

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

Review Case No. 24/ 3860 IC/CUST

In the matter of a decision: Mangaliliu/Mele Areas Land Tribunal decision
in respect of Ftanalma and Awako custom lands
made on 13 November 2024.

**BETWEEN: FAMILY LAKELOTAUA & NAKMAU
SAMPO LAKLOTAUA**

Applicants

**AND: MANGALILIU/MELE CUSTOM AREA
LAND TRIBUNAL**

First Respondent

**AND: CUSTOMARY LAND MANAGEMENT
OFFICE**

Second Respondent

AND: FAMILY FARULANG

Third Respondent

AND: FAMILY MOAKO

Fourth Respondent

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

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



Date of Hearing: 30 March 2026

Date of Decision: 09 April 2026

DECISION

Introduction

This is a judicial review filed by the Applicant on 25 November 2024 in accordance with section 45 of the Custom Land Management Actⁱ alleging three grounds of review.

Grounds

There are three grounds raised by the Applicant. The grounds are as follows:

- a) The tribunal was not properly constituted according to the Act.
- b) There was a breach of process as required by Custom Land Management Actⁱⁱ.
- c) The judgment was made by fraud.

In the Applicant's oral submission, it is submitted that the nakamal was not properly constituted. The chairperson was from Siviri and a council member was from Lelepa and another one from Malafao. Siviri, Lelepa and Malafao is within the area Farea Loveti custom boundary. The requirement of section 24 is for the head of the nakamals where Awako custom land lies. The nakamal was constituted as a Tribunal and is wrong. The meeting should be between the heads of the nakamal where the disputed land lies. Therefore, the Applicant says that the nakamal was not properly constituted.

It is submitted that there was a breach of process. The nakamal should have inform the CLO that there was no head chief of nakamal at the meeting. There were only the paramount chief and the Applicant who represents Family Lakelotaua. The Chief Poilapa walked away from the nakamal meeting. The nakamal should have report the incident to the CLO. This was not done. After Chief Poilapa walked away, the nakamal continue to hear and declare the custom owner in the absence of head of nakamals within Mele.

The judgment was fraud because the decision was made by nakamals in the boundary of Mangaliliu alone instead of including the nakamals from the Mele and Mangaliliu.

During the hearing, the Applicant submits a virtual map from the Lands Department. The map shows the overlap of boundary of Awako custom land and the Pangona custom land and Ponatoka custom land. The Applicant stated that the nakamal extended the boundary of Awako custom land into the boundary of Pangona and Ponatoka custom land. The process is wrong.

On 30 March 2026, the Applicant filed an amended review with more particulars. This was objected by the First Respondent as the amendment was out of time.



Response

On 23 March 2026, Mr. Jason Moli from the CLMO filed a response on behalf of the Mangalilliu/ Mele nakamal. It is submitted that the chairperson was a custom chief within the custom area where the land lies and Mr. James Noki was the appointed CLO who sat in the nakamal. It is submitted that the nakamal was properly constituted and the process was in accordance with the provisions of the Act.

On 23 March 2026, Chief Maseinawota filed a sworn statement and submitted that the nakamal followed the process provided in the provisions of the Act. There was a notice issued of the disputed land on 19 August 2024.

The nakamal had a meeting on 23 August 2024 to identify the disputing parties, 06 September 2024 to allow submissions from interested parties and on 16 September 2024, to discuss the customary practices and statutory procedures. The nakamal conducted a meeting from 11 October 2024 to 21 October 2024 where parties were heard on their claims and history. On 21 October 2024, the Applicant withdrew his claim from the nakamal. On 22 October 2024, the nakamal visited the land and on 28 October 2024, the nakamal delivered an oral decision on the custom owners of the Awako and Ftanalima custom land. He submitted that the nakamal was properly constituted and the procedure were in accordance with the Act.

The secretary of nakamal submitted that Ms. Diana Kalsong was nominated by the chiefs to sit as an adjudicator but she refused to sit as an adjudicator. He informed the Court that he is not seeking a disqualification of her sitting as a justice of the Island Court (Land) but only as an information for the Court to know.

Discussion

Section 15 and section 24 set out the procedure in determining a custom owner where a disputed custom land lies within the jurisdiction of more than one nakamal. Section 24 provides that the head of the nakamals should meet as soon as possible where a dispute of a custom land lies within more than one nakamal. We are satisfied that the nakamal had three meetings before it started its hearing. However, the nakamal meeting did not include heads of the nakamals of Mele where the boundary of Awako custom land is alleged to be. During the meeting of the nakamal, there were only heads of the nakamals of Mangaliliu.

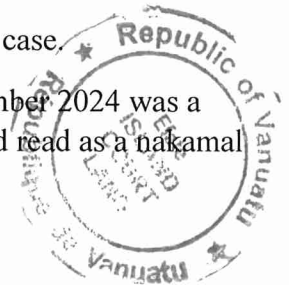
Moreover, Chief Maseinawota including council members of Lelepa and Malafao do not come from the jurisdiction of nakamal within Mangaliliu or Mele. The nakamal should include only heads of nakamals within boundary of the Mangaliliu and Mele. In appointing the chairperson and the member council from a custom boundary named as Farea Loveti is not in accordance with the Act. If it was a claim before a joint tribunal then we believe the process would be right. This was not the case. We are satisfied that the nakamal was not properly constituted.

Mr. Nakmau Sampo Lakelotaua was present and he represents the Lakelotaua family. There is insufficient evidence to satisfied us that he is a head of a nakamal in Mele. In the absence of such evidence, we are satisfied that head of nakamals in Mele were not present during the Mangaliliu/Mele nakamal meeting. It is unclear whether or not he was a head of a nakamal in Mele.

We consider the evidence of both parties including a virtual map provided by the Applicant that the boundary of Awako custom land has overlapped the boundary of Pangona custom land declared in Land Case No. 01 of 1997 and Ponatoka custom land declared in Land Case 06 of 1993. The process is wrong.

We do believe that Justice Diana Kalsong has no bias or conflict of interest to sit in this case.

We are satisfied that the judgment made by Mangalililu/Mele Tribunal issued 13 November 2024 was a decision of a nakamal and not a joint area tribunal and there was a typing error. It should read as a nakamal instead of a tribunal.



Upon this, the Court makes the following orders: -

1. The application for review filed by the Applicant is allowed.
2. The Mangaliliu and Mele Joint nakamal was not properly constituted according to section 24 and 25 of the Act.
3. The boundary set by Mangaliliu and Mele joint nakamal concerning the Awako custom land has overlapped the Pangona and Ponatoka custom land.
4. The joint nakamal decision of Mangaliliu and Mele dated 13 November 2024 is hereby quashed.
5. A new composed joint nakamal shall hear the claims of all the parties.
6. 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 Nicola Kaluatman



Justice Serah Paton



Justice Shem Thomas Arlie



Justice Diana Kalsong

