

MALAMPA ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Land Jurisdiction)

✓ DA/09/08
DM

Land Case No. 2 of 1995

BETWEEN: KALORIB ALANSON
Original claimant

AND: DONEL MALINGMEN
Counter claimant 1

NOEL SIMEON
Counter claimant 2

FAMILY MALVOMU
Counter claimant 3

FAMILY NATUNMAL
Counter claimant 4

MAY ABEL
Counter claimant 5

MORTEN KEN
Counter claimant 6

FAMILY EDWIN
Counter claimant 7

FAMILY SAIRES
Counter claimant 8

Coram: Justices

Magistrate EDWIN MACREVETH
ENDY SHEM
PHILIP DALEY
WILFRED RORY

Clerk: WENDY RAPTIGH

JUDGMENT

ISSUE AND DESCRIPTION OF LAND

The contending issue before this Court is to determine the ownership of the land so called *Batennoumol* that lies between Litzlitz village and the land of Metavin covering Port Stanley, in central Malekula. The land was originally registered in this court sometimes in 1995. Following the conferences held last year, the claimant elected that the case be retained at the Island Court and upon advertisement of the disputed land, eight (8) parties registered their claims in accordance with the relevant provisions provided by the Island Courts Act, Cap 167. The boundary of the contested land commences at sea coast to Dedcon running in a parallel line up the mountain side turning southwards to Banganevenu and Nalmotov, and turning eastwards meeting Meltamb and running down the land to Darnalap to the sea shore. For more specification, see map contained herein.

The land in question was once purchased by a settler Ewan Corlette in 1907 with trade goods to the natives of the area. There are plantations of coconuts including other farmed land currently occupied by the original claimant and other disputants. As a result, the land was alienated from the customary right holders during the former Anglo French Condominium of the New Hebrides and held by settlers and Christian missionaries at Port Stanley until independence in 1980. Such alienated land was returned to the local inhabitants of the area including the sharing of a native reserve contained thereon in light of Article 73 and other relevant provisions enshrined under the 1980 Constitution.

Given the brief description of the land we will now dwell upon the parties' evidence. For the sake of clarity and understanding; the parties evidence are presented in the different headings commencing with the original claimant. Before discussing the evidence, it is recommendable that the custom of this island and any other relevant laws or rules be consulted and disclosed so that conclusions are made in their consideration.

HISTORY AND CUSTOM

To arrive at a reasonable conclusion, the custom of this island pertaining ownership of land must be disclosed at its best as it transpired from the claims that there various claims for ownership of land through the matrilineal system and by way of adoption.

In this region of Malekula, land is communally owned based on common descent, residence within a nasara and participation in common activities. A tribe or a bloodline is identified with the land through their nasaras. Within an original or big nasara there are small nasaras or faea which are associated with the original nasara and its paramount chief. Individuals within a tribe are closely tied up with his territory by affinity and consanguinity through blood and marriage.

Land is customarily transferred or inherited patrilineally to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's

land amongst the siblings. This is a male dominated structure which is closely intertwined with the land tenure system. This is an eternal culture painted with norms and values which cannot be altered nor modified but flows infinitely from generations to generation in a society. Traditionally, the matrilineal system would only triumph supposed it is proven before a Court that there is no surviving male of the bloodline or nasara.

However, if the circumstances reveal that there are existing descendants of the patrilineal lineage or chiefly line then, upon being satisfied, the claimer would be under a custom obligation to perform some special custom ceremonies to warrant a transfer of right for use but again as a matter of procedure it desires consultation and consensus among his kinship. Such a situation would require strict performances in order that the right to utilize the land can be transferred to the mother's children. Such a duty cannot be isolated from the rest of the customary procedures.

