

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Other Jurisdiction)

Land Appeal
Case No. 18/2383 SC/LNDA

BETWEEN: Norris Jack Kalmet and Kalkot Kaltatak
representing family Kalmet and Family
Kaltatak
Appellants

AND: Kaluaat Thomas
First Respondent

AND: Family Kalmermer
Second Respondent

AND: Naflak Kram Naoi
Third Respondent

AND: Kalmetabil Namak Kalmet
Fourth Respondent

AND: Family Salsal Lauto
Fifth Respondent

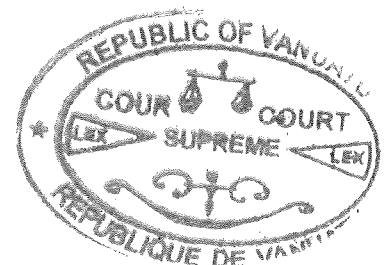
AND: Family Kalman Kiri
Sixth Respondent

AND: Kalontas Kalfabun
Seventh Respondent

AND: Akau Kaltamat
Eight Respondent

AND: Family Kaluas Lamlamru
Ninth Respondent

AND: Family Kalwatong
Tenth Respondent



Coram: Justice Aru

Counsel: Mr. James Tari for the Appellant
Mr. Silas Hakwa for all the Respondents

JUDGMENT

Introduction

1. The respondents are applying for orders to strike out the appellants' application to extend time to appeal a decision of the Efate Island Court in land Case No 1 of 1995 (LC1/95) concerning custom ownership of Bouffa/Bellevue land on Efate. Before considering the application to extend time, I need to first deal with the strike out application.

Background

2. LC1/95 was filed with the Efate Island Court sometime in 1995. On 23 December 2010 following consent by all the parties to the dispute, judgment was entered by consent. That decision has never been appealed. No appeal was filed within the 30 days appeal period.
3. On 5 September 2018 the appellants who were not parties to LC1/95 filed an application to extend time to appeal. Eight (8) years have now lapsed since judgment was entered.
4. On 1 October 2018, Mr Hakwa acting for the respondents filed his application to strike out. The basis of the strike out application is that the application to extend time was time barred and secondly the appellants had no standing to apply.

Discussions

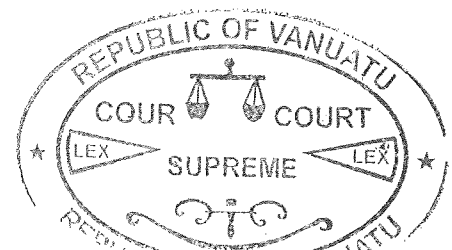
Extension of time

5. Section 22 (5) of the Island Courts Act [CAP167] provides:-

....
“(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 therefor is made within 60 days from the date of the order or decision appealed against.*”

(emphasis added)

6. Any application to extend time to appeal a decision of the Island Court can only be considered if it is made within 60 days after judgment is entered. In **Kalsakau v Jong Kook Hong** [2004] VUCA 2 the Court of appeal stated that:-



“...any application for grant of an extension of the 30 days period must be made within 60 days. Outside the 60 days no relief can be sought or granted”.

7. The appellants filed their application some 8 years after final judgment. The application is clearly time barred as it is not within time. Considerations for extending time as set out in **Laho Ltd v QBE Insurance (Vanuatu) Ltd** [2003] VUCA 26 can only be considered if the application was made within 60 days. Outside the 60 days no consideration should be given.
8. The appellants have sat on their rights for 8 years without doing anything.

Standing

9. The appellants were not parties to LC1/95. A person aggrieved by a decision can nevertheless appeal provided they satisfy the appeal requirements. The question of standing arises as the appellants in their application state that they are representing family Kalmet and family Kaltatak respectively. Mr Kaltatak has not filed any sworn statement in support of the application to extend time and has not filed any evidence of authorisation from family Kaltatak that he is to act on their behalf as their representative.
10. Mr Kalmet on the other hand has filed sworn statements in support of their application but there is no evidence that he has been authorised by family Kalmet to act on their behalf as their representative.
11. In the absence of such authorisation the appellants lack standing to bring these proceedings even if their application was made within time.

Result

12. For the above reasons the application to extend time is struck out. The respondents are entitled to costs to be agreed or taxed.

DATED at Port Vila this 28th day of June, 2019

BY THE COURT

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**D. Aru
Judge**

