

(Land Jurisdiction)

BETWEEN : SETH MULON & SAMSIN MULON
Original claimant

AND : SHADRAK SETH MALTAPE
Counter claimant 1

AND: FAMILY URELELES
Counter claimant 2

AND: RANGONMAL SETHY SAMUEL
Counter claimant 3

**Coram: Justices –Magistrate EDWIN MACREVETH
ROBERT NIPTIK
JACOB NAUS
APSAI KALMAN**

Clerk: WENDY RAPTIGH

JUDGMENT

The area of the land in dispute between the parties is situated at the north east part of Malekula island known as Lowo land. For purposes of specification, its boundaries lie around the areas of Bethel and Pinalum Village and extending to other undisputed land according to the map contained before this Court. The case is originally registered by the original claimant by way of a statement of claim sometimes in 1997. Upon advertisement of the area, it attracted three other parties to register their counter claims.

The issue in contention before this Court for determination relates to the ownership of the said land in question. As mentioned, there are four claimants to this case. Having heard the evidence presented to this Court, it is worthy to present each parties evidence to guarantee better understanding of the case.

ORIGINAL CLAIMANT

The genesis of the original claimants, Seth and Samsin Mulon represented by Eften Mulon, shows that the custom basis upon which they are placing reliance in claiming ownership of the land is traced through his great grand father's history.

He testified that Baer was the first ever person to inhabit Lowo land. Baer migrated from Uri Island during the years of famine in these islands. As food became scarce, Baer decided to sail his canoe to Sale Sandior, a passage in the coastal shores of the main land near Pinalum.

On his arrival he erected a stone in commemoration of his arrival and named the place as Haim Sandior. After living there for sometimes, he decided to move further south where he set up a place which he named as Haim Lowo. There he fathered two sons, Nabunmal was the eldest and he also created a Nasara which he called Amel Telen. Some years after the marriage of the sons, Nabunmal was advised by the father to move to Tchineskur due to bad terms that had developed between the wives.

At Tchineskur he built a Nakamal and also set up a Nasara which he named Lowo Amel Nabales. At this Nasara he had a son which he named as Melteklos who had 2 sons, Sionmal and Nemenmal whose descendants later moved to Pinalum where they created the third Nasara called Amel Pakaro. A family tree was produced to illustrate the story.

In support of his claim, two witnesses were called to give evidence. Witness 1 statement's was brief and only confirmed that Seth and Samsin were the natural sons of Seth Mulon. Other part of his evidence were inadmissible by reason that he had confessed to the court that the statement comprises of other persons statements and that he had not written it either. Whereas witness 2, statement also states that main claimant is originally a native of the Lowo land.

Both witness 1&2 statements were greatly challenged by the other parties on cross examination. A lot of question was put to a specific part of the claimant's evidence where it reads " *History blong seth Mulon we pupu blong mi I kivim long papa blong mi, papa blong mi I kivim long mama blong mi, mo mama blong mi I kivim long mi*". This passage has raised doubts in our mind pertaining his parental status. The central question posed here is whether the claimants are the true natural sons of Seth Mulon.

At the course of examination surrounding the above issue, the following was noted from witness 2. The question asked was " *Seth I no papa blong Mulon, be papa blong hem hemi Sem. Yu agri?* This witness in answering the question admitted the following words " *Mi no save talem stret se Mulon I papa blong seth be mi save talem se Seth I bon mo liv insead long haos blong Sem*". This is a direct and clear admission unveiling of the truth. From our observation the claimant seemed to be hiding his familial status. It is presumptuous that the claimant's claim has no firm foundation.

A subsequent question equipped with counter arguments put to the claimant strongly states that the claimant's mother, Sherry has publicly announced that Seth and Samsin are not the sons of Mulon but Sem. This announcement was made on the 18th of March, 1991 witnessed by many people. The Claimant had difficulties in defending this important issue. Instead, he attempted to obfuscate the evidence by touching on irrelevant matters.

In addition, his evidence presented to the court does not match or collaborate with the evidence collected during the site visit of the Nasaras. Even, his family tree and statement of claim have ever mention Samsin and neither he was present in court as a witness. Furthermore, most of his stories were disputed by other parties.

From the evidence adduced from the primary claimant, we are not satisfied with the evidence by reasons that it is apparent from the confessions highlighted above that they are not the natural sons of Seth Mulon. We are of the view that Seth and Samsin cannot claim ownership of Lowo land through adoption unless there is no surviving issue of Mulon. However, it is not our duty to investigate into this matter. Therefore, based on the above discussions the claimant's claim for ownership must fail.

COUNTER CLAIMANT 1

Seth Shadrak Maltape claims that his great grand parents, Malowo who was a paramount chief of Lowo land. He was the first ever person to live and work the land before other migrants were accepted into the land. His son Melteklos had a family of six sons and a daughter. History shows that the sons all died without having any children, except the daughter Letang Maljungsolip. She was married to Maltape and they had a son, Seth Maltape who fathered Seth Shadrak Maltape, counter claimant 1.

