

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

**Judicial Review**  
**Case No. 23/2284 SC/JUDR**  
**Case No. 22/180 SC/ JUDR**

**BETWEEN: KEMUEL HARRY, TELE HARRY RAMBAY, LAMI RAMBAY,  
JOHN KEITH, EPHRAIM IMBON, MICHAEL OTAK, ROBEA  
BILL, SHEMUEL NUMALMELME, JOHN AMPEL**

Claimants

**BY: LINDA OLUL**

Defendant

**AND: JOSIAH NATO TAMAT, DANIEL NATO TAMAT, MASIA NATO  
TAMAT, RODA WILLIAM TAMAT**

Interested Party

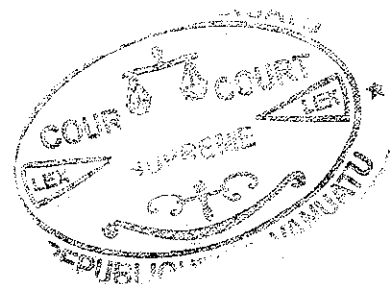
**Date of HEARING: 30<sup>th</sup> October 2023**  
**Date of Decision : 14<sup>th</sup> December 2023**  
**Before: Judge Oliver A Saksak**  
**In Attendance: Mr Edward Nalyal for the Claimants**  
**Mr Tom Loughman for the Defendant**  
**Mr Tom Joe Botleng for the Interested Party**

---

**DECISION**

---

1. The application by the claimants fails and is dismissed with costs on the standard basis to be taxed if not agreed.
2. The claimants challenged the decision of the National Coordinator made on 4<sup>th</sup> March 2022 cancelling the Green Certificate issued in their favour on 3<sup>rd</sup> December 2021.
3. Messrs Josiah Nato Tamat and others have become the Interested Party to this proceeding because they are the Claimants/ Applicants in Judicial Review Case No. 180 of 2022 which is also pending determination. In this proceeding the Interested Parties are challenging the cancellation of their Green Certificate by the National Coordinator on 18 June 2020. The certificate was issued on 4<sup>th</sup> June 2020.



4. The dispute as to custom ownership of Tervaut Land has a long history. The parties started in the Malekula Island Court in Civil Case No. 10 of 1993 which gave judgment only on 27 October 2004. Since then the parties have gone back and forth, round and round to the Magistrates Court, the Supreme Court and the Court of Appeal, either as appeals or Judicial Reviews. The case cries out for finality.
5. There is one only issue: Whether the National Coordinator was correct in cancelling the Green Certificate issue to these claimants on 4<sup>th</sup> March 2022?
6. The answer is " Yes"
7. The argument that the claimants were not notified and given the opportunity to respond prior to cancellation is well established at common law. See Kwirinavanvanua v Toumata Tetrau Family [2018] VUCA 15.
8. However even if they were given the opportunity, would it have changed the position? I doubt that it would. The reason for this is because of Civil Case 1849 of 2020 instituted by Family Tamat as claimant against Kemuel Harry as defendant.
9. In that case the Malekula Island Court was faced with 2 issues: (a) which of the parties was the true bloodline of Tamat? And (b), How did they relate to Tamat?
10. The Island Court after hearing evidence held and concluded that Josiah Nato was the bloodline of TAMAT. The Court restrained the defendant Kemuel Harry from using the name TAMAT. That decision was published on 26<sup>th</sup> March 2021.
11. That decision in essence expanded on the original decision of the Island Court of 27<sup>th</sup> October 2004 in my considered view. That decision recognized Josiah Nato as the true blood line of Tamat who were and are the true custom land owners of Tervaut Land.



12. In my view the cancellation of the Green Certificate dated on 3<sup>rd</sup> December 2023 on 4<sup>th</sup> March 2022 based on the Island Court decision of 26<sup>th</sup> March 2021 was entirely correct and reasonable.
13. That decision was appealed by Kemuel Harry to the Magistrates Court which dismissed the appeal. Kemuel Harry appealed further to the Supreme Court in CAC 21/2008. Wiltens J dismissed the appeal on 5<sup>th</sup> January 2022 and Ordered costs of VT 100,000 against the appellant to be paid within 21 days and lifted a stay of judgment dated 18<sup>th</sup> August 2021.
14. Those proceedings have provided the Family Tamat with standing to issue JR 180 of 2022 and to enable them to become Interested Party to this proceeding.
15. For the claimant to argue that the Interested Party could not have standing to defend this claim is not tenable and is rejected.
16. The claimant relied heavily on the Kwirinavanua case in support of their claim that their Green Certificate should not have been cancelled. They appear to be relying on the document as the basis of custom ownership in their favour. That is a misconception. The Court of appeal said at page 6 of the judgment as follows:
- " The actual event that determines the title of custom owner is not the recording of an interest, but the decision of the relevant customary institution or Court" ( my emphasis).*
17. The original decision of the Island Court on 27<sup>th</sup>October 2004 record on page 3.
- " COUNTER CLAIMANT 1*
- " Kemuel Harry, claiming on behalf of family Tamat pleaded that Tervaut is the native land of Tamat and Harry..... " ( my emphasis)*
18. In its conclusion on page 7 the Island Court concluded:
- " In light of the foregoing discussions and in application of the custom, IT IS HEREBY DECLARED that counterclaimant 1, Kemuel Harry representative of Family Tamat as the rightful custom owners of the Land of Tervaut as mapped accordingly." ( my emphasis)*



19. That declaration and conclusion must be understood clearly by the parties. At the moment it is not. It seems to me that Kemuel Harry is interpreting it to mean he is the declared rightful landowner of Tervaut land, he is not. The contrary is true. That declaration is in favour of Family Tamat. Kemuel Harry was only claiming as Counter-claimant on behalf of the Family Tamat as a representative only. It could not be more clearer than that, unless there was some ulterior motives behind it all as is obvious because of the ongoing dispute.
20. The second decision of the Malekula Island Court in Civil Case 1849/2020 has excluded Kemuel Harry from the Family Tamat by holding that Josiah Nato Tamat only is the blood line of Tamat. And that in my view settles the issue of custom ownership of Tervaut land.
21. That brings me to conclude that-
- a) The cancellation by the defendant of the claimants Green Certificate of 3<sup>rd</sup> December 2021 on 4<sup>th</sup> March 2022 was proper and correct. The claimants claim in this proceeding is dismissed.
  - b) The cancellation by the defendant of the Interested Party's Green Certificate dated 4<sup>th</sup> June 2023 on 18<sup>th</sup> June 2023 was improper and is to be reissued. The Interested Party as claimant in Civil Case 1849 of 2020 is successful and judgment is entered in their favour.
22. The claimants will pay the Defendants and the Interested Party's costs of and incidental to this proceeding and Civil Case 1849 of 2020 on the standard basis as agreed or taxed.

**DATED at Port Vila this 14<sup>th</sup> day of December 2023.**

**BY THE COURT**

.....  
**Hon. Oliver A Saksak**  
Judge

