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

Civil Appeal Case
Case No. 25/3887 COA/CIVA
[2026] VUCA 7

BETWEEN: **STEPSON RUBEN, DERRICK TIMOTHY SILHAPAT, ROBIN SAMUEL**
Applicants

AND: **JOHN NALWANG as Acting National Coordinator, Custom Land Management Office**
First Respondent

AND: **MILY WALTERSAI HAPHAPAT II AHELMHALAHLAH**
Second Respondent

Date of Hearing:	***3 February 2026***
Before:	***Hon. Justice M. O'Regan*** ***Hon. Justice M. Wigney*** ***Hon. Justice D. Aru*** ***Hon. Justice V.M. Trief*** ***Hon. Justice J. Naigulevu***
In Attendance:	***Mr G. Blake for the Applicants*** ***Ms J. Toa Tari for the First Respondent*** ***Mr S. Kalsakau for the Second Respondent***
Date of Decision:	***13 February 2026***

JUDGMENT OF THE COURT

A. Introduction

1. The applicants, Stepson Ruben, Derrick Timothy Silhapat and Robin Samuel, apply to this Court for an extension of time to bring an appeal against the Supreme Court decision as to Rule 17.8 matters dated 27 January 2025 in *Ruben v Nalwang* [2025] VUSC 15 striking out their judicial review claim. In that claim, the applicants had sought review of the issuance of a Certificate of Recorded Interest in Land (colloquially known as a, 'green certificate') by the first respondent John Nalwang as Acting National Coordinator of the Custom Land Management Office ('CLMO') to the second respondent Mily Waltersai Haphapat II Ahelmhalahlah. .

2. In the same application to this Court, the applicants also applied for leave to appeal an interlocutory decision as that the Supreme Court decision does not finally determine the parties' rights, duties

and obligations[1]. They attached to the application a draft notice of appeal setting out their grounds of appeal in the event that leave to appeal and for extension of time to appeal was granted. The application is opposed.

B. The Supreme Court decision

3. The primary Judge held a conference to consider the matters set out in Rule 17.8 of the *Civil Procedure Rules* ('CPR') to ensure that this was an appropriate matter for the Supreme Court. Pursuant to rule 17.8(3) of the CPR, the Court will not hear the claim unless satisfied as to all 4 matters set out in that rule:

    a) The claimant has an arguable case; and
    b) The claim is directly affected by the 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.

4. The primary Judge recorded the background to the matter as follows.

5. The custom ownership of Undualao, Pakal and Alniraps land in North West Malekula was disputed. On 13 December 2018, there was a decision of the Undualao Nakamal. The decision declared Waltersai Haphapat II Ahelmhalahlah custom owner.

6. On 14 November 2023, the CLMO issued a Certificate of Recorded Interest in Land to the custom owner.

7. On 23 January 2024, the claimants filed a judicial review claim, seeking the following orders:

    a) An order quashing the Certificate of Recorded Interest in Land issued on 14 November 2023 to Mr Ahelmhalahah.

    b) An order that the matter be sent back to the Nakamal Court of Undualao, West Malekula with the presence of a custom land management officer to correct the boundaries and determine the issue of custom ownership pursuant to the *Custom Land Management Act* No. 33 of 2013 (the 'Act').

8. The applicants claim that the green certificate should not have been issued because the nakamal decision to which it relates was made in breach of the provisions of the Act, including unidentified boundaries of the subject lands, there being no consensus and no custom land officer present. In addition, they allege bias in that former National Coordinators of the CLMO had previously refused two requests by Mr Ahelmhalahah for the issuance of a Certificate of Recorded Interest in Land.

---

[1] Rule 7.1(1) of the *Civil Procedure Rules* provides as follows:

7. ...

(1) An interlocutory order is an oder that does not finally determine the rights, duties and obligations of the parties to a proceeding.

However, after Mr Ahelmhalahah became an employee of the CLMO, Mr Nalwang as the then Acting National Coordinator of the CLMO issued the Certificate of Recorded Interest in Land dated 14 November 2023 to Mr Ahelmhalahah.

9. The claim is disputed by both respondents.

10. The respondents' position at the Rule 17.8 conference was that the Court should decline to hear the claim and strike it out because there is a remedy that resolves the matter fully and directly. That is, that on 15 December 2023, Mr Jack Tamai, a disputing party to the Undualao Nakamal decision, applied for review of the decision under s. 45 of the Act, as well as enlargement of time. On 7 June 2024, the Island Court (Land) granted an enlargement of time for the review under s. 45 to be heard. Then Mr Ahelmhalahah applied to the Supreme Court under s. 47 of the Act challenging the decision of the Island Court (Land) to enlarge time.[2] The Supreme Court had listed that matter for hearing on 29 January 2025 at 9am. The primary Judge recorded that therefore, there was currently (and subject to the Supreme Court application), a review of the Undualao Nakamal decision before the Island Court (Land).

