

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

Judicial Review
Case No. 24/2704 SC/JUDR

IN THE MATTER OF: AMELIAH, NAHA AND ALAHAMO

AND:

IN THE MATTER OF ISLAND COURT (LAND) decision on Malekula
Island, dated 7th and 10th June 2024

BETWEEN: Vinbel Abel Habhapat, Vinbel Richard, Vinbel
Anhapat, Vinbel Fabian Vinbel, Vinbel Kalia,
Vinbel Bryan, Vinbel Alvin, Vinbel Jojo Joel,
Vinbel Arsen, Vinbel Hayten
Applicants

AND: The Island Court (Land) of the Republic of
Vanuatu
First Respondent

AND: Family Kilman
Second Respondent

AND: Family Natnuar, Family Kalnata, Family Tavdey
Third Respondent

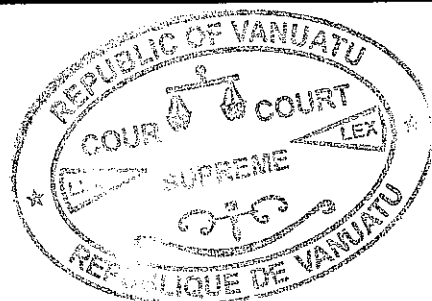
AND: Family Karma Fare
Fourth Respondent

Before: Hon. Justice EP Goldsbrough

In Attendance: Mr Daniel Yawha for the Applicants
Mr E Nalyal for Kilman Family- 2nd Respondent
Mr P Fiuka for 4th Respondent
Mr P Fiuka holding papers for Mr Molbaleh- 3rd
Respondent
No appearance for AG Chamber- 1st Respondent

Date of Hearing: 3rd June 2025
Date of Decision: 3rd June 2025

JUDGMENT



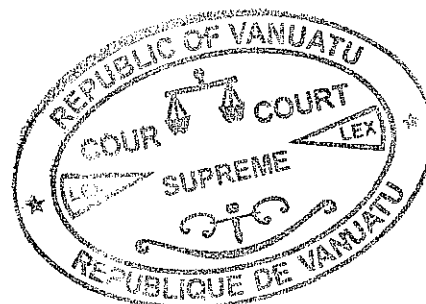
1. This application for review of decisions made by the Island Court (Land) is brought pursuant to section 47 (2) of the Custom Land Management Act No.3 of 2013. It was filed on July 10, 2024, and subsequently amended on November 22, 2024.
2. The matter has been settled following discussion between counsel.
3. There are two earlier decisions of this Court which assisted counsel in their discussions, the first being civil case 718 of 2024 between *Kennedy Matokuale Tariwer v Forari Village Land Tribunal & Ors.* (unreported) and civil case 2059 of 2024 between *Family Waltersai Haphapat II Ahelmalahlah v Undualao Nakaml & Ors.*
4. In those decisions, which are now available on PacLii, a discussion on the status of the Island Court (Land) can be found. For the avoidance of doubt, those two decisions aim to clarify that when sitting as an Island Court (Land), it is merely an Island Court established under the Island Courts Act [Cap 167] that is making the decision.
5. It follows that the tribunal is obliged to follow the rules prescribed by the Island Courts Act and rules made thereunder. Some of those rules include a prohibition on legal practitioners appearing before the tribunal (s27), and rules concerning the conduct of a hearing.
6. The rules concerning the conduct of a hearing are to be found in Order No.28 of 2005, Island Courts (Civil Procedure) Rule 2005, beginning at rule 6. Of particular importance in this case is Rule 6(3), headed 'Interests of justice'. For convenience, that rule is set out herein:-

(a) Declaration of interest by justice

If, at any stage of the proceedings, a justice realises that he or she is related to any of the parties or has any interest in the subject matter of the claim, that justice must inform the other justices who must then inform the parties and ask the parties whether they wish the justice to withdraw from the hearing. If one or more of the parties objects to the justice hearing the case, that justice must withdraw, and the hearing adjourned to a new date and time.

If the parties have no objection to the justice hearing the case, the case may proceed.

(b) Objection by party



If a party considers that a justice is related to any of the parties or has an interest in the subject matter of the claim, that party may object to the court about the participation of that justice. If the other justices consider that the objection is well founded, the clerk shall adjourn the hearing to be heard by a different panel of justices.

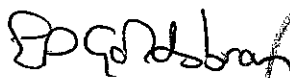
If the justices consider that the objection is not well founded, the court shall continue with the hearing.

(c) Recording of declaration or objection relating to the interest of a justice The clerk must record any declaration of interest made by a justice, or objection made by a party to the interest of a justice, and the result of that declaration or objection.

7. This rule was applied in *Tariwer*. It should have been applied in this case, as counsel have now conceded. It was not, as the decision suggests, for the parties to take the question of recusal to the Supreme Court but for the Island Court (Land) to follow the procedure set out in the rules. If the relevant disclosure had been made by the Presiding Judicial Officer and the Justices, and the parties had been allowed to make submissions on the disclosed interest and a decision made thereon, the matter would not require review.
8. In addition, this case involves the question of the power to extend the time within which to file an application for review to the Island Court (Land). As was decided in *Waltersai*, no such power has been given to the Island Court (Land) and so therefore no consideration needs to be given to the exercise of a discretion, as the Island Court (Land) has no such discretion.
9. This decision is necessarily brief as nothing turns on it, given the parties' helpful decision to settle this review by consent. It is, perhaps, necessary for the future guidance of the Island Court (Land) to understand why the parties came to their decision that the review must be successful, and decisions made by the Island Court (Land) on 7th and 10th June 2024 be set aside.

Dated at Port Vila this 3rd day of June 2025

BY THE COURT



Hon. Justice EP Goldsbrough