The customary basis upon which he is registering his claim was that he is claiming ownership of the land through blood ties through the mother. In other words, the claim is rooted upon the matrilineal lineage as the mother was the only surviving issue of the blood line.

Two witnesses were called to present evidence in his favour. Witness 1, William Sarisets statement notes generally that claimant 3 is his slave and cannot make a claim. He has also mentioned other irrelevant matters. Witness 2, adduced evidence that the first claimant's mother, Sherry has publicly announced on the 18th of March, 1991 that Seth and Samsin are not the natural sons of Seth Mulon. Witness 3's statement was not of great assistance to this Court as it only gives confirmation of the claimant's statement of claim.

On cross examination, it is noted that this challenging statement from the said witness pertaining his parental status remained unchallenged and as such, it is accepted as undisputed evidence. This witness went on to submit that he has a number of witnesses to give confirmation of this subject matter. Witness 3's statement was not of assistance to this Court as it only gives confirmation of counter claimant 1 statement.

On cross examination, he was interrogated whether he has performed any recognized customary ceremony to receive the right to use or own the land. He was silent on this issue and instead submitted that such a ceremony is immaterial as his ancestors have been living and cultivating the land long before. He went on to argue strongly that they do have the right to claim through Letang pursuant to the customary laws recognized by the highest council of chief, Malmetenvanu in Malekula. Upon visiting the land, the claimant has been able to show and explain their respective Nasaras, however his evidence was also contested by other parties.

The Matrilineal lineage system will be an exception to the general customary rule that a person can only claim land through the patrilineal system in this island. We have accepted this custom practice however, there are rules of custom that must be applied strictly in such a situation. There are customary obligations that require strict performances in order that the right to own the land can be transferred to the mother's descendants. Such a duty cannot be isolated from the rest of the customary duty. This is

a fundamental key point of custom which was not undertaken by counter claimant 1. There is no evidence that this obligation was performed. The evidence is also silent on the questions as to whom, where and when was this right recognized by any customary event.

Given the evidence, it is our conclusion that contestant 1 has not completed the customary requirements that would qualify him for claiming ownership of the land. His claim cannot stand but would have a right of interest to the land.

COUNTER CLAIMANT 2

Family Ureleles, claims that once upon a time there was a man by the name of Nasiterenbel, a native from La catscats had a row with his brother. As a result of these differences, he decided to sail away with a pig in his canoe to Sale Sandior. Upon his arrival at Sandior, Paramount Chief Maltor Lowo was called to meet him at sea shore. At the beach Nesiterenbel offered Paramount chief Maltor Lowo the said pig and upon acceptance he asked Nasiterenbel to erect a stone to mark his arrival. A family tree was produce to reinforce the evidence.

Some years later, Chief Maltor Lowo performed a custom ceremony purposely to mark the adoption of Nasiterenbel as his son beside Burinmal. History says Burinmal did not have any issue and this was the basis of his claim in contesting that he is the only surviving generation of the said chieftom and blood line.

In support of his story, two witnesses were called. Witness 1, Patrick Malnaim's statement reported that the village Court at Pinalum has already declared the said land to family Louis, whom has aligned himself with his claim. Whereas Vidal Soksok, the second witness statement was withdrawn by reason that it contains counter arguments and was advised to use it in their submission at the closure of their case.

It is recorded that the majority of questions from other contestants posed to the two witnesses are of no relevance to the issue of ownership. In addition a portion of their submission was out of topic and was inadmissible.

Weighing the credibility of the evidence we have come to conclude that there are loopholes in his story. Firstly, he has produced evidence that does not conform with trademark custom practice utilized from generation to generations to date. A good example, is that it does sound valid to say that chief Maltor Lowo has allowed Nesiterenbel to lay a stone upon receiving the gift. This does not normally happened because the offering of the swine would normally be regarded as a gift to the chief purposely for his security and acceptance into the chief's sovereignty over his people and the land.

Secondly, defendant 2 has no concrete foundation justifying his claim for ownership. In custom having been adopted cannot be construed that Nesiterenbel become part of the blood line. His adoption is only a sign of acceptance to live under the guardianship and security of the chief's family. In our case, this acceptance would extent to the use of the land but excluding ownership. The blood line is an eternal culture that flows from generation to generations and must be distinguished from adoption. By virtue of the customary rule highly recognized in Malekula a patrilineal blood line cannot be modified

or given away to another blood line or tribe for instance by just accepting someone into the family .

Although the second defendant has largely contributed evidence during the visit ^ Nevertheless, most of his evidence has been challenged by other parties. Furthermore, the questions of when and where did Chief Maltor Lowo handed down these rights was not clear. He strongly argued that the other parties have no valid claim but failed to advance proof for his case.

Therefore, from the foregoing discussions, the claim for ownership by counter claimant 2 cannot prevail without proof of valid custom but may have some right to use the aforesaid land.

