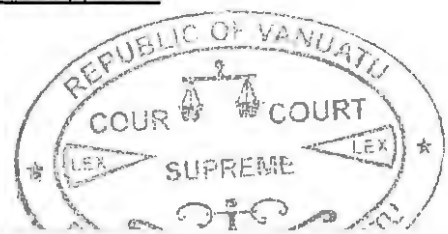


IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Judicial Review
Case No. 25/2667 SC/JUDR

- BETWEEN:** JONAS SUMU, JEAN YVES SAMANA &
ZAVIER SUMU representing FAMILY
SUMU of Sau Mene Tribe of South Imaki
South Tanna
First Claimants/ Applicants
- AND:** POIDA NAKO AND MASSI DOMINIQUE
NAKO representing FAMILY NAKO of
Sau Mene Tribe of Imaki South Tanna
Second Claimants/ Applicants
- AND:** NARUSAN KISSEL representing FAMILY
NARUAN of Sau Mene Tribe
Third Claimant/ Applicant
- AND:** JOSHUA KAHU representing Family
FAMILY KAHU of Sau Mene Tribe
Fourth Claimant/ Applicant
- AND:** YAWIKO JERRY BRUCE representing
FAMILY TAIN of Sau Mene Tribe
Fifth Claimant/ Applicant
- AND:** JEAN YVES SAMANA representing
FAMILY YAWIKO APEN of Sau Mene
Tribe
Sixth Claimant/ Applicant
- AND:** ANDREW KUAU representing FAMILY
KUAU of Sau Mene Tribe
Seventh Claimant/ Applicant
- AND:** KAPERRE RAYMOND representing
FAMILY KAPERRE of Sau Mene Tribe
Eighth Claimant/ Applicant
- AND:** KASU IRENE representing FAMILY
NALAWAS (NARAWAS) of Sau Mene
Tribe
Ninth Claimant/ Applicant



AND: REPUBLIC OF VANUATU
State Law Office
First Defendant

**AND: NOAR PIERRE, NOAR AUGUSTIN, NOAR
JEAN CLAUDE, NOAR VICTOR, NOAR
JULES, NOAR JEAN MARIE, NOAR
PIERRE PAUL, NOAR ARSENE, NOAR
NOEL, NOAR SEMEON, KONMAWI
ALFRED, KONMAWI ROBERT,
KONMAWI ALAIN, KONMAWI SERGE &
FAMILY, NASUAI PAUL SHEM OF
FAMILY MANGAPEN of Imaki South
Tanna**
Second Defendants

AND: IENMERAI COUNCIL OF CHIEFS
Ienmerai Village, South Tanna
Third Defendant

Date of Hearing: 2 October 2025
Before: Justice M A MacKenzie
Counsel: Applicants – Mr E Molbaleh
First Defendant – Mr T Loughman
Second Defendant – Mr G Blake
Third Defendant – Self-represented

DECISION

Introduction

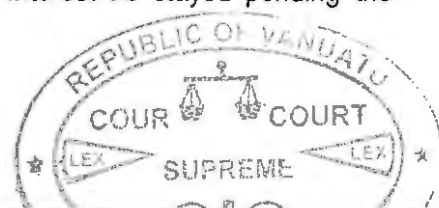
1. On 26 September 2024, the Custom Land Management office issued a Certificate of Recorded Interest in land ("Certificate of Recorded Interest"). The Certificate of Recorded Interest was issued in reliance on a decision of the Ienmerai Council of Chiefs nakamal meeting on 21 February 2006 ("the 2006 decision").
2. The land in question is Inauparau custom land located at South Tanna. The declared custom owner is Kaka Rausekau, Imekauramene Tribe of Tanna. Kaka Rausikou is represented by a number of people as detailed in the Certificate of Recorded Interest.



3. The Claimants assert that the Custom Land Management Office wrongly issued the Certificate of Recorded Interest to the Second Defendants relying on the lenmerai Counsel of Chiefs decision. This is because the Council of Chiefs did not have jurisdiction to determine the custom land ownership claim. The Claimants assert that there is an appeal pending in the Customary Land Tribunal. The Second Defendants strongly dispute these assertions.
4. The Claimants filed an application for judicial review. Initially, an urgent application for leave to extend time to file a judicial review claim was filed on 9 September 2025. I directed that the Claimants were to file the judicial review claim and that the issue of delay would be considered in the context of a rule 17.8 conference.
5. The Claimants accept there has been delay in filing the judicial review claim, given that the Certificate of Recorded Interest was issued in September 2024. They contend they only became aware of the Certificate of Recorded Interest in April 2025. But since then, no steps were taken until September 2025, some five months later.
6. A judicial review claim was filed on 16 September 2025. The basis for the judicial review claim is that:
 - a. the lenmerai village Counsel of Chiefs is not a competent Counsel to decide on custom land ownership, as the meeting did not involve customary land tribunal officers and was not organised in accordance with the Customary Land Tribunal Act.
 - b. The Claimants have appealed the 2006 decision but the Second Defendants have not taken any steps to respond to the appeal.
7. Accordingly, by way of relief, the Claimants seek an Order that the Certificate of Recorded Interest be cancelled or quashed.

