IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Judicial Review
Case No. 24/3636 SC/CIVL

BETWEEN: **NAMIP NASSE NOHOT**
MAHANA AND NATONGA TRIBE
FAMILY KAUKARE
IALIKAWA
Of Ipikangien
Whitesands, Tanna
Vanuatu

Claimant

AND: **JOHN NALWANG**
Acting National Coordinator
Customary Lands Management Office
Port Vila
Vanuatu

First Defendant

MICHEL NASSE NOHOT
STEPHEN NASSE NOHOT
Port Vila
Vanuatu

Second Defendant

Date of Order: *12 May 2025*
Before: *Justice B. Kanas Joshua*
In Attendance: *Mr Willie Kapalu, for the Claimant*
Ms Nadya Robert, for the First Defendant
Mr Roger Tevi, for the Second Defendant

DECISION ON RULE 17.8

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1. On 13 November 2024, a claim for judicial review was filed by the claimant. The claim was supported by four sworn statements of Daniel Lawawa, Daniel Kota, Jelson Nimaka and Peterson Walter. On 9 May 2025, a memorandum was filed by the representative of the fourth party claimant, Ialika/Faronga. The memorandum stated that the Faronga tribe has moved out from the claimants as they do not want to involve themselves with the issues of Ipekagien. A sworn statement of Tom Daniel Kota stated that they did not give their consent to the second defendants to represent them in the certificate of recorded interest ("**green certificate**"). For this reason, the Faronga tribe is removed as one of the claimants.

2. The first defendant filed a defence on 22 April 2024. The supporting sworn statement of Denson Damien Boe was filed on 2 May 2025. The second defendant filed a defence on 11 March 2025, with supporting sworn statement of Michel Nasse Nohot filed on 22 April 2025.

3. Prior to hearing arguments from counsels, a restraining order was granted on 3 March 2025. The defendants were restrained from doing any of the following until the judicial review case is determined,

    a. Using the green certificate to demand for any compensation, rent and payments in respect to the development such as schools, hospital etc in the area of Ipkangien, Whitesands;
    b. Using the green certificate to negotiate with investors and other persons for new development or cause new development at Ipkangien land; and
    c. If the defendants have already caused rectification of names of lessors in leasehold titles at Ipkangien land, the defendants shall not be entitled to any proceeds, compensation, rent and other payments.

4. The judicial review claim concerns a judgment by the Island court on 9 July 2012 which declared the claimants as custom land owners on parts and parcels of Ipkangien land in Whitesands, Tanna. The first defendant issued a green certificate to Family Nasse Nohot, represented by Michel Nasse Nohot and Stephen Nasse Nohot, the second defendant. The claimant claims that this is contrary to the judgment of 9 July 2012.

5. The declarations made in the Island court judgment were:
    a. Ipikagien boundaries belongs to the great *Iermaneng* Nasse Nohot, the husband of Iaris. It is inherited by his daughter Saloki, in the absence of any male bloodline, under the exception to the custom rule of inheritance in Tanna which is also applied in this area. Saloki's first born son Jack Riders received her blessings with and in the presence of great *Ienees* of Enumakel. That title is now held by Daniel Lawawa. He is declared the great *Iermaneng* of Ipikagien.
    b. ORIGINAL CLAIMANT: Kaukare is placed under the *Iermaneng* Nasse Nohot in the person of Daniel Lewawa and the *Ienees* Mahana & Natonga. His '*kakles*' should remain as originally agreed by the ancestors.
    c. COUNTER-CLAIMANT 1 – NASSE NOHOT: His (Wilson) adoption fails in custom. However, he retains some rights as descendants of Saloki under Article 73 of the Constitution which states that the land belongs to the indigenous custom owners and their descendants; but those rights are secondary. This counterclaimant is a notable family in Inekwili. He is now placed under Daniel Lewawa, the great *Iermaneng* Nasse Nohot and the *Ienees* of Ipikagien. He cannot impose himself in Ipikagien. He must abide and respect Nasse Nohot in the person of Daniel Lewawa and the *Ienees* of Ipikagien. As the Ipikagien *Iermaneng*, Daniel Lewawa must arrange for this party to enjoy a small portion of their grandmother's wealth within Ipikagien.
    d. COUNTER-CLAIMANT 2 – NAMIP NASSE NOHOT: He is the right Nasse Nohot and now *Iermaneng* of Ipikagien, and own lands in "A" and jointly owns land in "C".
    e. COUNTER-CLAIMANT 3 – IALIKAWA/FARONGO TRIBE: This tribe succeeds in his claim. They represent the population of Ienemaha who are join owners of the land in "C". They and Nasse Nohot should manage the 3 plots in join customary ownership.
    f. COUNTER-CLAIMANT 4 – MAHANA & NATONGA: This claimant is the *Ienee* of Ipikagien and custom owner of land in "B".
    g. COUNTER-CLAIMANT 5 – FAMILY PUKA: This claim cannot succeed.

