to permit a further notice of appeal or amendment outside the three months; in this regard reliance is placed on *Mobil Oil Australia Pty Ltd v Kwaeria*;<sup>4</sup>
  - b) the CLAC acted in excess of its jurisdiction by accepting a Notice of Appeal filed outside the three-month period;
  - c) the learned primary judge was wrong to place reliance on *Filo v Toto*; and
  - d) rule 5.34 of the *Solomon Islands Courts (Civil Procedure) Rules 2007* does not apply to the CLAC so as to permit such an amendment.

### Consideration

11. There are several reasons why the appellant's contentions must be rejected.

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<sup>3</sup> [2002] SBHC 100.

<sup>4</sup> [2001] SBHC 16.

12. First, s 256(1) provides that an aggrieved person may appeal “may, within three months from the date of such order or decision, appeal therefrom”. That was done in this case, with the Notice of Appeal filed on 2 July 2016, within three months from the Local Court decision. It was, at that point, a regularly instituted proceeding of its own. It did not thereafter cease to be so.
13. Secondly, s 256(1) says nothing about what is to be done to regulate an appeal, once properly instituted. That is left to the rules administered by the relevant court. In this case that was the CLAC.
14. In *Vunagi v Palmer*,<sup>5</sup> this Court said:

“The Solomon Islands (Civil Procedure) Rules 2008 were made by the Rules Committee established under section 90 of the Constitution. There it provided that the Rules Committee may make rules to regulate proceedings in the High Court and the Magistrates Court. The power to make rules regulating the practice and procedure of inferior courts and tribunals lies elsewhere.”

15. Thus, one does not turn to the Civil Procedure Rules to see how the CLAC should handle amendments to notices to appeal.
16. Thirdly, there is nothing in s 256(1) to prevent amendments being made to an otherwise regularly instituted appeal. An amendment to an existing notice of appeal is, axiomatically, not the institution of a new appeal.
17. Reliance by the appellants on *Mobil Oil Australia Pty Ltd v Kwaeria*<sup>6</sup> is misplaced. That case concerned a complaint of unfair dismissal, and the provision that stated a complaint “may not be made after the end of the period of three months beginning with the date of dismissal”. The initial complaint was made four months after the decision and was therefore out of time. It was argued there was a discretion to permit the complaint even though out of time. The issue there was not that in this case.

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<sup>5</sup> [2019] SBCA 2 at [5].

<sup>6</sup> [2001] SBHC 16.

18. Fourthly, in *Filo v Toto*,<sup>7</sup> the High Court was dealing with a similar case in that there was a regularly instituted appeal, and an amended notice of appeal had been filed outside the three months. Kabui J said:

“These Amended Notice of Appeal was opposed by Counsel for the Respondent, Mr Hou, on the ground that they were out of time as the Amended Notice of Appeal contained new grounds of appeal and therefore the Court had no jurisdiction to hear them. The original Notice of Appeal was within time. I do not think the Amended Notice of Appeal is out of time. Mr Hou cited no authority to support his assertion that new grounds of appeal by way of an amendment to the original Notice of Appeal would also be subject to three months time-limit under section 256(3) of the Land and Titles Act. This is a customary land dispute and I do not think the legislature would have intended technicalities to defeat the spirit of section 256 of the Land and Titles Act. In fact, the Amended Notice of Appeal does reflect the complaints 4-6 in the original Notice of Appeal in a condensed form. It is not really true to say that the Amended Notice of Appeal created new grounds of appeal.”

19. We respectfully consider Kabui J to have been correct in that analysis.
20. Fifthly, there was no injustice to the appellants in the CLAC’s permitting the amendment. It was filed on 25 March 2020, nearly 10 weeks before the hearing of the appeal. If it be true to say, as the appellants do, that they only became aware of the Amended Notice of Appeal on 3 June 2020, the day of the hearing, they had the ability to object to it or seek an adjournment so that they could deal with it. The transcript of the hearing before the CLAC, and the CLAC reasons, show they did not seek an adjournment and did not object to it being considered.<sup>8</sup>
21. That conclusion is supported by the fact that a denial of natural justice (by permitting consideration of the Amended Notice of Appeal on late notice in the CLAC) was raised before the learned primary judge in the course of oral submissions. An objection was taken that it was not one of the appeal grounds. Plainly that objection was upheld as that issue does not form part of the reasons below.
22. Finally, we pause to note that Counsel for the Second Respondent in this appeal attempted to file his written submissions a week out of time. They were refused by the Registry. Before this Court Counsel sought leave to rely on them though not filed in time. Over objection the Court permitted them to be handed up. However, parties must be aware that

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<sup>7</sup> [2002] SBHC 100.

<sup>8</sup> Appeal book: Reasons pages 45-52; transcript, pages 53-59.

adherence to the rules relating to filing submissions in this Court must be strictly adhered to, otherwise the orderly business of the Court will be disrupted. No party in the same situation can rely upon a similar indulgence to be granted.

23. **Result**

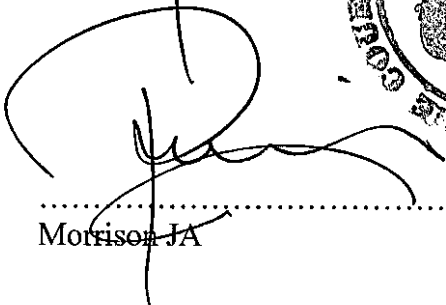
1. The appeal is dismissed.
2. The costs of the appeal are to be paid by the appellants, to be taxed if not agreed



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Muria P



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Gavara-Nanu JA



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Morrison JA