IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/3848 COA/CIVA
[2026] VUCA 14

BETWEEN: DADDEE LAPENMAL & FAMILY
Appellant

AND: TOLSIE DAVID & FAMILY REPRESENTED BY STEVIE ELSIEMS
First Respondent

AND: REPUBLIC OF VANUATU
Second Respondent

Date of Hearing:	***5 February 2026***
Coram:	***Hon. Justice Vincent Lunabek*** ***Hon. Justice Mark O'Regan*** ***Hon. Justice Micheal Wigney*** ***Hon. Justice Dudley Aru*** ***Hon. Justice Maree MacKenzie*** ***Hon. Justice Beverleigh Kanas Joshua*** ***Hon. Justice Josaia Naigulevu***
Counsel:	***Mr J Boe for the Appellant*** ***Mrs Mary Grace Nari for the First Respondents*** ***Ms Florence Sewen and Mr Sammy Aron for the Second Respondent***
Date of Judgment:	***13 February 2026***

JUDGMENT OF THE COURT

Introduction

1. This is an appeal against a decision to decline to hear a judicial review claim following a conference held pursuant to Rule 17.8 of the Civil Procedure Rules No. 49 of 2002 ("CPR").[1]

2. The judicial review claim brought in the Supreme Court concerned a decision of the Customary Land Management National Co-ordinator to grant a Certificate of Recorded Interest (commonly known as a green certificate) for the Amelprev custom land in Northeast Malekula. The green certificate was granted to Tolsie David on 16 August 2016. The green certificate was issued in reliance on a decision of the Malekula Island Court dated 15 October 2007 declaring Tolsie David and family as custom owners of the Amelprev land.[2]

[1] *Lapenmal v David* [2025] VUSC 312
[2] *Awop v Lapenmal* [2007] VUIC 2

3. The judicial review claim challenged the decision to grant the green certificate to Tolsie David. This was on the basis that the appellant was declared the custom owner of the Amelprev Nasara within Lolnambo and Lolombo on 15 October 1975 by a British Agent, DK Wilkin. ("the 1975 declaration"). Lolnambo and Lolombo nakamals form part of the Amelprev land. It was not the first time the appellant has asserted ownership of Lolnambo and Lolombo nakamal land based on the 1975 declaration, as we will shortly explain.

4. The primary judge determined that the claim was misconceived, an abuse of process and was frivolous and vexatious. This was because there was a considerable delay in filing the judicial review claim, and that the appellant did not have an arguable case. The primary judge held that the appellant was seeking to relitigate issues already decided by the Malekula Island Court ("the Island Court") and then by the Supreme Court following an appeal by the appellant.[3] The primary judge said that the case was res judicata.

Relevant background

5. Tolsie Awop (David) and family were the original claimants in land case No 10 of 1984. The land in dispute was Amelprev land situated at Rano mainland, Northeast Malekula. Their claim was based on a family member, Bursiw, being the original ancestor of Amelprev land. Daddee Lapenmal was a counterclaimant. Family Lapenmal claimed ownership of Lolnambu and Lolombo nakamal land. Their claim was based on a declaration made in 1975 by British District Agent, DK Wilkin that the Lolnambu and Lolombo nakamal land belonged to Family Lapenmal.

6. After hearing the competing claims, the Island Court declared Tolsie David and family as the custom owner of the Amelprev land. The declaration made by the Island Court was:

> ***DECLARATION***
>
> *"In light of the foregoing deliberations, it is hereby this day adjudged in the following words:*
>
> 1. *That Tolsie David and family be the custom owner of the land of Amelprev as advertised therein.*
> 2. *That the claim by Jean Claude Muluane is dismissed.*
> 3. *That all other parties to the case have the right to use the land. Such granted right is given effect light of the fact that claimants to the land have for many years caused development to it. It is for that reason, that they will continue to maintain their existing properties but are subject to the authority of the declared owners of the land.*
>
> *For ease of clarity, it is noted that some parties have no properties in their claimed land. The conferred rights will not mean that they are now given the mandate to use such land save in consultation with the owners.*

[3] *Lapenmal v Awop* [2016] VUSC 90

All costs necessitated by this proceeding will fall as found.

