

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

**CIVIL CASE No.84 OF 2010**

**BETWEEN:** EDWARD TABISARI and MARK MELTEN  
Claimants

**AND:** ENOCK TABI & FAMILY  
Defendants

*Mr Jack Kilu for the Claimants  
Mr Stephen Joel Tari for the Defendants*

**RULING**

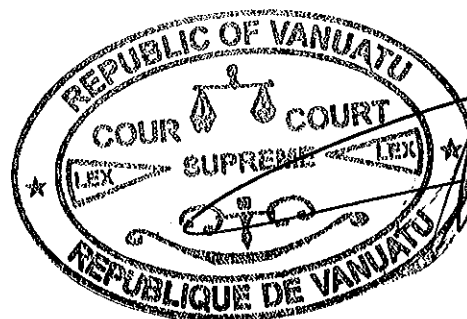
This is an application for leave to appeal out of time. It was filed by the Claimants on 15 June 2010. The Claimants filed four sworn statements in support of the application on the same date.

The Defendants were directed to file their response and any sworn statements in support. No written response or statements filed. Counsel for the Defendants appeared and makes oral submissions in response.

The brief background is this.

On 29 August 2004, Pentecost Island Court issued an oral decision over the custom ownership of a land known "Lonbilon" in favour of the Defendants. The Island Court provided the written reasons of its decision in September 2005. The Claimants confirm this through their sworn statements.

No Notice of appeal was filed 30 days after the oral decision of 29 August 2004. No Notice of appeal was filed by the Claimants/Applicants within have received the written reasons of the decision in September 2005.



The Claimants waited until 15 June 2010 to file the present application seeking leave to appeal out of time. The sworn statements filed in support of the application fail to provide relevant material evidence justifying the huge delay.

It is now more than 5 years since the Pentecost Island Court delivered its oral decision on 29 August 2004 and published its reasons on September 2005 and the Claimants/Applicants received it in September 2005.

Section 22(1)(5) of the Island Courts Act [CAP.167] is the relevant provision. It provides as follows:

***“Appeals***

*22.(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 therefrom to-*

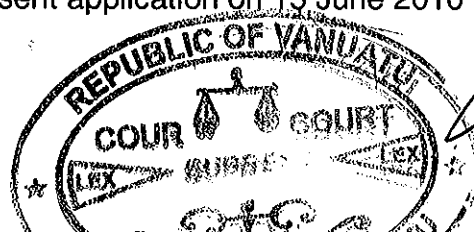
*(a) the Supreme Court , in all matters concerning disputes as to ownership of lands;*

*...*

*(5) Notwithstanding the 30 days period specified in subsection (1) the Supreme Court... 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.”*

During the course of the oral arguments and submissions, Mr Jack Kilu concedes that as far as the law is concerned, the present application is lodged outside the requirements of section 22(5) of the Act [CAP.167]. However, he maintained that the Court has discretion to extend time for the Claimants to file their appeal out of time despite the requirements of s.22(5).

Section 22(5) of the Island Court Act is clear. There was no notice of appeal filed within 60 days after the decision of 29 August 2004. I accept the fact which is not disputed that the claimants/Applicants had received a copy of the written Judgment with the reasons of the decision of 29 August 2004 sometime in September 2005. There was no notice of appeal filed within 60 days of the reception of the Judgment by the Claimants. The Claimants filed the present application on 15 June 2010



It is now more than 5 years. The application is outside the requirements of s.22(5) of the Act [CAP.167]. It is refused and dismissed.

I award costs in favour of the Defendant/Respondent against the Solicitor of the Claimants in person. The reason being that as he himself informed the Court, he knew the position of the law under section 22(5) of the Act and that the application has no chance of being successful. He, however, went ahead with the application on behalf of the Claimants as he felt sorry for them or to please them in a way on the basis that the Court has some discretion irrespective of the law. It amounts to an abuse of the process of the court.

For these reasons, the Court makes the following Orders:

### **ORDER**

1. The application filed 15 June 2010 for leave to appeal out of time the Judgment of Pentecost Island Court dated 29 August 2004, is dismissed.
2. The Defendants are entitled to their costs assessed in Vatu 20,000.
3. The costs of Vatu 20,000 are awarded to the Defendants against the solicitor of the claimants in person and such costs shall be paid by 4 October 2010.

**DATED at Port-Vila this 21<sup>st</sup> day of September 2010**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

