IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/1022 CoA/CIVA
[2025] VUCA 23

BETWEEN: **Chief Silu Malasikoto & Family**
Appellants

AND: **John Nalwang**
First Respondent

AND: **Silas Vatoko, Nakmau Sambo, Edwin Malas and Dee-Jones Vatoko**
Second Respondents

Date of Hearing:	***12 May 2025***
Coram:	***Hon. Chief Justice V Lunabek*** ***Hon. Justice John Mansfield*** ***Hon. Justice Raynor Asher*** ***Hon. Justice Dudley Aru*** ***Hon. Justice EP Goldsbrough*** ***Hon. Justice Viran Molisa Trief***
Counsel:	***Mr Willie Daniel for the Appellants*** ***Mr Freddie Bong for the First Respondent*** ***Mr Edward Nalyal for the Second Respondents Silas Vatoko and Edwin Malas*** ***Mr Garry Blake for the Second Respondents Nakmau Sambo and Dee-Jones Vatoko***
Date of Judgment:	***16th May 2025***

JUDGMENT OF THE COURT

Introduction

1. The litigation between the Appellant and the Second Respondents concerning the Pangona custom land has been long standing. This is yet another, and hopefully the final, chapter in that litigation history. We are using the singular "the Appellant" as it is clear that the principal appellant is Chief Silu Malasikoto.

2. This appeal is from a judgment of the Supreme Court of 13 March 2025 where the primary Judge dismissed the judicial review claim made by the Appellant against the Second Respondents under

Civil Procedure Rules 17.8. The primary Judge was satisfied that each of the four conditions specified in Rule 17.8(3) had been satisfied, and his reasons indicate why that conclusion was reached.

3. On this appeal the Appellants contends that the primary Judge was wrong in respect of each of those matters. However, his submissions through counsel, and through the proposed sworn statement of the Appellant of 9 May 2025 (wrongly dated to 2024) indicates that his submissions extend considerably beyond the scope of the issues determined by the primary Judge, and the scope of the issues raised in the pleadings leading up to that decision. Obviously, that is not permissible. This is an appeal from a judgment dealing with the pleaded case.

4. We record that the First Respondent is joined in his capacity as the Acting National Coordinator of the Custom Land Management Act. He abides the decision of the Court.

5. The amended claim for judicial review, with the Appellant as claimant, seeks to quash a Certificate of Recorded Interest in the land dated 11 November 2023 issued by the First Respondent to the Second Respondents, and to substitute the Appellant as the holder of that registered interest in land. Alternatively, it seeks an order directing the First Respondent to convene a meeting of the custom land owners of the Pangona custom land pursuant to Section 6H of the Land Reform Act [CAP. 123]. So it is the legality and correctness of the Certificate of Recorded Interest in land of 11 November 2023 which is the issue in the proceeding at first instance.

Facts not in issue

6. Importantly, there are certain background facts which are not the subject of any challenge.

7. The first is to recognise that the decision of the Efate Island Court decided that the custom owner of Pangona land is "*Family Malasikoto*". It did not nominate the Appellant as the custom owner. Indeed, it is clear that it has already been decided (and not now challenged by the Appellant) that the Second Respondents are within the custom owner group of Family Malasikoto. See *Malasikoto v Vatoko [2019] VUCA 65.*

8. Next, there is now no dispute that there had been a meeting of the members of the Malasikoto Family custom owners pursuant to Section 6H of the Land Reform Act on 21 October 2021. That meeting has been the subject of an unsuccessful challenge to its validity by the present Appellant. There is no fresh challenge to that meeting at this point, and there could not be.

9. It was upon that meeting and its outcome that the certificate of recorded interest issued by the First Respondent on 11 November 2023 resulted.

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7. The first is to recognise that the decision of the Efate Island Court decided that the custom owner of Pangona land is "*Family Malasikoto*". It did not nominate the Appellant as the custom owner. Indeed, it is clear that it has already been decided (and not now challenged by the Appellant) that the Second Respondents are within the custom owner group of Family Malasikoto. See *Malasikoto v Vatoko [2019] VUCA 65.*

8. Next, there is now no dispute that there had been a meeting of the members of the Malasikoto Family custom owners pursuant to Section 6H of the Land Reform Act on 21 October 2021. That meeting has been the subject of an unsuccessful challenge to its validity by the present Appellant. There is no fresh challenge to that meeting at this point, and there could not be.

9. It was upon that meeting and its outcome that the certificate of recorded interest issued by the First Respondent on 11 November 2023 resulted.

Consideration

10. As it emerged in the course of submissions on behalf of the Appellant, the principal argument was that it was not within the power of the First Respondent to have issued that Certificate because it was necessary to issue it only to the Appellant Chief Silu Malasikoto because he held that chiefly title.

