

LEVI LIKOHO (on behalf of Goe Clan of Vihuvungai Tribe) -V- LONSEALE MANASA

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Land Appeal Case No. 7 of 1995

Date of Hearing: 31st October 2002
Date of Judgment: 7th November 2002

Mrs. M. Samuel for the Appellant
Mr P. Tegavota for the Respondent

JUDGMENT

Kabui, J. This is a Notice of Motion filed by the Appellant on 4th October 2001 for the following orders-

1. That the time required for filing this application be abridged.
2. That the orders of this Court to dismiss the Applicants Notice of Appeal be set aside.
3. That the Applicants Notice of Appeal be re-listed for hearing.
4. Any further or such orders that this court sees fit to make.
5. Costs to be costs in the cause.

Brief Background

On 31st January 1995, the Magistrate made a finding against the Appellant in that he found that the acquisition officer had no jurisdiction and therefore quashed the acquisition officer's determination in identifying the Appellant as one of the trustees of Kolosori land. The Appellant, having decided to appeal, filed his Notice of Appeal on 28th April 1995. Awich, J. heard the appeal on 25th February 2000 and dismissed it on the ground that the Respondent had failed to prosecute his appeal.

Setting aside of Awich, J's. Order of dismissal

Mr. Titiulu had filed the appeal on 28th January 1995 when he was a Solicitor in the Public Solicitor's Office. It should have been prosecuted a long time ago. It had

been heard by Awich, J. on 18th July 1997 but was adjourned on the request of Mr. Lavery of the Public Solicitor's Office. It came on again for hearing before Awich, J. on 19th September 1997 but again was adjourned to a date to be fixed. It came again for hearing before Awich, J. on 25th February 2000 after a delay of 2 years and 7 months. The Appellant did not appear in person or by Counsel and the appeal was therefore dismissed. Although the Appellant did not cite Order 38, rule 6 of the High Court 1964 (Civil Procedure Rules) "**the High Court Rules**," paragraph 2 of the Notice of Motion suggests that the Appellant has invoked the said Order 38, rule 6 of the High Court Rules. Rule 6 says that if when at the trial, the defendant appears and the plaintiff does not, the defendant is entitled to judgment dismissing the action. Rule 7 does however allow the party who is aggrieved to apply to the Court to set aside the verdict or judgment obtained. The time limit to do that is 21 days after the trial. The Appellant is clearly out of time by over 2 years. He has not applied for extension of time. See **Avaiki Shipping Company Limited v. Attorney-General**¹. The affidavit of Mrs. M. Samuel filed on 29th October 2002 is therefore irrelevant on this point. This is one front. The other front is whether or not an appeal is the appropriate remedy in this case than an application to set aside. This point was not raised and so I do not need to say anymore on this point. This application is accordingly dismissed. This is a sad case for the Appellant. The delay in the appeal was caused by the previous Solicitors acting for the Appellant. The appeal seemed to have been transferred from the Public Solicitor's Office to Crystal Lawyers in 1997. By that time, the delay had been more than 2 years already since the filing of the appeal. The delay became even worse in the hands of Crystal Lawyers lasting for 5 years. The total delay is 7 years. That is clearly an inordinate delay in the prosecution of the appeal. I now call on you Mrs. M. Samuel to show cause within 14 days from today why I should not disallow costs between you as advocate and your client under Order 65, rule 8 of the High Court Rules. I order that you Mrs. M. Samuel and Mr. L. Kwaiga, your partner, file an affidavit each or jointly to explain why I should not make an order against you for costs.

F. O. Kabui
Judge

¹ Civil Case No. 248 of 2000