

**IN THE ISLAND COURT (LAND)
OF THE REPUBLIC OF
VANUATU – Port Vila
(Custom Land Jurisdiction)**

Case No. 21/3573 IC/CUST

IN THE MATTER OF: Section 45 of the Custom Land Management Act

AND IN THE MATTER OF: Part Ewenesu, Emornaik, Emtenmap, Epal, Part Estalep, Elak Mparom, Emlenaperik, Emtaipur, Part Etartar & Elol pur custom land Erakor, South Efate

IN THE MATTER OF A DECISION OF: Erakor Village Nakamal Tribunal, dated 4th March 2021

BETWEEN: Smith Lauto & Family

APPLICANT

AND: Erakor Village Nakamal Tribunal

1st RESPONDENT

AND: Annuel Bernard Lauto

2nd RESPONDENT

AND: Allen Kallon & Family

3rd RESPONDENT

AND: Kalotip & Karsen Robert

4th RESPONDENT

AND: Jean-Pierre Serel & Samuel Mangau Kaltapang

5th RESPONDENT

AND: Walter Kalkot and Ati Flora Family

6th RESPONDENT

AND: Abete Takau Kalopong

7th RESPONDENT

Before:

*Choir lady B. Kanas Joshua (SM)
Justice Thomas Felix
Justice Lutu Sakita
Justice Serah Paton
Justice Roy Tining*

Counsel:

*Mr Edwin Macreyeth for the Applicant
Mr Sammy Aron for the Tribunal
Mr Roger Rongo for the second Respondents
Mr Roger Tevi for the third, fourth, fifth, sixth and seventh Respondents*



RULING

1. This matter concerns a decision made by the Erakor Village Mpau Natkon (the Nakamal) on 16 and 17 June, 2020. The Nakamal sat to hear a claim by Bernard Lauto. The cross claimants were Allen Kallon and family, Kalotip and Karsen Robert, Pierre Onel and family, Jean Pierre and Samuel Kaltapang Kaltak (Nelly), Walter Kalkot and family (Flora), Abete Takau Kalopong and Smith Lauto.
2. Six adjudicators sat in this meeting and a Customary Lands Officer as observer:
 - a. Kalsaur Kalomtak Bomal VIII (head of nakamal)
 - b. Peris Kalopong (chairperson)
 - c. Johnny Alphonse
 - d. Kalosik Kaluaat
 - e. Reno Kalnmatmal
 - f. Kaar Naklokut (secretary)
 - g. Daniel Lukai (Custom Land Officer, the "CLO")
3. The purpose of the meeting was to determine land ownership of the three areas of custom land at Erakor:
 - a. Part Ewenesu, Emornaik, Emtenmap, Epal
 - b. Part Etaslep, Elak Maparom, Emlenaperik, Emetaipur
 - c. Part Etartar & Eloipur
4. At the end of the meeting, the applicant and his family were apportioned a small piece of land, namely part Etaslep (*smol pis ground we family blong late Gerald Lauto I reside long hem*). This, it appears, to be an action taken by the Nakamal to appease the applicant somewhat.
5. From the decision it is alleged by the applicant that,
 - a. The Nakamal was not properly constituted
 - b. The Nakamal did not proceed in accordance with the provisions of the Customary Land Management Act No. 33 of 2013 (the Act)
 - c. The decision of the Nakamal was procured by fraud
6. In determining the allegations, the Court's findings are as follows:

i. The Nakamal was not properly constituted

It was stated that the Nakamal was not properly constituted because Kalsaur Kalomtak Bomal VIII's (Kalsaur) status as head of nakamal is erroneous. The reason being that there is a pending chiefly title in Court against him. There is no provision in the Act that states that where there is a pending chiefly title against a person, that person cannot act as head of nakamal. The Act defines "head of nakamal" to mean the chief or customary leader or leaders who have the authority to convene and preside over meetings of a nakamal. Given this definition, it can be interpreted that Kalsaur is a chief who has the authority to convene and preside over meetings of a nakamal, especially in a "caretaker" capacity. In that sense, the issue of pending chiefly title against Kalsaur cannot be used as he can perform the duties of a chief. If the definition of head of nakamal means a paramount chief only, then Kalsaur cannot sit in the Nakamal until the issue of chiefly title has been determined.

It was also raised that there was no consensus by the Nakamal because there were only 2 signatures by the head of nakamal and the chairperson. Section 17(4) of the Act states that "*Decisions of a nakamal must be made by consensus of the members of the nakamal...*". Section 25 also states that "*A decision of a nakamal must be made by consensus of the members of the nakamal...*". The definition of consensus in the Act is, the members of the nakamal as a whole,



or all the custom owners, agree or consent. It does not mean just the adjudicators but all men, women and children under the governance jurisdiction of that particular nakamal. At the commencement of the meeting there were no objections raised by the members of the nakamal. In this sense, it shows that there was consensus.

