



**IN THE COURT OF APPEAL OF NAURU  
AT YAREN  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2/2021  
Supreme Court Civil  
Number 15/2021**

BETWEEN

**RON KEPPA & OTHERS**

AND

**VYKO ADEANG**

APPELLANT

1<sup>ST</sup> RESPONDENT

**DEDAUNO ENGAR**

2<sup>ND</sup> RESPONDENT

BEFORE:

**Justice Dr.  
Bandaranayake,  
Acting President  
Justice R. Wimalasena  
Justice C. Makail**

DATE OF HEARING: **07/09/2022**

DATE OF RULING: **14/10/2022**

CITATION: **Ron Keppa & Others v Vyko Adeang & Dedauno Engar**

KEYWORDS: Notice of Appeal, not filed within time, service of notice, out of time, non compliance of Rules, professional attire and conduct, power of the Court to strike out

LEGISLATION: Nauru Court of Appeal Act, 2018, Nauru Court of Appeal Rules, 2018, Nauru Legal Practitioners (Professional Conduct) Rules, 2019

APPEARANCES:

COUNSEL FOR Appellant: **P. N. Ekwona**

COUNSEL FOR 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents: **A. Lekenaua**

## **RULING**

1. This is an application by the Respondents to strike out the Notice of Appeal of the Appellant for non compliance.

2. Learned Counsel for the Respondents, on 23/11/2021 had filed for summons for an Order to strike out the Notice of Appeal under and in terms of section 26 of the Nauru Court of Appeal Act, 2018 (hereinafter referred to as the Act) and Rule 10 of the Nauru Court of Appeal Rules, 2018 (hereinafter referred to as the Rules) with supporting affidavits from the Respondents.
  
3. The facts which are relevant to this matter commences with the Supreme Court decision in Civil Suit No. 15/2021, dated 03/09/2021. In that matter the Supreme Court had dismissed the action against the Respondents and had set aside the Interlocutory Orders that had been made on 23/06/2021. Based on that decision of the Supreme Court dated 03/09/2021, the Appellant had filed their Notice of Appeal on 04/10/2021. According to the learned Counsel for the Respondents, the Notice of Appeal was served on the Respondents after 04/11/2021. The summons to extend the time to Appeal by filing the Notice of Appeal had been carried out on 14/12/2021.
  
4. Learned Counsel for the Respondents contended that the Notice of Appeal is out of time and that the learned Counsel for the Appellant had not served the Notice of Appeal on the Respondents until after 04/11/2021. Further it was submitted that the learned Counsel for the Appellant had not filed his written submissions on time nor has he served such submissions on the respondents within the given time and thereby had not complied with the relevant provisions of the Act as well as the Rules.
  
5. Learned Counsel for the Respondents submitted that the Respondents on 23/11/2021 had filed for a summon to strike out the Notice of Appeal as the appeal is filed out of time without serving the Notice of Appeal to the Respondents and therefore the Appeal is not compliant with the Rules of the Court of Appeal.

6. Section 22 of the Act, speaks of time for appealing. Section 22(1) of the said Act, refers to the time period of filing and serving a Notice of Appeal and states as follows:

*"Where a person desires to appeal under this Part, he or she shall **file and serve a notice of appeal within 30 days of the date of the delivery of the final judgment, decision or order of the Supreme Court**" (emphasis added).*

7. Section 10 of the Rules also refers to the time frames in filing the Notice of Appeal. Rule 10(2)(a) of the said Rules, clearly states thus:

*"The notice of appeal shall:(a) **be filed and served within 30 days of the delivery of the final judgment, decision or order of the Supreme Court**" (emphasis added).*

8. The Notice of Appeal filed by the Appellant is Filed of Record. In that, the date of the Judgment, Decision or Order is clearly given as 03/09/2021. Moreover, under the section where the applicant, and in this matter, the Appellant has to indicate the last date for appealing, learned Counsel for the Appellant has clearly given the date as **Sunday 3<sup>rd</sup> October 2021**.

9. On the Notice of Appeal the signature of the Appellant or Pleader is given and the date filed and sealed by the Court is written as 4<sup>th</sup> October 2021. More importantly, it could be clearly observed that the Registry of the Court of Appeal had received the said Notice of Appeal on 4<sup>th</sup> October 2021 at 3.30 pm.

10. The provisions relating to the time for appeal stipulated in section 22 of the Act, as well as in Rule 10 of the Rules, are quite clear. Both the Act and the Rules refer to the need of not only filing the Notice of Appeal, but also serving the Notice of Appeal within 30 days of the date of delivery of the final judgment, decision or order of the Supreme Court.

11. It is common ground that the Ruling of the Supreme Court was delivered on 03/09/2021.

12. The computation of time regarding such periods of time referred to in the relevant Act is specifically stated in the Rules. Rule 57 of the said Rules is titled **computation of time** and reads as follows:

*"A time fixed by the Act, these Rules or any other written law or by any decision of the Court for doing any act shall be counted as follows:*

*a. a period of days from the occurrence of any event or the doing of any act shall be deemed to be exclusive of the day in which the event occurs;*

*b. if the last day of the period is a Saturday, Sunday or a public holiday, the period shall include the next working day;*

*c. where any act or proceeding is directed or allowed to be done or taken on a certain day, if that day is a Saturday, Sunday or a public holiday, the act or*

*proceedings shall be considered as done or taken in due time if it is done or taken on the next working day;*

*d. where any act or proceeding is directed or allowed to be done or taken within any time not exceeding 7 days, Saturday, Sunday and any public holiday shall not be counted in the computation of time; and*

*e. unless the Court otherwise directs, the period of judicial vacation shall not be counted in the computation of time" (emphasis added).*

Rule 3 deals with the definitions and accordingly in the Rules, 'Act' refers to the Nauru Court of Appeal Act 2018.

