

(Civil Jurisdiction)

**BETWEEN: REDY ANNIE  
TOVILAN TOME  
KEN RAVU  
GEORGES PRAN  
EDWARD AKIRU**

Appellants

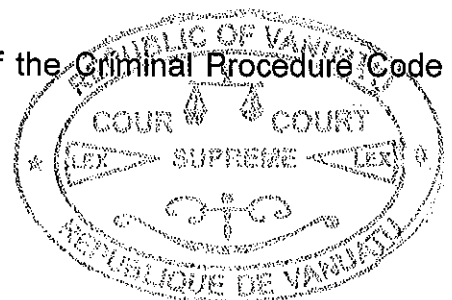
**AND: BEREY ULY of South Santo**

Respondent

Mr Justice Oliver A. Saksak

### **RULING**

1. This appeal was listed for hearing today 19<sup>th</sup> March 2009 at 9.30 a.m. Parties were notified by Notice dated 9<sup>th</sup> March 2009.
2. None of the parties are present in Court today.
3. Directions were issued by the Court last on 21<sup>st</sup> November 2006, almost three years ago. Mr James Tari, Counsel for the appellants was in Court at that time.
4. Order 1 required the appellants to file and serve three copies of their Appeal Book within 21 days. The Appellants have not done that even to date.
5. This is an appeal from the Magistrate's Court. Part 16 and Division 9, Rules 16.26 to 16:32 inclusive are relevant provisions to consider. But these fall short of making provisions for what happens when a party fails to comply with direction orders made at first hearing when the Court gives directions.
6. Rule 1.6 states that the Civil Procedure Rules No. 49 of 2002 apply in all civil proceedings in the Supreme and Magistrate's Court except
  - (a) Constitutional petitions brought under section 218 of the Criminal Procedure Code Act Cap 136; and



(b) A proceeding for which other Rules under an enactment are in force.

This case does not fall into either of these two categories.

7. Rule 6.8 states the effect of non-compliance with orders made at conferences. Subrule (2) states that if a party or their lawyer has failed to comply with an order made at a conference without reasonable excuse, the judge may order that party's claim or defence to be struck out.
8. The Orders of 21<sup>st</sup> November 2006 were made at a conference. Mr Tari of Counsel for the Appellants was present but it has been more than two years now that the Appellants have not filed their appeal book. And they have not shown any excuse at all why they have not done so.
9. Further Rule 16.28(1) states that an appeal is made by filing and serving an application within 28 days of the date of the decision. The appellants' appeal was filed on 20<sup>th</sup> September 2006. The decision appealed against was made on 20<sup>th</sup> July 2006. It was more than 28 days after the decision was made that the appeal was filed. It is outside of the time requirement.
10. Further, it has been more than 6 months that the Appellants have taken any active steps in their proceeding. Rule 9.10(2)(d) gives a discretion to the Court to strike out the proceeding.
11. For the reasons stated above, the Court is clearly of the view that this appeal should be struck out.
12. Accordingly, it is ruled and ordered that Civil Appeal Case No. 5 of 2006 be hereby struck out in its entirety.
13. There will be no order as to costs.

DATED at Luganville this 19<sup>th</sup> day of March 2009.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

