IN THE COURT OF APPEAL OF TONGA LAND JURISDICTION

AC 27 of 2014 [LA 14 of 2007]

BETWEEN:

ARTHUR KENNETH HAVILI

Applicant

AND

- 1. TONGA DEVELOPMENT BANK
- 2. MINISTER OF LAND

Respondents

DECISION

- [1] This is an ex-parte application for leave to appeal out of time against a judgment of the Land Court delivered on 1 December 2008.
- [2] In an affidavit filed in support, the Applicant describes the unsuccessful attempts he made to obtain a deed of registration from the Ministry and his earlier attempts to obtain legal representation to file an appeal.
- [3] In paragraph 18 the Applicant states that in June 2014 his attention was drawn to a Judgment of the Court of Appeal in *Aivenihonu Lisiate & Anor v Mele 'Eli & Ors* (AC23 of 2011) delivered on 27 April 2012. In the opinion of his legal adviser *Lisiate's* case suggests that the Land Court erred when it dismissed the Applicant's case in 2008.
- [4] The courts' understanding and application of the law is a process of continuing development but there is no principle in civil law that the decision of an appellate court in respect of an unconnected action which

suggests that an appeal filed within time might have been successful constitutes a ground for allowing an appeal to be lodged, very much out of time, against the earlier decision of the lower court. Were this not the case then there would be no finality in litigation.

[5] The application fails and is dismissed.

NUKU'ALOFA: 12 September 2014.

N. Tu'uholoaki 12/9/2014.

PRESIDENT

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