

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of The High Court of Solomon Islands (Kouhota J)
COURT FILE NUMBER:	Civil Appeal Case No. 23 of 2021 (On Appeal from High Court Civil Case No.236 of 2021)
DATE OF HEARING:	By circulation of papers
DATE OF JUDGMENT:	4 November 2022
THE COURT:	Goldsbrough P Palmer CJ Gavara-Nanu JA
PARTIES:	SAMUEL NGALAVOLE & OTHERS -V- ATTORNEY GENERAL & EZRA KUKUTI
ADVOCATES:	
APPELLANT:	Kwaiga, L
RESPONDENT:	Ofanakwai, N Rano, W
KEY WORDS:	Service of notice of appeal: time limits
EXTEMPORE/RESERVED:	RESERVED
ALLOWED/DISMISSED	DISMISSED
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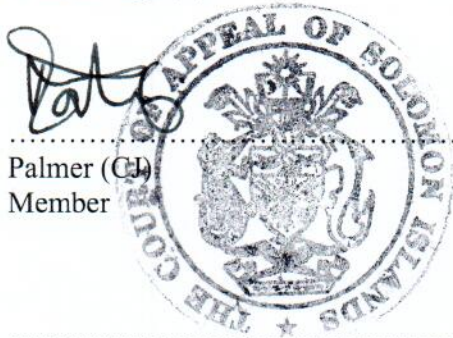
JUDGMENT OF THE COURT

1. This appeal has been listed for dismissal by the Full Court. The simple issue here is that the Notice of Appeal filed by the Appellants was not served on the Respondents within the time allowed. It was served on the 1st and 2nd Respondent one day after it should have been filed, and on counsel for the 3rd Respondent on 27th September 2021.
2. A Notice of Application to dismiss the appeal was filed by counsel for the Third Respondent to this appeal on 8 October 2021. The Notice of Appeal had been filed on 15 September 2021. The 1st and 2nd Respondent is the Attorney General representing both the Choiseul Provincial Government and the Western Customary Land Appeal Court.
3. After the application to dismiss the appeal had been filed, the Appellants then sought leave to extend the time to serve the original Notice of Appeal. That application was refused because it had only been made after the application to dismiss the appeal had been filed and was pending determination. On that application, which could only be determined by the Full Court, consideration could be given as to whether to condone the later service of the Notice of Appeal.
4. Counsel raised the additional issue of the payment of security for costs. The evidence now filed shows that the security for costs on the appeal has been paid and the issue therefore falls away.
5. Counsel for the Appellants in their material point out the difficulty of serving the 3rd Respondent in person when that individual does not live in Honiara. That may well pose a practical difficulty. However, when the eventual service out of time was effected, it was only effected on counsel for the 3rd Respondent, not the 3rd Respondent in person and so the stated reason for failure to serve within the permitted time has no bearing. It is noted that even service on the Attorney General was not effected within the permitted time.
6. This Court may condone late service where good reason is shown for that. The Rules are sufficiently flexible to allow that to happen. Condonation must, though, be for good reason and here no good reason is put forward. It may have been different if, for example, counsel for the 3rd Respondent had refused to accept service and thus required the Appellant to serve the respondent in person in one of the provinces. That did not

occur here. Counsel for the 3rd Respondent accepted service, albeit late, and informed the client accordingly.

7. If good reason for failure to comply with conditions precedent to an appeal can be shown, in considering whether to grant condonation, a court will turn to consider the prospects of success of the substantive appeal. That is not necessary here given that no good reason to condone the late service has been given. Even so, we note that the decision to strike out the claim for Judicial Review because it had the appearance of a device to appeal an otherwise non appealable decision of the CLAC does not initially appear as an appeal destined for success.
8. In the event this appeal is dismissed for failure to comply with conditions precedent to the appeal. Costs of this application are to be paid by the Appellant to the three respondents, to be agreed or assessed.

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Goldsbrough (P)

The seal of the Court of Appeal of Solomon Islands is circular, featuring a central coat of arms with a crown on top, flanked by two figures. The text 'THE COURT OF APPEAL OF SOLOMON ISLANDS' is written around the perimeter of the seal, with a small star at the bottom center.

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Palmer (CL)
Member
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Gavara-Nanu (JA)
Member