11. That is not correct. The holding of the chiefly title does not mean that the chief is the sole custom owner. Nor does it mean that, at a meeting under section 6H of the Land Reform Act, the person holding the chiefly title must be selected as the representation of the custom owners.

12. The Judge at first instance rejected that proposition, and correctly so. The Land Reform Act provides a procedure under Section 6G and 6H for the custom owners to meet and, determine those amongst them who should be their representatives for the purposes of managing the land of which they are collectively the custom owners. That meeting has taken place. On 21 October 2021 that meeting held under Section 6H, and under the supervision of the First Respondent, decided that the Second Respondents should be the appropriate representatives of the custom owners.

13. It is also convenient to note that the Second Respondents acknowledged that, pursuant to Section 6H of the Land Reform Act, the custom owners may properly request a further meeting to review their appointment as representatives, and that meeting could substitute the First Appellants as the representatives of the custom owners. Counsel for the Appellant, when that was pointed out, nevertheless insisted on proceeding with this appeal.

14. Consequently, it is necessary to address the other contentions of the Appellants.

15. Rule 17.8 of the Civil Procedure Rules dealing with the conduct of judicial review applications provides:

> ***17.8 Court to be satisfied of claimant's case***
>
> *(1) As soon as practicable after the defence has been filed and served, the judge must call a conference.*
>
> *(2) At the conference, the judge must consider the matters in subrule (3).*
>
> *(3) The judge will not hear the claim unless he or she is satisfied that:*
>
> *(a) the claimant has an arguable case; and*
> *(b) the claimant is directly affected by the enactment or 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.*
>
> *(4) To be satisfied, the judge may at the conference:*
>
> *(a) consider the papers filed in the proceeding; and*
> *(b) hear argument from the parties.*

(5) *If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out.*

16. It is important to note that the Claimant, after the defence, must satisfy the judge of each of the four matters in subrule (3) or the judge must decline to hear the claim and strike it out. If the judge is not satisfied on any one or more of those matters, the claim cannot proceed. We make that point because counsel for the Appellant argued that the judge had to be satisfied on all of those four matters before the claim can be struck out.
Accordingly, for the purposes of this appeal, we do not have to address each of the four matters.

17. We agree with the primary Judge that the Appellants have not demonstrated that they have an arguable case to challenge the validity of the Certificate of Recorded Interest of 11 November 2023, because its foundation is the meeting of 21 October 2021 referred to and which is not challenged. That is sufficient to dispose of the appeal. The judge was correct in finding criterion (a) in subrule (3) was not satisfied.

18. As it happened the primary Judge treated each of those criteria as necessary to be established. We shall refer only briefly to subrules (3) (c) and (d). It is quite clear that the Judge was not satisfied that there had been no undue delay in making the claim also was not satisfied, and that there was also 'no' alternative remedy that would resolve the matter fully and directly.

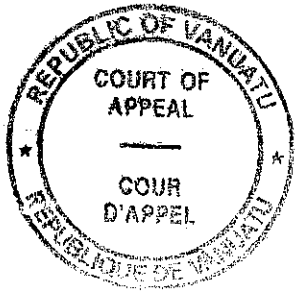
19. We agree with the primary Judge that neither of those two criteria were shown on the material which the primary Judge had before him and on the arguments presented to him.

20. The critical dates to found the validity or otherwise of the Certificate of Recorded Interest was the meeting of 21 October 2021. That was not the subject of challenge. In any event the time for any proceedings to challenge it were well expired. Indeed, as we have noted, that meeting had previously been a subject of challenge in proceedings by the Appellant and those proceedings had been discontinued.

21. And clearly, as we have noted above, there was an alternative remedy to resolve the matter of the dispute fully and directly, that is the calling of a further meeting under Section 6H of the Land Reform Act: That meeting would be conducted under the management of the First Respondent, and would give the opportunity to the Appellant to be adopted as the appropriate representative of the custom owners.

22. The appeal must be dismissed.

23. The First Respondent does not seek an order for costs.



24. The Appellants are to pay costs of the Second Respondents. Having regard of the extent of material which was necessary to be considered, and the extensive recent submissions of the parties, we consider that an appropriate order for costs is that the Appellant should pay VT200,000 to the Second Respondents for costs. We do not see why each of the separately represented groups of respondents should recover that amount of costs, and we apportion to costs as to VT150,000 to the Second Respondents Nakamau Sambo and Dee-Jones Vatoko and VT50,000 to the Second Respondents Silas Vatoko and Edwin Malas.

DATED at Port Vila, this 16th day of May 2025.

BY THE COURT

Hon. Chief Justice Vincent Lunabek

REPUBLIC OF VANUATU COURT OF APPEAL — COUR D'APPEL REPUBLIQUE DE VANUATU