

**IN THE ISLAND COURT (LAND)
OF THE REPUBLIC OF
VANUATU – Lakatoro, Malekula
(Custom Land Jurisdiction)**

Case No. 18/2349 IC/CUST

BETWEEN: John Matthew
Benjamin Tusai
Uri village
North West Malekula

Applicants

AND: Big Nambas Sub-Area Land Tribunal
(Chief Kalsiari Nisal, Maxwell Riapat, Tari
Christopher & Michael Vanu)
Unmet village
North West Malekula

Respondent

Coram:

Ms B. Kanas Joshua, Chairlady
Justice Douglas Fatdal
Justice Patisson Peter
Justice Joses Lingi
Justice Max Arnamu

Counsels:

Mr Jack Kilu for the Applicants
Mr Sammy Aron, for the Respondent

RULING

1. This is an Application for Review, filed on 31/8/18, pursuant to Section 45 and 58 of the Customary Land Management Act ("CLMA"). On 20/7/06 the Big Nambas Sub-Area Land Tribunal ("BNSALT") made a decision that declared Nicholas Nakar as the custom landowner of Tapenpel and Lamu custom land.
2. The grounds for the application were:
 - a) That there was apprehended bias, in that there was favoritism;
 - b) That the nakamal disregarded the proper custom that should have been applied; and
 - c) That the case was discontinued without the knowledge of the applicants.
3. To ensure that the grounds are according to Section 45 of the CLMA the above grounds must be fitted into the three grounds provided by Section 45 that allows for aggrieved parties to apply to the Island Court (Land) ("ICL") for review. In that light, grounds (a) and (b) can be seen as a breach of process. Ground (c) is not a ground under Section 45(1) thus, it is not considered in the ruling. Upon this clarification, this ruling will be based on the ground of breach of process, under which falls the sub-headings of apprehended bias and improper custom that was applied by the nakamal.
4. These grounds are the same grounds raised in an application filed by the applicant's former counsel, to review the decision in the Supreme Court, on 24/11/06. In addition, an urgent application was also filed to stay the BNSALT decision. The urgent application was refused to stay the decision of BNSALT and shortly afterwards the former counsel discontinued the case.



5. Rule 9.9(4) of the Civil Procedure Rules¹ stops any proceeding that is discontinued to be revived. This Court cannot revive an application that has been discontinued in another court. The point that the applicants did not instruct their former counsel to discontinue the matter does not mean that the matter can still be raised in another court. Whether the case was discontinued or not, the ruling in the Supreme Court refused the urgent application which sought the same orders as what they are seeking in ICL today. The refusal occurred before the discontinuance.
6. As the matter has been discontinued it cannot be revived in this Court. As mentioned previously, this Court does not have the jurisdiction to make a ruling on the ground of discontinuance as we are bound by the CLMA. This ground must be challenged elsewhere.
7. Given this, there is no need to discuss the other points that were raised.
8. Therefore, this application for review is dismissed. Accordingly, the decision by the Big Nambas Sub-Area Land Tribunal, which declared that Nicholas Nakar is the custom landowner of Tapenpel and Lamu custom land, is upheld.

Dated in Lakatoro, on this 28th day of September, 2023

BY THE COURT

**B. Kanas Joshua (SM)
CHAIRLADY**

Justice Douglas Fatdal

Justice Joses Lingi



Justice Patisson Peter

Justice Max Arnamu

¹ No. 49 of 2002.