11. At the Rule 17.8 conference, the applicants' then counsel conceded that there was another remedy that resolves the matter fully and directly.

12. The primary Judge was satisfied that the review in the Island Court (Land) was an alternative remedy that would resolve the matter fully and directly, hence she declined to hear the claim and struck out it out.

C. The application for extension of time to appeal and for leave to appeal

13. The applicants' advanced the application for enlargement of time and for leave to appeal on the ground that the primary Judge erred in finding that a review of the Undualao Nakamal decision before the Island Court (Land) was another remedy that resolved the matter fully and directly.

14. The applicants attached to the application a draft notice of appeal. The sole ground of appeal (if leave were granted) is that the primary Judge erred in law in finding that a review of the Undualao Nakamal decision before the Island Court (Land) was another remedy that resolved the matter fully and directly because four months later, Justice Goldsbrough ruled in his decision dated 30 May 2025 in *Ahelmhalahlah v Undualao Nakamal* [2025] VUSC 127 that Mr Tamai's application for review to the Island Court (Land) was out of time and the Island Court did not have the power to extend the time for filing an application for such review, therefore the review before the Island Court was not an available remedy. Consequently, the only available court process for fully and directly determining the applicants' claim is the hearing of their claim for judicial review which was struck out.

15. Other matters relied on by the applicants included that their previous counsel did not advise them as to their rights, and that the chances of the appeal succeeding (if enlargement of time and leave

[2] *The Supreme Court has supervisory powers on limited grounds under s. 47 of the Act.*

to appeal were granted) were high. They also asserted that the applicants would suffer a grave injustice if their claim was not heard, including the loss of customary land ownership rights, without the opportunity of hearing a challenge to the purported recording of land ownership rights in circumstances where legal processes were not observed. Finally, they asserted that they would suffer the greater prejudice than Mr Ahelmhalahah if their claim were not heard.

16. Ms Toa Tari submitted that the applicants had not adduced evidence to show how they engaged with their lawyer for advice between 30 May 2025 to 9 December 2025 hence they had not provided a satisfactory explanation for their delay in not filing an appeal. She also submitted that a Certificate of Recorded Interest in Land only certifies the custom ownership rights declared by the Undualao Nakamal, therefore the applicants' only course was to apply to join the review proceedings in the Island Court (Land) but as those proceedings had been ended by the 30 May 2025 Supreme Court decision, they could not now do so. In her submission, it follows that the nakamal decision dated 13 December 2018 stands and therefore the applicants' appeal had little chance of success.

17. Mr Kalsakau submitted that the reasons for delay provided by Mr Stepson Ruben were unsatisfactory as it was disingenuous for the applicants to assert that they were not given proper advice as to their rights when the primary Judge had told them in plain terms in the 27 January 2025 decision that they needed to apply to join the review proceedings before Justice Goldsbrough, but they did not do so. He also submitted that the effect of Justice Goldsbrough's 30 May 2025 decision was that the nakamal decision is a final substantive decision against which there cannot be a challenge: art. 78(4) of the Constitution[3] hence the applicants; claim for judicial review constitutes an abuse of process. He submitted that the applicants would not suffer any prejudice as they were not party to the land dispute before the Undualao Nakamal whereas Mr Ahelmhalahlah would be greatly affected and prejudiced as he is being denied the fruits of the judgment (particularly the nakamal decision).

D. Consideration

18. The application for extension of time invoked r. 9 of the *Court of Appeal Rules* 1973 (the 'Rules'), which empowers this Court or a Judge of this Court to enlarge the time prescribed by the Rules for doing anything to which the Rules apply. This Court outlined the matters to be taken into account in determining whether an extension of time should be granted to file an appeal in *Laho Ltd v QBE Insurance (Vanuatu) Ltd* [2003] VUCA 26 and *Sangary v Vemol* [2025] VUCA 3. The factors to be considered include:

    a) The length of the delay;

---

[3] Article 78(4) of the Constitution provides as follows:

78. ...

(4) Despite the provisions of Chapter 8 of the Constitution, the final substantive decisions reached by customary institutions or procedures in accordance with Article 74, after being recorded in writing, are binding in law and are not subject to appeal or any other form of review by any Court of law.

b) The reasons for the delay;
c) The chances of the appeal being successful if time were extended; and
d) The degree of prejudice to the potential respondent if the application were granted as well as the degree of prejudice to the potential appellants if the application were refused.

