

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

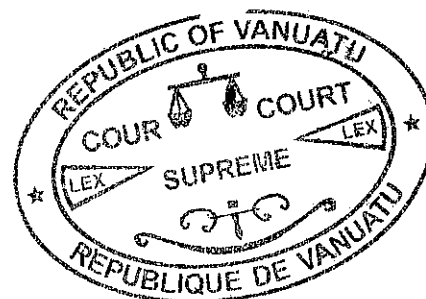
**Civil Appeal Case
Case No. 20/1246 SC/CIVAL**

BETWEEN: Peter Bebe
Appellant
AND: Willie Bebe
First Respondent
AND: Erick Wayback
Second Respondent
AND: Ron Tamtam
Third Respondent

Date of Hearing : 20th July 2020
Date of Decision: 19th August 2020
Before: Justice Oliver.A.Saksak
In Attendance: Mr Eric Molbaleh for the appellant
Mr James Tari for First Respondent
Mr Roger Rongo for Second Respondent
No appearance for Third Respondent

DECISION

1. On 30th April 2020 the Senior Magistrates Court refused leave to the appellant to appeal out of time on grounds that the appellant was time barred under section 22 (5) of the Island Court Act.
2. The appellant Peter Bebe appealed to this Court against that decision. The grounds of the appeal are:
 - (a) The Magistrate erred in fact law and custom by refusing leave,
 - (b) By failing to take into account the facts raised in the sworn statement filed in support of the application for leave,
 - (c) By failing to take into account the grounds of appeal and
 - (d) By failing to take into account the rural living of the appellant and his lack of knowledge of the Court processes regarding appeals.



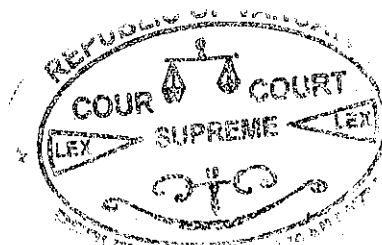
3. The first respondent Willie Bebe filed an application to strike out the appeal on 29th June 2020 on grounds that the application for leave was filed well outside the 60 days period allowed by section 22 (5) of the Island Court Act [Cap 167].
4. The second respondent Erick Wayback supports the application for strike out. He filed a separate application on 6th July 2020. Mr Rongo filed written submissions in support of the strike out application on 4th August 2020. Mr Tari filed written submissions earlier on 21st July 2020.
5. On 20th July 2020, the Court directed by consent that the applicants file their submissions by 27th July 2020, the appellant to file his responding submissions by 3rd August 2020, and that the Court formulate its decision on the papers and to issue accordingly.
6. Both applicants filed sworn statements in support of their applications for strike out.
7. Both applicants rely on the Court of Appeal Case of Klesyavne Numania v Ierisoa Numanian CAC 1163/019 in support of their submissions that the appellant's application was well outside of the 60 days period allowed in section 22 (5) of the Island Courts Act. As such, the appeal should be struck out.

Discussion

8. The appellant has not filed any responding submission in compliance with the Court's direction of 20th July 2020.
9. Section 22 (5) of the Island Court Act states:

"22. 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 it to the Magistrates' Court.*
- (2) The court hearing an appeal against a 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 made to the Supreme Court under subsection (1) (a) shall be final and no appeal shall lie therefrom to the Court of Appeal.*
- (5) Notwithstanding the 30 day 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."*

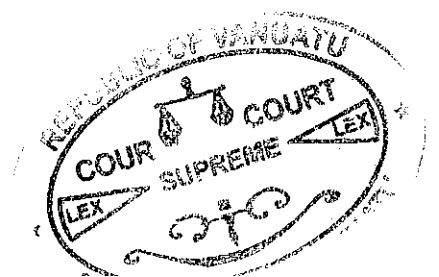


10. In **Numania's** appeal the Court of Appeal reiterated what is said in **Kalsakau v Jong Kook Hong** [2004] VUCA 2 where the Court said"

" 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 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."

(Underlining for emphasis)


11. The **Kalsakau** appeal and the **Numania** appeal were in relation to disputes as to ownership of land. This appeal relates to a dispute as to ownership of a chiefly title. Whether that makes these cases distinguishable? I think not. In the general scheme of the Island Court Act which deal with matters involving custom, section 22 of the act is capable of being qualified to cover appeals by aggrieved persons over any decision or order of the Island Court in relation to custom, the time frames fixed by that section apply.
12. The facts in evidence show the Island Court of Pentecost made its decision on 30 August 2019. The appellant was not a party to the proceeding but he applied as an aggrieved person pursuant to section 22 (1) of the Act. He made application for joinder and filed it together with his Notice and Grounds of Appeal on 3 December 2019.
13. Clearly the appellant was well outside the 60 days period allowed by section 22 (1) and (5) of the Act. The Magistrate was therefore correct to hold that appellant's application was time-barred.
14. The issue is whether for that reason of time-barred the appeal should be struck out at this stage?
15. The appellant's appeal is time-barred and it is therefore an incompetent appeal. To save costs and time, an incompetent appeal should not be allowed to proceed any further as the appellant will not succeed in any event.



16. Section 22 (1) and (5) of the Act provide strict time frames. The Court of Appeal cases of Kalsakau and Numania are very clear authorities that those time frames must be strictly complied with.
17. Accordingly and for those reasons, the applications by the First and Second Respondents are allowed. The appeal of the appellant is incompetent and is therefore struck out.
18. There shall be no order as to costs. Each party bears their own costs.

DATED and ISSUED at Luganville this 19th day of August 2020

BY THE COURT


Oliver.A.Saksak
Judge

