

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

**Judicial Review**  
**Case No. 24/3785 SC/JUDR**

**BETWEEN: Family Vanuapuru represented by  
Philipson Vanuapuru**  
Claimant

**AND: Republic of Vanuatu**  
Defendant

**AND: Family Salerua Poruja**  
Interested Party

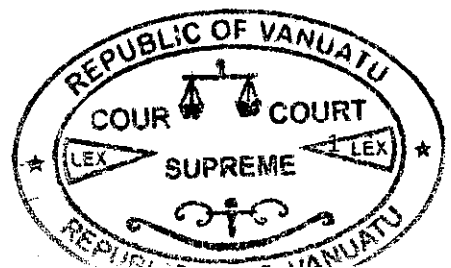
*Date of Rule 17.8 Conference:* 27 June 2025  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr M.G. Nari  
Defendant – Ms J. Toa Tari  
Interested Party – Mrs M.P. Manuariki, via video link from Luganville Court House  
*Date of Decision:* 30 June 2025

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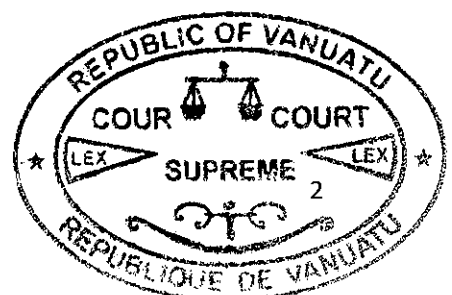
**DECISION AS TO RULE 17.8 MATTERS**

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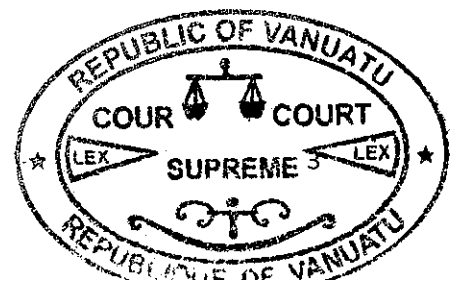
1. Claim for Judicial Review filed on 27 November 2024. Sworn statement of Meresimani Bakeo Markward filed in support. On 28 November 2024, the Claimant Family Vanuapuru represented by Philipson Vanuapuru filed Application for Leave to file Claim seeking extension of time to file claim pursuant to rule 17.5(2) of the *Civil Procedure Rules* ('CPR') (the 'Application') and supporting sworn statement of Mrs Nari.
2. On 19 June 2025, the Claimant filed Submissions for Hearing – Rule 17.8.
3. On 11 June 2025, the Defendant State filed Defence and Sworn statement of Linda Olul.



4. On 13 June 2025, the Interested Party Family Salerua Poruja filed Defence to Application for Leave to file a Judicial Review Claim, with the Sworn statements of Fred Salerua, Riuta Salerua and Chief Garae Talo having been filed on 2 June 2025.
5. Also on 13 June 2025, the Interested Party filed Defence of Family Salerua Poruja to Application for Leave to file a Judicial Review Claim opposing the Application.
6. Counsel confirmed today that all documents have been served and received.
7. Rule 17.8(3) of the CPR provides that the judge will not hear the claim unless he or she is satisfied as to all four matters set out in that rule:
  - (i) the Claimants have an arguable case (rule 17.8(3)(a), CPR);
  - (ii) the Claimants are directly affected by the decision under challenge (rule 17.8(3)(b), CPR);
  - (iii) there has been no undue delay in making the Claim (rule 17.8(3)(c), CPR); and
  - (iv) there is no other available remedy which resolves the matter fully and directly (rule 17.8(3)(d), CPR).
8. Having considered the pleadings, sworn statements and the written submissions, and having heard counsel, I am satisfied as to the following:
  - a. That there are two decisions over the same custom land, Vunapaura custom land: (i) the decision of the Supe Natavui Tano Island Land Tribunal dated 15 July 2005 in favour of the Interested Party (the '2005 decision'); and (ii) the decision of the Vaturani Joint Village Land Tribunal dated 2 April 2008 in favour of the Claimant (the '2008 decision');
  - b. That neither decision has been appealed or successfully challenged otherwise before the Courts;
  - c. That a purported challenge to the 2005 decision in *Family Vanuapuru v Supenatvuitano Island Tribunal*; CC 20 of 2007 ('CC 2007/20') resulted in the claim being struck out in the Ruling dated 5 September 2007 after the claim was not ever served and had ceased to have effect [Attachment "LO5", Sworn statement of Linda Olul]. No question of *res judicata* arises, therefore, as this decision did not substantively determine any party's rights;
  - d. That an application to vacate the 5 September 2007 strike out orders and restore CC 2007/20 was dismissed by Ruling dated 5 May 2010 [Attachment "LO5", Sworn statement of Linda Olul];

