

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

Judicial Review
Case No. 24/3785 SC/JUDR

**BETWEEN: Family Vanuapuru represented by
Philipson Vanuapuru**
Claimant

AND: Republic of Vanuatu
Defendant

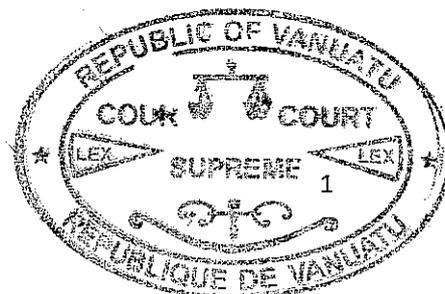
AND: Family Salerua Poruja
Interested Party

Date of Trial: 21 July 2025
Before: Justice V.M. Trief
In Attendance: Claimant – Mr M.G. Nari
Defendant – Ms J. Toa Tari
Interested Party – Mrs M.P. Manuariki
Date of Decision: 27 February 2026

JUDGMENT

A. Introduction

1. There are two decisions, both stated to be customary land tribunal decisions, as to the custom ownership of Vanuapaura custom land in the southern part of Santo island. On 2 April 2008, the Vaturani Joint Village Land Tribunal declared the Claimant Family Vanuapuru represented by Philipson Vanuapuru ('Family Vanuapuru') the custom

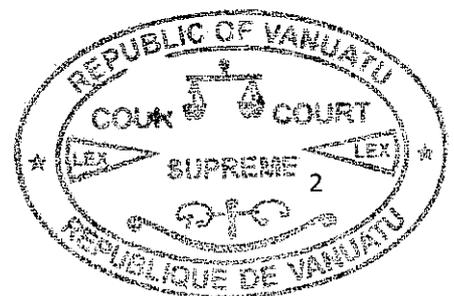


owners of Vanuapaura custom land (the '2008 decision'). In an earlier decision dated 15 July 2005, the Supe Natavui Tano Island Land Tribunal declared the Interested Party Family Salerua Poruja the custom owners of Vanuapaura custom land (the '2005 decision').

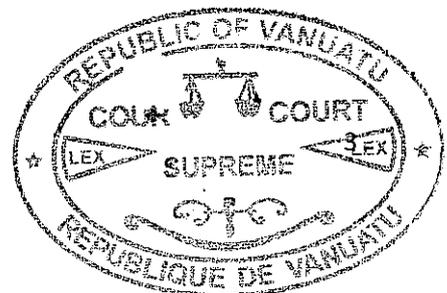
2. On 18 October 2018, the National Coordinator of the Custom Land Management Office ('CLMO') issued a Certificate of Recorded Interest in Land (colloquially referred to as a 'green certificate') to the Interested Party in respect of the 2005 decision.
3. By the Claim for Judicial Review filed on 27 November 2024, Family Vanuapuru is seeking a declaration that the 2005 decision was made contrary to Part 5 of the *Customary Land Tribunal Act* [CAP. 271] (the 'CLT Act'); that the National Coordinator of the CLMO issued the Interested Party a green certificate in 2018 contrary to s. 58 of the *Custom Land Management Act* No. 33 of 2013 (the 'CLM Act'); a mandatory order that the National Coordinator cancel the 2018 green certificate and issue a green certificate to the Claimant in respect of its 2008 declaration; or alternatively, that the CLMO facilitate the nakamal or joint nakamal hearing for the land dispute relating to Vanuapuru land boundary.
4. In the Rule 17.8 decision dated 30 June 2025, I was satisfied of the matters in rule 17.8(3) of the *Civil Procedure Rules* and listed the Claim for hearing: *Vanuapuru v Republic of Vanuatu* [2025] VUSC 199.
5. At the hearing of the Claim, no witness was required for cross-examination by any counsel. Counsel sought time for the parties to file written submissions then the Court issue its decision.
6. The Claimant filed submissions on 19 August 2025 and submissions in reply on 24 September 2025 and 13 October 2025. The Interested Party filed submissions on 10 September 2025. The Defendant filed submissions on 9 October 2025.
7. This is the judgment.

