

**MATTHEW KUBEBATU**  
**v.**  
**ATTORNEY GENERAL**

**APPLICANT**  
**RESPONDENT**

**HIGH COURT OF SOLOMON ISLANDS**

**Palmer J.**

Civil Case No: 251 of 1994

Hearing: 2/2/95

Oral Ruling: 2/2/95

Judgment with reasons: 27/2/95

*T. Kama* for Applicant

*C. Ashley* for Respondent

**PALMER J.:** This application by way of originating summons, filed on the 19th of September, 1994, was heard on the 2nd of February, 1995, at Gizo, and a verbal ruling given on the same day, dismissing the action. I indicated that I will give reasons at a later date.

The Applicant is a member of the Megarau Tribe of South Choiseul and has an interest on the question in custom, as to who is the rightful chief of the Megarau Tribe. The question of chieftainship was one of the issues raised in the action instituted by Nathan Sinovagege against a number of members, of the same tribe. By order of the High Court dated 15th June, 1993, the Choiseul Local Court was directed to determine that question.

On the 3rd of September, 1993, the Choiseul Local Court gave its determination. It ruled in favour of Nathan Sinovagege. The Applicant was a member of the losing party.

On the 17th of October, 1993, the Applicant posted a notice of appeal to the Clerk of the Western Customary Land Appeal Court (CLAC) at Gizo. The notice of appeal was received on or about the 20th of October, 1993 (see letter of Emmanuel Kouhota, Clerk to CLAC(W) dated 8/2/94). This was filed within the time limit of 3 months allowed for appeals. The time limit started to run from the 3rd of September, 1993. The appeal fee of \$100.00 however, was not paid until the 25th of January, 1994, (see affidavit of Emmanuel Kouhota filed on the 2nd of February, 1995). This was well outside the time limit of three months allowed by law.

The first issue before this Court is whether the filing of the notice of appeal within the 3 months period constitutes a valid appeal, or whether both the notice of appeal and the filing fee must be lodged within the 3 months time period?

The second issue is whether the Court has a discretion to extend the time limit for the filing of fees?

The main ground on which relief is sought is based on the second issue. Mr. Kama submits that the Clerk to the CLAC failed to inform the Applicant about the requirement of the payment of the fees until it was too late. The delay was directly caused by the Clerk to the CLAC, and accordingly the Court should issue an order of mandamus to require the Clerk to accept the filing fees paid on the 25th of January, 1994.

The first issue raised therefore is not in much dispute.

It is accepted by Mr. Kama that in order for an appeal to the CLAC be deemed valid, both the Notice of Appeal and the filing fees must be lodged within the 3 months time period allowed by law. The only relevant question then which would need to be considered is whether there is a discretion given to the Court to enlarge the time limit?

The grounds for relief relied on by Mr. Kama go to the question of the exercise of the discretionary powers of the Court. If there is no discretion, then that is the end of the matter.

The relevant law is found in section 231B(1) of the Land and Titles Act [Cap. 93]:

*"Any person aggrieved by any order or decision of a native court given in exercise of its jurisdiction under section 231 may, within three months from the date of such order or decision, appeal therefrom to the customary land appeal court having jurisdiction."*

In a previous court case, *Patatoa v. Talauai* [1983] S.I.L.R. 112, the same provisions were considered. The facts in that case were also similar. The appeal fee had not been paid within the three months period allowed by law: (see page 113 last paragraph).

*"This case turns on a short point, that is, was the learned magistrate member of the CLAC right in his opinion that the failure to pay the appropriate appeal fee within three months was fatal to the appeal?"*

At pages 114 and 115, there is an analysis by the learned judge, Daly C.J., as to the question of whether an appeal fee must also be paid within the three months allowed by law. His conclusion was yes. He then went on to consider the crucial issue:

*Second, can the situation be redeemed by payment of the fee outside the three month period? In Seselono's case, the court said: "If there is nothing that is lawfully justiciable before the Court at the end of the three month period then no act by anyone thereafter can cure the matter as that act would constitute bringing an appeal outside the period of limitation". These words apply equally to the present case, if failure to pay the fee within the three month period prevents the appeal from being duly brought then once the three month period has elapsed payment cannot cure the defect. To hold otherwise would be to enable an appeal to be brought outside the period specified by Parliament."*

There is little left to be said on the matter. The above comments of Daly C.J. are directly applicable to this case. There is no discretion involved on the question of enlargement of the time limits of three months. The Applicant is entitled to some sympathy but as also stated by the learned Chief Justice Daly, in Patatoa's case at page 116:

*"But it remains in the final analysis, the burden of the appellant to take all necessary steps whether or not he is informed of them by the Court. Hence the sympathy one feels can have no effect on the position in law."*

The application for various orders by way of an originating summons filed on the 19th of September, 1994 is dismissed with costs.

**A.R. PALMER**

**JUDGE**