Any aggrieved party wishing to appeal this decision must do so within a period of 30 days from date."

7. In reaching its decision, the Island Court considered the applicable rules of custom. Relevantly, the Island Court said at pages 3 and 4:

> *"It is the common trend that the first person to explore, live and control a land boundary would eventually become the original chief of the territory. This chief on behalf of his tribe or family would normally be referred or regarded by the public as the original custom owner of the land. He would become the paramount chief or sometimes referred to as big faea of the land boundary. The members of his tribe or group communally own undivided interests in the land.*
>
> *The tribe which forms the land owning unit is normally based on blood relationship, meaning, they are all related by blood, having descended from a common or original ancestor. This family unit would be regarded as the big faea having a single bloodline. In practice, the first person and his family to arrive at the disputed land and built a nasara there, are the custom owners of the land. It makes no difference whether they left again for some other reasons, they would be designated as the custom owners.*
>
> .....
>
> *Land is traditionally transferred or inherited patrilinealy from the chief or original ancestor to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings, relatives and kinships. This is a male predominated system which is twinned with the land tenure system handed down from generation to generation.*
>
> *The only exceptional condition to the general principle of land ownership is that in the situation where there are no more surviving male heirs to the land then, ownership will pass on to the matrilineal offspring. This is typically seen where a woman's children having bloodline to the extinct patrilineal line are given land acquisition.*
>
> *Conversely and by custom, the matrilineal descendants cannot claim land ownership if, there are surviving male descendants. Any claim following the matrilineal lineage would be culturally limited to a claim of right to utilize the land. Conditions are normally attached to that right of use as well. Example, such a claimant is duty bound to perform a customary rite of recognition to the uncles in exchange, prior to any use of the land."*

8. As the Supreme Court recorded on appeal,[4] the Island Court accepted the evidence of Tolsie David and family and made 3 specific findings in their favour:

   a) There was undisputed evidence showing Mulon Bursiw was the paramount chief of Amelprev, and he and his relatives had perpetually lived on the land for centuries.

[4] At paragraph 38

b) The land belonged to David (Telvanu) being the last survivor of Amelprev land, and that his daughter Tolsie Awop is the only surviving descendant of Chief Bursiw from the matrilineal lineage.

c) As Tolsie Awop was the only surviving bloodline of the original ancestor, Bursiw, if there were no more surviving male descendants of the original ancestor, then the female descendants would automatically inherit the right of ownership of the land.

9. A key plank of Family Lapenmal's counterclaim in the Island Court was the 1975 declaration. The Island Court accepted the family was from the Lolnambu and Lolombo nakamals, which formed part of the 1975 declaration. Nevertheless, the Island Court held that Lapenmal family had no customary right to claim the nakamal land, because the land is solely owned by the principal chief who is normally the first person to discover, live and build a nasara on the disputed land. The Court found that an incoming tribe like Family Lapenmal, being a "*smol faea*" could only claim rights to use the land.

10. Family Lapenmal appealed the Island Court decision to the Supreme Court in Land Appeal 76 of 2007. The appeal grounds included:

a) Matrilineal v patrilineal rights.
b) Pre-independence decisions, including the 1975 declaration.