B. Background

8. Both of the following decisions are stated to declare the custom ownership of Vanuapuru custom land:
 - (i) The decision of the Supe Natavui Tano Island Land Tribunal dated 15 July 2005 in favour of the Interested Party; and



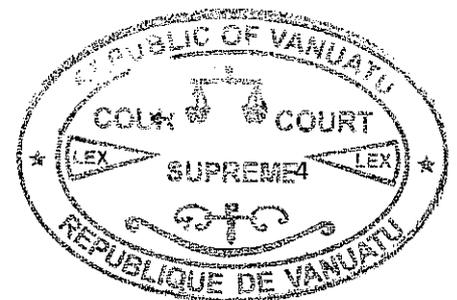
- (ii) The decision of the Vaturani Joint Village Land Tribunal dated 2 April 2008 in favour of the Claimant.
9. Neither decision has been appealed or successfully challenged otherwise before the Courts:
- a) In 2007, there was a purported challenge to the 2005 decision in *Family Vanuapuru v Supenatvuitano Island Tribunal*; CC 20 of 2007 ('CC 2007/20'). The claim in that matter was struck out by way of the Ruling dated 5 September 2007 after the claim was not ever served and had ceased to have effect [**Attachment "LO5"**, Sworn statement of Linda Olul]. No question of *res judicata* arises, therefore, as this decision did not substantively determine any party's rights;
- b) By Ruling dated 5 May 2010, an application to vacate the 5 September 2007 strike out orders and restore CC 2007/20 was dismissed [**Attachment "LO5"**, Sworn statement of Linda Olul]; and
- c) The 2008 decision has never been appealed or challenged in a Court.
10. The 2005 decision has not been successfully challenged to date but there is no substantive decision estopping the Claim for judicial review in the present matter.
11. The Court is the only body which can determine whether or not the 2005 decision was made contrary to the CLT Act.
12. By letter dated 9 November 2005 to the President of the Supenatuitano Council of Chiefs, the Land Tribunal Office advised that the 2005 decision was made contrary to the CLT Act because the dispute was not heard in the first instance by a village or area land tribunal [**Attachment "MBM3"**, Sworn statement of Meresimani Bakeo Markward].
13. The dispute came before the Vaturani Joint Village Land Tribunal, which made the 2008 decision.
14. In 2013, Parliament repealed the CLT Act. The repeal came into force on 20 February 2014.
15. Also in 2013, Parliament enacted the CLM Act. This Act also came into force on 20 February 2014.
16. On 18 October 2018, the National Coordinator of the CLMO issued a Certificate of Recorded Interest in Land to the Interested Party in respect of the 2005 decision.



17. Since finding out about the 2018 green certificate, the Claimant has not sat on her hands but challenged its issuance by:
- a) The Claimant challenged the issuance of the green certificate by application for review in Case No. 19/651 in the Island Court (Land). That application was dismissed by Ruling dated 29 June 2023 [**Attachment "LO14"**, Sworn statement of Linda Olul];
 - b) Subsequently, the Claimant challenged the issuance of the green certificate by Constitutional Application in Constitutional Case No. 24/2957. By decision dated 31 October 2024, the Constitutional Application was struck out [**Attachment "MBM8"**, Sworn statement of Mrs Markward]; and
 - c) Within a month of the decision in the Constitutional Case, the Claimant filed the Claim for judicial review in the present matter.

C. Pleadings

18. It is alleged in the Claim that the 2005 decision was made contrary to Part 5 of the CLT Act. The Claimant is seeking a declaration to that effect and if granted, that the green certificate in respect of the 2005 decision be quashed.
19. The Claimant has also alleged in the Claim that the Claimant has the 2008 decision in its favour therefore is entitled to a green certificate in respect of that decision. It is also seeking an order that the National Coordinator issue a green certificate to the Claimant in respect of the 2008 decision.
20. The Claimant filed the Sworn statement of Meresimani Bakeo Markward in support of the Claim on 27 November 2024.
21. The Claim is disputed.
22. On 11 June 2025, the Defendant State filed Defence and Sworn statement of Linda Olul. The State's case is that the 2005 decision has not been successfully set aside therefore it remains valid and binding and that the Claimant's 2008 decision was cancelled on 6 March 2008.
23. On 13 June 2025, the Interested Party Family Salerua Poruja filed Defence of Family Salerua Poruja to Application for Leave to file a Judicial Review Claim. Mrs Manuariki confirmed that this be treated as the Interested Party's Defence. It filed the Sworn statements of Riuta Salerua, Fred Salerua and Chief Garae Talo on 2 June 2025.



