

**IN THE SUPREME COURT OF THE  
REPUBLIC OF VANUATU – Port Vila  
(Civil Jurisdiction)**

**Judicial Review  
Case No. 24/3894 SC/CIVL**

**BETWEEN: Family Lakelotaua**  
Represented by Nakmau Sampo Lakelotaua  
Mele, Efate  
Vanuatu  
**Claimant**

**AND: Customary Land Management Office**  
Port Vila  
Vanuatu  
**First Defendant**

**AND: Republic of Vanuatu**  
Port Vila  
Vanuatu  
**Second Defendant**

*Date of Hearing: 12 November 2025*  
*Date of Decision: 29 December 2025*  
*Before: Justice B. Kanas Joshua*  
*Appearance: Mr James Tari, for the Claimant*  
*Mr Denny Jonah, for both Defendants*  
*Mr Daniel Yawha, sitting in for applicants to join as third and fourth defendants*  
*(application depends on outcome of this Decision)*

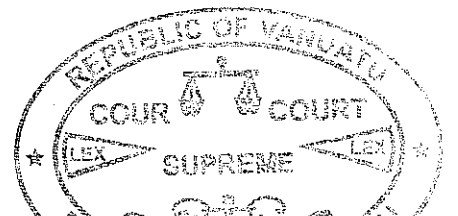
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**DECISION ON RULE 17.8**

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**Introduction**

1. This decision concerns the boundaries of Awako and Ftanalima custom lands. The custom lands are within the boundaries of Pangona and Ponatoka lands. The claimant does not dispute the boundaries of Pangona and Ponatoka lands.
2. The claimant relies on the submission filed on 10 November 2025, with the following documents:
  - a. Judicial Review claim (13/12/24),
  - b. Sworn statement in support of the claim (13/12/24),
  - c. Further sworn statement (4/6/25),
  - d. Memorandum (2/5/25).
3. The defendant relies on their defence and memorandum, filed on 10 November 2025.
4. The judicial review claim concerns an oral judgment made on 28 October 2024, and its written judgment on 13 November 2024. Both counsels agree that it is the same



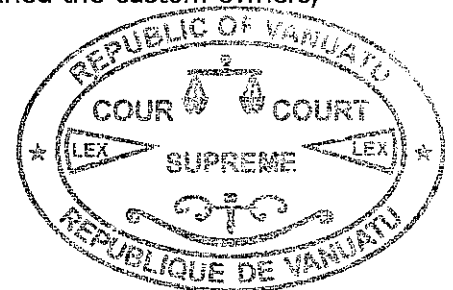
judgment, however, the claimant argues that the written judgment does not reflect the oral judgment.

5. The declaration in the oral judgment is as follows:
  - a. *Se Chief Willie Makomarakibue mo ol descendants blong Leinoasale oli ol stret custom landowners blong Ftanalima land;*
  - b. *Se Chief Jacob Kalotuk Faruleng mo ol descendants blong Laklotaumak mo Leimeten oli ol stret custom landowners blong Awako;*
  - c. *Counter(s) mo interest claimants oli forfeit rights blong olgeta;*
  - d. *Family Nakmau Sampo hemi cancelem claim mo no challengem original claimant mo confirm claim blong original claimant and putum wan petition I kam long original claimant; therefore, Order blong nakamal: bae Chief Makomarakibue mo Chief Faruleng mo Nakmau Sampo bae oli mekem wan agreement between olgeta I kam blong I recorded long minutes;*
  - e. *Pangona wetem Pounatoka land oli stap outside lo boundaries blong Awako mo Ftanalima.*
6. The written judgment is as follows:
  - a. *Fes original klemen Ftanalima emi...: CHIEF WILLIE LORE MAKOMARAKI WETEM DESCENDANTS BLONG LEINOASALE.*
  - b. *Seken original klemen Awako emi...: CHIEF JACOB KALOTUK FARULENG WETEM OL DESCENDANTS BLONG LEIMETEN.*
7. Before a judicial review claim is heard by the court, the court must consider the following:
  - a. Whether the claimant has an arguable case;
  - b. Whether the claimant is directly affected by the enactment or decision;
  - c. Whether there has been an undue delay in making the claim; and
  - d. Whether there is no other remedy that resolves the matter fully and directly.<sup>1</sup>

