

BETWEEN: Adrian Maurice Mooney
Appellant

AND: Malani Tavola Vakaloloma
Respondent

Before: *Justice Aru*

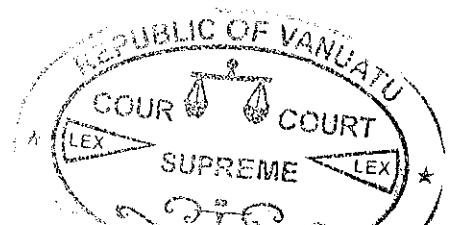
In Attendance: *Mr. M. Fleming for the Appellant*
Mrs. M. N. Patterson for the Respondent

JUDGMENT

1. This is an application seeking leave to enlarge time to appeal three decisions of the Magistrate Court. The application is supported by a sworn statement of the Appellant, Mr Mooney in support of the appeal and the application filed on 13 April 2018.
2. If time is enlarged, the Appellant wishes to pursue the appeal pursuant to s 47 (1) of the Family Protection Act No 28 of 2008.

Background

3. The parties are a husband and wife. Their marital relationship has broken down and as a result they are involved in several proceedings before this Court against each other.
4. On 21 December 2017, the Magistrate Court on application by the Respondent issued an Ex Parte Temporary Order for Domestic Violence Protection (the First Order) against the Appellant.
5. On 19 January 2018, the First Order was extended for a month until 21 February 2018 by a further order (the Second Order).
6. On 23 February 2018 on the Respondent's application an Ex Parte Order for Domestic Violence Protection (the Third Order) was issued against the Appellant.
7. On 13 April 2018, the Appellant filed his application to extend time to appeal the various orders made.



Grounds

8. The application is made on the following three grounds:-
- (i) there is irreparable prejudice to the Appellant if leave is not granted.
 - (ii) time to appeal in respect of the current orders is on foot and / or at large.
 - (iii) there is no prejudice to the Respondent with leave being granted.

Discussion

9. Before this application was heard, the Appellant filed his notice of appeal also on the same date as the application. It needs to be stated that that is simply putting the “cart before the horse” approach so to speak and is wrong. Under such circumstances, the notice of appeal should only be filed once leave to extend time is granted not before. Therefore the notice of appeal filed on 13 April 2018 is ineffective unless and until leave is granted.

10. In the First Order the Appellant was restrained from assaulting, threatening molesting or insulting or abusing the Respondent and he was also restrained to keep a distance of 100m from the Respondent. Paragraph 4 of the orders reads:-

“4. That this order to lapse on the 2 January 2018 however an extension is guaranteed on reasonable grounds if so requested by the Applicant (Respondent) few days before the lapsing date otherwise the matter will be deemed settled.”

(emphasis added)

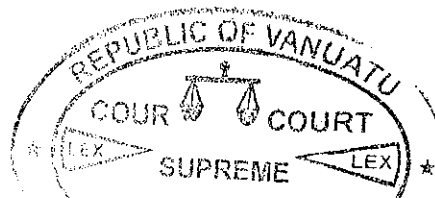
11. An extension was sought by the Respondent and on the 19 January 2018 the Second Order was issued stating that *“the Order of 21 December 2017 be extended for a month i.e until 21 February 2018”*.

12. The Second Order expired on the 21 February 2018. Following the expiration of the these orders a further application was made ex parte by the Respondent for domestic violence protection orders. Following this application the Third Order was issued with more or less the same conditions as the First Order. Paragraph 5 of those orders stated that:

“5. These orders will remain in force until it will lapse thereafter on Thursday 23 August 2018 unless either party applies to court for review or extension of these orders.”

(emphasis added)

13. The First and Second Orders are no longer in force as they were of a limited duration and expired on 21 February 2018. Any appeal against those orders now would be



purely academic and would put the parties to more costs. The Third Order remains current and effective and will lapse on 23 August 2018. The Magistrate Court has given each party liberty to apply "for review or extension of these orders". Having been given liberty to apply, any appeal in my view would be premature. There is no evidence that the Appellant has applied to vary or set aside the Third Order and the application was refused.

Ground 1

14. The Appellant submits that he will suffer irreparable prejudice if leave is not granted. In his sworn statement at paragraph 8 he says :

"8. I am absolutely against domestic violence of any kind and feel humiliated that I have this concept even associated with my name."

15. Aside from feeling humiliated, there is no evidence of irreparable prejudice that the Appellant will suffer. He has been given access to see the children and as stated above, the Magistrate Court has given both parties including the Appellant liberty to apply to review the orders. There is no evidence from the Appellant that he has applied. Under such circumstances an appeal is premature.

Ground 2

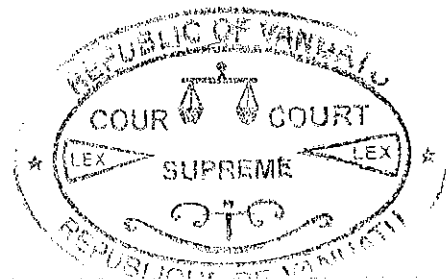
16. Concerning the First and Second Orders, both those orders expired on 21 February 2018. There is nothing to appeal. As for the Third Order, the proper course as I stated above is to apply to have the order reviewed as per paragraph 5 of those orders.

Ground 3

17. As to ground three the Appellant says that there will be no prejudice to the Respondent if leave is granted. The Respondent on the other hand has referred me to the following cases which the Appellant is pursuing against her:-

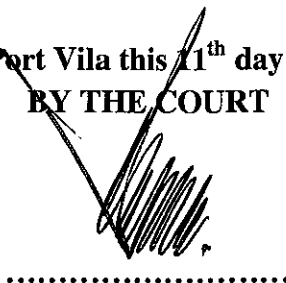
- Company Case No 685 of 2018
- Civil Case No 686 of 2018
- Civil Appeal Case No 1286 of 2018
- Civil Appeal Case 1053 of 2018

18. I also note that the children are in the care of the respondent. Taking these two factors into consideration, I am of the view that the Respondent will be prejudiced financially in terms of defending the above proceedings, caring for the children and defending the current proceedings if leave is granted. In addition, any further added litigation would not be in the best interest of the children either.



19. For the above reasons, leave is refused and the application for extension of time is dismissed. The Respondent is entitled to costs to be agreed or taxed by the Master.

DATED at Port Vila this 11th day of July, 2018
BY THE COURT



.....
D. Aru
Judge