The second area that needs understanding focuses on the issue of adoption. It is traditional and highly recognized in this region that adoption is secondary or an exception to the general rule as regards to land ownership. In custom, having being adopted such acceptance cannot be construed to being absorbed into or part of the surviving bloodline. It is understandable that adoption is only a sign of acceptance to live under the guardianship of another family. In our case scenarios, this acceptance or recognition would only extent to the right to use the land excluding ownership. It must be reminded that the bloodline is an eternal culture that flows from generation to generations and must be distinguished from adoption. The point is that it is recognized that a patrilineal bloodline from nasara cannot be modified or given away to another tribe. Such bloodline remains the root of one's heritage to the land.

We also have consulted the Policies adopted by the Malvatumaori Council of Chiefs and other regional bodies such as the Malmetevanu Council of Chiefs in relation ownership of land. These commissions share the same principles. Section 2 of the Malvatumaori policies regarding adoption stipulates that adoption of other tribes will be accepted to have a right to claim land ownership provided they have lived in the land for about 4 to 6 generations but again in our view provided there is no surviving heir of the bloodline. While, section 3 states that adoption must only be made within the family or bloodline itself. The same section went on to state that any adoption of other tribes or family would be accepted provided the claimant can prove the custom of the area. This particular section seems to contradict itself. However, given such ambiguity, our priority is to apply the former part of the section as such is in conformity with the practice in this area.

The third issue of awareness is whether the matrilineal lineage could be adopted. If so, under what circumstances. The custom provides that the matrilineal system would only triumph on the ground that it is proven before a court that there is no surviving male issue of a tribe or bloodline. This custom is also reflected under section 4 of the policies aforesaid stipulating that in the case where sections 1-3 quoted above are not fulfilled then the matrilineal system would automatically be applied.

The next area of attention is whether there are customary boundaries recognized to be in existence during the period involving the movement of tribes and the creation of nasaras. The answer is in the positive. It is historical that tribes in the olden days barely moved around due to tribal wars over territorial conquest and the practice of cannibalism. Boundaries are usually indicated by creeks, dense forests, rocks or other physical phenomena. Additionally, it is accepted that a moving clan is generally allowed to perform pig killing ceremonies on others soil or nasaras. But, such occasion cannot entitle such an individual or bloodline to claim ownership over that land or nasara.

A further issue raises the question of whether pigs and stones are historically used for marking adoption event. Yes, pigs are normally exchanged in such occasions but not to the extent amounting to 10 tusked pigs. The normal practice would see 1- 2 pigs with supplementary amount of local food and artifacts. On the other hand, the use of adoption stones would also prove an invalid custom because such a practice does not occur in traditional adoption ceremonies.

ANALYSIS OF EVIDENCE

ORIGINAL CLAIMANT

Kalorib Alanson in his claim provided that the basis for his claim is through the blood line of his great grand parents whom he claimed are the native origins of the nasara Banganvenu being his original nasara. He claims that his fore fathers have been living in this nasara and after some years they constructed two other nasaras, called Amel kumo and Conloc. Consequently, due to tribal wars fought between the tribes of Celcocogas and his tribe; they have been forced to leave these nasaras and departed for a new settlement at Leglef what is known today as Litzlitz village. Following this history foretold by his grand fathers from generations to generation he now claims the land as mapped.

A family tree was produced to illustrate his story. This family tree illustrates that the first paramount chief of the land is chief Malsangavul. This name would appear to mean that this chief has attained the highest chiefly title (10th rank) in the chiefly hierarchy. Malsangavul had three wives namely, Leleksolip, Letangmar and Lemaltete. The claimant is descended from the second wife, Letangmar who begat the claimant's father Alanson. He has produced certain related documents marked as exhibits 'OC1 & OC2' showing that the land was registered under the name of Margaret Theuil on the 2nd of November, 1976. He added that the land was not purchased with a bona fide value and as such, the land is reversible as alienated land to him as the custom owner in light of the relevant articles of the Constitution.

On cross examination, he submitted that the nasara of Vetu is outside the boundary claimed and added that he has an identity in support of his claim. He told this court that such nasasa tree has a special use because its fallen leaves would turn into living snake. Upon interrogation he could not name the different titles or names given to chief Malsangavul and where and when he has performed those pig killing ceremonies.