24. The Interested Party's case is that the Claimant had unsuccessfully challenged the Interested Party's 2005 decision on three separate occasions. In addition, that the Claimant's 2008 decision was cancelled by the Department of Lands and declared invalid as per the Department's letter dated 6 April 2008.
25. The issues arising are whether or not the 2005 decision was made contrary to Part 5 of the CLT Act, and whether or not the National Coordinator issued the 2018 green certificate to the Interested Party in relation to the 2005 decision in breach of s. 58 of the CLM Act. Finally, whether or not the Claimant is entitled to the issuance of a green certificate in respect of its 2008 declaration.

D. The Law

26. Part 5 of the CLT Act is headed, "Part 5 – Island Land Tribunals." It contains ss 21-24 which provide as follows:

21. Application of Part

This Part applies in relation to the following decisions:

- (a) *decisions of a custom area land tribunal under Part 4;*
- (b) *decisions of a village land tribunal under Part 2 about land situated on an island where there is only one custom area, being a custom area that is not subdivided into custom sub-areas;*
- (c) *decisions of a custom sub-area land tribunal under Part 3 about land situated on an island where there is only one custom area.*

22. Appeal notice

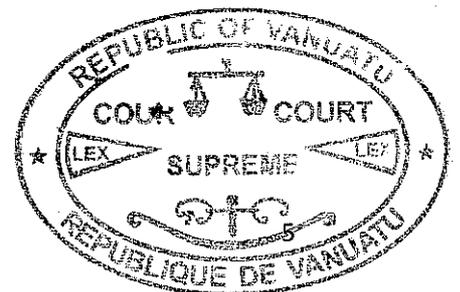
- (1) *If a person or group of persons:*

- (a) *is a party to a decision referred to in section 21(a), (b) or (c); and*
- (b) *wants to appeal against that decision;*

the person or group must give a notice of appeal in accordance with subsection (2) within 21 days after the announcement of that decision.

- (2) *The notice must:*

- (a) *be in writing in Bislama, French, English or another language of the person or group giving the notice; and*
- (b) *be given to the chairperson of the council of chiefs for that island; and*
- (c) *specify the decision being appealed against; and*
- (d) *specify the grounds of the appeal; and*



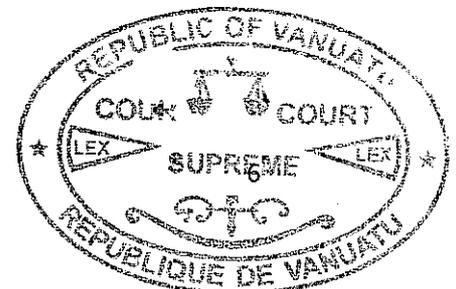
- (e) contain a description, and specify the location, of the land; and
- (f) specify the names of the parties to the dispute.

23. Island land tribunals

- (1) The chairperson of the island council of chiefs must convene a meeting of the council within 21 days after receiving a notice of appeal under section 22.
- (2) The island council of chiefs must establish an island land tribunal to determine the appeal.
- (3) If the land the subject of the decision being appealed against is situated wholly within one custom area, the island land tribunal consists of:
 - (a) subject to subsection (4), a chairperson who is to be the chairperson of the custom area council of chiefs if he or she is qualified under this Act to adjudicate the dispute and is willing to do so; and
 - (b) 4 other chiefs or elders from the custom area appointed by the island council of chiefs; and
 - (c) a secretary appointed by the island council of chiefs.
- (4) If the chairperson of the custom area council of chiefs is not qualified under this Act to adjudicate the dispute or is not willing to do so, he or she must appoint another chief or elder from the custom area as the chairperson.
- (5) If the land the subject of the decision being appealed against is situated within more than one custom area, the island land tribunal consists of:
 - (a) subject to subsection (6), the chairpersons of the council of chiefs of each custom area if qualified under this Act to adjudicate the dispute and willing to do so; and
 - (b) 4 other chiefs or elders from each custom area appointed by the island council of chiefs; and
 - (c) a secretary appointed by the island council of chiefs.
- (6) If the chairperson of the council of chiefs of a custom area is not qualified under this Act to adjudicate the dispute or is not willing to do so, he or she must appoint another chief or elder from that custom area as a member.
- (7) A person must not be appointed:
 - (a) under subsection (3)(b), (4), (5)(b) or (6), unless the person is qualified to adjudicate the dispute and is willing to do so; or
 - (a) as the secretary under subsection (3)(c) or (5)(c) unless the person is qualified under this Act to be a secretary and is willing to do so.
- (8) The chairperson of each custom area council of chiefs who are members of the island land tribunal and any members of the island land tribunal appointed under subsection (6) must elect one of their number to be the chairperson of the island land tribunal referred to in subsection (5).