Based on these findings, the Court is satisfied that the Nakamal was properly constituted.

ii. The Nakamal did not proceed in accordance with the provisions of the Customary Land Management Act No. 33 of 2013 (the Act)

All parties present at the Nakamal were given the opportunity to speak, except the applicant. The applicant was a cross-claimant in the meeting. Section 17(2) of the Act states that a meeting must be convened in accordance with the custom of the nakamal. In custom, a person can be asked to not speak in a meeting if a family representative who is an older person, is representing them. However, if a family member has different interests to the family representative, he/she may speak. In this case, the Nakamal stopped the applicant from speaking because Bernard Lauto is referred to as "*smol papa*" of the applicant. However, the applicant was a cross-claimant in the meeting so he clearly had different interests to his "*smol papa*" and should have been given the opportunity to be heard.

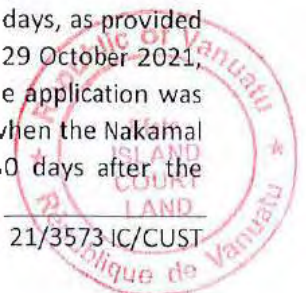
Based on this finding, the Court is satisfied that the Nakamal did not proceed in accordance with the Act because the applicant, as a cross-claimant, was denied the right to speak.

iii. The decision of the Nakamal (04.03.2021) was procured by fraud

The evidence accepted by the Nakamal were google maps showing the lease titles of the areas. This clearly was not in accordance with Section 18(1) of the Act where it states that sketch maps must be provided. Only 2 cross-claimants attempted to draw brief sketch maps on CLMO forms, which did not really detail the customary boundaries and land marks. It is important to point out that google maps are not sketch maps. Sketch maps will show custom boundaries containing customary land marks such as roads, rivers, lakes, coastline, creeks, rocks, nasara etc. Sketch maps are hand drawn roughly to point out the customary features which google maps will not be able to highlight. The purpose of sketch maps used in customary land matters is to see if the party knows where their custom boundaries are and what is contained in the boundaries. The sketch maps are then used during the site visitation to check if the features seen on site corroborates with the sketch. The google maps used in this case certainly did not highlight customary features, however, it was useful to the Court only to point out the location of areas in dispute.

The site visitation was done on 22 June 2020. It did not state in detail what they did, where they went, or which customary land mark was confirmed. In fact, the Minute only states that the Nakamal was satisfied with the "*field wokbaut*" and briefly states that the true custom boundaries and sketch maps were identified. By merely stating that true custom boundaries and sketch maps were identified does not show the Court anything about customary boundaries.

The Nakamal failed to notify the applicant on the date it delivered its decision on 4 March 2021. The applicant was served with the decision of the meeting on 22 September 2021, a deliberate move to stop the applicant from appealing the decision within 30 days, as provided in Section 45(1) of the Act. The applicant filed the Application for Review on 29 October 2021, 36 days after they were served with the decision. In this regard, although the application was lodged after 30 days, this cannot be seen as a non-compliance with the Act, when the Nakamal had clearly breached Section 45(1) by not serving the applicant within 30 days after the



decision was made. This was deliberately done to stop the applicant from appealing the decision.

Based on these findings, the Court is satisfied that the actions of the Nakamal was procured by fraud. Although the applicant filed his Application for Review after 30 days, the Court will disregard it due to the chain of events previously stated.


7. The findings show that 2 of the grounds were not satisfied.
8. The Court hereby sets aside the decision of the Erakor Village Mpau Natkon, made on 4 March 2021, and refers the matter back to the Nakamal for a re-hearing taking into account the points identified in this ruling.
9. Furthermore, the Court directs that,
 - a. The Nakamal re-hearing the matter must be newly composed in accordance with the Act;
 - b. The evidence submitted in the Nakamal, such as, sketch maps must be free hand drawn with customary features identified;
 - c. The site visitation must be recorded in detail in the Nakamal minute;
 - d. The records of the Customary Lands Management Office must be well documented from when the claim is lodged and registered, until the matter is determined and completed;
 - e. The Customary Lands Officer must ensure that all original documents on the matter are kept in the file for ease of Court's reference, should the matter be challenged.

Dated at Port Vila on this 25th day of November, 2022


BY THE COURT



B. Kanas Joshua (SM)
CHAIRLADY




Justice T. Felix

Justice L. Sakita


Justice S. Paton


Justice R. Tining