

IN THE ISLAND COURT OF
REPUBLIC OF VANUATU
(Custom Land Jurisdiction)

Review Case No. 24/ 2144 IC/CUST

In the matter of a decision: Emtenmap nakamal decision made on 04 March 2024 and the decision by Erakor Mpau Natkon Nakamal on 11 August 2024 in respect of Ewenesu, part of Emornaik, part of Emtenmap, part of Epal, part of Etaslep, part of Elaknparom, part of Emlenaperik, part of Etartar, part of Emetaipur and a part of Elol and Naisraper custom lands.

BETWEEN: SMITH LAUTO & FAMILY

Applicant

**AND: EMTENMAP NAKAMAL & ERAKOR
MPAU NATKON NAKAMAL**

First Respondent

AND: ALLEN KALON & FAMILY

Second Respondent

**AND: KALOTIP & KARSEN ROBERT &
FAMILY**

Third Respondent

**AND: JEAN PIERRE SEREL SAMUEL MAGAU
KALTAK & FAMILY**

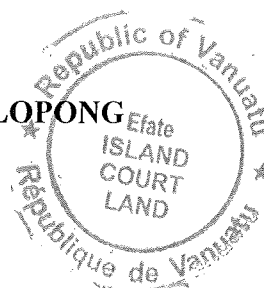
Fourth Respondent

AND: PIERRE ONEL & FAMILY

Fifth Respondent

AND: APETE TAKAU KALOPONG

Sixth Respondent



AND: WALTER KALKOT & FAMILY
Seventh Respondent

AND: BERNARD LAUTO
Eighth Respondent

Coram: Chief Magistrate Laloyer. A
Justice Serah Paton
Justice Nicola Kaluatman
Justice Shem Thomas Arlie
Justice Diana Kalsong

Parties: Representative of Applicant & Applicant
Mr. Boe Damien for First Respondent
Respondents and Representatives of Respondents

Date of Hearing: 25 & 27 March 2026

Date of Decision: 09 April 2026

DECISION

Introduction

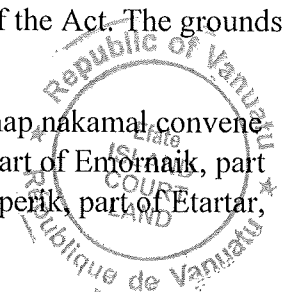
On 25 November 2022, the Island Court (Land) made a ruling for a new composed nakamal to hear the parties.

This is a review of the decision of Emtenmap nakamal dated 04 March 2024 and Erakor Mpau Natkon nakamal made on 11 June 2024 over Ewenesu, part of Emornaik, part of Emtenmap, part of Epal, part of Etaslep, part of Elaknparom, part of Emlenaperik, part of Etartar, part of Emetaipur and a part of Elol and Naisraper custom lands.

On 11 July 2024, the Applicant filed an application for review under section 28 and 45 of the Custom Land Management Act¹. The application seeks for the matter be referred back to a different and properly constituted area tribunal. The grounds of the review were that the nakamal breached section 25 (5) of the Act where the decision of the nakamal was not made by consensus. The matter should be referred to a tribunal instead the nakamal continued to hear the case.

On 24 March 2026, the Applicant filed another application under section 28 and 45 of the Act. The grounds of review were:

- a) The nakamal decisions was procured by fraud. On 4 March 2024, the Emtenmap nakamal convened and declared the Eighth Respondent as custom owner over part of Ewenesu, part of Emornaik, part of Emtenmap, part of Epal, part of Etaslep, part of Elkaparom, part of Emlenaperik, part of Etartar,



part of Emetaipur and a part of Elol. On 11 June 2024, the Erakor Mpau Natkon sat again and declared the Third Respondents to be custom owner of the same custom lands. As a result, two decisions made that contradicts each other.

- b) The nakamal was not properly constituted. The chairperson of the former nakamal participated in the nakamal proceeding. The process was in breach of the ruling of the Island Court (Land) decision of 25 November 2022.
- c) The nakamal refused to consider the ruling of the Island Court concerning his family rights.
- d) The nakamal did not provide the Applicant an opportunity to submit a written sketch map and family tree.
- e) The nakamal continue to uphold its previous nakamal decision which the Island court has set aside and failed to independently redetermine the matter as ordered by the Island Court (Land) on 25 November 2022.

On 11 July 2024, Mr. Smith Lauto filed a sworn statement in support of the application. His evidence was that on 11 June 2024, Erakor Mpau Natkon declared the Third Respondent as custom land owners over part of Emlenaperik, part of Etaslep and Emornaik custom land. The decision was not made by consensus of the members of the nakamal. The nakamal should refer the claim to a custom area land tribunal for determination instead of conducting its hearing. The process to continue to hear the claim of the Applicant was in breach of section 25 (3)(5) and 29 of the Act.