13. It is common ground that the Notice of Appeal was filed on 04/10/2021. Considering Rule 57 (a) and (b), it is abundantly clear that the learned Counsel for the Appellant had filed the Notice of Appeal within the time period specified in the Act as well as in the Rules.

14. The contention of the learned Counsel for the Respondents was not only on the delay of filing the Notice of Appeal, but that the Notice of Appeal was not served within the stipulated time period of 30 days referred to in the Act as well as in the Rules, by the learned Counsel for the Appellant.

15. According to the learned Counsel for the Respondents, the Notice of Appeal was served to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents only after 04/11/2021. In support of her contention, learned Counsel for the Respondent relied on the affidavits

filed by Vyko Adeang, the 1<sup>st</sup> Respondent, as well as Engar, the 2<sup>nd</sup> Respondent, both of whom had averred in paragraph 4 of their respective affidavits dated 19/11/2021, that the Notice of Appeal was not served on them until after 04/11/2021. No extension of time has been granted by the Court in this regard.

16. Considering the date of the delivery of the Ruling being on 03/09/2021, and the applicability of the provisions of section 22(1) of the Act and Rule 10 (2) (a) of the Rules where it is clearly stated that the Notice of Appeal has to be **filed and served within 30 days of the delivery of the final judgment, decision or order**, it is abundantly clear that the learned Counsel for the Appellant has not complied with the provisions either in the aforementioned Act or the Rules.

17. Learned Counsel for the Appellant did not contest the dates of filing of the Notice of Appeal or the service of the Notice of Appeal to the Respondents. His contention was that the Court of Appeal has the inherent power to take up any matter even though there has not been compliance of the provisions either in the Act or in the Rules.

18. Undoubtedly any Court is possessed with inherent powers. However, it is to be borne in mind that when provisions are made regarding the procedure and the time frame that should be followed in taking up an Appeal before the Court, it is imperative that strict adherence should be given to such provisions.

19. The Nauru Court of Appeal, which is a Court of Record, is the final Appellate Court of the Republic. The Rules for the Court of Appeal, which are made

under and in terms of section 59 of the Act, clearly provides for the orderly, expeditious and inexpensive disposal of applications and appeals and enables all parties before Court to prepare and present their cases and responses to each other, comprehensively and in a fair manner. Therefore, it is to be borne in mind that in any of the Appeals before this Court, it is imperative to observe that the provisions in the Act and in the Rules are complied with, unless waived by the Court.

20. This Appeal before Court is a matter related to civil proceedings. Part 6 of the Act deals with Appeals in civil proceedings. Section 26 of the said Act, which is contained in Part 6, deals with the power of the Court of Appeal to strike out an Appeal for non-compliance. The said section 26 reads as follows:

*"The Court shall not entertain any appeals made under this Part unless the appellant has fulfilled the conditions prescribed by this Act or the rules of the Court".*

21. It is to be noted, as stated earlier, that section 22 which speaks of time for appealing, is also a section under Part 6 of the Act.

22. Considering all the aforementioned facts and circumstances, it is abundantly clear that the learned Counsel for the Appellant has not complied with the provisions stipulated in the Act as well as the Rules.

23. Section 26 of the Act is clearly a mandatory provision. When an Appellant has not taken steps to fulfil the conditions stipulated by the Act or the Rules, the Court cannot ignore such laches, and entertain that Appeal. Such an action would undoubtedly negate the importance and the value of procedural



guidelines that have been brought in for the purpose of orderly and expeditious disposal of Appeals before the Court of Appeal.

24. It is worthy of mention that when this matter was taken up for consideration on 07/09/2022, the learned Counsel for the Appellant was delayed in appearing before Court and he was not attired properly. Although he had filed his submissions in accordance with the directions given by this Court on 05/09/2022, he had not served a copy as directed by this Court, to the learned Counsel for the Respondents. There were no copies filed by the learned Counsel for the Appellant for the Judges' briefs. Without an adjournment, the Court granted learned Counsel for the Appellant to come properly attired. Even thereafter, he attended Court without wearing the Jabot, and was still not properly attired, but the Court allowed him to make his submissions. As copies of the submissions were not available they were photocopied at the Registry, on the basis of the payment of usual charges. All this was allowed in the interest of justice purely on the basis that a fair hearing be given to the Appellants.

25. A Counsel should always be conscious of his professional duties and conduct not only towards the Court, but also towards his client. Just as much as he should owe candour, fairness and good faith to the Court as specified in the Nauru Legal Practitioners (Professional Conduct) Rules, 2019, a legal practitioner must serve his client with competence and diligence.

26. Be that as it may, the Court decides to strike out the Notice of Appeal for non-compliance of the provisions stipulated in the Act as well as in the Rules.

27. Learned Counsel for the respondents submitted that the Court takes into consideration the grant of costs. Costs summarily assessed in the sum of \$500 to be paid to the Respondents.

Dated this 14<sup>th</sup> day of October 2022



*Shirani A. Bandanayake*

Justice Dr. Shirani A. Bandaranayake,  
Acting President of the Court of Appeal

Justice Rangajeeva Wimalasena

I agree

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.

Justice of the Court of Appeal

Justice Colin Makail

I agree

A handwritten signature in black ink, featuring a prominent horizontal line and several vertical strokes below it.

Justice of the Court of Appeal