

# **PART VIII**

# **APPEALS**



# 1 Right of Appeal

Any party to any proceedings has the right to appeal against any final decision of the Court, except in the following circumstances.

There is no right of appeal against:

- an interim order made under *ss49 or 50*;
- an order for costs under *s72(2)*;
- offences under *s75*;
- a decision made under *s11(5)(c) Village Fono Act 1990*.  
*See s76(2) and s11(6) Village Fono Act 1990*

## 2 Jurisdiction

### 2.1 Leave to Appeal

The President sitting alone may grant leave to appeal or refuse leave to appeal.

### 2.2 The Appeal

The Land and Titles Court hearing every appeal may:

- dismiss the appeal;
- uphold the appeal;
- set aside or vary the final decision which is being appealed;
- make such order as to costs as it thinks fit.

The Court may dismiss the appeal on the application by any other party if the applicant does not prosecute his/her appeal with due diligence or if the appellant does not appear at the time appointed for hearing his/her appeal.

## **3 Effect of Appeal Decisions**

### **3.1 Leave to Appeal**

If leave to appeal is refused, the process ends and the original decision of the Court is final.

The President may make an order as to hearing and/or costs to any party.

If leave to appeal is granted, the President may order a stay of proceedings against the original decision.

### **3.2 The Appeal**

The decision of the Land and Titles Court hearing the appeal is final and marks the end of the process.

## **4 Leave to Appeal**

### **4.1 Application Process**

#### **Role of the applicant**

The applicant:

- files his/her application within 21 days from the date of the original decision. If the President grants extra time to lodge an appeal, the appeal must be made no later than 2 months after the original decision is delivered;
- pays the prescribed fee and security for the appeal on the date their leave for appeal is filed;
- must state whether the appeal they are seeking leave for is against the whole or only part of the original decision.

### **Role of the Registrar**

The Registrar:

- serves copies of the application for leave to appeal on all other parties;
- serves copies of reply in opposition to the application for leave to appeal on the applicant;
- prepares and produces for the President:
  - ≡ a full record of proceedings leading up to the application for leave; and
  - ≡ all evidence that was given at the original Court hearing.

### **Role of the Opposing Parties**

Each party wishing to oppose the application for leave to appeal should file its reply within 21 days after the date of receiving the copy of the application for leave to appeal

## **4.2 The Hearing Process**

The appeal is heard by the President sitting alone.

All parties are to be heard and may make submissions.

The hearing is not open to members of the public.

## **5 The Appeal**

The appeal shall be heard by a Court comprising the President and two Judges of the Land and Titles Court after leave to appeal has been granted.

The appointed Judges and the President cannot have been part of the Court which rendered the decision which is now the subject of the appeal.

The Court hearing every appeal has all the powers and jurisdiction of the Land and Titles Court.

Every appeal shall be by way of rehearing:

- Judges can hear either part or the whole of the original decision, depending on what was granted in the leave to appeal application;
- Judges may also exercise their discretion in this matter.

The decision of the Court hearing the appeal is final and binding.

## **6 Grounds of Appeal**

Leave to appeal may be based on any of following grounds:

- New and material evidence found since the hearing, which the applicant had no prior knowledge of, or could not reasonably have been adduced at the hearing;
- The successful party is guilty of misconduct in relation to the hearing, which has affected the result of case;
- A witness is guilty of misconduct in relation to the hearing which has affected the result of the case;
- A Court member or officer made a mistake or misconducted himself/herself in relation to the hearing and has affected the result of the case;
- The Court did not have jurisdiction to make the final decision or Order;
- The decision or Order is wrong in law or not in accordance with custom and usage;
- The decision or Order is manifestly against the weight of evidence adduced at the hearing.

Despite the above mentioned grounds, leave to appeal cannot be granted unless the President is of the opinion that some substantial wrong or miscarriage of justice has occurred.

*See s79*