

GABRIEL HURA'A, WULSTON HURA'A AND LENI HURA'A (representing themselves and members of the Talapaina tribe of Ulawa) -V- ATTORNEY-GENERAL (representing the clerk to the Kira Kira Local Court)

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.)

Civil Case No: 092 of 2003

Date of Hearing: 21st May 2003

Date of Ruling: 21st May 2003

Mr D. Hou for the Applicant

No appearance for the Respondent

RULING

Kabui, J. This is an application for leave to extend time and leave to apply for an order of mandamus against the decision of the Kira Kira Local Court Clerk refusing to accept the court fee of \$100.00 and the appeal by the applicants to the Makira/Ulawa Customary Land Appeal Court. This application was by Summons filed on 28th April 2003.

Extension of time.

It appears that there is no time limitation for applying for leave to apply for an order of mandamus. The time limit of 6 months in rule 3 of Order 61 of the High Court (Civil Procedure) Rules 1964, 'the High Court Rules,' only applies to an application for leave to apply for an order of certiorari. I do not find anything else to the contrary in Order 61 of the High Court Rules, nor elsewhere for that matter. For that reason, Order 64, rule 5 of the High Court Rules does not apply, it would seem, to this application for extension of time. The question of delay is likely to be relevant when the court deals with the application itself after leave has been granted. I refuse to make the order sought in this application.

Leave to apply for an order of mandamus.

The law that governs the granting of leave or not in this kind of proceeding was stated in the case of **Ramo Dausabea v. The Cabinet (represented by the Attorney-General and the Commissioner of Lands**, Civil Case No. 153 of 2001. There is evidence in this case which points to granting an order of mandamus though not conclusively at this stage. That is, there is evidence of an arguable case in favour of the applicant. I think a case has been made out sufficiently to enable me to grant this application. I therefore grant leave as requested. Leave is granted.

F. O. Kabui,
Puisne Judge