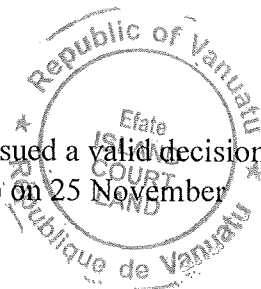
On 20 March 2026, Mr. Smith Lauto filed a sworn statement in reply to the Respondents' respond. He submits in his sworn statement that the Supreme Review Case No. 15/2015 and the Court of Appeal Case No. 17/2972 uphold his custom rights over Ewenesu, Elak Mparum, Emtenmap and Elak Naperik custom land. The Emtenmap nakamal and Erakor Mpau Natkon decision is a res judicata.

On 26 March 2026, Mr. Smith Lauto filed an additional statement and said that the secretary of nakamal served him with a notice on 8 April 2024 at around 3pm asking him to attend the nakamal meeting the next day. His wife was present when he received the notice. He was not given enough time to produce his document as required by the notice. The nakamal used the documents of Bernard Lauto to make its findings instead of allowing him time to produce his documents.

He further said that Karr Naklokut, chief Kalsaur Kalomtak Bomal and Mr. Peris Kalopong were adjudicators of the former nakamal who made a decision and was dismissed by the Island Court (Land) on 25 November 2022. These three persons sat as adjudicator again when the Island Court had clearly stated that the nakamal should be a newly constituted nakamal. In them doing so, there was bias and contempt of the Island Court ordered dated 25 November 2022.

Response

The First Respondent filed a response to say that the Erakor Mpau Natkon nakamal issued a valid decision and the nakamal was newly constituted nakamal as ordered by the Island Court (Land) on 25 November



2022. It is submitted that section 29 of the Act could not be applied since the nakamal determine the dispute of Ewenesu, Emornaik, Emtenmap, Epal, Etaslep, Elakmaparo, Emlenaiperik, Emtaipur, Etarrar and Elol Natkon within 30 days. The argument under section 29 of the Act should be dismissed.

All the parties were present and the Applicant was given the opportunity to be heard. He chooses not to bring his family to the meeting. During the hearing, the Applicant was questioned and he answered the questions. The map relied upon by the Applicant was based on the claim form submitted by Bernard Lauto. The visitation of the site was proper and all parties attended the visitation process and the decision of the nakamal was made by consensus of all members present.

On 24 March 2026, Chief Louis Tukune filed a sworn statement in response to the application of review and said that the nakamal was properly constituted with new adjudicators. All the parties serve the adjudicators with new sketch map before the sitting of the nakamal. All the parties were questioned and the ruling of the nakamal was made in accordance with the custom of Erakor. The nakamal process was fair and reasonable time was given to all the parties.

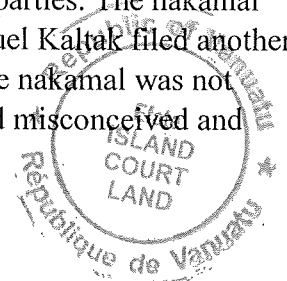
Mr. Steve Tagaro filed a sworn statement on 25 March 2026 and he gave similar evidence as Chief Tukune. He was the CLO and he sat at the rehearing.

Chief Karr Narklokut filed a sworn statement on 26 March 2026 and he said he served the notice on the Applicant's wife because he was not home. The notice was served some week before the nakamal hearing. He was present during the meeting as an observer and not an adjudicator. During the meeting, the Applicant did not raise the issue of the notice being served on him.

On 08 August 2024, a response was filed by the Second, Third, Fourth, Fifth, Sixth and Seventh Respondent to say that the Applicant's grandfather's history does not have a merit in custom. The Applicant failed to answer questions raised in regard to his history as to how his grandfather acquired the land and failed to prove his case. The Applicant has little knowledge of how he is connected to the custom land he claimed. Furthermore, the nakamal was a newly constituted nakamal and it made a consensus decision.

The Fourth Respondent filed a response on 04 March 2026 that repeats the same argument as the response filed on 08 August 2024. On 16 March 2026, the Second, Third, Fifth and Seventh Respondent filed a response that repeats the same argument. On 21 March 2026, a sworn statement was filed in support of that response to say that the matter for determination by the nakamal was not of chiefly title but of land and the Applicant was given the opportunity to give the nakamal its documents.

On 23 March 2026, Samuel Kaltak filed a sworn statement and said that the decision made by the Island Court was birth right declaration and not ownership of custom lands disputed by the parties. The nakamal decision made by Erakor Mpau Natkon nakamal was valid. On 25 March 2026, Samuel Kaltak filed another sworn statement and says that the Applicant raised the issue that decision made by the nakamal was not consensus but failed to provide evidence of such. The application was misleading and misconceived and should not be entertained and be dismissed entirely.



