

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Judicial Review  
Case No. 24/1966 SC/JUDR

**BETWEEN:** Richard Timothy Silhaphath & Derrick  
Timothy Silhaphath  
Claimants

**AND:** National Coordinator of the Custom Land  
Management Office  
First Defendant

**AND:** Nicolas Nakar  
Second Defendant

**AND:** Republic of Vanuatu  
Third Defendant

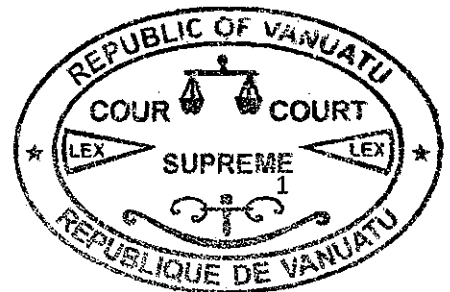
*Date:* 14 May 2025  
*Before:* Justice V.M. Trief  
*Counsel:* Claimants – Mr R. Rongo  
First & Third Defendants – Mr F. Bong  
Second Defendant – Mr T.J. Botleng  
*Copy to:* Sheriff of the Supreme Court

---

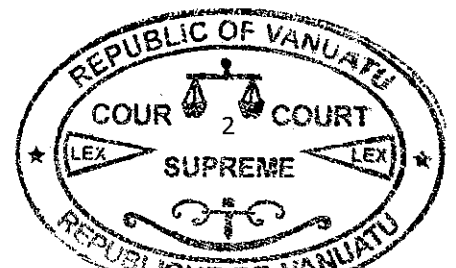
**DECISION AS TO CLAIMANT'S APPLICATIONS FOR STAY AND FOR RESTRAINING  
ORDERS**

---

1. Amended Claim filed on 22 August 2024. Sworn statements of Derrick T. Silhaphath filed in support on 27 June 2024, 1 August 2024 and 22 August 2024. Sworn statement of Robea Patrick Timothy filed on 29 July 2024.

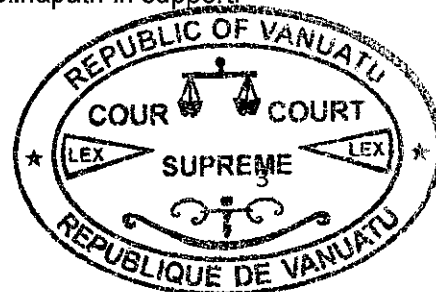


2. Second Defendant's Defence filed on 16 September 2024. Affirmed statement of N. Nakar filed in support on 16 September 2024. Reply to Second Defendant's Defence filed on 10 October 2024.
3. The First and Third Defendants' Defence filed on 17 September 2024. Sworn statements of Jason Moli filed on 12 November 2024 and Jimmy Pierre filed on 13 November 2024. Reply to First Defendant's Defence filed on 24 September 2024.
4. Following is a summary of the pleadings:
  - a) It is alleged in the Amended Claim that at all material times, the Claimants have resided on Nun custom land which is inside the larger Nivmeru custom land at North West Malekula, both of which lands have never had their custom ownership declared;
  - b) It is also pleaded in the Amended Claim that on 18 October 2005, the Joint Village Tribunal declared the Second Defendant as the custom owners of Tapenpel and Lamu custom lands at North West Malekula;
  - c) It is pleaded in the Amended Claim that the Claimants do not dispute the Second Defendant's custom ownership of Tapenpel and Lamu custom lands, however, the green certificate overlaps into the Claimants' Nun and Nivmeru custom lands (undeclared custom ownership) as it covers the boundary where the Brenwei Hydropower Station is located;
  - d) It is also pleaded in the Amended Claim that therefore on 18 June 2024, the Claimants filed a new claim with the CLMO for the custom ownership of the Nun and Nivmeru custom lands;
  - e) The First and Third Defendants' case is that on 26 February 2024, the First Defendant National Coordinator of the Custom Land Management Office ('CLMO') issued a Certificate of Recorded Interest in Land ('green certificate') to the Second Defendant based on the Joint Village Tribunal decision and subsequent decisions of the Sub-Area Land Tribunal and Island Court (Land) decisions;
  - f) The Second Defendant's case is that he is the declared custom owner of the Tapenpel and Lamu custom lands and that he was issued his green certificate according to law;
  - g) It is pleaded in the Reply to the Second Defendant's Defence that there was no sketch map attached to either the Joint Village Tribunal decision or the Island Court (Land) decision;
  - h) It is pleaded in the Reply to the First Defendant's Defence that accordingly, the relief sought is either the quashing of the green certificate and the Claimant's claim for the custom ownership of the Nun and Nivmeru custom lands be heard




OR that the present proceeding be stayed pending the outcome of the Claimant's claim for the custom ownership of the Nun and Nivmeru custom lands which will make clear which custom land(s) the Brenwei Hydropower Station is located on.

5. By Decision dated 11 March 2025, I set out that I was satisfied of all four matters in rule 17.8(3) of the ('CPR') however rather than listing the Amended Claim for hearing, for the reasons given, the present proceeding would likely need to be stayed. However, that should only occur if restraining orders have first been sought and obtained.
6. I then directed the filing of applications and submissions in response and in reply.
7. On 4 April 2025, the Claimants filed Application to Stay the Effect of the Green Certificate issued on 26 February 2024 to Nicolas Nakar and Family over the boundary of Tapenpel & Lamu custom land in North West Malekula and also to Stay the Amended Claim in Judicial Review Case No. 1966 of 2024 pending Outcome of a New Fresh Claim which was filed with the Custom Land Management Office (the 'Application'). They also filed on the same day the Sworn statement of Derick Timothy Silhapath in support.
8. Despite the opportunity given, no submissions have been filed in response or opposition to the Application.
9. Having considered this application and the evidence in support, I am satisfied that the Claimants on 18 June 2024 lodged a fresh claim with the Custom Land Management Office over the boundary of Nun and Nivmeru custom land where they claim the hydro power station is located and that the Second Defendant's green certificate overlaps onto.
10. Accordingly, the green certificate and the present proceeding should be stayed pending the determination of that claim lodged with the Custom Land Management Office.
11. For the reasons given, the Application is **granted** and it is **ordered** that the Certificate of Recorded Interest in Land issued on 26 February 2024 to Nicolas Nakar and Family is **stayed** and the present proceeding also is **stayed** pending the determination of the Claimants' claim lodged on 18 June 2024 with the Custom Land Management Office or till further Order of the Court.
12. Also on 4 April 2025, the Claimants filed Urgent Application for Restraining Orders (the 'Urgent Application'), Sworn statement of Urgency of Roger Rongo, Undertaking as to Damages and the Sworn statement of Derrick Timothy Silhapath in support.



13. Despite the opportunity given, no submissions have been filed in response or opposition to the Urgent Application.
14. Having considered this application and the evidence in support, I am satisfied that given the Application already granted, that restraining orders should be made restraining the Third Defendant from making any more acquisition compensation payments to the Second Defendant pending the determination of the Claimants' claim lodged on 18 June 2024 with the Custom Land Management Office or till further Order of the Court.
15. For the reasons given, the Urgent Application is **granted** and it is **ordered** that the Third Defendant is **restrained** from making any more acquisition compensation payments to the Second Defendant pending the determination of the Claimants' claim lodged on 18 June 2024 with the Custom Land Management Office or till further Order of the Court.

DATED at Port Vila this 14<sup>th</sup> day of May, 2025  
BY THE COURT

  
Justice V.M. Trief

