

IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Civil Appeal
Case No. 19/1163 CoA/CIVA

BETWEEN: KLESYAVNE NUMANIA
Appellant

AND: IERISOA NUMANIEN
Respondent

Coram: Hon. Justice Oliver Saksak
Hon. Justice John Mansfield
Hon. Justice Dudley Aru
Hon. Justice Gus Andrée Wiltens

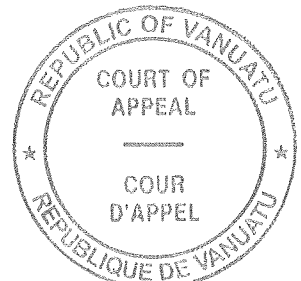
Counsel: Less John Napuati for Appellant
Willie Kapalu for Respondent

Date of Hearing: 11th July 2019
Date of Judgment: 19th July 2019

JUDGMENT

A. Background

1. This appeal concerns a short point about S.22 of the Island Courts Act [CAP 167] (“The Act”).
2. On 7 July 2017 the Tanna Island Court decided a dispute over custom birth right ownership of the name “NEMANIEN” in favour of the appellant, Klesyavne Numania (Mr Numania).
3. The respondent Ierisoa Numanien (Mr Numanien) filed an application to the Magistrate Court seeking leave to appeal out of time on 16 October 2017. That is more than 60 days after the Island Court decision.
4. On 15 May 2018 the Magistrate struck out the application in the absence of Counsel for Mr Numanien under Rule 9.10 (1)(a) of the Civil Procedure Rules.



5. Mr Numanien then appealed to the Supreme Court where the appeal was allowed and the case remitted to the Magistrates Court for rehearing.
6. Mr Numania now appeals against that decision and says the judge had no jurisdiction to set aside the orders of the Magistrates Court.
7. There is basically one issue and that is whether or not the Supreme Court had jurisdiction to set aside the orders of the Magistrates Court dated 15 May 2018.

B. Submissions

8. Mr Napuati submitted on the basis of Section 22 of the Act and the case of Kalsakau v. Jong Kook Hong [2004] VUCA 2 that the respondent's appeal was incompetent for two reasons: (a) that no leave had been sought or obtained to appeal out of time, and (b) that the appeal was time-barred with no exception.
9. Mr Kapalu however argued that the Supreme Court judge had correctly exercised his powers under Section 23 of the Act.

C. Law

10. Section 22 of the Act states:-

“Appeals

- (1) Any person aggrieved by an order or decision of an Island Court may within 30 days from the date of such order or decision appeal from the Magistrate's Court.
- (2) The Court hearing an appeal against the decision of an Island Court shall appoint two or more assessors knowledgeable in custom to sit with the Court.
- (3) The Court hearing the appeal shall consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it thinks fit.
- (4) An appeal to the Supreme Court under subsection (1) (a) shall be final and no appeal shall be therefrom to the Court of Appeal.
- (5) Notwithstanding the 30 days period specified in subsection (1) the Supreme Court or the Magistrates' Court, as the case may be; may on application by



an appellant grant an extension of such period provided the application therefore is made within 60 days from the date of the order or decision appealed against.”

11. Section 23 of the Act states:-

“Power of Court on Appeal

The Court in the exercise of appellate jurisdiction in any cause or matter under section 22 of this Act may –

- (a) make any such order or pass any such sentence as the island court could have made or passed in such cause or matter;
- (b) order that any such cause or matter be relied before the same court or before any other island court.”

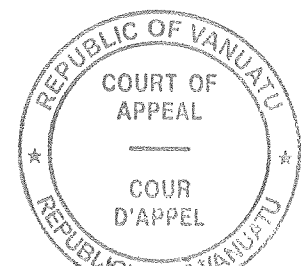
12. In the Kalsakau case this Court said this:-

“We are of the clear view that strict compliance with the terms of subsections (1) and (5) in relation to an appeal and in relation to an application seeking an extension of time is essential. In short the person aggrieved by an order or decision of the Island Court must appeal within 30 days from the date such order or decision to the Supreme Court in relation to a matter concerning a dispute as to ownership of land. We consider that the **“date of such order or decision”** commencing the time frame within which the 30 days for an appeal must be made, commences from the date on which the reasons for the decision duly signed and sealed are made available to the parties. Likewise the further 30 days period specified in section 22 (5) of the Act runs from that date. Further any application for grant of an extension of the 30 days must be made within 60 days. Outside the 60 days no relief can be sought or granted.” (Our emphasis)

D. Discussion

13. The original Island Court decision was made on 7 July 2017. The application seeking leave to appeal out of time was filed on 16 October 2017. The Magistrate therefore correctly ruled that the application was past the 60 days period.

14. It follows that Mr Numanien’s appeal to the Supreme Court was incompetent and that the judge erred in hearing it.



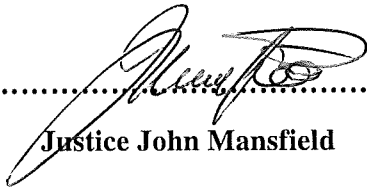
E. Result

15. The appeal is allowed. The judgment dated 13 May 2019 is quashed. The judgment of the Magistrate's Court dated 15 May 2018 is upheld.

16. The respondent will pay the appellant's costs of the appeal on the standard basis as agreed or taxed..

DATED at Port Vila this 19th day of July, 2019.

BY THE COURT


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Justice John Mansfield