On 25 March 2026, Mr. Samuel Kaltak filed another sworn statement and says that Bernard Lauto should be dismissed as a party since he filed a notice of discontinuance on 17 November 2022. He said after the decision of the Island Court (Land) on 25 November 2022, the error comes on 28 March 2024 when CLMO issued a notice titled "NAKAMAL RE-HEARING CASE BLONG BERNARD ANUEL LAUTO HEMI LISTED LONG 8 O 9TH APRIL LONG 9.00AM". Mr. Bernard Lauto then took the advantage of this referral and disguisedly organized a nakamal meeting at his residence calling the sitting as Emtenmap nakamal to determine an undisputed claim over part of Ewenesu, part of Emornaik, part of Emtenmap, part of Epal, part of Etaslep, part of Elkaparom, part of Emlenaperik, part of Etartar, part of Emetaipur and a part of Elol custom lands including Naisraper that was declared by Eratap Tribunal. The nakamal consist of two of his family members and that nakamal declared Mr. Bernard Anuel Lauto as the custom owner of those custom lands.

He said that Mr. Bernard Lauto called the meeting knowingly that he withdrew his review at the Island Court (Land). The meeting of the Emtenmap nakamal was bias when it had two family members of Mr. Bernard Lauto as adjudicators. Mr. Bernard Lauto held onto the decision and waited until 30 days requirement period for any challenges lapsed and then he sought the CLMO to be issued a certificate of interest. The disputing parties knew of the certificate of interest when Mr. Bernard Lauto posted it on social media. He stated that Mr. Bernard Lauto deviate the process and used his house as a nakamal and named the sitting as Emtenmap nakamal when there is no such nakamal when there is no such within the Erakor area. Mr. Bernard Lauto had grossly abused the process and perverted the cause of justice in this proceeding.

The Emtenmap nakamal meeting took place one month before Erakor Mpau Natkon nakamal for re-hearing of the case of Smith Lauto as directed by the Island Court (Land) on 25 November 2022.

Discussion

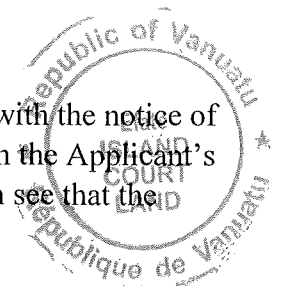
The Island Court (Land) do not have the discretionary power to hear the review out of time concerning the decision of Emtenmap nakamal dated 04 March 2024. This application is statute barred by section 45 of the Act. Having said this, we dismiss the application for review of Emtenmap nakamal dated 04 March 2024.

Furthermore, the Erakor Mpau Natkon do not have the jurisdiction to quash the decision of Emtenmap nakamal. The decision of Emtenmap nakamal can only be review by the Island Court (Land).

The application for review file on 24 March 2026 is statute barred by section 45 and therefore is dismissed.

The Court now turns to the application for review filed by the Applicant on 11 July 2024 over the decision of Erakor Mpau Natkon nakamal.

We are satisfied upon considering the evidence in Court that the Applicant was served with the notice of hearing weeks before the sitting of the nakamal. Mr. Kaar Naklokut served the notice on the Applicant's wife at the Applicant's residence. In consideration of the minute of the nakamal, we can see that the



Applicant had the opportunity to present his claim. We dismiss the ground for insufficient time for Applicant to preparer himself.

The evidence of Samuel Kaltak establishes that all the parties including their family and friends were present in the nakamal. The Applicant choose to take only his son with him. Section 17 (1) states that: ***“Any decision by a nakamal to determine the custom owners of the land must be made at a meeting of the nakamal referred to in section 16 and two-thirds of the adult members of the nakamal must be present at that meeting.”*** The Applicant do not have evidence to show that the nakamal breached section 17 (1) of the Act. We dismiss the ground that the decision was not made by consensus.

We are also satisfied that the Erakor Mpau Natkon nakamal was a new constituted nakamal. The ground of review that the judgment was made by fraud because there were two judgments over the same custom lands. We are of the view that the judgment of Erakor Mpau Natkon was not made by fraud. However, the judgment cannot be binding since the Emtenmap nakamal had already declared Mr. Bernard Anuel Lauto as the custom owner of Ewenesu, part of Emornaik, part of Emtenmap, part of Epal, part of Etaslep, part of Elaknparom, part of Emlenaperik, part of Etartar, part of Emetaipur and a part of Elol and Naisraper custom lands. Erakor Mpau Natkon cannot re-hear the same land.

Upon this, the Court makes the following orders: -

1. The application for review filed by the Applicant is hereby dismissed entirely.
2. The judgment of Erakor Mpau Natkon dated 11 June 2024 is hereby quashed.
3. The judgment of Emtenmap nakamal is valid.
4. Anyone who is not satisfied with this ruling, has a right to file an application for review in the Supreme Court within 30 days.



DATED at Port Vila, Efate on 09th day of April 2026

BY THE COURT



Chairlady

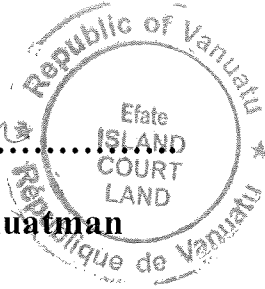
Laloyer. A



Justice Serah Paton



Justice Nicolas Kaluatman



Justice Shem Thomas Arlie



Justice Diana Kalsong