

BETWEEN: MALON ALI & KALOS OBED
Appellants

AND: WILLIAM KIERRY AMEARA
Respondent

Mr James Tari for the Appellants – present
Respondent William Kierry Ameara - present

ORAL JUDGMENT

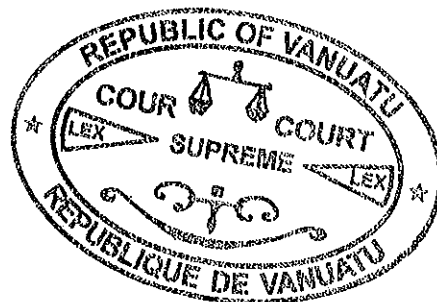
- A Notice of Appeal was filed in the Magistrate's Court by the Appellant against a decision of the Efate Island Court dated 1 October 2007.
- On 1 October 2007 the Efate Island Court made a decision relating to Chiefly Title Ameara of Takara Village, North East Efate, in accordance with custom.
- 1 October 2007 Decision was in favour of the Respondent. The Efate Island Court declared that:

*“(1) Mr William Kerry Ameara mo ol Descendants blon em olgeta nao oli true
bloodline blong Chiefly Title ia Ameara we hemi Paramount Chief blong
Takara.*

*(2) Ol Descendants blong Ameara nomo oli kat raet blong tekem Chiefly Title
ia mo lukaotem ol kastom properties blong Chief Ameara long Takara.*

...”

Notice of Appeal against this declaration was filed 10 October 2007 before the Magistrate's Court sitting in Port-Vila.



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On 12 February 2008, the Magistrate's Court struck out the Notice of Appeal for want of prosecution.

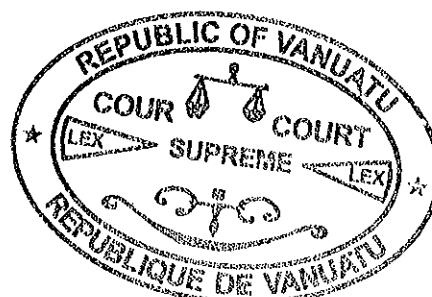
Background

- 12 November 2007, Notice of Appeal was first called by the Magistrate's Court;
- Appellant present and Magistrate's Court directed the Appellant to file Appeal Book within 14 days;
- Further conference scheduled on 26 November 2007 at 2.00PM o'clock.
- On 26 November 2007, counsel for Appellants, Mr James Tari, appeared and informed the Court that no Appeal Book filed and the Notice of Appeal had not been served on the Respondent;
- Extension of period of service of extra 14 days;
- Matter further adjourned to 14 December 2007 at 2.00PM;
- The Appellants nor their counsel appeared on the next return date;
- The Magistrate's Court further adjourned the matter to 12 February 2008 at 2.00PM;
- On 12 February 2008, the Appellants nor their counsel appeared;
- The Magistrate's Court noted that the Magistrate Court directions were not complied with to the date 12 February 2008;
- The Magistrate's Court found that the Appellants have failed to appear and inform the Court on the progress of the matter.

The Magistrate's Court struck out the Notice of Appeal for want of prosecution on 12 February 2008.

A Notice of Appeal and grounds filed by the Appellants against the decision of the Magistrate's Court of 12 February 2008. The Notice of Appeal was filed on 18 March 2008.

The Grounds of Appeal are set out below:



1. Counsel for Appellants was engaged in another Court matter, Supreme Court trial in CC 183 of 2006.
2. Counsel not informed about date of 12 February 2008.
3. Rule 9.10(2)(3) to give notice to Appellants before Court issue a striking out order. The Appellants say these rules were not complied with.

Considerations of each ground:

As to ground 1, counsel for Appellant failed to inform the Court of his unavailability and the fact that the Appellant did not comply with the Magistrate's Court Orders and Directions. The failure of a lawyer or a party to comply with Court Orders is not a ground of appeal. Ground 1 is dismissed.

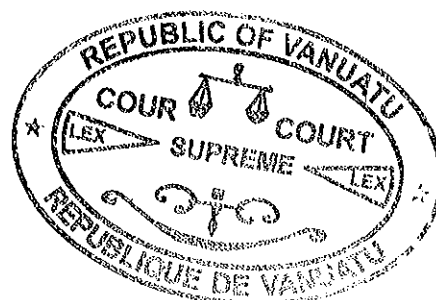
As to ground 2, there is evidence of Notice of Conference by the Magistrate's Court. There is no basis of what the Appellant advances in ground 2. On perusal of the Magistrate's Court file records, the steps and process followed by the Presiding Magistrate are recorded. Ground 2 is also dismissed.

Ground 3 is based on rule 9.10(2)(3) of the Civil Procedure Rules. There is evidence that the Appellant did not comply with Court Orders and Directions and the Court may strike out the proceedings pursuant to rule 10.9(2)(b). On the face of the records of the Magistrate's Court file this was the learned Magistrate's intention to do. The third ground is dismissed.

The final and additional ground is relating to a question of process about the composition of the Appellate Magistrate's Court in its appellate jurisdiction against its decision of on 12 February 2008 when the Notice of Appeal had been struck out.

Section 22(1)(b) and (2) of the Island Courts Act [CAP.167] is the relevant provision. It reads:

"APPEALS



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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) ...
- (b) the competent magistrate's court in all other matters.

(2) **The court hearing an appeal against a decision of an Island Court shall appoint two or more assessors knowledge in custom to sit with the Court.**

...”

The decision of the Magistrate's Court of 12 February 2008 complained of is an appeal against a decision of the Efate Island Court over the custom Chiefly Title of Takara village, North East Efate.

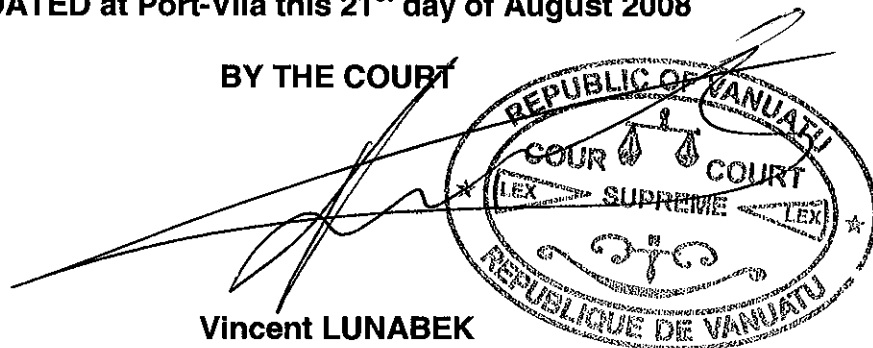
Pursuant to Section 22(1)(b) and (2) of the Island Courts Act [CAP.167], the Magistrate's Court shall be composed of the Presiding Magistrate and at least two assessors knowledge in custom. It is a legal requirement. This had not been met. The decision of 12 February 2008 to strike out the Notice of Appeal is made by an incompetent appellate court. For this reason, the appeal must be allowed.

ORDER

- 1. The appeal is allowed.
- 2. The matter is remitted before the Magistrate's Court to hear the appeal as soon as possible.
- 3. There is no Order as to costs.

DATED at Port-Vila this 21st day of August 2008

BY THE COURT



**Vincent LUNABEK
Chief Justice**