

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

**Review Case No. 23/2634 IC/CUST
Review Case No. 23/2635 IC/CUST**

In the matter of a decision: Eratap Customary Land Tribunal decision in respect of Naisraper and Eratap custom lands made on 18 May 2004 and 25 November 2003.

BETWEEN: KALMERMER FAMILY

First Applicant

AND: JOHNSTON KALMAN TAU & RENE TAIN

Second Applicant

AND: ERATAP CUSTOMARY LAND TRIBUNAL

First Respondent

**AND: JACK KALON, FAMILY ABIUT JOSEPH
AND FAMILY MARKAL KALSONG**

Second Respondent

AND: FAMILY KALMET & ORS

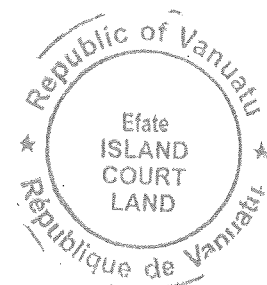
FAMILY KALTATAK

Third Respondent

AND: CHARLOT NAWEN RUTAU

Fourth Respondent

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



Parties: Representative of Applicants
Mr. Boe Damien for First Respondent
Representatives of the Respondents

Date of Hearing: 01 April 2026

Date of Decision: 09 April 2026

DECISION

Introduction

On 15 October 2023, the Island Court (Land) granted the Applicants leave to file their review out of time.

On 23 March 2026, the National Coordinator filed an application to strike out the review on behalf of the First Respondent on the following grounds:

- a) The review was filed out of time and the Island Court (Land) lack jurisdiction to grant leave to review out of time;
- b) The application was an abuse of process.

First Respondent's submission

The First Respondent submits that the period stated in section 58 of the Custom Land Management Actⁱ had lapse and the Island Court (Land) decision to grant leave out of time on 15 October 2023 is void. The review was time barred by section 58.

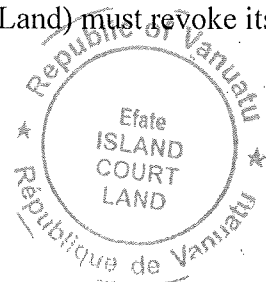
Mr. Damien made reference to the case of *Family Kalmermer -v- The Eratap Customary Land Tribunal*ⁱⁱ and submitted that the Supreme Court did recognize that the Applicant took no action since 2003- 2004. The application for review was filed in 2023 about 20 years later is an abuse of process. The Island Court (Land) in granting the leave to extend time on 15 October 2023 should be void.

Mr. Damien also relied on the case of *Ahelmhalahlah v Undualao Nakamal*ⁱⁱⁱ and submitted that the Island Court (Land) do not have the discretionary power to extend a leave for an application to hear a review out of time. The Island Court (Land) on 15 October 2023 should be held to be void.

It is submitted that in *Family Kalmet v Kalmet*^{iv}, *Family Kalmermer v Eratap Customary Land Tribunal* had dealt with the review of the Applicant and re-hearing the review again would be a res-judicator. The case of *Anura Limited (formally Orion Marine Limited) v Sealegs International Limited*^v was submitted to summarize the doctrine of res-judicator.

In conclusion of this submission, Mr. Damien submitted that section 58 gives right to the Applicant to file his review 12 months after the Custom Land Management Act and the Island Court (Land) must revoke its decision to grant leave to extend time to file application for review out of time.

Response



The Applicants submitted orally that the Island Court (Land) on its decision of 15 October 2023 set out the chronology of the cases filed in the Supreme Court. In 2005, there was a judicial review before the Supreme Court against the Eratap Custom Land Tribunal. The judicial review was dismissed on the grounds that the Applicants were not a party in the two Eratap decisions. The ruling of the Supreme Court in consideration of the repealed Customary Land Tribunal Act. However, the Customary land Management Act replaced the repealed Act and the Applicant filed the review under section 58 of the Act. The Court heard the application to review out of time and was granted the Applicant leave to file his review. The case of *Ahelmhalahlah v Undualao Nakamal* cannot overturn the decision of 15 October 2023.

The Applicant submitted that the decision made in consideration of the repealed act can be heard again since filing of the review was not res judicata. The argument as to abuse of process was addressed in the ruling of 15 October 2023 and therefore it is binding. There was never an abuse of process.

Discussion

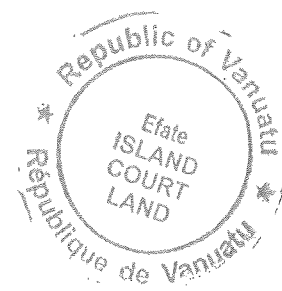
Section 58 sets out the time frame to file an application for review within 12 months from the time the Act was enacted. This submission is correct but this Court cannot overturn a decision of the Island Court (Land). It is bound by that decision of 15 October 2023. Section 47 of the Act enable any aggrieved party to seek a review before the Supreme Court within a period of 30 days. The only step for the First Respondent to challenged the decision of the Island Court (Land) is laid in section 47.

We take into consideration the case of *Ahelmhalahlah v Undualao Nakamal* and we believe that the decision of Island Court (Land) can be overturn but that would be subject of the Supreme Court under section 47 of the Act. The Island Court (Land) cannot overturn its own decision. The Island Court (Land) of 15 October 2023 is binding.

We consider the chronology set out in the ruling of 15 October 2023 and we are satisfied that this submission was already addressed and the Island Court (Land) is satisfied that there was no abuse of process. Under the Custom Land Management Act, this is first time the Island Court will review the Eratap Custom Land Tribunal decision made on 18 May 2004 and 25 November 2023. We dismiss the submission on abuse of process.

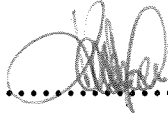
Upon this, the Court makes the following orders: -

1. The First Respondent's application is dismissed.
2. The review is listed for hearing on 13 July 2026 at 09.00am.
3. Anyone who is not satisfied with this ruling, has a right to file an application for review in the Supreme Court within 30 days.

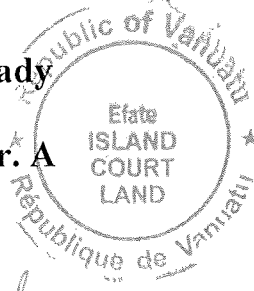


DATED at Port Vila, Efate on 09th day of April 2026

BY THE COURT



**Chairlady
Laloyer. A**






Justice Serah Paton



Justice Nicola Kaluatman



Justice Shem Thomas Arlie



Justice Diana Kalsong