Secondly, he was not able to name other chiefs of the other 18 or so nasaras within his claimed boundary such as tracing his movement leading to the creation of the other nasara contained therein. He could not even state when and how he has acquired the right over these other nasaras. Further, during the visit he has shown this court a nasara which he named as Banganevenu which was largely disputed. He was proven wrong by all other parties who pointed out that such nasara is Maelemb and not Banganevenu. Maelemb is interpreted as "ples blong namele" which corresponded very much to the site itself containing a lot of namele palms. The nasara of Banganevenu according to other claimants is some kilometers away from the boundary. We are of their view having studied the sites.

Three witnesses appeared on his behalf. Witness 1, William Muramur's statement counter argued the status of counter claimant 2, Noel Simeon. He testified that Noel's father Willie Keke is a native of the Island of Ambae, and has no nasara neither any right in custom to claim the land in question. On cross examination he maintained his statement and admitted that he heard the story from his mother in law, Etty from Ambae who used to be a plantation labourer at Ewan Christian Corlette plantation. William has elected not answer any question touching the boundary of the land reasoning that he has no knowledge about the nasaras and his history.

Jameson Abel's statement was ruled irrelevant and inadmissible as it addressed issues of damages falling out of our subject matter. While witness 3, Fred Sedrak statements was not of great assistance to the Court as it contained multiples of issues, some of which are not within the sphere of our determination. As a result, few questions were asked by the counter claimants and the Court. Except that upon interrogation he provided that the grand parents of family Noel had come from Unua.

In the analysis of his evidence, it is obvious that the claimant has advanced a claim without sufficient proof. Although he has a valid claim in accordance with the patrilineal system, nevertheless he has entirely failed to substantiate sufficient evidence to validate his claim. It is noted that he has very little knowledge about the area concerned and seemed uncertain about the locality of the nasaras. For instance, during the visit he identified a nasara as Banganevenu and he was proven wrong.

Moreover, he cannot claim the whole boundary because there are traditional boundaries that existed between the different tribes who have been living on this territory beside his ancestors. By comparison of his family tree with the period involved in the creation of all the nasaras claimed, his family tree appeared young. The period of time involved in the creation of the nasaras would exceedingly out rule his family tree.

Despite his general weaknesses, we are satisfied that he is a native of Banganevenu which is outside the boundary claimed and its subordinate nasaras such as Arnel Kumo and Arnel Conloc. Therefore, in the application of section 25 of the Island Court Act, Cap 167 only the uncontested part of the boundary claimed would rest in his hands.

COUNTER CLAIMANT 1

Donel Malingmen's basis of his claim was by way of adoption of his father Daniel by chief Belenmal of the nasara of Venave. He claims that this adoption is a valid adoption performed in accordance with the customary law recognized in the highest bodies like the Malmetenvanu council of chiefs in Malekula and Malvatumaori on the national level. He said two tusked pigs were handed over Daniel's parents to mark the event. It is told that Daniel was adopted beside Lucy Staky the only surviving issue of chief Belenmal. To enforce his argument, he further tendered a document marked as exhibit 'CC1 A' which is an extract of the policies governing to the issue of adoption adopted by the Malvatumaori Council of Chiefs in Vanuatu. He further submitted that his great grand parent has sold the said land to Mr Corlette in 1907 by tendering a document marked as exhibit 'CC1 B' indicating that one of his ancestors was a witness in the sale of the land to Mr Corlette.

A family tree was produced to the Court tracing his generations classifying him as the 9th generation. Following this genesis, Donel is claiming the name Melevkos as his founding creator and three nasaras by the name of Venave, Emilemb and Maelemb embodied in the claim. He illustrated that Melevkos consisted of three rocks that produced the first humans to live the land in which two of them are in the nature of humans a woman and a man. These two stones begat a bitch who then gave birth to the first twin humans, a male, Mulon and a female, Leyal. It was the descendants of this family who built the first nasara, Venave whose paramount chief is Maltengnabat. After some years they migrated and built the second nasara Emilemb a smol faea whose chief is Malemb who erected the nasara of Vetu. Malemb fathered chief Malingmen whose wife is Malnawis. Malingmen's son is chief Belenmal.