The Stay Application

8. On 17 September 2025, the Claimants filed an urgent application to stay the effect of Certificate of Recorded Interest on the basis that:
 - a. The Second Defendants have erected a fence in the area of the land in question which prevents the Claimants from accessing their gardens.
 - b. The Second Defendants have put cattle in the Claimants' gardens.
9. The Claimants seek Orders that:
 - a. The effect of the Certificate of Recorded Interest be stayed pending the judicial review being resolved.



- b. the fence be removed so that the Claimants can have access to their gardens.
10. The Second Defendants oppose an Order staying the effect of the Certificate of Recorded Interest on the basis that it is premature.

Outcome

11. After hearing oral argument to supplement the written submissions, I refused the stay application, and said I would give written reasons. These are my reasons.

Applicable Principles

12. In a *Family Kalmermer v The Eratap Customary Land Tribunal* [2025] VUSC 171, the Honorable Chief Justice considered an urgent application to restrain the use or reliance on a Certificate of Recorded Interest obtained as a result of two Eratap Customary Land Tribunal decisions in 2003 and 2004. In refusing the Interlocutory Orders sought, the Court considered the following factors:
- a. Is there a serious question to be tried?
 - b. Is the Applicant likely to succeed if the evidence bought be the applicant remains as it is?
 - c. Would the Applicant be seriously disadvantaged if the Order is not granted?
 - d. Where the balance of convenience lies?

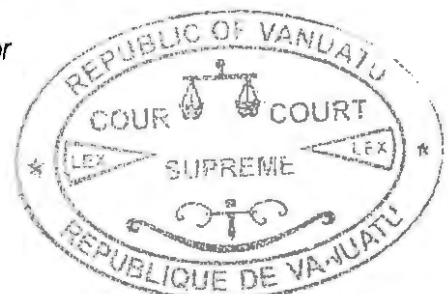
Discussion

13. Pursuant to s 58 of the Custom Land Management Act No. 33 of 2013 ("the Act"), a decision of a Custom Land Tribunal made before the commencement of the Act and not challenged within 12 months after the commencement of the CLMA, is deemed to create a Recorded Interest in land in relation to the declared custom owners. Relevantly, s 58 provides:

58 Existing decisions of Customary Land Tribunal

(1) *Decisions of:*

- (a) a single or joint village Customary Land Tribunal; or
- (b) a single or joint sub-area Customary Land Tribunal; or
- (c) a single or joint area Customary Land Tribunal; or
- (d) an island Customary Land Tribunal,



which determined the ownership of custom land and which were made before the commencement of this Act and have not been challenged within 12 months after the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such tribunal to be a custom owner.

(2) The creation of a recorded interest in land under subsection (1) will enable the custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator's certificate or a lease, or is to provide the basis for rectification of an existing lease instrument.

(3) A person may challenge a decision of a Customary Land Tribunal under this section by filing an application with the appropriate Island Court (Land) that the decision of the Customary Land Tribunal be reviewed on the ground that:

(a) it has been made at a meeting that was not properly constituted; or

(b) it has been made in breach of the authorised process; or

(c) it has been procured by fraud; or

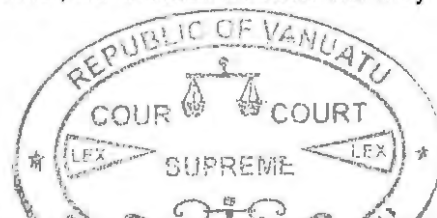
(d) it was wrong in custom or law.

(4) The Island Court (Land) after hearing all relevant evidence may dismiss the application for review, or may order that the decision of the Customary Land Tribunal be set aside and direct that the ownership of custom land be determined in accordance with this Act.

14. There is no evidence that the Claimants challenged the 2006 decision under s 58(3) of the Act within 12 months. Thus, the Second Defendants were entitled to ask for a Certificate of Recorded Interest in Land to be issued.
15. The creation of a Recorded Interest in land under section 58 enables custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator's certificate or a lease, or is to provide the basis for rectification of an existing lease instrument. The purpose and effect then of a Certificate of Recorded Interest in land is so that the identified custom owners are able to enter into leases or can seek rectification of existing leases.

Is there a serious question to be tried?

