

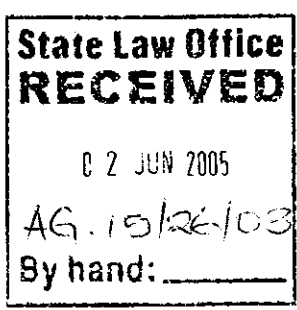
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IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Civil Case No. 8 of 2004

(Civil Jurisdiction)

IN THE MATTER OF: Judgment No.6 of 2004



BETWEEN: MARINA RAVO

Applicant

AND: MINISTER OF ENERGY

First Respondent

AND: PRINCIPAL ENERGY OFFICER

Second Respondent

**Coram: Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk**

**Counsel: Mr Willie J. Kapalu for the Applicant
Mr Kiel Loughman for the Respondents**

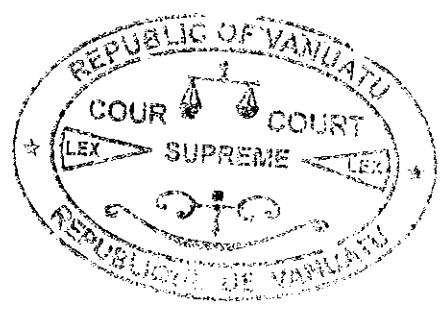
Date of Hearing: 30th May 2005

JUDGMENT

This judgment provides reasons for the oral decision dismissing the Applicant's Application with costs today.

Mrs Ravo, the Applicant seeks leave to appeal out of time. The grounds of her application are that –

- (a) She has a constitutional right to appeal.
- (b) There is a filed Notice of Appeal containing sufficient cause of action.



- (c) The Court has inherent powers to enlarge time for appeal up to 90 days based on good reasons.
- (d) There were delays specified in her sworn statement dated 11th January 2005.

Mr Loughman opposes the Application. He does not dispute the fact that the Applicant has a constitutional right to appeal. He argues that her right to appeal is limited to be exercised within the time specified by legislation. He argues that the Applicant had sufficient time and the reasons she provided for the delays in filing her appeal in time as per her sworn statement are not sufficient or inadequate reasons. He argues that the administrative bottleneck in her solicitor's offices did not stop her from filing an appeal in time. Referring to the purported grounds of appeal Mr Loughman submits that the indefeasibility of title was not in issue in the original proceedings and it could not be an appellable point. He asks the Court not to take any notice of the Applicant's Notice of Appeal. He argues that Lawyers and their clients should avail themselves to the convenient of the Court and not vice versa. He seeks an order dismissing the Application with costs.

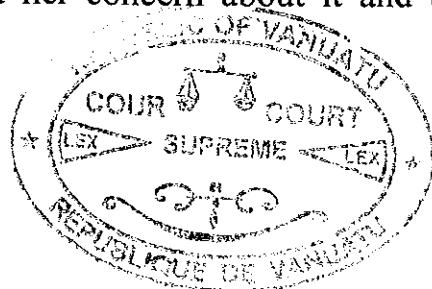
I now deal with each grounds as follows:-

Constitutional Right to Appeal

1. The Court adopts the position as submitted by Mr Loughman that this right is limited to the time or period specified by regulation or legislation. The Court of Appeal Rules 1973 provides for a period of 30 days after the decision complained of. See Rule 20.

Sufficient Cause of Action in the Notice of Appeal

2. The Court agrees with Mr Loughman that the Notice of Appeal does not disclose sufficient cause of action to warrant an appeal. The Applicant seemed to make an issue out of two matters:(a) Her indefeasibility of title which was not in issue in the original proceedings, and (b) Lack of consent. It is in the Court record as evidence that at no time did Mrs Ravo write to the Respondents to say she did not consent to the power pole and line erected on her property. All she did was raised her concern about it and then



asked for the provision of a guarantee that it was safe, and then accepted to be compensated at the sum of VT176.000. Those are not appealable points on which she is likely to succeed.

3. The Court's inherent Power To Enlarge Time

This is the Court's discretionary power under Rule 9 of the Court of Appeal Rules 1973. Again this exercise of power is subject to the applicant providing valid reasons for so applying. There is no provision for the 90 days period. Mr Kapalu has not drawn the Court's attention to any such provision.

4. Delays

The Court agrees with Mr Loughman that the delays caused by solicitors were administrative matters which did not restrict or prevent the Applicant lodging an appeal in time. She is a woman of some educational standing and background and there can be no excuse why she could simply do a letter to the Registry to indicate that she was appealing. She did not do that but simply waited on her lawyers. That cannot be adequate reason for allowing an extension of time to appeal.

For those given reasons, leave to appeal out of time is refused. The Application is dismissed with costs. Costs are fixed at VT40.000 to be paid by the Applicant to the Respondents within 28 days from the date of this judgment.

DATED at Luganville this 30th day of May, 2005.

BY THE COURT



OLIVER A. SAKSAK
Judge