24. Rehearing

- (1) If:



- (a) an island land tribunal determined an appeal against a decision mentioned in section 21(b) ("the original decision"); and
- (b) a person or group of persons was a party to the appeal decision of the island land tribunal and is not satisfied with it; and
- (c) the person or group wants a rehearing of the original decision;

the person or group must give a notice of a rehearing under subsection (2).

(2) The notice must:

- (a) be in writing in Bislama, French, English or another language of the person or group giving the notice; and
- (b) be given to the chairperson of the island council of chiefs within 21 days after the island land tribunal announced its decision; and
- (c) specify the grounds of the appeal; and
- (d) contain a description, and specify the location, of the land; and
- (e) contain the names of the parties to the dispute.

(3) The chairperson of the island council of chiefs must convene a meeting of the council within 21 days after receiving the rehearing notice.

(3) The island council of chiefs must establish another island land tribunal to rehear the dispute. The island land tribunal is to conduct the rehearing as if it was hearing and determining the dispute for the first time.

(5) The island land tribunal mentioned in subsection (4) consists of:

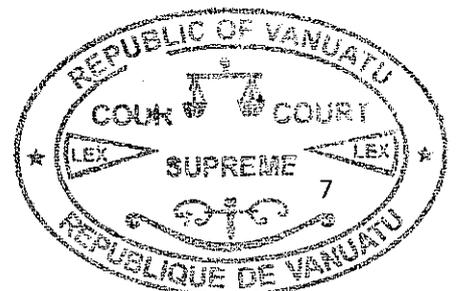
- (a) a chairperson who is to be a chief or elder within the custom area appointed by the island council of chiefs; and
- (b) 4 other chiefs or elders living within the custom area appointed by the island council of chiefs; and
- (c) a secretary appointed by the island council of chiefs.

(6) A person who was a member or the secretary of the island land tribunal that has already determined the appeal cannot be appointed under subsection (5).

(7) A person cannot be appointed:

- (a) under subsection (5)(a) or (5)(b) unless the person is qualified to adjudicate the dispute under this Act and is willing to do so; or
- (b) as the secretary under subsection (5)(c) unless the person is qualified under this Act to be a secretary and is willing to do so.

27. Section 57 of the CLM Act provides as follows:



57. Existing decisions of Island Court, Supreme Court, single or joint area Customary Land Tribunal and island Customary Land Tribunal

- (1) Decisions of the Island Court, Supreme Court, single or joint area Customary Land Tribunal and island Customary Land Tribunal which determine the ownership of custom land and which were made before the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such Court or Customary Land Tribunal to be the custom owners.
- (2) Decisions made under subsection (1) will enable the custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator's certificate or a lease, or is to provide the basis for rectification of an existing instrument.

28. Section 58 of the CLM Act provides as follows:

58. Existing decisions of single or joint Village Customary Land Tribunal and single or joint sub-area Customary Land Tribunal

- (1) Decisions of:
 - (a) a single or joint village Customary Land Tribunal; or
 - (b) a single or joint sub-area Customary Land Tribunal,¹
 - (c) ~~_____ [repealed]²~~
 - (d) ~~_____ [repealed]³~~

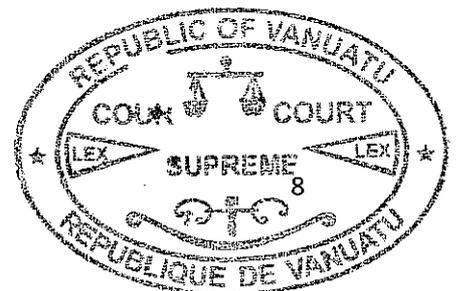
which determined the ownership of custom land and which were made before the commencement of this Act and have not been challenged within 12 months after the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such tribunal to be a custom owner.

