

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Land Appeal Case No. 01 of 1987

(Civil Jurisdiction)

BETWEEN: SILAS HINGE

First Appellant

AND: NATHRIK LATH

Second Appellant

AND: SUL PAUL

Respondent

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

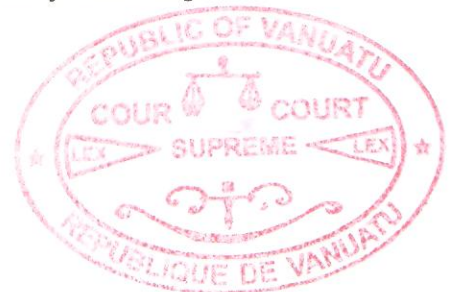
Chief Petro Rite – Assessor
Chief James Ngisa – Assessor

Mr Felix Laumae for First Appellant
Mr Lent Tevi for Respondent and Applicant
No appearance by Second Appellant

REASONS FOR DECISION

1. This judgment provides reasons for the decision and orders delivered orally and issued on 17th October 2011.
2. The application was made by the respondent Sul Paul seeking orders that –
 - (a) The appeals are out of time and that they be struck out; and
 - (b) The appellants pay the respondent's costs.

The application was supported by the evidence contained in the sworn statement of Kalsei Paul filed on 23rd February 2009 together with the application.



3. At the hearing of the application neither the Second Appellant nor his lawyers were present. They were served by the Sheriff on 1st August 2011 with the appropriate Notice of Hearing dated 3rd August 2011 returnable on 5th September 2011. On 5th September 2011, the Second Appellant and the Respondent/Applicant were not present. Only a representative of the First Appellant was present, therefore the Court adjourned the matter for the final time to 17th October 2011. It was unfortunate that the second defendant or their lawyers did not appear.

4. The Court noted the following:-

(a) All the parties are named in their personal names and not in their representative capacity.

(b) All the named appellants and respondent are deceased.

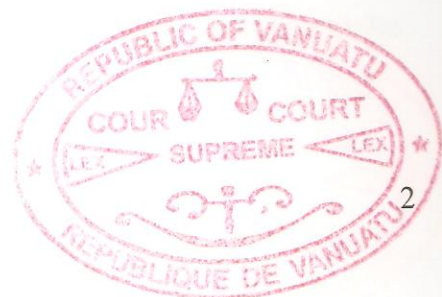
(c) There have been considerable delays in the hearing of the appeals.

(d) None of the counsel for the parties present requested any further adjournments.

On these basis, the Court proceeded to hear Counsel in respect of the application.

5. The application was advanced on one main ground that appeals were filed so out of time that they ought to be struck out.

6. The evidence by Kalsei Paul in his sworn statement of 23rd February 2007 shows that –



(a) The First Appellant only filed his appeal on 26th September 2009; and (b) the Second Appellant filed his appeal on 19th September 2005.

7. The date of the Santo Malo Island Court's decision was 15th January 1987. The Respondent/Applicant argued that the appeals were filed some 18 years later. Counsel submitted that on the basis of the Court of Appeal rulings in the Cases of Kalsakau v. Hong [2004] VUCA 2 and Loparu v. Sope [2005] VUCA 4, section 22 (1) and (5) of the Island Courts Act Cap 167 must be interpreted strictly, and as such, these appeals could not be sustained and allowed.
8. Mr Laumae acknowledged that legal position. The evidence as to the dates of filing of the appeals were not disputed. However, Counsel argued and submitted that when the Court issued directions on 20th July 2005 directing the appellants to instruct solicitors and afforded them 21 days to file and serve their proper Notices of Appeals, it could be inferred that the Court had acknowledged that the appellants' appeals were already before the Court.
9. Mr Tevi however argued that as no leave was formally applied for by the appellant, the Court could not grant such leave on its own Motion.
10. On the question of leave the Court confirms that on 20th July 2005 or at any stage of this proceeding none of the appellants had sought any leave by formal application to file their appeals out of time. The Court accepted Mr Tevi's submission therefore that the Court could not grant leave on its own motion without any proper application made seeking such leave. The orders of 20th July 2005 were, as it were facilitating orders in anticipation that an application would be filed seeking a strike



out. The application was not forthcoming until 2009 when the respondent filed his application.

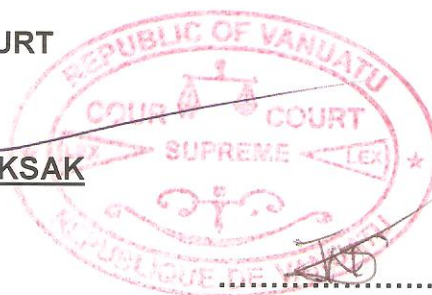
11. The Court noted further also that even with the Court's directions dated 20th July 2005 the appellants still failed to comply. Therefore on 16th August 2005, the Court re-issued those orders but shortened the period down to 5 days for the First Appellant and 21 days for the Second Appellant. Despite these further directions, the appellants still failed to comply. They filed their notices and grounds but did so outside of the time specified or directed by the Court. These failures did not assist the appellants. They were already late by 18 years and their failures two times at the Court's directions to file their proper notices and grounds was clear indication to the Court that the appellants were not serious in prosecuting their appeals.
12. For the foregoing reasons, we allowed the application and dismissed the appeals of the First and Second Appellants.
13. We refused the applicant's application for costs and thought that in this sort of cases costs should lie where they fall and each party should meet their own costs.

DATED at Luganville this 17th day of October 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge




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Chief Petro Rite
Assessor


.....
Chief James Ngisa
Assessor