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

Civil Appeal
Case No. 25/307 CoA/CIVA
[2025] VUCA 19

BETWEEN: **Peter Tafla and Nakamal Family**
Appellant

AND: **Poita Kasiken**
First Respondent

AND: **John Nalwang acting National Coordinator of Climate Change Office**
Second Respondent

AND: **Kasaru Tribe Council/Ipikagian Nakamal**
Third Respondent

Date of Hearing:	***7th 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 Daniel Yawha on behalf of Mr. Nigel Morrison for the Appellant*** ***Mr. Sakiusa Kalsakau for the First Respondent*** ***Mr. Jonah Mesao for the Second Respondent*** ***Ms. Nadia Robert for the Third Respondent***
Date of Judgment:	***16th May 2025***

JUDGMENT OF THE COURT

Background

1. This is an appeal against a judgment of the Court below in Judicial Review Case No 24/493 **Poita Kasiken v John Nalwang & Ors** (JR Proceedings) dated 28 January 2025.

2. The JR proceedings were brought by Poita Kasiken challenging the decision to issue a Certificate of Recorded Interest (Green Certificate) to Peter Tafla and Nakarnal family over Lautapas land. The Green Certificate was issued on 9 December 2023 by Mr Nalwang as the National Coordinator under the Custom Land Management Act No 33 of 2013 (the Act).

3. The main relief sought were orders: -

   a) to quash the decision of the coordinator to issue the Green Certificate and

   b) to quash the decision of the Kasaru Tribe Council/Ipikagian Nakamal declaring Peter Tafia as custom owner of Lautapas land; and

   c) to refer the dispute over Lautapas land to another nakamal for determination.

4. In his defence, the National Coordinator maintained that the issuance of the Green Certificate complied with s 19 of the Act regarding the creation of a recorded interest in land. Peter Tafia also asserted in his defence that the decision of the Kasaru Tribe Council/Ipikagian nakamal was validly made in accordance with the provisions of the Act.

5. At the first conference on 28 May 2024 (rule 17.8 (3) conference), the primary judge determined that the claimant Poita Kasiken had an arguable case to be heard and set a 2-day hearing date for 26 and 27 August 2024. The hearing did not proceed and another conference was listed for 28 January 2025.

6. At this conference the only Counsel in attendance was Mr Mesao on behalf of the National Coordinator who informed the primary judge that his client had conceded the claim. Counsel for Poita Kasiken was excused. Counsel for each of Peter Tafia and Nakamal Family, and for the Nakamal did not attend.

Decision appealed

7. At paragraph 4 of his ruling the primary judge said the *"concession by the first defendant is enough to end this proceeding .."* and later at [7] added:

> *"the First Defendant [the National Coordinator] made his decision based on the decision of the second defendant [the Nakamal] which from the evidence available was made fraudulently and in the absence of the claimant [Poita Kasiken] who were advised the meeting would not take place, yet it occurred without them. They were denied natural justice."*

8. Thereafter the primary judge issued orders quashing the decision to issue the Green Certificate and the decision declaring custom ownership of Lautapas land and referred the dispute for determination by another nakamal under the provisions of the Act.

The Appeal

9. The appellant appealed the decision by a notice of appeal filed on 27 February 2025 with a single ground that the primary judge fell into error in making his ruling under the mistaken belief that

the first respondent sought such a ruling whereas the appellant's expressed intent to the other parties was to ask the Court to list a trial date.

Discussions

10. The appellant submitted that the decision could not have been made under the Civil Procedure Rules and that the appeal be allowed for the matter to be returned to the Court below for hearing.

11. It was further submitted that the primary judge's decision was made in error under a mistaken belief that the first respondent sought such a ruling when the appellant's expressed intention in relation to the other parties was to request the court to list the matter for trial. On that basis it was further submitted that the ruling was contrary to what the parties had resolved (to get a hearing date) and counsel present as agent for the first respondent failed to inform the court of his instructions from the first respondent.

12. The appellant also submitted that Part 9 of the Civil Procedure Rules (Ending a Proceeding Early) did not provide a process for ending a proceeding early in such manner to support the primary judge's ruling.

13. Mr Morrison as Counsel for the appellant also filed a sworn statement on 15 April setting out the details of what transpired between counsel regarding the 28 January conference. Mr Kalsakau confirms he agrees with the contents of Mr Morrison's sworn statement and the discussions had in relation to the 28 January conference.

14. Mr Mesao on the other hand filed submissions seeking to uphold the decision. Following exchanges with the bench and noting what Mr Morrison stated in his sworn statement, those submissions were abandoned.

15. The 28 January conference was listed pursuant to a Notice of Conference issued by the Chief Registrar to all the Counsel on 6 January 2025 informing them that the matter was listed before the primary judge for "*conference in chambers*".

16. Counsel concede that they had discussions amongst themselves regarding what was to happen at that conference. On the 27 January 2025 around 5.17pm Mr Morrison informed Mr Kalsakau by email that he was unable to attend the conference (the next day). The response from Mr Kalsakau was to request a hearing date after the Court of Appeal session (February session) and that request was conveyed to Mr Mesao to inform the primary judge.

17. Mr Mesao confirms his discussions with Mr Kalsakau and also confirms informing the primary judge seeking to set the matter down for hearing or list a further conference. In addition, Mr Mesao confirms informing the primary judge that his client conceded the claim. Mr Mesao also filed a sworn statement to that effect. Mr Mesao submits he informed the primary judge of the second respondent's position given that he had signed a "consent order" as discussed by the

parties following the decision that there was an arguable case for the adjournment of the conference and either a further direction or a hearing date should be fixed.

18. The purported consent orders were not signed by the appellant and the first respondent and was not endorsed by the primary judge. The proceedings therefore remained on foot.

19. Part 17 of the CPR provides for judicial review claims. The rule 17.8 (3) conference was held on 28 May 2024 for the primary judge to be satisfied there was an arguable case. Upon hearing from the parties present, the primary judge was satisfied that the claimant had an arguable case and listed the matter for a two-day trial on 26 and 27 August 2024. That hearing date was abandoned. In preparation for the trial, leave was granted to the claimant to file and serve an amended claim with further evidence, the defendants were directed to file and serve their defences and evidence in support and the parties were directed to pay their hearing fees.

20. It is evident that that 28 January 2025 conference did not proceed as expected. We are satisfied that the parties' clear intentions were to get another hearing date at the 28 January 2025 conference. The proper course under the rules would have been to provide another hearing date as requested by the parties for the matter to be tried. The judge proceeded to judgment, contrary to their collective expectations and to the specified purpose for the conference. That is sufficient to dispose of this appeal.

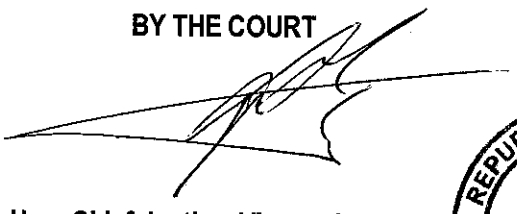
Result

21. The appeal is allowed. The matter is to be returned to the Court below to be tried before another judge.

22. The first respondent is ordered to pay costs to the appellant and third respondent in the sum of VT50,000 each. No order as to costs for the second respondent.

Dated at Port Vila this 16th day of May 2025

BY THE COURT



Hon. Chief Justice, Vincent Lunabek