11. As to Tolsie David's right in custom to be declared the custom owner, the Court held:

> *39. Having considered the evidence and competing submissions we are satisfied that the Island Court was correct in its determination of the applicable customary law which included an exceptional right of succession which vests in surviving daughters in the absence of any surviving sons. Furthermore, the appellants have not established that the Island Court's decision on this aspect was unavailable or unsupported by the law or the evidence that was accepted by the Island Court.*

12. The Court addressed in detail Family Lapenmal's complaint that the Island Court erred in not accepting the 1975 declaration. Relevantly, the Court held:

> *44. Having considered the contents of the above-mentioned Declarations and letters we are satisfied that the Island Court was conscious of and indeed accepted that:*
>
> > *"(Daddee Lapenmal) had elicited sufficient information concluding that he is from the nakamal of Lolombo and Lolnambu".*
>
> *And later, in discussing the competing claim of Cerilo Lapenmal the Island Court said:*

> *"It is accepted that the nakamals of Lolombo and Lolnambu belonged to Family Lapenmal having descended from Chief Malrowsi".*
>
> *Plainly there is no substance to this complaint that the Island Court did not recognize or accept the First Appellant's Declarations.*
>
> *45. Having said that we are satisfied that the Island Court was nevertheless, obliged and correct, in the face of that acceptance, to question whether the First appellant had "... any customary right to claim the land of these nakamals" and to then state:*
>
> > *"The answer is in the negative. By tradition, it is only the paramount chief who has control and authority over the land boundary ... incoming tribes like the (Lapenmal Family) being a smol faea can only claim rights to use the land".*
>
> *46. We also note that the First appellant's supporting Declarations are limited to "**Lolombo and Lolnambu**" and appears to record the result of a traditional settlement of an internal dispute within the Lapenmal Family which was still continuing in 1978.*

13. The Court also said that the 1975 declaration was not conclusive as to the customary ownership of Amelprev land in so far as it was not a decision of a duly established court of law. But it could be considered by the Island Court in determining the true custom owners of Amelprev land, citing *Valele Family v Touru* [2002] VUCA 3.

14. Family Lapenmal was unsuccessful in its appeal, which was dismissed in its entirety.

15. The appellant then appealed to the Court of Appeal.[5] The appeal grounds related to the delay between the appeal hearing and delivery of the judgment. As the Court said, the law is clear that the Court of Appeal has no jurisdiction to hear an appeal from a land appeal decision of the Supreme Court pursuant to s 22(4) of the Island Courts Act. The inherent or supervisory jurisdiction will only be enlivened where the jurisdiction under s 22 of the Island Courts Act has not been exercised, and the appeal has in reality not been heard.[6]

16. The appeal was dismissed.

Appeal grounds

17. While there are 3 grounds contained in the notice of appeal, they can be distilled into 2 grounds:

    1) That the primary judge erred in law and fact by ignoring or failing to take into consideration the 1975 declaration.

[5] *Lapenmal v Awop* [2016] VUCA 44
[6] See *Matavare v Talivo* [2010] VUCA 3 and *Taftumol v Lin* [2011] VUCA 30

2) That the primary judge erred by failing to consider that Tolsie David is a woman so cannot be declared custom owner or paramount chief in custom in Malekula.

18. The appeal grounds do not disclose how the primary judge erred in the findings which led to the Court declining to hear the judicial review claim. But given the appeal grounds, we take the appellant to contend the primary judge erred in determining the issues raised in the claim could not be relitigated as the doctrine of res judicata applied.

Rule 17.8 CPR

19. As this Court said in *Wells v Nalwang* [2024] VUCA 48, Part 17 of CPR deals with applications for judicial review, and rule 17.8 provides for a conference to be held after a defence has been filed and served. At that conference, the judge must consider certain matters as set out in rule 17.8(3) CPR and may not hear the claim unless they are satisfied 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.

20. To base any conclusion, the judge is to consider the papers filed in the proceedings and hear argument from the parties (CPR Rule 17.8 (4)). If the judge is not satisfied, he or she must decline to hear the claim and strike it out (CPR Rule 17.8 (5)). That is what occurred in this case.

Discussion

21. We consider both appeal grounds together, as they involve the same issue. Did the primary judge err in holding that the claim was res judicata?

