

**IN THE HIGH COURT OF SOLOMON ISLANDS**

Civil Jurisdiction

**(Maina, PJ)**

Civil Claim No. 474 of 2023

**BETWEEN: JACK PENNY TARA VALEKE - Appellant**

**AND: WESTERN CUSTOMARY LAND APPEAL COURT - First Respondent**

**AND: LEADLEY MEDOKO - Second Respondent**

*Kaehuna Mr for the Appellant*

*Devesi J for First Respondent*

*Kwana L for Applicant/Second Respondent*

**Date of Ruling: 18<sup>th</sup> September 2025**

**RULING ON APPLICATION TO STRIKE AN APPEAL**

**Maina J:**

1. This is an application by the Second Defendant to strike out an appeal of the Appellant of Western Customary Land Appeal Court (CLAC/W) decision pursuant Rules 9.72 and 9.75 of the Civil Procedure Rules 2007.
2. The Second Respondent alleges the appellant filed the appeal out of time contrary to section 256 (3) of the Lands and Titles Act as the appeal time commence when the oral judgment was delivered on 23<sup>rd</sup> June 2023.

**Brief Facts**

3. On the 14 – 15<sup>th</sup> June 2023, the Western Customary Land Appeal Court (WCLAC) sat at Gizo Western Province and heard an appeal from the Luru Local Court of ruling over the dispute on Gabili Land.

4. On 23<sup>rd</sup> June 2023, the WCLAC made an oral ruling on the appeal of the appellant and dismissed the appeal.
5. Subsequently, the WCLAC made the written judgment of the appeal which it had dismissed in the oral ruling. The written judgment was released or dated 30<sup>th</sup> June 2023.
6. On 29<sup>th</sup> September 2023, the Appellant filed notice of appeal against the judgment of the WCLAC. The relief sought in the notice was that the decision of the WCLAC be brought up to this court and be quashed.
7. Further Appellant seeks the consequent order that the issue of ownership, genealogy and boundary of the land in dispute be referred back to the chief and or the local court and Respondents pay for the cost.

#### **Issue**

8. The issue is whether the appeal time started from the verbal ruling dated 23<sup>rd</sup> June 2023 or the date of the written judgment on 30<sup>th</sup> June 2023.
9. This is a preliminary matter as it involves a failure to comply with procedural requirements of a written law. In this case it is the time of filing the appellant's appeal.

#### **The Law**

10. Section 256 (3) of the Lands and Titles Act state:

*“(3) Any person aggrieved by any order or decision of a customary land appeal court may within three months from the date of such order or decision, appeal therefrom to the High Court on the ground that such decision or order is erroneous in point of law (which expression for this purpose shall not include a point of customary law) or on the ground of failure to comply with any procedural requirement of any written law”*

11. This provision in Section 256(3) restricts appeals from the CLAC to the High Court to errors of law or procedural requirements of a written law.
12. Rules 9.75 of the Civil Procedure Rule 2007 stated that the court may strike out a proceeding if the proceedings are among others, frivolous or vexatious and or the proceedings are an abuse of the process of the court.

13. The court may order that the proceedings be dismissed generally or in relation to that claim on the application of a party or on its own initiative.

### **Analysis**

14. It is somewhat an allegation of abuse of the law or rules, an issue of fact relates to the filing of an appeal from CLAC to this Court.

15. The Appellant in the sworn statement and submission stated the appeal time should start on the dated of written judgment being 30<sup>th</sup> June 2023 or when the appellant physically received both the oral and written judgment on 1<sup>st</sup> July 2023.

16. The applicant's evidence to strike out the appeal of the Appellant are from the sworn statements of Levi Tanvalu and President of CLAC/W Davis Vurusu and record of the proceeding of the case.

17. Levi Tanvalu stated that he is a member of Kopana Clan of Gabili tribe and chief of the Second Defendant. He attended the hearing of the appeal case with the CLAC and the verbal judgment of the appeal was delivered on 23<sup>rd</sup> June 2023 and subsequent written judgment on 30<sup>th</sup> June 2023.