- (2) The creation of a recorded interest in land under subsection (1) will enable the custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator's certificate or a lease, or is to provide the basis for rectification of an existing lease instrument.
- (3) A person may challenge a decision of a Customary Land Tribunal under this section by filing an application with the appropriate Island Court (Land) that the decision of the Customary Land Tribunal be reviewed on the ground that:
 - (a) it has been made at a meeting that was not properly constituted; or
 - (b) it has been made in breach of the authorised process; or
 - (c) it has been procured by fraud; or
 - (d) it was wrong in custom or law.

¹ Paragraph 58(1)(b) of the CLM Act was amended by Act No. 12 of 2014.

² Paragraph 58(1)(c) of the CLM Act was repealed by Act No. 12 of 2014.

³ Paragraph 58(1)(d) of the CLM Act was repealed by Act No. 12 of 2014.

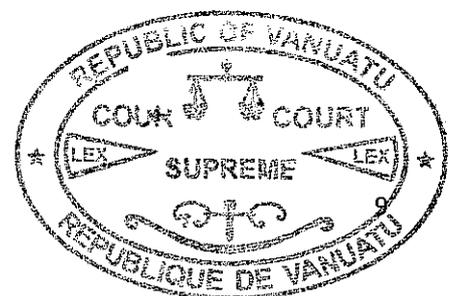


- (4) *The Island Court (Land) after hearing all relevant evidence may dismiss the application for review, or may order that the decision of the Customary Land Tribunal be set aside and direct that the ownership of custom land be determined in accordance with this Act.*

[emphasis added]

E. Issue 1: Whether or not the 2005 decision was made contrary to Part 5 of the CLT Act?

29. Part 5 of the CLT Act provides for island land tribunals. The effect of ss 21 and 23 of that Act is that island land tribunals are to hear decisions of village land tribunal, a custom sub-area land tribunal or custom area land tribunal. Section 24 of that Act provides for an island land tribunal to rehear a matter in the circumstances set out in that section.
30. However, there is no provision for an island land tribunal to hear a land dispute at first instance. In other words, an island land tribunal is an exclusively appellate tribunal under the CLT Act.
31. There is no evidence, even by the Defendant, that the 2005 decision was made following hearing and decision first at village land tribunal or custom sub-area land tribunal or custom area land tribunal before it was heard by the Supe Natavui Tano Island Land Tribunal.
32. I find, therefore, that the dispute was heard in the first instance by the island council of chiefs, the "Executif Kaonsel blong Supe Natavui Tano Island Land Tribunal" purporting to sit as the island land tribunal.
33. In the Interested Party's evidence, the dispute came before the Supe Natavui Tano Island Land Tribunal at the initiation of the Claimant [Chief Garae Talo's sworn statement; Fred Salerua's sworn statement; Riuta Salerua's sworn statement].
34. Even if this Court accepts that the Claimant initiated the matter before the Supe Natavui Tano, this does not change the position that that body did not have the power to hear a land dispute at first instance.
35. It follows that the 2005 decision by the Supe Natavui Tano Island Land Tribunal was made contrary to Part 5 of the CLT Act.
36. The State has previously recognized this. By letter dated 9 November 2005, the Custom Land Tribunal Office stated that the 2005 decision was made contrary to the CLT Act because the dispute was not heard in the first instance by a village or area land tribunal [Attachment "MBM3", Sworn statement of Mrs Markward].



