

**BETWEEN: CHIEF RINGIAU NASSE IAKWEI MAFE**  
**Appellant**

**AND: CHIEF RINGIAU KOMI**  
**Respondent**

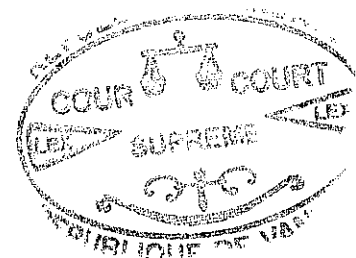
**Date of HEARING:** 4<sup>th</sup> October 2023  
**Date of Decision:** 6<sup>th</sup> October 2023  
**Before:** Acting Chief Justice  
**In Attendance:** Mr Avock Godden for applicant/ Appellant  
Mr Eric Molbaleh for respondent

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**DECISION**

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1. I heard Counsel in relation to the application filed by Mr Godden on 1<sup>st</sup> June 2023 seeking leave to appeal out of time, together with a sworn statement filed in support by the applicant.
2. Mr Molbaleh objected to the application very late on 3<sup>rd</sup> October 2023 at 4:20pm through the sworn statement of the respondent
3. The dispute concerns ownership of a chiefly title. It started in the Tanna Island Court in July 2013, some 10 years ago when the Island Court declared the respondent as the rightful custom owner of the Chiefly title "Ringiau".
4. The decision or judgment was appealed to the Magistrates Court and on 11<sup>th</sup> March 2019 the Court upheld the Tanna Island Court's decision and judgment. The respondent appealed further to the Supreme Court.
5. On 28<sup>th</sup> April 2020 the Supreme Court allowed the appeal, set aside the decision of 11<sup>th</sup> March 2019 and remitted the matter back to the Island Court for hearing de novo.
6. The respondent then appealed to the Court of Appeal who dismissed the appeal on 17<sup>th</sup> July 2020 and upholding the primary judge's conclusion.
7. The matter was listed for hearing before the Magistrates Court on 10 November 2022. The applicant and counsel did not attend after they had received confirmation from the Clerk of the Court that all listings were vacated due to the Government system of the applicant's statement dated 1<sup>st</sup> June 2023.



8. Despite that advice, Mr Molbaleh and the respondent attended the Magistrate's Court on 10<sup>th</sup> November 2022 and sought an Order that the case be struck out. And the Court struck out the case.
9. The decision striking out the case was never served on the applicant until 25<sup>th</sup> April 2023 when he and Counsel made inquiries. And even when a copy was promised to be made available in the afternoon of that day, it was not until 1<sup>st</sup> May 2023 that copy was finally made available to the applicant's counsel
10. I find there is clear evidence that the listing for 10<sup>th</sup> November 2022 was vacated which justified the absence of the applicant and his Counsel.
11. The hearing on 10<sup>th</sup> November 2022 was a one sided hearing without the applicant and his Counsel. It therefore could not have been a de novo hearing as Ordered by the Supreme Court on 28<sup>th</sup> April 2020 and upheld by the Court of Appeal in July 2020.
12. It did not matter that the applicant did not progress his appeal up to that date. It did matter that the applicant and Counsel were advised the listing was vacated and yet the Court sat and struck out the appeal. It was therefore not de novo hearing as Ordered.
13. The appropriate thing to do in such circumstances is to consider awarding wasted costs which did not happen here.
14. I therefore came to the conclusion that leave should be granted.
15. There has been a denial of natural justice by the decision dated 10<sup>th</sup> November 2022. It is to be vacated and the case be relisted for hearing de novo.
16. I direct that the matter be listed for a conference before the relevant Magistrate on Friday 6<sup>th</sup> October 2023 at 0815 hours.
17. I Order that the respondent pays the applicant's costs fixed at VT 50.000 within 30 days from the date of this decision.

**DATED at Port Vila this 6<sup>th</sup> day of October 2023**

**BY THE COURT**

  
**Hon. OLIVER A SAKSAK**  
**Acting Chief Justice**