6. For better understanding, I took the liberty to arrange the declaration for the purposes of this application:

a) Namip Nasse Nohot, who is counterclaimant 2, is the *iermaneng* of Ipikagien boundaries. This means he is the paramount chief of the supreme nakamal in Ipikagien. Based on the findings of the Island court Daniel Lewawa has inherited the name Nasse Nohot and is the right *iermaneng* of Ipikagien. The name Nasse Nohot was given to Wilson (counterclaimant 1) but the Island court declared that the process in which he acquired this name was not legitimate in custom.
b) Mahana & Natonga tribes hold the position of *ienee* of Ipikagien. They are the spokespersons of the paramount chief of the supreme nakamal in Ipikagien.
c) Kaukare family, Ialika/Farongo tribe and Wilson family are under the custom governance of *iermaneng* Namip Nasse Nohot.
d) Within the Ipikagien boundaries are plots of lands labeled A, B, and C on the map produced in the Island court decision. The *iermaneng* Namip Nasse Nohot owns lands in A. In addition, he jointly owns land C with Ialika/Farongo tribe. The *ienees* Mahana & Natonga own land in B.

7. The green certificate is for Ipikagien land boundary, which covers custom lands A, B and C. The green certificate is made to Family Nasse Nohot, represented by Michel Nasse and Stephen Nasse Nohot. This technically means that any dealings regarding the said land will be handled by the 2 named persons, who are the second defendants.

8. According to Rule 17.8(3) of the Civil Procedure Rules[1], the claimant must satisfy all four of the following requirements, in order for the claim to be heard:
   a. The claimant has an arguable case;
   b. The claimant is directly affected by the enactment or decision;
   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. On the first requirement, the claimant argued that the representatives named in the green certificate are not the right persons to represent Nasse Nohot. The names of Stephen and Michel Nasse Nohot were taken from a Minute of Family Nasse Nohot meeting held on 1 June 2023. Claimant's counsel pointed out that the list of people who attended the meeting do not represent all the parties in the Island court judgment[2]. He also raised that the meeting was held at the residence of Stephen Nasse Nohot, at Malapoa, Port Vila, and as some parties reside on Tanna they could not attend the meeting. The parties residing on Tanna did not appoint any of the attendees, breaching Section 6H of the Land Reform Act[3]. It was also argued that to obtain a lease, the meeting should occur in the area where the lease will be made.

10. The first defendant argued that for a green certificate to be canceled there must be a pending review before the Island court, or that the green certificate was wrongly issued. The National Coordinator was satisfied that there was no appeal before the court, and based on the documents submitted to the Custom Land Management Office ("**CLMO**") the green certificate was issued[4]. The second defendant supported the first defendant's argument.

[1] No. 49 of 2002.
[2] Sworn Statement of Densen Damien Boe (2/5/25), Attachment DDB3.
[3] CAP 123.
[4] Ibid, Attachment DDB2.

11. Section 6H of the Land Reform Act[5] provides for variation of the names of representatives. In applying Section 6H to this case, it is the sensible thing to include representatives of each party of the Island court case[6] who must be appointed by the custom owner groups in the Island court judgment[7]. In that sense, attendees should clearly state which of the party they represent, and have in record who appointed them to represent them. The meeting minutes did not show this. The meeting held at the residence of Stephen Nasse Nohot, at Malapoa, showed that there were 4 representatives of Family Nohot and the rest representing different families. They may be family members of Nasse Nohot but there is no evidence that they were appointed by the custom owners.

12. I agree with the claimant that there were no representatives from their families present. Section 6H would have been satisfied if there was a representative of Namip Nasse Nohot, Mahana and Natonga tribes, Family Kaukare and Ialikawa tribe, on record. On the point that the meeting should have occurred in the area where the lease will be made, I agree that this is the ideal way. However, considering that people move around, appointing a representative to attend the meeting is the next option.

13. On the point raised by the first defendant, I find that the National Coordinator failed to exercise due diligence before issuing the green certificate.

14. For this first requirement, I say the claimant has an arguable case.

15. On the second requirement, when the first defendant issued the green certificate, it allowed the second defendant to receive payments that are made by lessees of that lease. The claimant argued that this directly affected them as Declarations (d), (e) and (f) of the Island court decision clearly stated their names as *iermaneng, ienee* and joint owners of 3 plots with Nasse Nohot. The claimant claims that the second defendants are not the right persons to be named in the green certificate. They argued that Stephen Nasse Nohot is from Inekwili and has secondary rights that is subject to Daniel Lawawa. As to Michel Nasse Nohot, the claimant argued that, his name was never in the judgment.

