

BETWEEN: Family Ati Kalran

Appellant

AND: Donal Maltok

First Respondent

AND: Titus Sam

Second Respondent

AND: Ambee Bonbonmal

Third Respondent

AND: Family Meltekane

Fourth Respondent

*Date of Hearing and
Decision:*

8th April 2021

Before:

Justice Oliver.A.Saksak

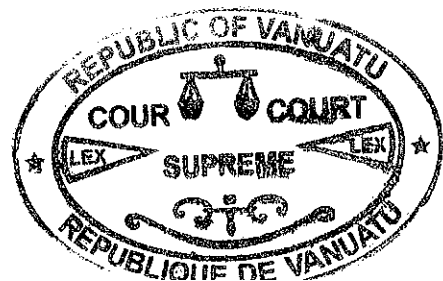
In Attendance:

Ms Jennifer La'au for the appellant

*No appearances for the First, Second, Third
and Fourth Respondents*

JUDGMENT

1. This is an unchallenged appeal. It is an appeal against the Ruling of the Supervising Magistrate sitting at the Lakatoro Magistrates Court on 17th September 2020.
2. On 21st September 2020 the Supervising Magistrate dismissed the appellant's appeal for reason that it was filed outside of the required time periods of 30 days or 60 days from the date of judgment.
3. The Magistrate found and held the judgment of the Island Court sought to be appealed was delivered on 26th November 2019. He also found the notice of appeal having been filed only on 5th February 2020 and the Grounds filed on 17th February 2020 was filed some 71 days after the judgment was delivered.



4. The appellant says the Magistrate was in error in so finding, resulting in the dismissal of his appeal.
5. Except for the First Respondent, there has been clear proof of service of the Appeal Books on the Second, Third and Fourth Respondents. None of them have responded or instructed legal counsel to act on their behalf.
6. The issue before the Court is a legal one. It is whether the Magistrate was wrong in dismissing the appeal upon finding it was filed outside of the 30 days or 60 days period as stipulated in section 22 of the Island Court's Act.
7. Section 22 of the Island Court's Act provides-

22. Appeals

"(1) Any person aggrieved by an order or decision of an island court may within 30 days from the date of such order or decision appeal from it to the Magistrates' Court.

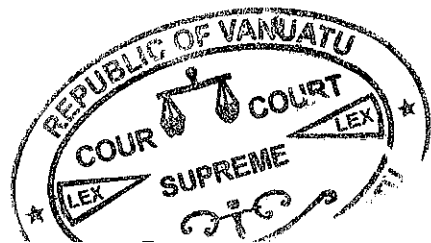
(2) The court hearing an appeal against a decision of an island court shall appoint two or more assessors knowledgeable in custom to sit with the court.

(3) N/A....

(4) N/A...

(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 therefore is made within 60 days from the date of the order or decision appealed against."

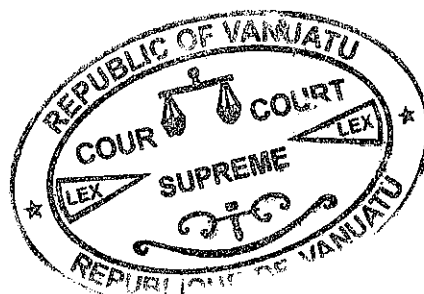
8. A further issue arises as to the date of the order or decision sought to be appealed against.
9. The Magistrate found that date to be 26th November 2019 and so ruled that as at 5th February 2020 and 17th February 2020 the appeal was outside the 30 and 60 days periods stipulated in section 22 (1) and (5) of the Island Court's Act.



10. The Court of Appeal has clarified the issue of date in its judgment in Kalsakau v Jong Kook Hong [2004] VUCA 2 CC 20/2003, page 7 where the Court said:

"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." (underlining for emphasis)

11. The documents in the Appeal Book show two separate judgments issued by the same Island Court that sat to hear the dispute on 17th and 18th October 2019. At TAB 5 of the Appeal Book a judgment dated 25th November 2019 is disclosed. At TAB 4 another judgment by the same Court is dated 26th November 2019 is disclosed.
12. By comparison the 25th November judgment consists of 4 pages. It contains 5 findings and 3 Court orders on page 3. The pages are not numbered.
13. The 26th November judgment consists of 19 pages with 27 Court findings and 4 Court Orders.
14. These reveal clear inconsistencies in the judgments.
15. But evidence further reveals in the sworn statement of Collyne Tete, the Island Court Clerk who sat with the Court on 17th and 18th October 2019 available in TAB 14 of the Appeal Book, confirms that the written judgments dated 25th and 26th November 2019 were only served on Mr Dick Ati at Lakatoro only on Friday 17th January 2020.



16. As a result of receiving the written judgments, the appellant filed their Notice of Appeal on 5th February 2020 [TAB 6] and their Grounds of Appeal on 17th February 2020 [TAB 7].
17. According to the Court of Appeal ruling in the Kalsakau case, the 30 days period in section 22 (1) begun to run from 17th January 2020 and not on 26th November 2019 as held by the Magistrate.
18. The decision of the Magistrate dismissing the appeal of the appellant on 21st September 2020 was clearly an error of both fact and law.
19. Accordingly this appeal is allowed.
20. The judgment of the Magistrate's Court dated 21st September 2020 is hereby set aside in its entirety.
21. The appellant's appeal in the Magistrate's Court is reinstated and remitted to the Court for a hearing but before a different Magistrate presiding.
22. The appellant is entitled to his costs of the appeal on the standard basis as agreed or taxed.

DATED at Port Vila this 8th day of April 2021

BY THE COURT

OLIVER.A.SAKSAK

Judge

