

**LUXTON JOVERE –v- JACOB MATOKO AND NORTH NEW GEORGIA
TIMBER CORPORATION**

IN THE HIGH COURT OF SOLOMON ISLANDS
(F.O. Kabui, J.)

Civil Appeal Case No. 19 of 2001
[Appeal from Civil Case No. 138 of 1994]

Date of Hearing: 2nd August 2002
Date of Ruling: 7th August 2002

Mrs Tongarutu for the Appellant
Mr J. Sullivan for the 1st Respondent
Mr. J. Apaniai for the 2nd Respondent

RULING

F. O. Kabui, J. This case was listed before me at 10.30am on 2nd August 2002. It came before me following a hearing by the Registrar on 17th July 2002. At that hearing, Counsel for the Respondent, Mr. Kama, submitted that the case should be dealt with under rule 46 (2) of the Court of Appeal Rules "**the Rules**". That is to say, any person aggrieved by the decision of the Registrar in any matter, may apply to a judge to have the decision set aside or make such orders as the case may be. By summons filed on 31st May 2002, the Appellant seeks the following orders-

1. **The Direction Order dated 9th May 2002 be set aside.**
2. **The Direction Order dated 19th April 2002 be varied.**
3. **The Respondents pay the Appellant's costs and expenses in connection with this application.**
4. **Such other orders as the Court sees fit.**

The Background

The Appellant filed his appeal on 24th December 2001. On 8th February 2002, the 1st Respondent filed a summons seeking a number of orders. The summons was heard on 13th February 2002 by the Registrar who made orders for directions. One of the orders was that the Appellant lodge with the Court \$7,500.00 within 28 days being security for costs or provide surety in lieu of that security. The other order was that within that same time period, the Appellant lodge with the Court, \$4000.00 for preparation of the records of the proceedings failing which the appeal will be dismissed. The rest of the orders were time orders etc. There was a brief hearing on 13th March 2002 by the Registrar who adjourned the matter to 27th March 2002. The hearing on 27th March 2002 was again adjourned to 10th April 2002. Again, the Registrar following the hearing on 10th April 2002 made a number of orders for directions. The orders for directions were signed and perfected on 19th April 2002. The next hearing was on 8th May 2002, which Counsel for the Appellant, Mrs. Tongarutu, did not attend. The Registrar ordered that the matter be listed before the full Court at the next sitting with a view to the appeal being dismissed with costs reserved. This order was signed and perfected on 9th May 2002.

The Appellant's Complaint

The Appellant is clearly not happy with decision of the Registrar to cut off his chance to prosecute his appeal in the Court of Appeal. He wants the decision made on 9th April 2002 set aside and the earlier decision made on 19th April 2002 varied.

Do I have the jurisdiction to grant the orders sought by the Appellant?

The jurisdiction conferred by rule 46(2) cited above clearly depends on whether or not the Registrar has got power to make the decision from which the application is made to the judge. Rule 19 (2) (3) and (4) of the Rules deals with the matter of preparation of the record for the appeal. Paragraph 2 above is very clear on whose responsibility it is to prepare four copies of the record for the use of the Court and such additional copies as may be required. The responsibility lies with the Registrar of the Court of Appeal. Paragraph 3 stipulates the documents as may be necessary for the purposes of the appeal. The Registrar may, under paragraph 4, only consult the parties to the appeal for omissions from the record of any formal parts of the proceedings of the Court below, which in his opinion are not required for the proper disposal of the appeal. It is not the responsibility of the parties to prepare the record so that they can be penalized if any of them should fail to agree the Index to the record in civil appeals. I can find nothing in the Rules to support the action taken by the Registrar. I do understand the reasons for the present practice of preparation of the record but as much as it is convenient to the Registrar I think the Appellant should not be the victim of the Government's inability to meet its duty under the Rules. In fact this case arises because there is a slight deviation from rule 19 of the Rules. I have seen previous records done by Mr. Kwaimani in this regard. Simple and plain as they were, they met the requirements of rule 19 above without question. There was no need for any directions to be made. Direct control was in the hands of the Registrar as to the time limit for the completion of the record before the Court of Appeal sat. I do however concede that rule 19 above is silent on the manner in which the record should be prepared but whatever the Registrar does must be within the intent and spirit of the Rules. The intent and spirit of the Rules are clearly confirmed in rule 47(1) of the Rules which allows the Court of Appeal or a judge to permit, in the interest of justice, the prosecution of an appeal despite non-compliance with the Rules. A penalty order such as it appears to be in this case is in my view outside the purview of the Rules. The Registrar has no power to make such order and therefore rule 46 (2) of the Rules does not apply in this case. I have therefore no power to make any order under rule 46 (2) of the Rules. Even if I had the jurisdiction, I would also dismiss it for the Appellant was clearly out of time under rule 46(2) above. However, this is not the case here. Obviously, the party that benefits from my finding is the Appellant. I order that the order made by the Registrar on 9th May 2002 be quashed. I feel I should make this order to assure the Appellant that his appeal will reach the Court of Appeal provided he satisfies the conditions precedent for appeals under the Rules. The question of agreeing the Index should not be a bar to the Appellant's appeal reaching the Court of Appeal. The orders for directions made by the Registrar on 19th April 2002 would automatically fall away. I say nothing about the orders for directions about the payment of security for costs of \$7,500.00 and \$4,000.00 for the preparation of the record made by the Registrar on 28th February 2002. I make no order as to costs. I order accordingly.

F. O. Kabui
Judge