

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal Case No.5 of 2013

BETWEEN: BEN TUNALA

Appellant

AND: ERICK JOHN TABIR

Respondent

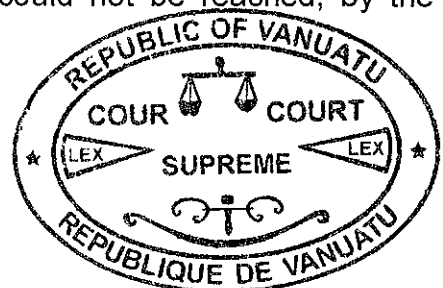
Coram: *Mr Justice Oliver A. Saksak*

Counsel: *Mr Lent Tevi for Applicant/ Appellant- No appearance
Mr Jack Kilu for Respondent*

Date: *3rd June 2014*

JUDGMENT

1. Mr Tevi filed a Notice of Appeal with grounds on 3rd December 2013.
2. On the same date Counsel also filed an application for leave to appeal out of the setting out the grounds. The Appellant filed a sworn statement in support of the application also on the same date.
3. On 10th April 2014 Mr Tevi and Mr Kilu appeared in Chambers. Mr Tevi indicated there had not been any response filed by the Respondent. Mr Kilu confirmed that position and indicated he needed to respond but submitted orally that the application was very late.
4. The Court indicated its intention to Counsel that it would consider the application together with the substance of the appeal. And for that purpose, the Court issued Orders requiring the Appellant to file and serve 3 copies of an Appeal Book within 28 days and for the Respondent to file and serve responses within another 28 days. The Court then fixed the final review date for Wednesday 4th June 2014. The Court however moved that listing forward to Tuesday 3rd June 2014 on the understanding that the Judicial Training Program for Judges was to begin on 4th June 2014. The Judge's associate was instructed to inform Counsel of this sudden change of date. This was done through an email dated 30th May 2014.
5. The matter was called in Chambers at 2 O'clock pm. Mr Kilu attended but unfortunately Mr Tevi did not attend and he could not be reached, by the Judge's associate despite telephone calls.



6. Mr Kilu referred the Court to the Appeal Review Orders issued on 10th April 2014 and argued the Appellant had not complied with paragraph 1 which required him to file Appeal Books. Mr Kilu objected to the application and argued that leave should be refused because
 - a. The application is very late. The decision sought to appeal against was made on 12th October 2009.
 - b. The Judgment has been enforced through an Enforcement Warrant.
 - c. Occupants of the property in dispute have vacated. and
 - d. The Respondent is now in occupation and is developing his leased property.
7. The Court accepts those arguments and submissions. The purported appeal is well out of time. There is no sufficient cause or reasons given by the Appellant in his sworn statement dated 3rd December 2013 why he did not file an appeal within the time allowed by the rules: that is after 30 days from the date of decision. He appears to shift the blame on his previous Counsel but that cannot be sufficient reason for not filing an appeal in time. Time for filing of appeals require strict compliance.
8. Further the Appellant failed to comply with the clear Orders of the Court issued on 10th April 2014 and there is no explanation for the failure and/ or omission.
9. The only conclusion reached is that leave must be refused and the application be hereby dismissed. Further the appeal filed on 3rd December 2013 is also hereby dismissed.
10. There will be no Order as to costs.

DATED at Port Vila this 3rd day of June 2014.

BY THE COURT