19. We deal first with the prospects of success of the appeal if time were extended, then the length and reasons for the delay, and finally with the question of prejudice.

20. The sole ground of appeal (if leave were granted) is that the primary Judge erred in law in finding that a review of the Undualao Nakamal decision before the Island Court (Land) was another remedy that resolved the matter fully and directly as the decision dated 30 May 2025 by Justice Goldsbrough has ended the Island Court proceedings hence those proceedings were not an alternative remedy for resolving the matter fully and directly.

21. It is alleged in the claim that Mr Ahelmhalahlah made two requests to the CLMO for the issuance of a green certificate in respect of the nakamal decision dated 13 December 2018. Both requests were refused. The reasons given for the refusals included that the boundaries of the subject lands remained unclear and that the nakamal decision was made in breach of the provisions of the Act because there was no consensus and there was no custom land officer present. However, after Mr Ahelmhalahlah became an employee of the CLMO, Mr Nalwang as the then Acting Coordinator of the CLMO issued the Certificate to him. The thrust of the claim, therefore, relates to the integrity of the CLMO (including alleged bias) and ensuring that the provisions of the Act are complied with.

22. At the time that the primary Judge made her decision, there were proceedings on foot before the Island Court (Land) which were the subject of review before another Judge of the Supreme Court. Accordingly, she was correct to conclude in that decision that the review in the Island Court (Land) was an alternative remedy that would resolve the matter fully and directly. She referred in the decision to both the review proceedings in the Island Court (Land) and the application for review in the Supreme Court, before Justice Goldsbrough, challenging the extension of time granted by the Island Court.

23. Subsequently, on 30 May 2025, Justice Goldsbrough ruled that the application to the Island Court (Land) under s. 45 of the Act is out of time and that the Island Court does not have the power to extend the time to file such application: *Ahelmhalahlah v Undualao Nakamal* [2025] VUSC 127.

24. Ms Toa Tari submitted that the applicants were not party to the proceeding before Justice Goldsbrough therefore the decision of 30 May 2025 is not binding on them. This submission overlooks the fact that the decision of 30 May 2025 did not determine rights limited to the parties in the proceeding before Justice Goldsbrough. The decision of 30 May 2025 ended the review proceedings in the Island Court (Land) and any person, including the applicants, are bound by that finding even though they were not party to the proceeding before Justice Goldsbrough.

25. It follows that the case before the Island Court (Land) was not an alternative remedy that resolved the matter fully and directly, albeit that did not become clear until the decision of Justice Goldsbrough dated 30 May 2025.

26. Given the effect of the 30 May 2025 decision on the proceedings in the Island Court (Land), the applicants' ground of appeal is effectively made out. Therefore, subject to the question of leave, we must conclude that the chances of the appeal being successful if time were extended are high.

27. Before we consider the other factors relevant to an application for extension of time to file an appeal, we deal first with two other matters raised by the respondents.

28. First, Ms Toa Tari submitted that a Certificate of Recorded Interest in Land only certifies the custom ownership rights declared by the Undualao Nakamal, therefore the applicants' only course was to apply to join the review proceedings in the Island Court (Land) but as those proceedings had been ended by the 30 May 2025 Supreme Court decision, they could not now do so, hence the nakamal decision dated 13 December 2018 stands. Mr Kalsakau also submitted that the primary Judge had told the applicants in plain terms in the 27 January 2025 decision that they needed to apply to join the review proceedings before Justice Goldsbrough, but they did not do so.

29. Secondly, Mr Kalsakau submitted that the effect of Justice Goldsbrough's 30 May 2025 decision was that the nakamal decision is a final substantive decision against which there cannot be a challenge: art. 78(4) of the Constitution[4] hence the applicants' claim for judicial review is an abuse of process.

30. The purpose of review proceedings in the Island Court (Land) are for that Court to review a nakamal decision on limited grounds (including that a nakamal decision has been made in breach of the process described in the Act).[5] The effect of Justice Goldsbrough's decision dated 30 May 2025 is to end the review proceedings in the Island Court (Land).

31. Even if the applicants did not apply to, or join, such proceedings in the Island Court (Land) or the review proceedings before Justice Goldsbrough, they may nonetheless seek judicial review in the Supreme Court of a decision by a decision-maker in the exercise of a public function.[6] In this case, the applicants have sought judicial review of the decision by Mr Nalwang as Acting National Coordinator of the CLMO to issue the Certificate of Recorded Interest dated 13 December 2018 to Mr Ahelmhalahlah.

