

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

Civil Case No. 65 of 2007

BETWEEN: TOLVIS JAMES
Applicant

AND: FREDDY REGENMAL
First Respondent

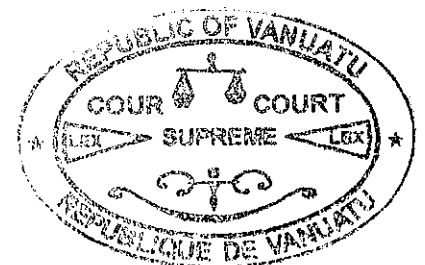
AND: EPHRAIM MALMETESO
Second Respondent

Coram: Justice Aru

Counsel: Mr. J. Kilu for the Applicant
Mrs. M.G. Nari for the 1 & 2 Respondents

RULING

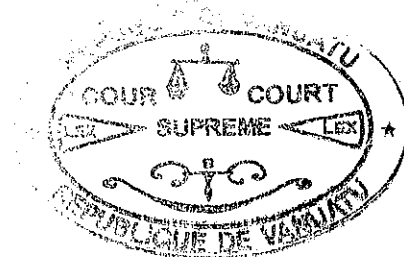
1. On 28 November 2008 Civil Case No 65 of 2006 was struck out pursuant to Rule 9.10 2) (d) of the Civil Procedure Rules . The background to this case is that the MALAMPA Island Court on 21 May 2004 declared the First Respondent custom owner of "PERPETREV LAND". The Applicant had wanted to appeal that decision but as the 30 days appeal period had lapsed he filed this case to apply for leave to appeal out of time. Subsequently the case was struck out by Dawson J.
2. The Application now before me seeks the following relief:
 - a) to set aside the struck out orders;
 - b) reinstate (Civil Case No. 65 of 2006 and;
 - c) list the application for leave to appeal out of time filed on 28 February 2007 for hearing.



3. The Respondents submit that on 11 October 2006, the Applicant's Solicitor, Kiel Loughman of Indigene Lawyers informed the court that they would be filing a Notice of Discontinuance and costs were paid to the Respondents. The Sworn Statement of Ailo Massing filed on 28 March 2007 on behalf of the Respondent annexes the order for discontinuance made by Bulu J at annexure "A" and the costs paid by the Applicant as a result of the discontinuance at annexure "B".
4. The Respondents further submit that there were two other conferences listed before the matter was finally struck out by Dawson J. This decision has not been appealed and brought the matter to an end.
5. The Court of Appeal in *Jonah v Kemuel* [2012] VUCA 10 made it very clear that the Judicial Services and Courts Act [CAP 270] "does not give a single judge jurisdiction to review or set aside a decision made by another judge. Only the Court of Appeal has that jurisdiction under section 48 of the Act."
6. Even if I could set aside the orders, the application for leave to appeal the island Court decision is some 9 years out of time. Again the Court of Appeal has said in *Kalskau v. Jong Kook Hong* [2004] VUCA 2 that:-

"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 for an appeal is essential. In short the person aggrieved by an order or decision of the Island Court must appeal within 30 days from the date of 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 the decision duly signed and sealed are made available to the parties. Likewise the further 30 days period as specified in section 22 (5) of the Act runs from that date. Further any application for grant of an extension of the 30 day period must be made within 60 days. Outside the 60 days no relief can be sought or granted."

7. For the above reasons the Application must be refused and I make the following orders:

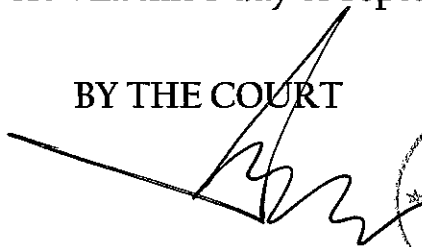


ORDERS

1. The Application to set aside struck out orders made on 28 November 2008 is dismissed.
2. The Respondent is entitled to costs on a standard basis to be taxed failing agreement.

DATED at Port Vila this 5 day of September, 2013.

BY THE COURT



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D. ARU
Judge