18. Levi Tanvalu stated that the Appellant had filled a notice of appeal against the CLAC's decision on 29<sup>th</sup> September 2023. It is out of time as the appeal period should commence on the date of verbal judgment being the 23<sup>rd</sup> June 2023 and not the date of written judgment on 30<sup>th</sup> June 2023.

19. The appeal should have been filed before or the last day on the 24<sup>th</sup> September 2023 but with this appeal it was filed on 29<sup>th</sup> September 2023 and therefore was out of time.

20. President of CLAC/W Davis Vurusu made a sworn statement and stated that the *Verbal Judgement* of the Appellant's appeal was delivered on June, 23<sup>rd</sup> 2023. The *Verbal Judgement* was recorded and signed by the justices of the CLAC and dated 23<sup>rd</sup> June 2023. The introductory heading of the *Verbal Judgement* among others appears as these:

*"Date of hearing: 14 – 15<sup>th</sup> June 2023*

*Date of Verbal Judgement delivered: 23<sup>rd</sup> June 2023"*

21. The record of the verbal judgment at Paragraph 4 it stated

*“ 4. The court after assessing and analysing all the submission and evidence presented before the court it hereby made the following decision:*

- 1. Appeal dismissed in its entirety*
- 2. Upheld the decision of the Lauru Local Court dated 21<sup>st</sup> October 2022.*
- 3. Right of appeal applies.*
- 4. Parties to bear own costs”.*

22. The President further stated that a Written Judgment was made and dated 30<sup>th</sup> June 2023. The Written Judgment made reference to the Verbal judgment of 23<sup>rd</sup> June 2023. The introductory heading of the written judgment among others appears as these:

*“Date of hearing: 14 – 15<sup>th</sup> June 2023  
Date of Verbal Judgement: 23<sup>rd</sup> June 2023  
Date of Written Judgement: 30<sup>th</sup> June 2023”*

23. This written judgment referred to the appeal that was heard on 14 – 15 June 2023, verbal judgment dated 23<sup>rd</sup> June 2023.

24. It stated or laid out the reasons of dismissing or rejecting all the appeal grounds from Lauru Local Court.

25. The written judgment showed or contained the same orders as in the record of judgment that was orally delivered on 23<sup>rd</sup> June 2023. With the appeal it bears or states “right of appeal applies”.

26. The WCLAC record shows that the decision of the case and dismissing all the grounds of appeal was delivered orally to the parties on the 23<sup>rd</sup> June 2023.

27. Again, as with the verbal judgment, the decision stated that after the court assessing all the submissions and evidences, the appeal is dismissed in entirety, upheld the decision of the Lauru Local Court, right of appeal applies and Parties to bear their own costs.

28. Patrick Pazani for the Appellant filed a sworn statement on 29<sup>th</sup> September 2023 and 7<sup>th</sup> August 2024. With the first sworn statements he stated that the appellant is his first cousin brother and during the hearing of the case at the local court and with the CLAC, he accompanied the appellant (now deceased).

29. Further Patrick Pazani in his sworn statements filed on 7<sup>th</sup> August 2024 stated that the CLAC/W heard the case on 14<sup>th</sup> and 15<sup>th</sup> June 2023. He said after the end of the hearing the case, the justice of the court told them that Ruling was reserved for the later date.
30. This witness stated that there was no actual date fixed to deliver the ruling and so after considering their financial situation that may be hungry in Gizo, they decided to go back to Voza village in North West Choiseul.
31. Interesting to note from the sworn statement of Pazani that he was at Voza village when the verbal ruling of the case was delivered on 23<sup>rd</sup> June 2023 and he was not notified of the date.
32. He only found about the decision of the appeal from Mr Russel Koroniki of Koqoatovo tribe on 30<sup>th</sup> June 2023 that the decision was not in his flavour. Mr Koroniki said that he had left Gizo and Pazani and Tracy Wasaro (Registered Nurse) may get a copy for him.
33. Pazani said that they only got the copy of the verbal and written judgment (as he stated in the sworn statement) *"by 1<sup>st</sup> July 2023"*. Both the verbal and written judgment were brought to him by Wasaro.
34. He said it was upon receiving and reading the verbal ruling and written judgments that they decided to consult a solicitor about the decision of the case.
35. Pazani said the instruction to the solicitor was that they *"received this decision on or about 1<sup>st</sup> July 2023 and not on 23<sup>rd</sup> June 2023 and when the this CLAC/W first issued its verbal judgment"*.
36. For the Appellant's side that they did not know the verbal ruling on 23<sup>rd</sup> June 2023. It was so and there should not be any confusion about that as they left Gizo or went back home in North West Choiseul earlier before the decision of the appeal was not yet delivered at that CLAC session.
37. This is perfectly clear in Pazani evidences that they were already or went back to Voza village in North West Choiseul when the rulings were delivered.
38. Typically, or at no circumstances the Appellant will not present, know and hear the decision of the appeal at the session or be able to know the date of the appeal or hear the delivering of the decision on the fact that they already at home in Choiseul.
39. While it is appellant's right present and hear the decision of your case, it my view they have forfeited that right when they decided and left to go home before the delivering of the decision on the appeal.