He explained that the movement of his ancestors from Venave to Vetu was caused by a custom spell upon his tribe whereby flocks of rats which devoured all their subsistence crops. This curse was caused by the tribe of Merkatembal which consequently brought them to starve and forced them to migrate further down to Vetu. In his statement of claim he has also counter argued, the status of counter claimant 2, family Noel that they have migrated from Unua to Uripiv at the nasara of Virvir where his father was buried. Beside this, he claimed that the adoption of contestants 5 and 8 are false and have no value in custom.

On cross examination, other parties such as contestant 6, 7 and 8 acknowledged that Donel's ancestors were originated from the nasara of Venave. He has maintained his statement and answered questions relating to his proper statement.

He called two witnesses to testify in his favour. Kensy Ata's statement is re affirming Donel's right of claiming the land through the said adoption. Alan Philip in his statement provided hearsay evidence that he had heard Daniel telling him that he owns the nasaras of Vetu and Maelemb. He has also overheard Mr Corlette in 1952-1953 during heated disputes saying that the land from La Catzcatz river to Port Stanley belonged to Donel. Few questions were asked to these witnesses who are not important to this Court.

While Lucy Staky who appears to be aged over 100 years explained that she is the only surviving issue of chief Belenmal of Venave. She is married at Larvate a village on the north west of Malekula. She testified that she has witnessed the event marking the adoption of Daniel by his father with two tusked pigs and an adoption stone which has been destroyed. This ceremony happened before the arrival of the Christian missionaries in the island witnessed by Johnny and Belenmal's brother Malnaul and Malsaikon including the public. She re instated that such adoption came within his tribe or nasara because she has no brother to inherit the land of Venave.

At the course of examination, she refuted other adoptions alleged to have been made by his father with regards to the adoption of family Saires and Moriel. She stated that she has no knowledge of these events to date and stressed that such stories are fabricated. We noted that she was able to answer questions posed to her and she has largely contributed customary substance towards some areas needed for clarity in the case of other contestants. She is in our view, is a competent witness. The last witness Walter Kilman's statement comprises of a confirmation of the Donel's claim. During the visit this party has identified one of his claimed nasaras Amel Berev undisputed by other parties.

In application of the custom regarding adoption and in light of his evidence, we are in his favour that he has a right to claim the land because he was adopted within the bloodline of Belenmal of the nasara of Venave.

COUNTER CLAIMANT 2

Family Noel Simeon was represented by Tompsen Noel briefly stated in his claim that he is originated from the nasaras of Amel Vetu whose paramount chief, is Malsansan. Amel Vetu he claims to be his original nasara. His history provides that after some years the same chief moved and created the second nasara called Maelemb and while residing at Maelemb he created the nasara of Amel Kumo. In whole, he is claiming the area of land so called Nokovos from La Catzcatz river mouth to a dried creek running down the main road according to his mapped filed herein.

From the above nasara chief Malsansan moved to Unua at the nasara of Emersumb. From Unua his descendants then migrated to Uripiv Island and created another nasara called Virvir due to conquering famine in the area. A family tree was also produced to picture his history.

During examination, he clarified that he has a secret stone called Melevkos. Melevkos is a god to them. His second identity consist of a nasasa tree whose fallen leaves turn into snake. During the trip, he showed us the nasara of Vetu and this stone Melevkos which has a carved face with two heads.

He called, Morsen Noel as his only witness. However, it was agreed by all parties and the court that there is no need to examine this witness by reason that he has produced a copy of Tompsen's statement.

In consideration of his evidence, we have discovered issues pertaining his claim that has raised our mind to be cautious not to make mere conclusions based on his short statement of claim. Such entails greater enquiry and weighing of his evidence. For instance, looking at the time frame which according to his story, chief Malsansan has performed pig killing ceremonies at three nasaras while chief Werr only performed one at Virvir. By comparison with his family tree it is apparent that his chieftom ship appears to have occurred very late. It is likely that it must have taken centuries to build these three (3) nasaras having studied the size of their remains.

