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

Review Case No. 24/ 2964 IC/CUST

In the matter of a decision: Erakor Mpau Natkon Nakamal decision in respect of Part Emtenmap & Part Etil custom land made on 19 August 2024.

BETWEEN: JOSEPH TUFORO MERA
Applicant

AND: ERAKOR MPAU NATKON NAKAMAL
First Respondent

AND: JACK KALON
Second Respondent

AND: JOSIANA BEN
Third Respondent

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

Parties: Representative of Applicant & Applicant
Mr. Boe Damien for First Respondent
Second and Third Respondent in person

Date of Hearing: 25 & 27 March 2026

Date of Decision: 09 April 2026

DECISION

Introduction

This is a review on the decision of Erakor Mpau Natkon nakamal made on 19 August 2024.

On 29 October 2021, the Erakor Mpau Natkon nakamal declared the Second Respondent to be the custom owner of part of Emtenmap (Lot 1, 2 and 3) as an undisputed claim.

On 08 June 2022, the Erakor Mpau Natkon nakamal declared the Second Respondent as custom owner of part of Etil as an undisputed claim.

The Applicant filed a judicial review (22/3399 SC/JUDR) before the Supreme Court challenging the decisions made by Erakor Mpau Natkon nakamal made on 29 October 2021 and 08 June 2022 over part of Emtenmap and part of Etil custom land.

On 30 November 2023, the Supreme Court decision ordered the nakamal to hear the Applicant's claim in relation to part of Emtenmap and part of Etil and to determine whether or not the Applicant and his family have any interest in the land including ownership and/or a use of rights.

On 19 August 2024 the nakamal heard the Applicant and maintain the ruling made by the nakamal on 29 October 2021 and 08 June 2022 and declared the Second Respondent as custom owner of part of Emtenmap and the Third Respondent as custom owner of part of Etil.

On 19 September 2024, the Applicant filed an application for review before the Island Court (Land) challenging the decision of the nakamal made on 19 August 2024.

Grounds for review

There are three grounds review raised by the Applicant are:

a) The same adjudicators of the nakamal who had made the decision on 29 October 2021 and 08 June 2022 sat to hear the Applicant's claim. The nakamal again ruled in favour of the Second and Third Respondents over part of Emtenmap and part of Etil without properly hearing the Applicant. There is likelihood of bias by the panel.

b) The Applicant was not given the opportunity to present his case. The Applicant did not present his family tree, his history and how his blood was connected to part of Emtenmap and part of Etil. The panel relied on the introduction to sum up the Applicant's case. Furthermore, the Applicant did not have the opportunity to cross-examine the Second and Third Respondent but was cross-examined by the panel.

c) The judgment was made by fraud on the grounds that:

   i. The Second and Third Respondent did not present their claim to allow the Applicant to advance his responses to their claims;

   ii. The Applicant was denied their right to present their claim;

iii. There was no visitation of part of Emtenmap and part of Etil custom land. The decision was made without a proper boundary of the disputed custom lands set up by the panel.

The sworn statement of Joseph Tuforo Mera and Stanley Lango & others were filed to support the grounds of the claim.

Response

On 21 March 2026, the CLMO filed a response on behalf of Erakor Mpau Natkon nakamal. It is submitted that the nakamal had properly dealt with the order of the Supreme Court in review case No. 22/3399 and the procedure undertaken by the nakamal was in accordance with the Custom Land Management Act[i] .

It is also submitted that the notice was issued by the Council of Erakor nakamal and served on the Applicant within reasonable time. Reasonable opportunity was given to all parties since the rehearing was conducted from 01 August to 19 August 2024 which is a total of 18 days.

On 24 March 2026, Peris Kalopong filed a sworn statement in support of the response. On 26 March 2026, Kaar Narklokut Erikan filed a sworn statement to support the response of CLMO. His sworn statement confirms there was no visitation of the two custom lands. On 24 March 2026, Steve Tagaro filed a sworn statement that confirms that the panel failed to visit the boundary of part of Emtenmap and part of Etil.

Discussion

The Supreme Court decision of 30 November 2023 ordered the nakamal to hear the Applicant's claim in relation to part of Emtenmap and part of Etil and to determine whether or not the Applicant and his family have any interest in the land including ownership and/or a use of rights. The Supreme Court did not order a new composed nakamal. In the absence of such order, we accept that the nakamal was properly constituted.

The evidence of Stanley Lango was that the nakamal was not neutral in its process. The nakamal ruled in favour of the Second and Third Respondent and relied on their past judgment to set the boundary of the land. We also take it from the evidence of Mr. Lango that there was no visitation of the boundary of the land. When asked why there was no visitation of the boundary of the land claim by the Second and Third Respondent, Mr. Kalopong state that the panel do not need to visit the site since the Second and Third Respondent know the boundary of the land and each boundary was set out in their claim. The panel used the boundary set out in Second and Third Respondent's claim. We are satisfied that in doing so, the nakamal was not neutral in the process.

We heard Steve Tagaro and we are satisfied that the Applicant did not present his family tree nor did the Applicant call his witness. They were given the opportunity to present an introduction and was question by the panel on the Applicant's introduction. In doing so, the nakamal did not allow the Applicant to make his case. Mr. Tagaro evidence and the evidence and Mr. Kalpong establish that the time given to the Applicant was short because there were three other claims to be heard by the nakamal on the date of the meeting. We are satisfied that the nakamal did not sat from 01 August to 19 August 2024 but only for two hours.

Mr. Peril Kalopong evidence was that the nakamal notice required the Applicant to serve on the secretary of the nakamal with their family tree, history and claim. The Applicant did not serve the secretary as required. The nakamal heard the Applicant without these documents. We believe that is why the nakamal started to question the introduction and not allow the Applicant to make his claim. The nakamal should have adjourned the case to allow the Applicant to serve the secretary. When asked why the nakamal had not adjourned time, Mr. Kalopong said that the nakamal was under the pressure of the Applicant. We do not

Republic of Vanuatu
State
LAND
COURT
LAND
République de Vanuatu

believe that the Applicant pressured the nakamal. The nakamal was not in a proper position to know the claim of the Applicant before the meeting. The process of the nakamal was improper.

From the evidence provided in this hearing, we are satisfied that there was no visitation on part of Emtenmap and part of Etil custom lands.

Moreover, the nakamal in accepting the boundary of an earlier decision is improper. The nakamal should visit the land with all the parties.

Jack Kalon gave evidence to question the history and settlement of the Applicant. This court will not consider these evidence as it is the subject matter for a nakamal as a court of fact to deal with the custom and history of the Applicant not the Island Court (Land).

We are of the view that the process of the nakamal was not proper and the judgment was fraud.

Upon this, the Court makes the following orders: -

1. The application for review filed by the Applicant is allowed.
2. A new composed nakamal shall hear the claims of all the parties.
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

Republic of Vanuatu Efate ISLAND COURT LAND République de Vanuatu

.....

Chairlady

Laloyer. A

.....

Justice Serah Paton

.....

Justice Nicola Kaluatman

.....

Justice Shem Thomas Arlie

.....

Justice Diana Kalsong