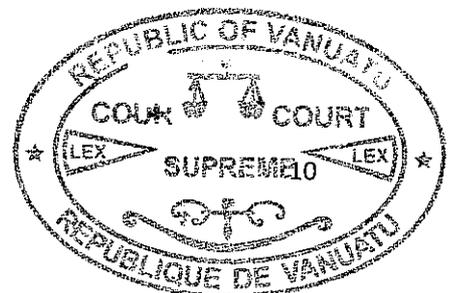
37. I infer that following the receipt of this advice, the parties re-litigated the dispute before the Joint Village Land Tribunal resulting in the 2008 decision.
38. Given my finding that the Supe Natavui Tano Island Land Tribunal decision of 15 July 2005 was made contrary to Part 5 of the CLT Act, it was not a decision made by an island land tribunal according to the CLT Act. It was a decision by a council of chiefs purporting to sit as an island land tribunal.
39. The Court of Appeal held in Valele Family v Touru [2002] VUCA 3 at p. 10 that, relevantly, a council of chiefs does not have any jurisdiction or authority to make a determination of custom ownership which bound claimants who disagreed with their ruling:

Where a dispute over custom ownership of land arises it is to be expected that those involved will do their best to reach an agreement to settle the dispute, with such assistance as is possible from customary procedures and meetings of chiefs. However, it is clear from the Constitution and from the Island Courts Act that unless everyone who at any time claims an interest in the land is prepared to accept a settlement, the only bodies that have lawful jurisdiction and power to make a determination that binds everyone are the Courts, in the first instance the local Island Court, and if there is an appeal, the Supreme Court.

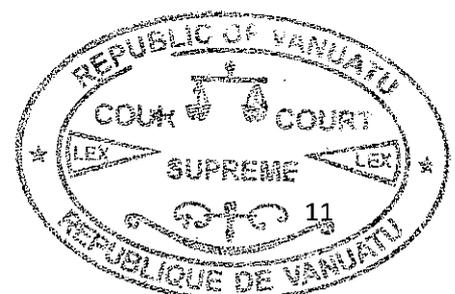
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It follows that neither the Utalamba Committee and its associated "Area Land Court" or Committee (which was in no sense a court established under the Constitution) nor the council of chiefs that sat at Deproma had any jurisdiction or authority to make a determination of custom ownership which bound claimants who disagreed with their ruling.

40. The only bodies who can finally determine custom ownership of land are an island court, or a customary land tribunal, or on appeal by the Supreme Court: Valele Family v Touru; Cevuard v Samsen [2003] VUCA 10; and Colmar v Rose Vanuatu Ltd [2009] VUCA 40 at [51] and Molbarav v Wells [2014] VUCA 13 at [11]-[12].
41. That said, any such decisions by a customary land tribunal must be made in accordance with the CLT Act.
42. In addition, since art. 78 of the Constitution was amended by the *Constitution (Sixth Amendment) Act* No. 27 of 2013 and the CLM Act came into force on 20 February 2014, land ownership or any disputes over custom land may also be resolved by the customary institutions or procedures set out in the CLM Act: Kunuan v Tamata [2020] VUCA 3 at [10] and [13].
43. Accordingly, the decision of the Supe Natavui Tano Island Land Tribunal in favour of the Interested Party dated 15 July 2005 is not a binding determination of custom ownership.



44. For the foregoing reasons, a declaration will be made that the 2005 decision was made contrary to Part 5 of the CLT Act.
- F. Issue 2: Whether or not the National Coordinator issued the 2018 green certificate to the Interested Party in relation to the 2005 decision in breach of s. 58 of the CLM Act?
45. Subsection 58(1) of the CLM Act provides that decisions of a single or joint village customary land tribunal, or of a single or joint sub-are customary land tribunal which determined the ownership of custom land and which was made before the CLM Act commenced (on 20 February 2014) and has not been challenged within 12 months after the commencement of that Act (by 19 February 2015) are deemed to create a recorded interest in land in respect of the persons determined by such tribunal to be a custom owner.
46. However, subs. 58(1) does not include any provision for decisions by an island land tribunal because in 2014, Parliament enacted the *Custom Land Management (Amendment) Act* No. 12 of 2014, which came into effect on 24 June 2014. By that Amendment Act, Parliament repealed paras 58(1)(c) and (d) of the CLM Act. In the same Amendment Act, it amended para. 58(1)(b) by deleting “, or” and inserting a comma, “,”.
47. The National Coordinator issued the green certificate in respect of the 2005 decision four years later, in 2018. By that time, there was no provision in subs. 58(1) of the CLM Act for a decision of an island land tribunal to be deemed to create a recorded interest in land.
48. Subsection 57(1) of the CLM Act, however, provides for existing decisions of an island customary land tribunal to be deemed to create a recorded interest in land. However, due to the Court’s finding set out above that the decision of the Supe Natavui Tano Island Land Tribunal in favour of the Interested Party dated 15 July 2005 was made contrary to Part 5 of the CLT Act, it was not a decision by an island Customary Land Tribunal and therefore does not fall within subs. 57(1) of the CLM Act.
49. What evidence is there as to the process that the National Coordinator followed to issue the 2018 green certificate?
50. The State’s evidence [**Attachment “LO7”**, Sworn statement of Linda Olui] is that the 2008 decision was cancelled by the Department of Lands (by letter dated 6 April 2008) and that the Interested Party was entitled to a green certificate in respect of the 2005 decision. It was submitted for the State that the National Coordinator issued the 2018