On the contrary, he has also confused this court that Amel kumo is not a nasara but a place where stones are erected marking natora trees. He has further presented an odd statement saying that there are implanted stones in the nasara of Amel kumo without a pig killing ceremonies. This statement does not conform with the custom renown in this region. We are certain that by virtue of the custom that stones cannot be erected without a pig killing ceremony.

Thirdly, his status or origin was greatly challenged by other parties asserting that family Noel Simeon are not descents of the area in contest. For example, there strong argument from May Abel, Kalorib Alanson, and Donel asserting that their ancestors have come from Ambae and Unua. The party has objected to these issues that such stories have no proof and are faked. An argument from counter claimant 7 stated that Family Noel would work under the authority of Donel as they are both claiming the nasaras of Vetu and Maelemb. However, in consideration of the claimed areas it appears that both are claiming separate boundaries and given this finding, we are reluctant to propose such recommendation.

However, despite his weaknesses we are satisfied that he has contributed a lot during the visit of the claimed nasaras. He was able to link each nasaras to their original nasara Vetu. He has showed us his identities a nasasa tree, human skeletons at the site and a stone, Melevkos a god was carved with two faces. In doing so, we are satisfied with the grandeur and its site that Vetu is their original nasara.

Given the ruling in the original claimant's case, it also appeared before us that family Noel's claimed boundary is freed from any dispute. For that reason and in consideration of his evidence, we have no alternative but to grant him the area claimed accordingly.

COUNTER CLAIMANT 3

Family Malvomou, is represented by Joe Ismael. The basis for his claim was by way of adoption into the patrilineal system. He claims that chief Maleun's grand son Burum has adopted Malvomou. Burum's second name is Malror who is one of the vendors of the land to Mr Corlette. His great grand father chief Rurus Maleun was the founder of the original nasara of Norokut whose small nasara or faea is Solokas. The area claimed lies amid the river of La Catzcatz to a narara tree that once used to be a cattle gate.

His genesis recites that chief Rurus left Norokut due to tribal war in the area for the island of Uripiv and settled at the nasara of Lowi. While living at Uripiv Island, he begat two sons by the name of Tessi and Veji. Tessy was killed by a shark. Veji's son is Burum who also lived in lowi until his death. After Malvommu's death Malvijrie re married Kari, Malvommu's spouse. He stated that Burum gave Malvommu three names, Meltek Uti, Burum & Maniuri during the adoption ceremony. He added that during Burum's death, his relatives contributed 2 pigs as a sign of appreciation for the adoption. A family tree was drawn to illustrate his family history.

At the course of interrogation, he stated that for purposes of proof he has identities of nangaria (ti leaf) and dwarfs. He further provided that 10 pigs were exchanged during the adoption ceremony. It is confirmed that Maleum is highest rank in a chiefly system and upon questioning by the court he could not name the different chiefly titles or names given to him during the different stages of his ordinations.

Chief Jonhson Malvejrie, 75 years old acting as a witness presented a similar statement reconfirming the claimant's claim. Few questions were asked at which derived similar responses. The second witness, John Sande Meltekral's account spoke on the same matter. On cross examination, it is noted that both witnesses had no knowledge concerning Malvommu's claim.

At the course of the field trip, he showed the court the nasara of Norokut but was disputed by other parties. He has also identified a place on the side of the main road as Solokas. He explained that such nasara has been bulldozed. Again his story was largely disputed by all the parties contesting that they have never heard of such a nasara by the name of Solokas. We are in favour of the disputants based on the ground that there is no proof of items such as stones implanted on the floor and other identical trees such as old namele palms in the vicinity.

