

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

Case No. 22/498 IC/CUST

**IN THE MATTER OF: SECTION 45 OF THE CUSTOMARY LAND
MANAGEMENT ACT**
AND IN THE MATTER OF: TENLAMU CUSTOM LAND
AND IN THE MATTER OF A DECISION OF: LEHAN NAKAMAL, DATED 13 AUGUST 2020

BETWEEN: Lennard Orambath
North West Malekula
Applicant

AND: Lehan Nakamal
North West Malekula
First Respondent(s)

AND: Frederick Sam Hosea
North West Malekula
Second Respondent(s)

Coram:

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

Counsels:

Mr Jack Kilu, for the Applicant
Mr Sammy Aron, for the 1st Respondent
Mr Daniel Yawha, for the 2nd Respondent

**DECISION ON THE
APPLICATION TO STRIKE OUT**

1. This is an application to strike out, filed by the second Respondent. On 22/2/22, an application for review was filed by the Applicant, pursuant to Section 45 of the Customary Land Management Act ("CLMA"). The application for review was made to review a decision made by Lehan Nakamal on 13/8/20 regarding Tenlamu custom land in north west Malekula. In that decision, it was declared that Chief Joseph Hosea and family were the custom landowners of Tenlamu land.
2. The grounds for strike out were:
 - a. That the application for review was filed out of time; and
 - b. That this was an abuse of process.
3. It was argued that there is no provision in the CLMA that provided for an aggrieved party to file out of time. The ICL is not the same as the Island Court that is established under the Island Courts Act CAP167 ("ICA"). The ICA gives a time frame of 30 days for an aggrieved party to appeal a decision. An extension of 60 days can be granted after the 30 days has lapsed. Section 45 of the CLMA only provides for 30 days. If the 30 days lapses there is no provision for an extension. This means that aggrieved parties must file a review application in that time. Failing to do so, the decision is final. The ICL is bound by the CLMA and must be seen to exercise its powers under that Act. Given the facts, 30 days after the date of the decision would be around 13/9/20, give or take. The application for review was filed on 22/2/22, which is 1 year and 5 months after the 30 days' timeframe.



4. The application for review was made pursuant to Section 45 of the CLMA. Section 45 applies to decisions made under the CLMA. The Court is satisfied that the application was brought to the ICL under the correct authority. However, although the application for review was brought to the ICL under Section 45, the timeframe of 30 days was disregarded. The applicant acknowledged that they filed the application for review late but argued that this was not an issue as they have a good reason for the late submission and that should be sufficient to warrant a review.
5. The reason given was that at the time of the meeting the applicant was not aware of it, as he did not receive any notice. The Court finds it hard to believe that a person who claims to be a paramount chief does not keep regular communication with his people or relatives when he travels to another place. It is even harder to believe that for such an important issue as land, it did not warrant an urgent call from the applicant's relatives on the island. Evidence put forward by the second respondent regarding photos and an unsigned letter from a police officer as there is no certainty that the photos are of the Nakamal meeting. The unsigned letter also does not hold weight as it can be written by anyone. Thus, the reason given by the applicant is not accepted.
6. There was no application seeking leave to file a review out of time. The proper way is to seek leave from the ICL to file an application. Only when leave is granted can the court hear an application for review. This was not done. There was no reason or explanation given as to why this was not done. It is as if the applicant tried to take a short cut by jumping some steps in the process and hoping the bench will not realize this. This is an abuse of process.
7. There is no need to discuss the other points raised in Court. Without a leave to file out of time, the case has killed itself before it even started. If the right applications were made and granted the substance of the matter also does not hold weight. Lehan Nakamal is set up by the appropriate chiefs who used the custom law governing Big Nambas. Whether that custom law is accepted or not, it is a custom law that most chiefs in that area have knowledge about and if they do not agree with it, there should be a mechanism in place for the chiefs to amend their custom laws. That is not a matter for the ICL and the ICL accepts that the custom laws of Big Nambas was used by Lehan Nakamal.
8. Given the above, the application for review is struck out. Accordingly, the decision by Lehan Nakamal on 13/8/20 is upheld.

Dated in Lakatoro, on this 25th day of September, 2023

BY THE COURT

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

Justice Douglas Fatdal

Justice Joses Lingi



Justice Patisson Peter

Justice Max Arnamu