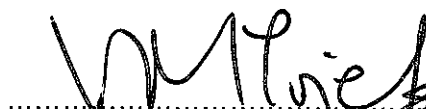


- e. That on 18 October 2018, the National Coordinator, Custom Land Management Office issued a Certificate of Recorded Interest in Land (colloquially referred to as a 'green certificate') to the Interested Party in respect of the 2005 decision;
- f. That the Claimant then challenged the issuance of the green certificate by application for review in the Island Court (Land). This application was dismissed by Ruling dated 29 June 2023 [**Attachment "LO14"**, Sworn statement of Linda Olul];
- g. That subsequently, the Claimant challenged the issuance of the green certificate by Constitutional Application in Constitutional Case No. 24/2957. By decision dated 31 October 2024, the Constitutional Application was struck out [**Attachment "MBM8"**, Sworn statement of Mrs Markward];
- h. That it is alleged in the Claim in the present matter that as per the advice of the Custom Land Tribunal Office dated 9 November 2005, the 2005 decision was made contrary to the *Custom Land Tribunal Act* 2001 (the 'Act') [**Attachment "MBM3"**, Sworn statement of Mrs Markward]. Part of the relief that the Claimant is seeking is a declaration that the 2005 decision was made contrary to the Act and if such declaration is obtained, that the green certificate in respect of the 2005 decision be quashed;
- i. It is also alleged in the Claim that the Claimant has the 2008 decision in its favour therefore is entitled to a green certificate in respect of that decision. Part of the relief that the Claimant is seeking is that the National Coordinator issue a green certificate to the Claimant in respect of the 2008 decision;
- j. There is no evidence, even by the Defendant, that the 2005 decision was made following hearing and decision first at village land tribunal then area land tribunal and finally in the island land tribunal. Instead, the 2005 decision appears to have been made in the first instance at island land tribunal level by the island council of chiefs, the "Executif Kaonsel blong Supe Natavui Tano Island Land Tribunal". It appears from this that the decision was made contrary to the Act. Accordingly, I am satisfied that the Claimant has an arguable case (rule 17.8(3)(a), CPR);
- k. Mrs Manuariki submitted that the Claimant did not put into evidence but that it is clear from the State's evidence [**Attachment "LO7"**, Sworn statement of Linda Olul] that the 2008 decision was cancelled by the Department of Lands. However, she could not cite any power in law for the Department of Lands to 'cancel' a decision of a joint village land tribunal. This is an issue for determination by the Court whether the 2008 decision was cancelled by the Department of Lands;
- l. It is not contested that the Claimant is directly affected by the decision under challenge (rule 17.8(3)(b), CPR);
- m. Ms Toa Tari submitted that the Claimant following the wrong process in terms of other Court proceedings but not a judicial review claim until now in the 6 years and 1 month since the National Coordinator issued the green certificate in October 2018 is the Claimant's own doing and not to be laid at the State's feet. She submitted that therefore there has been undue delay in making the Claim;



- n. Mrs Manuariki submitted that it is over 19 years since the 2005 decision and only now the Claimant is challenging it but has not provided valid reasons for the delay in filing the Claim for judicial review;
- o. However, I take into account the Claimant's case that the Land Tribunal Office by letter dated 9 November 2005 stated that the 2005 decision was made contrary to the Act [Attachment "MBM3", Sworn statement of Mrs Markward] therefore the parties re-litigated the dispute before the Joint Village Land Tribunal resulting in the 2008 decision;
- p. I also take into account that the 2005 decision has not been successfully challenged to date but that there is no substantive decision estopping the Claim for judicial review in the present matter;
- q. I also take into account that the 2008 decision has never been appealed or challenged in a Court;
- r. I am satisfied therefore that the parties following the 2008 decision did not see any need to appeal the 2008 decision or challenge it otherwise, but that with the enactment of the *Custom Land Management Act* 2013, the Interested Party obtained a green certificate in respect of the 2005 decision as that decision still stood;
- s. I am satisfied that since finding out about the 2018 green certificate, the Claimant has not sat on her hands but challenged its issuance in an application for review to the Island Court (Land) and then by way of Constitutional Application. Further, that within a month of the decision in the Constitutional Case, that the Claimant filed the Claim for judicial review in the present matter. Accordingly, I am satisfied that the Claimant has explained why it did not seek earlier judicial review of the 2005 decision, and therefore that there has been no undue delay in making the Claim (rule 17.8(3)(c), CPR). For the reasons given, I am satisfied that substantial justice requires extension of time to file the Claim therefore the Application for Leave to file Claim is **granted** and time is extended to file the Claim pursuant to rule 17.5(2) of the CPR; and
- t. The Court is the only body which can determine whether or not the 2005 decision was made contrary to the Act. Accordingly, there is no other available remedy which resolves the matter fully and directly (rule 17.8(3)(d), CPR).
9. In the circumstances, this matter must proceed to hearing of the Claim **at 2pm on 21 July 2025** at Dumbea Courtroom 2.

**DATED at Port Vila this 30<sup>th</sup> day of June, 2025  
BY THE COURT**

  
Justice Viran Molisa Trief

