

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

Case No. 21/3324 IC/CUST

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

IN THE MATTER OF: NAPE Custom Area Land Tribunal, Nguna Island

IN THE MATTER OF A DECISION OF: NAPE Custom Land Tribunal, dated 17 August 2021

BETWEEN: Mere/Sauwia
Represented by Taman Willie
APPLICANT

AND: NAPE Custom Area Land Tribunal Nguna Island
1st RESPONDENT

AND: Customary Land Management Office
2nd RESPONDENT

AND: Unakapu
Represented by Charlie James
3rd RESPONDENT

AND: Matoa
Represented by Tarip Kenneth
4th RESPONDENT

AND: Malaliu Tanoropo
Represented by Moses Kalsale William
5th RESPONDENT

AND: Sierau
Represented by Samson Marakipule
6th RESPONDENT

Date: 2nd December 2022
Before: Chairlady B. Kanas Joshua (SM)
Justice Thomas Felix
Justice Lutu Sakita
Justice Serah Paton
Justice Roy Tining

Counsels: Mr James Tari for the Applicant
Mr Sammy Aron for the First and Second Respondents
Mr Kent Tari for the Third, Fourth and Fifth Respondents
Mr Jerry Boe for the Sixth Respondents



RULING

1. This matter concerns a decision made by the NAPE Custom Area Land Tribunal (NAPE). The decision was made on 17 August 2021. NAPE is the Nguna/Pele Area Council of Chiefs that consists of Duruaki Nguna sub-area council of chiefs and Vatukoro Pele sub-area council of chiefs. NAPE is one of the 6 area council of chiefs established by Vaturisu Island Council of Chiefs.

Duruaki Nguna sub-area council of chiefs consists of the following nakamals:

- Farea Mere Kotoana (Mere village)
 - Farea Silimaui (Sierau village)
 - Farea Tarakayliu (Matoa village)
 - Farea Tapatnapau & Farea Komalnapau (Malaliu Tanoropo village)
 - Farea Tarakay (Unakapu village)
2. The customary land boundaries in dispute concerns,
 - a. The land boundary between Mere and Unakapu;
 - b. The land boundary between Mere and Matoa;
 - c. The land boundary between Mere and Malaliu Tanaropo; and
 - d. The land boundary between Mere and Sierau.
 3. Although it was stated by the fifth respondent that the decision was made in favor of the applicant, there was no copy of this decision before the Court.
 4. The documents before the Court were:
 - a. A Public Notice regarding the claim of Meresauwia;
 - b. Court Findings (20/07/2021) – signed on 17/08/2021 on the decision form of Customary Lands Management Office ("CLMO")
 - c. Documents from the CLMO
 - New and fresh claimant form
 - Joen Pepa 3
 - List blong Lan Tribunal Committee blong Mere Sauwia (27/11/07)
 - Decision of Mere-Sauwia Community Custom Court, Civil Case 03/07 (27/12/07)
 - Printed map of area
 5. The grounds for application for review are,
 - a. That the decision was made by the area lands tribunal, not the nakamal;
 - b. That the land boundaries encroach onto one or more nakamals;
 - c. That the adjudicators of the area land tribunal are not authorized to hear the case; and
 - d. That the area land tribunal did not consider the applicant's evidence.
 6. Before we delve into the grounds mentioned it is important to determine if the grounds mentioned are eligible for review in this Court. Section 45(2) of the Customary Land Management Act No. 33 of 2013 ("the Act") it states three grounds that applications for review must be based on. Firstly, that the tribunal was not composed in accordance with the



Act. Secondly, that the tribunal did not proceed in accordance with the Act, and lastly, that the decision was procured by fraud.

7. From the grounds stated in the application, it appears that the first and second grounds in the Act are appropriate to be used. In this sense, the ruling will be focus on the following:

- i) That the tribunal was not properly constituted
 - the adjudicators of the area land tribunal are not authorized to hear the case
- ii) That the tribunal did not proceed in accordance with the Act.
 - the decision was made by the area lands tribunal, not the nakamal
 - the land boundaries encroach onto one or more nakamals
 - the area land tribunal did not consider the applicant's evidence

8. In determining the allegations, the Court's findings are as follows:

i. NAPE was not properly constituted

In the sworn statement of Taman Willie Onesmas, he stated that objections were raised at the sitting of the NAPE. One of the reasons were that the "judges" sitting were not from the joint custom area of the dispute. Section 36(1) provides that a

"joint area land tribunal [must] consist of the chairperson of the councils of chiefs of each custom area and two persons knowledgeable in custom from each custom area who may be chiefs appointed by the custom area council of chiefs in that custom area."

In the documents from CLMO, there is a decision dated 27 December 2007. This was signed by

- the chairman of Mere-Sauwia Community Land Tribunal, Marimasoe Tafakalo;
- the vice-chairman of Mere-Sauwia Community Land Tribunal, Malesu-Mata; and
- the secretary of Mere-Sauwia Community Land Tribunal, Marselin Samson.

In a letter by Taman Willie Onesmas to the Customary Land Units, dated 27 November 2007, a list of names that were approved to determine disputes of customary land were submitted. They were;

- a. Malesumata F.
- b. Marimasoe T.
- c. Ruth Titus
- d. Marselyn Samson
- e. Jouliu Jerry
- f. Taman Willie O.

As stated earlier, this Court was not furnished with a copy of the Minute of NAPE. This is the most fundamental piece of evidence that this Court depends on. Without this evidence, anything that is said about what occurred in the meeting held by NAPE is doubtful. If this Court is to review decisions made in the nakamals and tribunals, it must have a copy of the Minute and decisions in order to be able to review it. Otherwise, there is nothing to review and the Court is left with whatever people want to say and nothing to rely on.



Based on these findings, the Court is unable to decipher what had occurred in the meeting that was supposedly held by NAPE. The documents before the Court do not give a coherent understanding to assist the Court. Although there are some documents that state the findings of what the Court presumes as decisions made by NAPE, it is not known who the adjudicators were, and if the tribunal was properly constituted as provided for in Section 36(1) of the Act.

9. Without the Minute and decision of the area land tribunal, there is nothing that the Court can rely on, to review. As a result, the decisions made by NAPE is null and void, and the second ground in 7(ii) above subsequently becomes redundant.
10. The Court, therefore, quashes the decision of NAPE Custom Land Tribunal, made on 17 August 2021, and refers the matter to the appropriate nakamals under Duruaki Nguna sub-area council of chiefs to resolve.
11. Furthermore, the Court directs that,
 - a. The [joint] nakamals must determine the land boundaries that encroach onto one or more nakamals;
 - b. The [joint] nakamals must consider evidence from the applicant and any other party who has an interest in the same matter;
 - c. The CLO must ensure that a copy of this ruling is made to the head of appropriate nakamal;
 - d. The CLO must ensure that the head of nakamal adheres to Part 4 of the Act;
 - e. The CLO must ensure that all records from when the claim is lodged and registered, is well documented until the matter is determined and completed;
 - f. The CLO 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 2nd day of December, 2022

BY THE COURT



B. Kanas Joshua (SM)
CHAIRLADY

Justice T. Felix

Justice L. Sakita

Justice S. Paton

Justice R. Tining