16. As explained in [11] and [12] above, Stephen Nasse Nohot should not have been named in the green certificate. He represented counterclaimant 1 (Wilson) in the Island court judgment. Counterclaimant 1 was declared to have secondary rights as descendants of Saloki. Due to this, counterclaimant 1 (Wilson) is governed by Daniel Lewawa, who has inherited the title of *iermaneng* Nasse Nohot. Stephen Nasse Nohot cannot now claim to be representing Namip Nasse Nohot, just because he has "Nasse Nohot" adjoined to his name. As for Michel Nasse Nohot, his name only appears in the minutes of the meeting at Malapoa. He cannot now represent Namip Nasse Nohot just from appearing in one meeting. Moreover, there is nothing that shows that both Stephen and Michel were appointed by Daniel Lewawa, or his successor, to represent them in the meeting at Malapoa.

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[5] CAP 123.

[6] Land Case 2 of 1993/Land Case 6 of 1994.

[7] Section 6H: *(1) All representatives of the custom owner group are appointed by the custom owners and must not act without the consent of the custom owners.*

17. For this requirement, the court is satisfied that the claimant, Namip Nasse Nohot, would be greatly affected by the green certificate that was issued to Stephen and Michel Nasse Nohot.

18. To be clear, on the point that was raised that families Kaukare and Mahana were not named in the green certificate, Declaration two of the Island court's judgment states that these two families are placed under the *Iermaneng* Nasse Nohot. This means that they come under the custom governance of the *iermaneng.* In this capacity, Kaukare's name need not be in the green certificate. Similarly, the claimant party Mahana and Natonga are subject to the *iermaneng,* as they are *ienees.* They are spokesmen of the *iermaneng* and are subject to his rule. The claimant party Ialikawa tribe are joint owners of land C with the *iermaneng* Namip Nasse Nohot, as declared in the Island court judgment.

19. Under the third requirement, the first defendant argued that the claim was filed well outside of 6 months timeframe, stated in Rule 17.5. The green certificate was issued on 20 July 2023 and the claim was filed on 20 November 2024. This is 28 months after the green certificate was issued. This argument was supported by the second defendant. The claimant did not give any reason for this delay, however, in reply to the defendants' argument they questioned why the Island court's judgment was not reflected in the green certificate.

20. In *Kalsakau v. Wells*[8] Tuohy J., stated,

> *"It is plain that under R17.8(3)(c), the Court has to look at the delay since the decision not just since the R17.5 time limit expired. That follows because R17.8 applies to all claims both within and outside the time limit."*

21. The decision to issue the green certificate was made on 20 July 2023 and the claim was filed some 16 months after. No reason was given for the delay. Thus, this requirement is not satisfied.

22. On the last requirement, the claimant stated that the only remedy was to come to court to have the green certificate canceled and have the case referred to Tanna for a proper nakamal to sit and hear the matter. The first defendant acknowledged that there is a possible issue on the representatives named in the green certificate. They pointed out that with a current restraining order the disputing parties are restrained from doing anything, however, a possible remedy is for all to sit together and choose their representatives, as provided in Section 6H. The second defendant also agreed that a possible remedy is for the parties to sit and discuss who their representatives will be.

23. In *Family Poia v. The National Coordinator*[9], the National Coordinator canceled the green certificate after he discovered that the Custom Land Management Act[10] was breached. It was held in *Kemuel Harry & 8 ors v. Linda Olul*[11], that

[8] [2006] VUSC 79; CC 97 of 2006, at [21].
[9] Judicial Review Case No. 24/2566 SC/CIVL, at [17].
[10] No. 33 of 2013 (Consolidated), Section 8.
[11] Civil Case No. 02 of 2004, Supreme Court of Vanuatu, at [35].

"[T]he National Coordinator had the power to cancel the certificate if they discovered that for any reason, the certificate was wrongly issued (see Kwirinavanua v. Tariwer *[2016] VUCA 54)".*

24. In this instance, the National Coordinator canceled the green certificate on 22 August 2023 and revoked this cancellation on 22 January 2024, with no reasons given. That is a remedy that was not used wisely due to the National Coordinator failing to exercise due diligence. The claimants' suggestion that the matter be resolved in a nakamal meeting indicates another remedy that could have been attempted before coming to court. There is no evidence of this. Thus, I am not satisfied as there were no remedies that could have resolved this matter. This component has not been satisfied.

25. To conclude, the claimant has not satisfied the requirements in Rule 17.8 (c) and (d). In order for the court to hear the judicial review claim, all four requirements of Rule 17.8 must be satisfied conjunctively.[12]

26. I must decline to hear the claim and strike it out. Consequently, the restraining order, granted on 3 March 2025, ceases effect.

27. There is no order as to costs.

Dated at Port Vila on this 27th day of June, 2025

BY THE COURT

Justice B. Kanas Joshua

[12] *Christopher Emelee v. Ham Lini v 2 Ors* Civil Case No. 02 of 2004, Supreme Court of Vanuatu.