

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

Judicial Review
Case No. 25/1032 SC/JUDR
Civil Case No. 24/1668 SC/CVL

BETWEEN: DADDE LAPENMAL & FAMILY
represented by Lapenmal Gaetan

Applicant

AND: TOLSIE DAVID & FAMILY represented
by Steve Elsiems

First Respondent

AND: REPUBLIC OF VANUATU

Second Respondent

Before: Justice Oliver A. Saksak

Counsel: Jerry Boe for the Applicant
Mary Grace Nari for the First Respondent
Florence Sewen for the Second Respondent

Date of Hearing: 24th September 2025

Date of Judgment: 10th November 2025

JUDGMENT

Introduction

1. By an amended claim filed on 16 June 2025 Dadde Lapenmal and Family applied to quash the Green Certificate issued to Tolsie David and Family on 16th August 2007.

Background Circumstances

2. Mrs Nari filed a defence on 14th May 2025 opposing the claim on the basis it is misconceived and with no basis. An amended defence was later filed on 25 June 2025 seeking dismissal with costs.
3. The Republic as Second Respondent filed a defence on 25th July 2025 also opposing the claim on the basis it is res judicata, an abuse of process, is frivolous vexatious and with no arguable case which should be dismissed with costs.
4. As for evidence the applicant filed two sworn statements, the first on 14th April 2025 and the second in support of the amended claim filed on 16 June 2025.



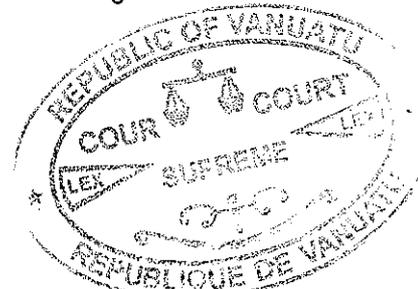
5. The State filed the sworn statement of Damien Denson Boe in support of its defence on 14 August 2025.

Process

6. The process in JR proceedings require that after defences have been filed the judge must call a conference to determine whether the Claimant has:
 - (a) an arguable case;
 - (b) is directly affected by the decision complained of;
 - (c) that there has been no undue delay in the making of the claim; and
 - (d) that there is no other remedy that resolves the matter fully and directly.
7. These are the criteria specified under Rule 17.8 of the Civil Procedure Rules. It is incumbent on the Claimant to satisfy the Court that all the four criteria or tests have been met.
8. Sub rule 5 states that if the judge is not satisfied about the four matters stated above, the judge must decline to hear the claim and strike it out.

Discussion

9. I have considered the written submissions filed by the applicants on 2 September 2025, by Mrs Nari filed on 3 September 2025 and by the Acting Attorney General filed on 6 October 2025.
10. The first defect of this proceeding I note immediately is the failure by the applicant to name the correct party.
11. Rule 17.4 (1) permits a person to claim for judicial review to seek either a declaration about enactment or for a mandatory, prohibition or a quashing order about a decision.
12. Subrule (2) states that the claim must name as defendant:
 - (a) for a declaration, the Attorney General; and
 - (b) for an order about a decision, the person who made or should have made the decision. (my emphasis).
13. The amended claim filed on 16 June 2025 fails to name the person who made the decision to issue the Green Certificate dated 16 August 2007. That person should rightly in my view be the National Coordinator of the Lands Management Unit.
14. The second defendant is the time period of the decision made. Rule 17.5 (1) states that the claim must be made within 6 months of the decision. In this case the decision sought to be reviewed was made some 18 years ago. Therefore, it is far out of time and the applicant has not sought leave to extended time. And even if he did, it is highly unlikely it would be granted.



15. Next, this case has a long history back to 2007 in Land Case No. 10 of 1984. On 15 October 2007 the Malekula Island Court declared land ownership of Amelprev land in favour of Tolsie David & Family.
16. The applicant appealed that decision in Land Appeal Case No. 76 of 2007. On 8 July 2016 the Supreme Court dismissed all grounds of appeal.
17. By this claim the applicant seeks to relitigate issues when have already been decided. It is the law that the concept of res judicata is a form of estopped. It is a concept giving effect to the policy of the law that parties to a judicial decision should not afterwards be allowed to relitigate the same question even though the decision may be wrong. This is often referred to as "Anshun" estoppel" and the "Henderson and Henderson" principle. See Crown Estate Commissioner v Doreat County Council [1990] 1 ALL ER 19.
18. I therefore accept the State's submission that this case is res judicata and the applicant cannot bring the proceeding to relitigate matters which have been litigated. He had his chances in the Courts below to do the right thing. If he failed to do so, that is their problem and they must now learn to live the consequences of their failures or omissions.
19. I accept the State's and Mrs Nari's submissions that the claim is misconceived, and abuse of the Court's process, and is frivolous and vexatious.
20. I am therefore not satisfied that the applicants have an arguable case. They may be directly affected by the decision but there has been such undue delay of 18 years.
21. Prior to filing the JR Proceeding the applicants also filed CC 24/1668 whereby the applicants sought a declaration to declare the Green Certificate issued on 16 August 2016 to be null and void. That case transpired into JR 25/1032 because the correct procedure was not followed giving rise to the amended JR claim filed on 16 June 2025.
22. I therefore decline to hear the claim further and order that both JR 25/1032 and CC 24/1668 be hereby dismissed.
23. The respondents have incurred unnecessary costs as a result of these proceedings. They are entitled to their costs of the proceedings on the standard basis to be agreed and paid within 28 days failing which, they are to taxed by the Master.

DATED at Port Vila this 10th day of November, 2025.

BY THE COURT


Hon. Justice Oliver A. Saksak

