

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

Judicial Review
Case No. 24/2078 SC/JUDR

BETWEEN: CHIEF SILU MALASIKOTO & FAMILY

Claimant

AND: JOHN NALWANG

First Defendant

**AND: SILAS VATOKO, NAKMAU SAMBO AND EDWIN MALAS
AND DEE- JONES VATOKO**

Second Defendants

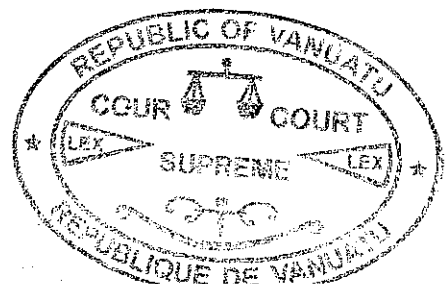
**Before:
Counsel:**

Justice Oliver A. Saksak
Mr Willie Daniel for the Claimants
Mr Freddie Bong for First Defendant
Mr Edward Nalyal for Second Defendants Silas Vatoko and Edwin Malas
**Mr Garry Blake for Second Defendants Nakamau Sambo and Dee Jones
Vatoko**

Date of Hearing: 12th March 2025
Date of Decision: 13th March 2025

DECISION

1. I heard submissions and arguments from Counsel orally in relation to Rule 17.8 of the Civil Procedure Rules. Under this rule, the Court must be satisfied of the Claimant's Claim.
2. Subrule (3) states that the judge will not hear the claim unless the Claimant satisfies the Court that:
 - (a) The Claimant has an arguable case; and
 - (b) The Claimant is directly affected by the enactment or decision; and
 - (c) There has been no undue delay in making the claim; and
 - (d) There is no other remedy that resolves the matter fully and directly.
3. The judicial review claim was initially filed on 5 July 2024 naming the Claimant as "*Malasikoto Family represented by Chief Silu Malasikoto*".
4. However, on 11 December 2024, a little over 6 months later an amended claim was filed naming the Claimant as:

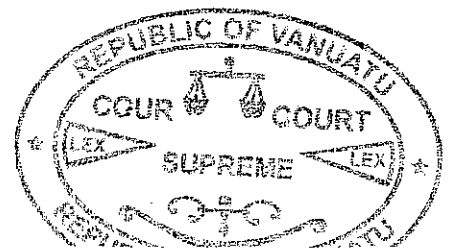


"Chief Silu Malasikoto & Family."

5. Despite being an amended claim, the titling of the Claimant was the only and sole amendment made to the claim. The rest of the pleadings from paragraphs 1 to 12 remain the same.
6. The challenge is relation to the First Defendant's decision to issue a Green Certificate or a Certificate of Recorded Interest in Pangona land on 11 November 2023.
7. The Certificate is issued to Family Malasikoto, represented by Silas Vatoko, Family Lakeleo Taua Nakmau, represented by Nakmau Sambo, Family Elmu Kaltamate Thomas represented by Edwin Malas and Family Vatoko represented by Dee-Jones Vatoko.
8. The persons named as representatives of the custom owner groups were elected at a Section 6H Meeting held on 21 October 2021.
9. Whilst the Claimant as amended challenges the Certificate dated 11 November 2023; he has omitted to plead the unlawfulness of the Section 6H meeting held on 21 October 2021. Perhaps the reason for this is obvious and it is because the Court of Appeal and the Supreme Court have held that meeting was lawfully held, and it is now not open for the Claimant to reopen the matter.
10. Be that as it may, the question is whether the Claimant as amended as Chief Silu Malasikoto and Family have any arguable case to challenge the Certificate of 11 November 2021? First Chief Silu Malasikoto and Family does not appear on the Certificate. Therefore, he has no standing and no arguable case.
11. Next, the Island Court in 2004 declared among others that Family Malasikoto were the true custom landowners of Pangona land, not Chief Silu Malasikoto and Family.
12. Secondly, whether Chief Silu Malasikoto and Family are affected by the decision of the First Defendant? The answer is "No".
13. Thirdly, whether there has been undue delay. The delay from the date of the issuance of the Certificate being 11 November 2021 to the date of filing of the original claim on 5 July 2024 is well out of time. Whilst it is acknowledged some other legal proceedings were pursued earlier, from the date of the original decision being 11 November 2021, until 5 July 2024, it has been over 2 years. There has therefore been undue delay.
14. Finally, whether there is no other remedy to fully resolve the matter?

From the evidence of the Claimant there have been requests for another Section 6H meeting. The defendants have indicated their willingness to have another meeting but on condition the claimant withdraws their challenge.

15. It is evident that this remedy is still available. The Malasikoto Family are the declared custom owners of Pangona land. They have requested another Section 6H meeting. That meeting must now be arranged and held to accommodate their wishes.



16. Accordingly, the Claimant's claim fails in its entirety and is dismissed.

17. In the circumstances of this case there will be no order as to costs. Each party will bear their own costs.

DATED AT Port Vila this 13th day of March 2025.

BY THE COURT

Hon. Justice Oliver A. Saksak

