

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION: Application for an extension of time to file a Notice of Appeal from Judgment of the High Court of Solomon Islands (Goldsbrough J)

COURT FILE NUMBER: Civil Appeal Case No.12 of 2010 (On Appeal from High Court Civil Case No. 431 of 2007)

DATE OF HEARING: 15th February 2011

DATE OF JUDGMENT: 24 February 2011 delivered at 9.30am by the Registrar

THE COURT: Mwanosalua P(Ag)
Faukona JA
Chetwynd JA

PARTIES: Kalahaki Timber Ltd and Organic Earth Company
-v-
Daniel Kikile and Jack Hanigaro

ADVOCATES:

Appellant: Mr Pitikaka Applicants
Respondent: Mr Tagini Respondents

KEY WORDS:

EX TEMPORE/RESERVED: RESERVED

ALLOWED/DISMISSED: Dismissed

PAGES: 3

JUDGMENT OF THE COURT

1. An application for an extension of time to file a notice of appeal was put before a single judge of the Court of Appeal in October 2010. It was determined and refused. We are hearing a renewed application to the full Court. The procedure for making an application to extend time under s.19 of the Court of Appeal Act [Cap. 6] is clearly set out in the Act and in the Court of Appeal Rules (also to be found at [Cap.6]). In particular Rules 18, 19, 20 and 21. Counsel is expected to be aware of the practices and procedures of the court, especially when they are so clearly set out in the Rules. A Notice of Appeal was filed on 29th October 2010. It was defective because counsel did not comply with the Rules. However, the Court has sufficient material to deal with the substantive matter before it which is an application for an extension of time to file a Notice of Appeal and a stay of execution pending appeal. The proposed appeal relates to the decision of Goldsbrough J handed down on 15th April 2010.

2. Whether or not time is extended is always in the discretion of the Court. The principles which we need to consider when exercising this discretion are long established and were concisely set out in *Price Waterhouse and Others v. Reef Pacific Trading Limited and Another* [1996] SBCA5: CA-CAC 5 of 1995. There is no need, in this application, to expand on those principles.

3. The Applicants' explanation for delay is set out in the sworn statement of Bernard Garo filed 16th September 2010 starting at paragraph 26. In summary he says, for a number of reasons the Applicants had difficulty finding a suitable lawyer, then their new (and present) lawyer had to review the "complex" file. Following that they had to obtain further materials. Then for two months their new lawyer was engaged in the national elections. Following his return to Honiara the lawyer was unwell. We bear in mind it is for the Applicants to satisfy us there are good and acceptable reasons for the delay. The time between the decision to be appealed and the application for an extension is some 5 months. It is difficult for us to accept the reasons advanced on behalf of the Applicants satisfactorily explain the delay.

4. We also bear in mind the merits of the proposed appeal. We accept that when dealing with this aspect of the application we need not embark upon a detailed analysis of the proposed grounds of appeal. It is sufficient for us to have regard to those grounds and determine whether they are arguable. The Applicants do not advance before us anything substantially different from what was said before Goldsbrough J. As he rightly pointed out, the judgments sought to be set aside were not granted on any merits of any case but upon the basis of failure to comply with orders of the court. He went on to say the question of whether the Applicants rely on fraud or not isn't one which is considered at the time of default, it would only arise during a trial on the merits. There is no doubt

that applies to both judgments subject of the proposed appeal. His Lordship also pointed out that the proceedings relate to decisions made by an Area Council and the Commissioner of Forests under the purview of the Timber and Forest Resources Act well over 15 years ago. It is not possible for the Applicants to challenge those decisions at this time in the present proceedings. As a result and without detailed consideration of what are now the proposed grounds of appeal, His Lordship found there was no possible prospect of the Applicants (before us) maintaining a successful application in the High Court. For the reasons he advanced in the High Court and which we adopt here, we find there is no real prospect of success in the appeal. In short there are no merits to the appeal.

5. We refuse the application to extend time for the filing of an appeal.
6. Having refused the application for an extension the application for a stay pending an appeal must also be refused.
7. Costs of the Respondent to be paid by the Applicant, taxed if not agreed.

.....F. M.

President (Ag)

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Judge of Appeal

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Judge of Appeal