

**BETWEEN: STEPSON RUBEN, DERRICK TIMOTHY
SILHAPAT & ROBIN SAMUEL of North
West Malekula**
Claimants

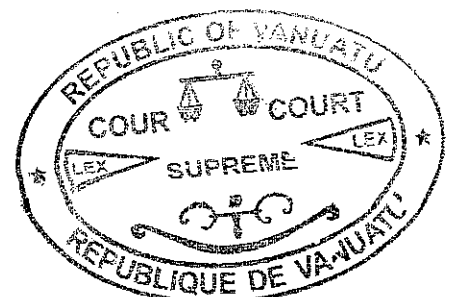
**AND: JOHN NALWANG, Acting National
Coordinator, Custom Land Management
Office of Port Vila**
First Defendant

**AND: MILY WALTERSAI HAPHAPAT II
AHELMHALAH**
Mobile No: +678 7768742
Email: walter.ahelm@gmail.com
Beverly Hills, Port Vila
Second Defendant

Date of Hearing: 13 December 2024
Date of Decision: 27 January 2025
Before: Justice M A MacKenzie
Counsel: Claimants - Mr R. Rongo
First Defendant - Mr S Aron
Second Defendant- Self-represented

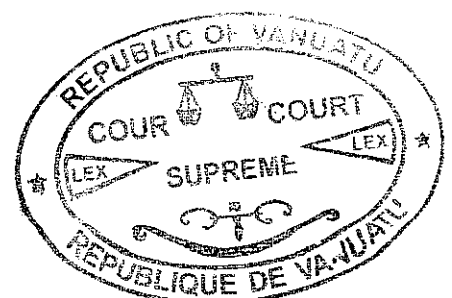
DECISION AS TO RULE 17.8 MATTERS

1. On 23 January 2024, the claimants filed a judicial review claim, seeking the following orders:
 - a. An order quashing the certificate of Recorded Interest in Land issued on 14 November 2023 to the Second Defendant.



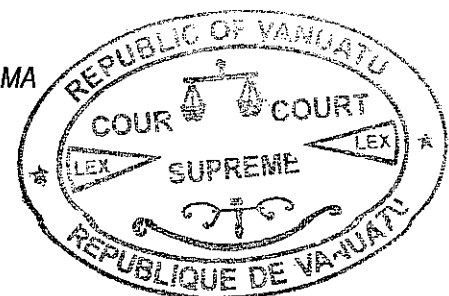
- b. An order that the matter be sent back to the Nakamal Court of Undualo, West Malekula with the presence of a custom land management officer to correct the boundaries and determine the issue of custom ownership pursuant to the Custom Land Management Act (“CLMA”).
2. The claim is disputed by the First and Second Defendants. Their position is that the Court should decline to hear the claim and strike it out because there is remedy that resolves the matter fully and directly.
3. At the rule 17.8 hearing, Mr Rongo conceded that there is a remedy that resolves the matter fully and directly, but nevertheless asked the Court to stay the outcome of the judicial review filed in civil case 2059 of 2024 Family Waltersai Haphapat II v Undualao Nakamal and Jack Tama under s 47 of the Custom Land Management Act.
4. A stay pending the outcome of the s47 review was opposed by both Defendants.
5. Rule 17.8 (1) of the Civil Procedure Rules (“CPR”) provides that as soon as practicable after the defence has been filed and served, the Judge must call a conference. There have been a number of conferences to get to the point where the matters in rule 17.8 (3) could be considered at the conference it is mandatory for the matters in rule 17.8 (3) to be considered.
6. The effect of the rules 17.8 (1) and (2) appears to be that the Court must consider whether or not to hear the claim with some expedition. While the First Defendant was tardy in filing a defence,¹ the Second Defendant acted promptly, and filed a defence on 16 February 2024.
7. In such circumstances, I decline to stay considering the matters in the rule 17.8 (3) pending the outcome of the S47 review. To delay further, would not be consistent with the spirit and intend of rules 17.8 (1) and (2).
8. Pursuant to rule 17.8 (3) of the CPR, the Court will not hear the claim unless satisfied as to all 4 matters set out in that rule:
 - a. The claimant has an arguable case; and
 - b. The claim is directly affected by the decision; and
 - c. There has been no undue delay in making the claim; and
 - d. There is no other remedy that resolves the matter fully and directly.
9. The difficulty for the claimants is that there is an alternative remedy that would resolve the matter directly, as Mr Rongo responsibly accepted. To understand why that is so, requires some background context.

¹ It was not filed until 31 October 2024



10. At issue is custom ownership of Undualao, Pakal and Alniraps land in North West Malekula. On 13 December 2018, there was a decision of the Undualao Nakamal. The decision declared Family Waltersai Haphapat II Ahelmalahlah custom owners. On 14 November 2023, the Custom Land Management Office (“CLMO”) issued a Certificate of Recorded Interest to the custom owner. Earlier requests for the issue of a Certificate of Recorded Interest had been declined by the CLMO.
11. The claimants believe that the Undualao Nakamal meeting was not properly conducted due to there being no consensus and no custom land officer present, as required under the CLMA. Therefore, a Certificate of Recorded Interest should not have issued.
12. Therefore, at the heart of the claim is that the claimants are asking the Court to review the Nakamal decision. The Supreme Court cannot do this. Pursuant to s 45 of the CLMA, a custom owner, member of the Nakamal or the disputing group may lodge an application for review with the Registrar of the Island Court (Land) or with the National Co-ordinator within 30 days from the date of the original decision.
13. On 15 December 2023, Mr Jack Tama, a disputing party to the Undualao Nakamal decision applied for review of the decision under s 45 of the CLMA, as well as enlargement of time. On 7 June 2024, the Malekula Island Court (Land) granted an enlargement for review under s 45 to be heard.
14. The Second Defendant has applied to the Supreme Court under s 47 of the CLMA challenging the decision of the Malekula Island Court (Land) to enlarge time.² **A hearing has been listed for 29 January 2025 at 9am.**
15. Currently (and subject to the Supreme Court application) there is a review of the Undualao Nakamal decision before the Malekula Island Court (Land). The Claimant’s sworn statements suggests they are a disputing party and so they can apply to the review of the Nakamal decision. If they are ordered, then that would create a pathway to apply to be added to the Supreme Court application, assuming there was sufficient time.
16. A review of the Undualoa Nakamal decision is what the claimants are seeking. There is a review application before the Malekula Island Court (Land) and as noted, the claimants can apply to be added as a party. The recent procedural history is set out in the sworn statement of Jason Moli, the Acting National Co-ordinator of the CLMO, filed on 4 November 2024. So it is inexplicable that he Claimants have not made an application to be added as a party to the review in the Malekula Island Court (Land). The review in the Malekula Island Court (Land) is the alternative remedy that would resolve the matter dully and directly.

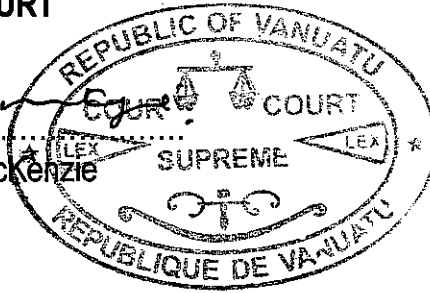
² The Supreme Court has supervisory powers on limited grounds under s 47 of the CLMA



17. Therefore, I decline to hear the claim and it is struck out.

**DATED at Port Vila this 27th day of January 2025
BY THE COURT**

name
.....
Justice M A MacKenzie

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COURT" and "SUPREME" are prominently displayed in the center, with "LEX" on either side. There are small stars on the left and right sides of the seal.