



2. The matter was subsequently brought before the Chiefs in 1998, who again determined that Fouka land was not part of Narufo land. The Second Respondent appealed to the Malaita Local Court, which gave judgment in his favour. The Applicant pursued appeals through the Customary Land Appeal Court (CLAC) and eventually to the High Court in *Agi v Kwaebeu* [2011] SBHC 191. In the High Court, the Court relied upon a clerical mistake in the record of the 1966 case, where the names “Fouka” and “Alafe” had been mistakenly interchanged. The High Court judgment, which was adverse to the Applicant, was not appealed further.

### **Issues for consideration**

3. The present application raises the issue of whether the Court can accept the filing of this application for judicial review of the 1966 decision delivered 59 years ago, or whether such filing would constitute an abuse of process. The Applicant relies upon Rule 15.3.9 of the Civil Procedure Rules, which permits a claim for judicial review to be filed out of time if substantial justice requires it.

### **Considerations**

4. At the outset, the Court notes that, according to the Applicant, the clerical error was detected only after the High Court decision delivered on 5 July 2011. The Applicant was represented by counsel Mr. Nori, a senior and highly experienced practitioner in this jurisdiction. If there was a need to correct that clerical error, the proper course of action would have been to file an appeal to the Court of Appeal promptly after the High Court’s decision. Judicial review is not the correct mechanism for correcting such an error. No appeal was filed, which is regrettable.
5. The Applicant argues that the clerical mistake in the 1966 record, where “Fouka” and “Alafe” were interchanged, materially affected the High Court’s reasoning. While clerical errors can, in certain circumstances, justify correction or review, the proper course of action, as earlier alluded to, would have been to appeal the High Court’s judgment or to seek correction promptly after the error was discovered. This Court cannot, through judicial review, correct another High Court decision. That must be done by way of appeal if the error is material.

6. This Court must now consider the principle of finality of litigation. It is well established that a judgment of the High Court in 2011 which upheld the 1966 decision, unless appealed or set aside, is final and binding. This principle is reinforced by the doctrine of *res judicata*, which prevents parties from re-litigating matters that have already been conclusively determined. In the present case, the High Court judgment was not appealed, and therefore stands as final.
  
7. Rule 15.3.9 must be read together with Rule 15.3.8 of the Civil Procedure Rules, which makes clear that leave for judicial review is discretionary and subject to strict procedural compliance. Even if this Court had jurisdiction to review the High Court decision in *Agi v Kwaebue* or the 1966 Native Court decision, the Court in *Ratusia v Attorney General* [2016] SBHC 53 emphasised that applications for judicial review must be brought promptly and within prescribed time limits. Delay without sufficient justification is a ground for refusing leave. In the present case, the application has been filed 14 years after the High Court decision, or indeed 59 years after the 1966 decision. This is an extraordinarily long period beyond the prescribed time. The explanations provided for the delay in the Court's view are unsatisfactory. In light of the finding that it is inappropriate to perfect this clerical error through judicial review, this Court holds that the interests of justice do not require this claim to be filed out of time.
  
8. The Court is also mindful of the need to prevent an abuse of the court process. An application that seeks to reopen matters already conclusively determined by the High Court, without appeal, amounts to an attempt to circumvent the principle of finality. Even if the clerical mistake is apparent on the record, the Applicant had the opportunity to challenge the High Court's reliance on that error at the time. To permit the application now would be to undermine the integrity of the judicial process and encourage endless litigation.

### **Conclusion**

9. For these reasons, the Court finds that the application is out of time, procedurally barred, and constitutes an abuse of the court process. The High Court judgment remains final and binding, and the Applicant cannot re-litigate the matter through judicial review at this stage. Costs are awarded to the Second Respondent on a standard basis.

**Orders of the Court**

1. The application for leave to file a claim for judicial review out of time is dismissed.
2. The application is accordingly dismissed as an abuse of the court process pursuant to Rule 9.75(c) of the *Solomon Islands Courts (Civil Procedure) Rules 2007*.
3. Costs are awarded to the Second Respondent on a standard basis.



Hon. Justice Augustine S. Aulanga

**PUISNE JUDGE**