COUNTER CLAIMANT 3

Chief Rangonmal Samuel, stated among other evidence that Paramount Chief Nabunmal was the ruler of the people of Tenmelive. No one else was settling in the land so called Lowo. His claim states that Lowo land is part of Tenmelive land and there are no separate boundaries. His evidence provides that Nabunmal fathered two sons, Novte and Terter. At one occasion these two brothers had bad terms between each other and the situation forced the father to advised the eldest son to move with his wife further down the land towards the coast.

Acting upon the father's guidance Novte moved and set up another Nasara known as *Amel Melnables* interpreted as "mi ko mo bae mi tes luk yu biae". Upon setting this Nasara he was ordained and given a chief title known as Chief Novetenmal. He had a son called Burlili who also performed a Namanki ceremony at Amel Melnabales.

Burlili was ordained and inherited his father's chiefly title and was named Chief Burulilinmal. He fathered a son, which he named as Tiambe who also took part in pig killing or Namaki at Amel Melnabales. He was ordained as Chief Tiabenmal.

As the generation grew wider and more people needed land at Tenmelive a man by the name of Bre went to Amel Melnabales sought for some parcel of land from Chief Tiabenmal. This new settlement was named as Aim Lowo but, they were still under the authoritarian rule of chief Tiabenmal.

Tiabenmal fathered a son and named him Tietes. He was ordained a chief title as Tietesnmal and also performed a namanki pig killing. After the massacre of 30 men from Tautu, in fear of revenge from the Tautu people Chief Tietesnmal and some family moved to join Bre and his family at Aim Lowo. There he fathered a son who's chiefly title was Lelenmal. After inheriting the father's authority he placed the third Nasara known as Amel telen. His son chiefly title is Vevenmal. Chief Vevenmal had a son whose chiefly title is Ulinmal.

It was Chief Ulinmal who received migrants from the nearby islands, such as Uri Island. History shows that the first person who was received by the chief was a man called Liginubel. Ulinmal had a son whose chiefly title is Berenmal. He was the last chief to rule the people of Tenmelive and Lowo. It is from the Nasara Amel Telen that their descendants moved to Pinalum till date where they built the last Nasara, Amel Pakaru.

When examined from his claim, he clearly maintained his statement and also reaffirmed that Lowo land is part of Tenmelive. He had no difficulty in answering all questions put to him at the witness box. Jean Deni Malkon, his sole witness affirmed that the claimant's history is not a legend. He further stated that he is part of this family tree and that he has witness several ceremonies performed to the claimant in return for the use of land based on their belief that he is the original owner of the land. These ceremonies occurred inside each of these Nasaras. The customary basis for his claim was through the patrilineal lineage. His knowledge concerning the visiting of the Nasara and other primary evidence on the land were also challenged.

However, despite the opposition, claimant 3 has generally answered questions as to when, where and how he acquired this right of ownership. It is our view that, such generalization did not affect the basis of his claim. We are satisfied and found his claim to be well presented and supported with a valid custom practiced in this island and for this reason, we are in his favour.

Conclusion

Given, the evidence we have generally noted that there are some similarities in these claims. Most specifically with reference to names of Nasaras and family trees. There is evidence of Nasaras when we visited pillars of stones, trees and other primary evidence marking events and history. However, each party has largely opposed each others evidence and history. None of the parties is claiming a right of interest such as a right to use the land.

In spite of the difficulty in balancing the evidence to explore the truth, we have directed our minds to the rules of custom practiced in this island. In doing so, we have formulated some important questions that must be answered by the parties supported with their evidence. Here are the questions. *Is there a right arising in custom for the party to claim ownership of the land? If so, who gave that right? How was the right acquired and by what customary basis?*

It is evident and accepted by the parties that the general rule of custom regarding land is that land ownership is inherited through the patrilineal system which is customarily recognized in the island. The only exception to this custom is the matrilineal system which applies only where there is no surviving male descendant of the patrilineal system but attached with some forms of customary obligations. Adoption cannot be classified as an exception to the above rules of custom.

From the totality of the evidence presented to the Court and in application of the rules of custom, it is this day adjudged that counter claimant 3, Rangonmal Sethy Samuel is the rightful owner of Lowo land as mapped and marked in his claim accordingly.

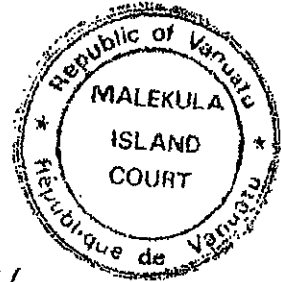
Whereas, claimant 1, 2 and 3 be given the right to use the land provided proper customary arrangements are accommodated in consultation with the owner of the land.

All costs of this proceeding will lie where they fall.

Any appeal must be registered within 60 days from date.

Dated at Lakatoro this 12th of March, 2004.

BY THE COURT



Jacob Naus

Justice Jacob Naus

Kalman Hapsai

Justice Kalman Hapsai

Robert Niptick

Justice Robert Niptick

Macreveth Edwin

Macreveth Edwin
Magistrate