green certificate to the Interested Party as the 2005 decision takes priority, purportedly for being earlier in time than the 2008 decision.

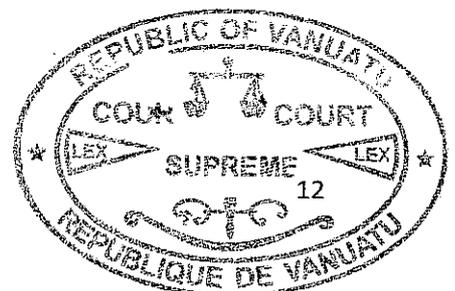
51. The Interested Party also adduced evidence as to the purported cancellation of the 2008 decision [**Attachment "FS1"**, Sworn statement of Fred Salerua].
52. However, there is no power in law for the Department of Lands to 'cancel' a decision of a joint village land tribunal. The State's case, based on an assertion that a letter by the Department of Lands cancelled the 2008 decision, is utterly devoid of merit.
53. In addition, as set out above, the 2005 decision was not made in accordance with the CLT Act.
54. As the State has not put before the Court any other information about the process followed by the National Coordinator, I infer that following the entering into force of the CLM Act in February 2014, the National Coordinator issued a green certificate to the Interested Party because their decision (from 2005) pre-dated that of the Claimant's (from 2008).
55. Given the Court's finding in the present matter that the 2005 decision was not made in accordance with Part 5 of the CLT Act, the 2018 green certificate in respect of the 2005 decision will be quashed.

G. Issue 3: Whether or not the Claimant is entitled to the issuance of a green certificate in respect of its 2008 declaration?

56. The 2008 decision has never been appealed or challenged otherwise.
57. The 2008 decision is a decision of a joint village land tribunal which determined the ownership of custom land which was made before the commencement of the CLM Act (on 20 February 2014) and has not been challenged within 12 months after the commencement of that Act (by 19 February 2015), therefore it is deemed to create a recorded interest in land in respect of the Claimant Family Vanuapuru pursuant to subs. 58(1) of the CLM Act.
58. For the foregoing reasons, the Claimant is entitled to the issuance of a green certificate in respect of its 2008 declaration.

H. Result and Decision

59. Judgment is entered for the Claimant and it is **ordered** as follows:



- a) Declaration that the decision dated 15 July 2005 by the Supe Natavui Tano Island Land Tribunal declaring the custom ownership of Vanuapaura custom land in the Interested Party's favour was made contrary to Part 5 of the *Customary Land Tribunal Act* [CAP. 271];
 - b) The Certificate of Recorded Interest in Land dated 18 October 2018 issued by the National Coordinator of the Custom Land Management Office to the Interested Party in respect of the decision dated 15 July 2005 by the Supe Natavui Tano Island Land Tribunal declaring the custom ownership of Vanuapaura custom land in the Interested Party's favour is quashed;
 - c) Mandatory order that the National Coordinator of the Custom Land Management Office issue a Certificate of Recorded Interest in Land in respect of the Claimant in relation to the decision dated 2 April 2008 by the Vaturani Joint Village Land Tribunal declaring the custom ownership of Vanuapaura custom land.
60. Costs must follow the event. The Defendant is to pay the Claimant's costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.
61. The Interested Party is to bear its own costs.

**DATED at Port Vila this 27th day of February, 2026
BY THE COURT**


Justice Viran Molisa Trief

