

BETWEEN: Samuel Iarai
Appellant

AND: Bosco and Ruea Sero
First Respondents

AND: Republic of Vanuatu
Second Respondent

Date of Hearing: 10 November 2020

Coram: Hon. Chief Justice V. Lunabek
Hon. Justice J. Mansfield
Hon. Justice R. Young
Hon. Justice O. Saksak
Hon. Justice D. Aru
Hon. Justice V.M. Trief

Counsel: Mr L.J. Napuati for the Appellant
Mr B. Livo for the First Respondents
Mr S. Aron for the Second Respondent

Date of Judgment: 20 November 2020

JUDGMENT

A. Introduction

1. The Appellant Samuel Iarai filed a Claim in the Supreme Court challenging the registration of leasehold title no. 14/2122/001. After 15 months in which no step was taken, the Supreme Court dismissed the Claim. Mr Iarai appeals that dismissal.

B. Background

2. By decision dated 15 March 2007, the North Tanna Custom Lands Tribunal determined the custom ownership of land at North Tanna in favour of the First Respondents Bosco Sero and Ruea Sero acting for Musa and Laupas Family.
3. After that decision, Bosco Sero and Ruea Sero obtained registration of leasehold title no. 14/2122/001 (the 'lease').



4. By Supreme Court Order dated 14 February 2011 in *Iarai v Solomon* [2011] VUSC 6; CC 104 of 2009, the Court cancelled the 15 March 2007 decision of the North Tanna Custom Lands Tribunal. It did so after the State Law Office admitted that the Tribunal was not properly constituted. The Court also ordered that a newly instituted Joint Village Land Tribunal re-hear the dispute.
5. Mr Iarai commenced action in the Supreme Court seeking cancellation of the lease. A Defence and some sworn statements for the Claimant were filed. After a period of at least 15 months in which neither party had sought to advance the case, the Supreme Court dismissed the Claim.

C. Discussion

6. Counsel largely focused their submissions on whether or not Mr Iarai required leave to appeal. Mr Livo and Mr Aron submitted that the dismissal order was an interlocutory order therefore rule 21(1) of the *Court of Appeal Rules* required leave to appeal from the Supreme Court. Counsel relied on *Miller v National Bank of Vanuatu* [2006] VUCA 1 for the proposition that an order striking out proceedings is an interlocutory order.
7. Rule 7.1 of the *Civil Procedure Rules* (the 'Rules') provides:
 - 7.1 (1) *An interlocutory order is an order that does not finally determine the rights, duties and obligations of a party to a proceeding.*
8. Whether or not an order does or does not finally determine the rights, duties and obligations of a party is to be assessed by looking at the outcome brought about by that order, not at the process leading to that order. The Supreme Court's Order dismissing the Claim brought the proceeding to an end. This gave rise to full appeal rights to appeal to the Court of Appeal therefore leave from the Supreme Court is not required. This approach is consistent with rule 7.1 and with the overriding objective of the Rules to enable the courts to deal with cases justly.
9. *Miller v National Bank of Vanuatu* [2006] VUCA 1 is distinguishable as it was made in different circumstances. Further, that decision does not refer to authority nor to rule 7.1 of the Rules.
10. Mr Iarai sought leave to appeal out of time. We are satisfied on the evidence that counsel were not given notice before the dismissal order was made, and that Mr Napuati was in any event on Tanna due to standing in the 19 March 2020 general elections and could not return to Port Vila immediately due to Covid-19 travel restrictions. Further, the names of counsel acting were incorrectly recorded on the dismissal order so the Order was not sent to Mr Napuati until he made inquiry in September 2020. The appeal was filed in September. These factors warrant the enlargement of time for Mr Iarai's filing of appeal.



11. In the circumstances, the parties were not given the opportunity to be heard before the Supreme Court dismissed the Claim. The appeal is therefore allowed, reinstating the proceeding in the Supreme Court.
12. It is common ground that custom ownership of the subject land has not yet been determined by the North Tanna Custom Lands Tribunal or other land tribunal. This Court will therefore order that the proceeding in the Supreme Court be stayed until there is a final decision determining the custom ownership of the land subject to the lease.
13. It is also common ground that restraining orders dated 9 June 2014 were made in *Sausiara v Moses*; Civil Case No. 36 of 2014, including that:
 1. *There will be no further land dealings with respect to leasehold title 14/2122/001 and no new development by all parties on or within leasehold title 14/2122/001 situated at North Tanna until final determination of this proceeding.*
14. We draw to Mr Iarai's attention the possibility of registering a caution on the Land Leases Register to ensure that the Court's function is protected in the meantime. If the caution is not able to be registered, Mr Iarai may consider an application for restraining orders in the Supreme Court proceeding in terms similar to the existing order referred to.

D. Result

15. Mr Iarai is granted an enlargement of time for the filing of the appeal.
16. The appeal is allowed, reinstating Civil Case No. 1895 of 2018 in the Supreme Court. It is likely that the Supreme Court will stay the proceeding until there is a final decision determining the custom ownership of the land subject to leasehold title no. 14/2122/001.
17. The parties are at liberty to apply in the event that the restraining orders in Civil Case No. 36 of 2014 come to an end.
18. There is no order as to costs.

DATED at Port Vila this 20th day of November 2020

BY THE COURT

.....
Hon. Chief Justice Vincent Lunabe