16. There is no evidence before the Court that the Claimants have taken any steps to challenge the 2006 decision pursuant to Section 58 of the Act. Rather, the Claimants assert that they



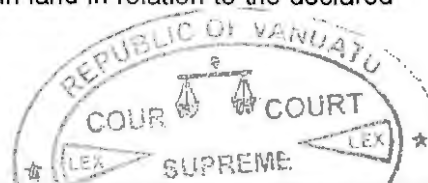
have appealed against the 2006 decision. That is strongly disputed by the Second Defendants, whose position is that there is no appeal on foot, because it was out of time.

Is the Applicant likely to succeed if the evidence brought by the Applicant remains as it is?

17. The Court is unable to say whether the Applicant is likely to succeed if the evidence remains as it is. The Applicant's prospect of success will be enhanced if there is a valid appeal of the decision on foot. If there is not, the judicial review claim is without any merit. However, that is not the end of the matter.
18. The judicial review claim was filed approximately 12 months after this Certificate of Recorded Interest was issued by the Custom Land Management Office. In his sworn statement in support of the judicial review claim, Mr Sumu says that he and his family did not know about the Certificate of Recorded Interest until sometime in April 2005. With respect, the Applicants must have been aware of the Certificate of Recorded Interest prior to April 2005. In his submissions, Mr Blake notes that Mr Molbaleh wrote to the Attorney General on 6 March 2005 referencing a challenge to the Certificate of Recorded Interest. As Mr Blake rightly notes, there is no explanation for the delay between that notice given on 26 March 2005 and 9 September 2005 when leave was sought to file judicial review claim outside the six month period. The issue of delay is likely to be an important issue. There is no evidence at all as to why there has been delay. Further, the Applicants have not explained why the asserted appeal has not been progressed. They simply blamed the Second Defendants for not responding to requests made by the Customary Land Tribunal. There is no evidence either as to why the Applicants did not follow the process set out in Section 58 of the CLMA to challenge the decision.

Will the Applicant be seriously disadvantaged if the Order is not granted?

19. The Applicants assert they have been living on the customary land in question for many years and that they are the potential custom owners. Mr Sumu expresses concern that the custom land may be sold. However, there is no evidence to support that assertion. Their primary concern is that the Second Defendants have stopped the Applicants from accessing their gardens because a fence has been erected. The Claimants are concerned also that the Second Defendants have put cattle inside the fence where the gardens are. The Applicants want the effect of the Certificate of Recorded Interest be stayed so that they can access their gardens again. With respect, staying the effect of the Certificate of Recorded Interest will not enable the Applicants to access their gardens and would not provide a platform for the Second Defendants to remove their fence. A stay will not achieve what the Claimants seek, given the purpose of a Certificate of Recorded Interest. Rather, it would prevent the Second Defendants from any dealings in respect of leases or rectification of leases.
20. As the Chief Justice in *Family Kalmermer*, it is difficult for a Court to stay or restrain what the law gave the Second Respondents. The effect of Section 58 of the CLMA is that the 2006 decision is deemed to create a Recorded Interest in land in relation to the declared



custom owners. The CLMA gave the Applicants a right to challenge the decision, but there is no evidence they did so.

21. Therefore, I do not accept that the Applicants would be seriously disadvantaged in the circumstances of this case if the stay application is refused. Firstly, staying the effect of the Certificate of Recorded Interest will not achieve what the Claimants seek, as discussed above. Secondly, the effect of a refusal to stay the effect of the Certificate of Recorded Interest will not render the judicial review claim redundant. Thirdly, the Second Defendants were entitled by law to obtain a Certificate of Recorded Interest.

The balance of convenience

22. For the reasons discussed at paragraphs 20 and 21, the balance of convenience does not lie with the Applicants. The Second Defendants have done no more than the law entitled them to do. They are the declared custom owners as per the 2006 decision. There is no evidence that the Applicants have taken any steps under Section 58 of the CLMA. There are question marks as to whether there is in fact a valid appeal on foot against the 2006 decision. Further, the Applicants have failed to explain their delay in filing the judicial review claim. Finally, there is no evidence the Second Defendants intend to sell the land in question. As I have said, a stay of the effect of the Certificate of Recorded Interest will not achieve what the Appellants want. They want to be able to have access to their gardens. Staying the effect of the Certificate of Recorded Interest will not give them such access.

Result

23. Accordingly, the Application to stay the effect of the Certificate of Recorded Interest in land is refused.

Further Directions

24. There is an Order of costs in the sum of VT 30,000 in favour of the Second Defendants. I decline to make any cost award in favour of the First Defendant, who played a limited role in the stay application hearing.
25. There is to be a **rule 17.8 conference at 8.30am on 28 November 2025**. Counsel are to file brief submissions by close of business 21 November 2025.

**DATED at Port Vila this 9th day of October 2025
BY THE COURT**


.....
Justice M A Mackenzie