40. The Counsel for the Appellant refers to the Court of Appeal decision on *Kokoro v Piko*<sup>1</sup> however, that view or opinion may be taken when there is no sufficient evidence is available to show that the CLAC had made an oral ruling before the written decision<sup>2</sup>.

41. This case before me is similar to the *Vikasi v Vunagi*<sup>3</sup> on the three-month time limit and commencement of the appeal. The Court of Appeal considered this requirement and stated:

*"We are satisfied the decision of the CLAC on 26 July dismissed the appeal and therefore was a final order. That conclusion is reinforced by the CLAC's decision of 8 August, which specifically refers to its decision of 26 July as dismissing the appeal. Time therefore began running for any appeal to the High Court on 26 July. When the Appellant filed his appeal on 8 November, he was beyond the three-month appeal period and so out of time."*

42. With Rule 16.12 of the Solomon Islands Courts (Civil Procedure) Rules 2007, the Court of Appeal determined that the rule applied to an appeal from the CLAC. The Rule state:

*"16.12 A notice of appeal from a decision of the Magistrate's Court or a tribunal must be filed in the court:*

*(a) not later than the time provided by the relevant law or any further time the court allows in accordance with the relevant law;*

*or*

*(b) if no time is provided by the relevant law - not later than 28 days after the day the decision appealed from was made, or not later than any further time the court allows on application at any time;*

43. The relevant law is the Lands and Titles Act that allow 3 months to appeal from CLAC to the High Court and the Court of Appeal ruled in the *Vikasi v Vunagi* case stated that:

*"The Lands and Titles Act as the "relevant law" allows 3 months to appeal from CLAC to the High Court. But it provides for no extension of time. In those circumstances the appeal was out of time and no extension could be given. For the reasons given the appeal is dismissed."*

44. With this application these facts are clear that:

1. The WCLAC had orally delivered the decision dismissing all the grounds of appeal on 23<sup>rd</sup> June 2023,

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<sup>1</sup> [2021] SBCA 14

<sup>2</sup> *Afuno v President of the Malaita Customary Land Appeal Court* [2022] SBHC 36; HCSI-CC 59 of 2020 (14 June 2022)

<sup>3</sup> [2016] SBCA 14

2. The written judgment with the reasons dated or being given out on 30<sup>th</sup> June 2023,
  3. The Appellant's notice of appeal against the judgment of the WCLAC was filed on 29<sup>th</sup> September 2023.
45. With the facts and circumstances and applying the law, the appeal period should start at date the oral decision or when it was delivered on 23<sup>rd</sup> June 2023.
46. For this appeal it was days overdue as the notice of appeal was filed on 29<sup>th</sup> September 2023 or 5 days and it was late 5 days.
47. Late the it is clear that the decision was orally delivered and dismissing all the grounds of appeal on 23<sup>rd</sup> June 2023 and written judgment dated or being given out on 30<sup>th</sup> June 2023.
48. The Land and Titles Acts do not provide for extension of time<sup>4</sup> and no extension could be given and so it is out of time and therefore appeal is struck out and dismissed.

#### **ORDERS OF THE COURT**

1. The Appeal is out of time
2. No extension of time,
3. The Appeal is struck out and dismissed
4. Costs in the cause.



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**Honourable Justice Leonard R Maina**  
**Puisne Judge**

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<sup>4</sup> ibid