The same question is posed as to whether a different tribe could be adopted into another tribe as claimed. The answer is in the negative by virtue of the custom practiced in the area. This is also reflected by section 3 of the Malvatumaori policies on adoption. It is our believe that in terms of land inheritance, only the blood line to the chief line or nasara is adopted when there is no surviving issue of the chiefdom or nasara.

Having verified the totality of his evidence, we are not convinced that there are no surviving descendant of the nasara of Venave. Secondly, whether it is the custom that such a number of pigs as pleaded, be handed over during adoption ceremonies. The answer to this question is in the negative based on the fact referred to above.

Moreover, the basis upon which he is relying to launch his claim was largely disputed. In particular the status of his grand father Willie Watchin. We wish to refer to the story communicated by Aisen Jimmy that Willie Watchin his grand father is the son of Malvijrie of Potun. He had stated that Malvijrie prior to Malvommu's death was having love affairs with Malvommu's wife while Malvommu was infected by a venereal disease. Willie Watchin was born to Malvijrie and thus, be regarded as his son born out of the

wedlock. For that undisputed evidence, the claimant cannot claim the rights conferred to Malvomu because his forefather Willie Watson was born out of the marriage of Malvommu and Kari. This evidence was also argued and re iterated by family Edwin.

In light of the weight of his evidence and the forwarded discussions, we are not persuaded that he has adduced adequate evidence to justify his claim and he has no right to claim ownership of land in reflection of the custom.

COUNTER CLAIMANT 4

Family Natunmal was represented by Japeth Ores. The basis for his claim is through the matrilineal system. He claimed that he is the only surviving issue of chief Nembet whose original nasara is Celcocogas. He provided evidence that his ancestors have moved from this original nasara to built a second nasara called Norogvit (Norokut). After some years they further moved seawards and created the third nasara Lombolit. Nembet was the first person to leave Lombolit for the Island of Uripiv. He explained the reason for his tribe to move to the formation of the second nasara was due to tribal wars and the hardship placed upon them to walk longer distance for collecting sea water and seafood.

His story illustrates that after the death of the paramount chief of Banganevenu, Nembet then decided to go to Uripiv Island and settled there till date. The boundary claimed according to his map covers the area between La Catzcatz stream ending at Mereru down the sea. A family tree was produced tracing his ancestors. He is claiming through this woman, Lemalinganiu because there are no surviving bloodline of this chief Nembet who originated from the nasara of Celcocogas.

During cross examination, he tendered an old gun pipe alleging to be the original musket used for the purchase of the land by Ewan Corlette in 1907. He explained that one of the reasons to launch his claim was because his descendant chief Malingmen has sold the land in particular plot 9 to the said planter. He argued that the description of address in the instrument were not accurate and submitted that Malingamin is from Botnambi, at Uripiv Island while Johnny is from Tovorurum. However, his assertion was greatly disputed by all other claimants stating that he is not correct. Further to the above, he went on to explain that Celcocogas has an identity of a wield yam.

Witness 1, Jephtha Ores statement focused primarily on the sale of the land. He was basically giving confirmation of the instrument of sale whereby a copy of the deed was tendered and marked as exhibit 'N1'. His second witness, Boyd Buemenmen shared the like version of the former witness. Apart from such, he clarified that Johnny is his great grand father a native of the nasara of Tovorurum but not Botnambi. A part of his statement provided that family Edwin had no right to claim the land. He asserted that family Edwin was only introduced to the land by his grand father Johnny on gardening purposes. He stressed that such claimants could only claim their properties but not ownership of the subject land. Counter claimant 7 did not discredit such statement as questions put to the witness addressed other matters.

During the visit we have visited two of his nasaras namely Norogvit (Norokut), Lombolit and a boulder at Mereru alleging it to be the customary boundary that divides the boundary of his claim with that of Venave and Tovorom. It is noted that the nasara of Norokut was disputed by counter claimant 7 that such nasara is a place marking the grave of a snake. However, upon verification of the site and its environment contained thereon we are in the view that such site is indeed a very old nasara. We observed that it has 3 huge stones embedded into the ground with 10 other stones from their sides.