22. The primary judge found that there was no arguable case. As we have said, that was on the basis that the judicial review claim sought to relitigate issues already decided between these parties. The primary judge said that res judicata applied.

23. The doctrine of res judicata prevents a person from relitigating a dispute that has already been determined. The parties are bound by the decision and may not relitigate any issue that was an essential part of the decision. In *Anura Limited (formally Orion Marine limited) v Sealegs International Limited* [2024] NZCA 538, the New Zealand Court of Appeal discussed the doctrine of res judicata and set out a helpful summary of the doctrine:

> *"[44] The doctrine of res judicata prevents a person from re-litigating a dispute that has already been determined. The doctrine has two core aspects: cause of action estoppe/ (which prevents re-litigation of the same cause of action in a subsequent*

proceeding) and issue estoppe/ (which prevents re-lit/gation of an issue that has already been decided in an earlier proceeding between the same parties or their privies). The public interest underlying the doctrine is that there should be finality in litigation and that a party should not be twice vexed in the same matter."

24. In *Family Kalmet v Kalmet* [2017] VUCA 20, this Court said that res judicata is normally applicable in circumstances where there has been a final determination of the substantive issues before the Court. Given the determination of those issues, the application of res judicata operates to prevent those issues from being litigated again.

25. The judicial review claim as pleaded, raised two issues which had previously been litigated between the same parties and determined by the Island Court and then by the Supreme Court on appeal. Firstly, that the 1975 declaration gave custom ownership of the Lolnambu and Lolomprevbo nakamal land to Family Lapenmal. Secondly, that in custom Tolsie David could not be the custom owner or paramount chief because she is a woman.[7] The same parties have already litigated both issues.

26. The 1975 declaration was considered by the Island Court, which held that Daddee Lapenmal and family did not have a right of custom ownership to the Amelprev land and could only claim rights to use the land. The failure of the Island Court to consider the 1975 declaration was one of the appellant's grounds of appeal to the Supreme Court. That appeal ground was dismissed.

27. Family Lapenmal's contention that Tolsie Davi did not have a right in custom to be a paramount chief or declared the custom owner of Amelprev land, because she was a woman has also previously been litigated in both the Island Court and Supreme Court. On appeal, the Supreme Court upheld the Island Court's findings that Tolsie David was the custom owner. As we have said, the Court held that the Island Court was correct in its determination of the applicable customary law which include an exceptional right of succession which vests in surviving daughters in the absence of surviving sons. That appeal ground was also dismissed.

28. These issues have been litigated between the same parties in earlier proceedings and finally determined. Both the Island Court and Supreme Court on appeal have decided these disputed issues in favour of Tolsie David. They cannot be relitigated. We note that during the appeal, Mr Boe did concede that was the legal position. That is the end of it, as the parties are bound by those decisions.

29. Therefore, there was no error on the part of the primary judge in holding that the doctrine of res judicata applied. It is a very clear case of res judicata, and an abuse of process. Underpinning the doctrine of res judicata is the principle of finality in litigation. Otherwise, there would be no end to litigation. Daddee Lapenmal and family cannot relitigate issues determined many years ago in the hope of a different outcome.

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[7] The right in custom of Tolsie David to be the custom owner or paramount chief was obliquely pleaded in the judicial review claim, but the appellant's submissions filed for the rule 17.8 conference and repeated on appeal put that in issue

30. The appeal is without merit and fails.

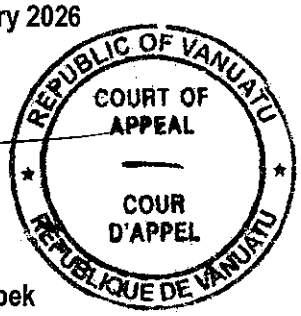
Disposition of the Appeal

31. The appeal is dismissed.

32. There is an award of costs of VT 50,000 in favour of each respondent.

DATED at Port Vila, this 13th day of February 2026

BY THE COURT



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Honourable Chief Justice Vincent Lunabek