---

[4] Article 78(4) of the Constitution provides as follows:

> *78.* ...
>
> *(4) Despite the provisions of Chapter 8 of the Constitution, the final substantive decisions reached by customary institutions or procedures in accordance with Article 74, after being recorded in writing, are binding in law and are not subject to appeal or any other form of review by any Court of law.*

[5] Section 45 of the *Custom Land Management Act* No. 33 of 2013.

[6] Rules 7.2 (definitions of "decision" and "decision-maker" and Rule 7. 4 of the *Civil Procedure Rules.*

32. If the applicants succeed on their claim in the Supreme Court that the green certificate dated 13 December 2018 was issued as a result of bias and in breach of the provisions of the Act (unascertained boundaries of the subject lands, no consensus and no custom land officer present) and obtain an order quashing that green certificate, the effective result would be that no green certificate should issue at any point in time to certify the nakamal decision dated 13 December 2018. That nakamal decision would stand but could not be enforced in the absence of a green certificate issued to certify it. It may be that the nakamal itself would reopen its decision under s. 53 of the Act.[7]

33. For the foregoing reasons, we reject Mr Kalsakau's submission that the applicants' claim for judicial review is an abuse of process and the submissions by Ms Toa Tari and Mr Kalsakau regarding joinder to the Island Court (Land) proceedings and the proceedings before Justice Goldsbrough.

34. We turn now to consider the balance of the factors relevant to an application for extension of time to file an appeal.

35. From the date of the primary Judge's decision to the filing of the application in this Court, the length of delay is 9 months. From the date of Justice Goldsbrough's decision to the filing of the application in this Court, the length of delay is 6 months. Irrespective of the starting point for the delay, the length of delay is considerable.

36. In a sworn statement filed on 9 December 2025, Mr Stepson Ruben deposed that he and the other applicants were not given appropriate legal advice by their then counsel following the 30 May 2025 decision. He deposed that it was not until they sought advice from their present counsel that they were advised how they needed to proceed and they have moved as quickly as possible toward the filing of their application in this Court.

37. There is no evidence, however, as to what legal advice, if any, the applicants' previous counsel gave them nor any waiver of lawyer-client privilege and evidence from that counsel. There is scant information provided about when they approached and retained their present counsel. The applicants have therefore not provided a very satisfactory explanation for their delay in not filing an appeal.

38. We turn now to the question of prejudice.

39. Mr Blake submitted that a grave injustice would be sanctioned upon the applicants, including the loss of customary land ownership rights, if their claim is not heard, which claim challenges the purported recording of land ownership rights in circumstances where legal processes were not observed. Given the matters raised by the applicants in the present appeal and in their claim for judicial review (as pleaded), we accept that the potential prejudice to the applicants if the application was refused is significant.

[7] See *Kallon v Mera* [2024] VUCA 1 at [35]-[36].

40. Mr Kalsakau pointed to the prejudice that Mr Ahelmhalahlah would suffer from being denied the fruits of the judgment, that is, the nakamal decision. We note, however, that the subject nakamal decision is dated 13 December 2018 but Mr Ahelmhalahlah did not receive a Certificate of Recorded Interest in Land until 14 November 2023. The applicants filed their claim for judicial review in January 2024. Given the length of time between the nakamal decision and the issuance of the Certificate of Recorded Interest to Mr Ahelmhalahlah, we consider that the potential prejudice to Mr Ahelmhalahlah if the application was granted relates to elapse of time only.

41. Ms Toa Tari accepted that Mr Nalwang would not suffer any prejudice if the applicants' application for extension of time to appeal was granted. The CLMO and the State undoubtedly want legally correct outcomes from customary institutions, and integrity in the country's customary land management processes.

42. In conclusion, the length of the delay on the applicants' part was considerable and they have not provided a very satisfactory explanation for their delay in filing an application for extension of time to bring an appeal. However, the prospects of success of the appeal are high. Indeed, if leave is granted, the appeal must succeed. The applicants would suffer more prejudice than the respondents if the application were refused. The issues raised by the claim for judicial review in the underlying proceedings also relate to the integrity of the CLMO and Vanuatu's customary land management system which are of such seriousness and importance that notwithstanding the delay, we consider that on balance, the application for extension of time to appeal must be granted.

E. Result

43. Enlargement of time to file the appeal and leave to appeal the interlocutory decision is granted.

44. The appeal is allowed. The decision as to Rule 17.8 matters dated 27 January 2025 is set aside and the matter remitted to the Supreme Court for the primary Judge to resume the Rule 17.8 conference.

45. Costs must follow the event. The respondents are to each pay costs of VT50,000 to the applicants.

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

BY THE COURT

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

.....

Hon. Justice M. O'Regan