#### **A. Whether the claimant has an arguable case**

8. The claimant submits that he has an arguable case based on three reasons. First is that, there is an overlap of Awako and Ftanalima. The written judgment declares that Chief Willie Lore Makomaraki and the descendants of Leinoasale as the custom landowner of Ftanalima, and Chief Jacob Kalotuk Faruleng and the descendants of Leimeten, as the custom landowner of Awako. The claimant is not a declared custom landowner of the two lands. Under Section 36 of the Custom Land Management Act No. 33 of 2013 ("**the CLM Act**"), any overlap of the two lands is a concern that should be raised by the custom landowners. This means that if Chief Willie Lore Makomaraki and Chief Jacob Kalotuk Faruleng, as the declared custom landowners, have an issue with the overlap of the two lands, they have the avenue under Section 36 to determine their dispute. The two chiefs do not have any issues with the overlap of Awako and Ftanalima. On this point, the claimant does not have standing to raise the issue of overlap as he is not a declared custom landowner. The claimant may have an available avenue under Section 28 of the CLM Act if he disputes the decision of the nakamal that determined the custom owners,

<sup>1</sup> Civil Procedure Rules No. 49 of 2002, Rule 17.8.



but he must report any allegation to the custom land officer, or the National Coordinator, or the Island Court (Land).

9. Secondly, in the oral judgment the claimant and the two chiefs were ordered to make an agreement and submit it to the tribunal to be recorded in the minutes. It states,

*Family Nakmau Sampo hemi cancelem claim mo no challengem original claimant mo confirm claim blong original claimant and putum wan petition I kam long original claimant; therefore, **Order blong nakamal: bae Chief Makomarakibue mo Chief Faruleng mo Nakmau Sampo bae oli mekem wan agreement between olgeta I kam blong I recorded long minutes.***

(My emphasis)

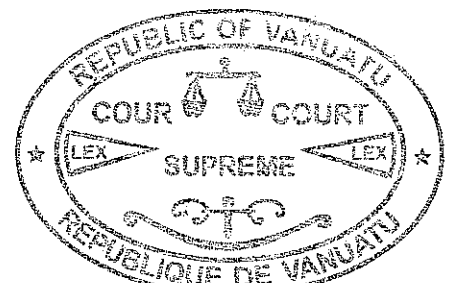
10. The claimant submits that this was supposed to be done before the written judgment, however, it was not done. It does not state in the oral judgment that the agreement should be done before the written judgment. However, the oral judgment must be read conjunctively with the written judgment. In reading both judgments together, it is the tribunal's duty to follow up on the order that it made, not a matter for this court.
11. The third reason raised by the claimant is that they have rights in Pangona land. The defendants agree, however, these rights are only secondary rights. In the oral judgment, the last declaration states that Pangona and Pounatoka lands are outside of the Awako/Ftanalima lands. As Awako/Ftanalima lands are within the bigger boundaries of Pangona and Pounatoka, I take this last declaration of the oral judgment to mean that Pangona and Pounatoka lands are not part of the Awako/Ftanalima land dispute. In this sense, any rights that the claimant has in Pangona must be dealt with in any land matters pertaining to Pounatoka land.
12. The first and third reasons are to do with overlap of land boundaries and rights of another custom land. This must only be dealt with in the appropriate custom land tribunal for the area which these lands are located. According to the Sixth Amendment of the Constitution,<sup>2</sup> the Supreme Court does not have the jurisdiction to deal with customary land matters.
13. The second reason is a matter for the tribunal to enforce and can be done any time, as the order does not give a time limit.
14. For the above reasons, I find that there is no arguable case before this court.

## **B. Whether the claimant is directly affected by the enactment or decision**

15. The claimant argues that he is directly affected by the judgment. The defendant acknowledges this but points out that the claimant was a party in the Pangona land determination. In that case, it was declared that the claimant has secondary rights only. Although these secondary rights will still be affected, that is a matter for the land tribunal

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<sup>2</sup> Constitution (Sixth)(Amendment) Act No. 27 of 2013.



to clarify. Regarding the Ponatoka land, this is a pending case which its outcome can be challenged by the claimant.

**C. Whether there has been an undue delay in making the claim**

16. The defendant does not dispute this.

**D. Whether there is no other remedy that resolves the matter fully and directly**

17. Since the Sixth Amendment of the Constitution, the CLM Act has come into force. This legislation provides the forum to address customary land disputes. In answer to this issue, the claimant can apply to the appropriate land tribunal to resolve the issues of overlap.

**Conclusion**

18. In conclusion, the claimant has not satisfied the four matters required under Rule 17.8 of the CPR.

19. I decline to hear the claim and it is struck out.

**Dated in Port Vila on this 29<sup>th</sup> day of December, 2025**

**BY THE COURT**

  
**Justice B. Kanas Joshua**