The later nasara was disputed as well by other parties that such amel belonged to Corlette. They argued that they have heard it from various sources suggesting that Corlette has performed a pig killing ceremony in this nasara to mark the purchase of the land. We have rejected the defendant's side story. It is our view that such allegation had never occurred. If so, then that event would have been recorded in the instrument of sale or in other historical texts. These contestants have not been able to advance any evidence to that effect. They have not given this court the custom name given to Corlette. In the alternative even, if such occasion had occurred it will not undermine the heritage of this nasara by reason that such pig killing is only a sign of appreciation and support.

Furthermore, in consideration of his family tree and the movement of his chief Nembet were found no distortion in his evidence. It transpired to fall in line with the time period leading back to the sale of the land in 1907 and to his ancestral chief Nembet. The name Malinganiu is confirmed as the same person Malingamin whom is named at his family tree classified at the third generation.

Beside these reasoning, we do not accept his version concerning the stone at Mereru as there is overwhelming evidence that such stone was left abandoned by the natives of Venave due to breakage of the cord while towing the rock up to Venave. Secondly we have declined to approve his assertion surrounding the instrument of the sale of land. Such instrument is sealed and we are bound to officially accept as it appears. However, it is arguable that such names or addresses may not be accurate in contemplation of the period of sale. There is room for mistakes to be made, because during the period of colonial era most of the natives in the area are illiterate and were not legally represented in the construction of the said deed.

However, his weaknesses have not considerably undermined the basis for his claim. We are satisfied with the totality of his evidence presented before this court. The principal question posed here is whether Natunmal has a basis of right of ownership through the matrilineal lineage. The answer is positive by reason of the custom practiced in this area recognizing that any person claiming through a woman would inevitably prevail particularly when evidence warrants that there no other surviving issue of a nasara's bloodline. Section 4 of the Malvatumaoi policies is of the same explanation.

COUNTER CLAIMANT 5

Theon Abel acted on behalf of May Abel. He produced a short statement of claim. He is claiming through the adoption of Saires by chief Belenmal of Venave. Such claim extents

to cover other small nasaras or faea of the original nasara of Venave. He is claiming through his mother May Saires, the daughter of Saires. Saires is a native of the nasara of Merkatambal adopted into the nasara of Venave. He is claiming the area of land from La Catzcatz river to Batnamal creek see, map filed herein. It is noted that he has genuinely confessed to this Court that he does not have any knowledge about the formation of the nasaras and other generations of chief Belenmal. A family tree was drawn to illustrate his relationship.

Upon examination, he explained that 10 tusked pigs were handed over to Saires parents during such adoption ceremony. He went on to accuse Lucy Staky of fabricating a tale to discredit his claim. He stressed that Lucy used to have a close relationship with his family and that he had never heard of Daniel's adoption except in 2002 and 2004. In addition, he emphasized that he has refused to witness for Moriel because Moriel's adoption was not made in accordance with the proper custom ceremony usually marked with a custom rite. He also appeared to have a fair knowledge about the nasaras visited during the site trip.

Seimo Jeffrey statement only re affirmed the claimant's claim. Upon questioning, he seemed to have very little knowledge about the land claimed. Furthermore, other parties have pointed out that according to custom a tribe or blood line cannot be adopted into another tribe on the basis that he will inherit the land save, whenever there is no surviving descendant of the clan. This point is in line with section 3 of the referred policies.

In the analysis of his evidence, it is highly recognized in this region that adoption is secondary or an exception to the general rule as regards to land ownership. This acceptance or recognition would only extent to the right to use the land excluding ownership unless there is evidence that there are not surviving bloodline of the tribe of Belenmal. Again the same question is asked here as to whether it is practicable that pigs would be exchanged during an adoption ceremony. The answer to it is in the positive but not to the extent of 10 tusked pigs.

In conclusion, we are not persuaded with his evidence placed before us because that there living descendants of Belenmal of Venave who are parties to our case. In application of the custom to the finding facts, his claim for ownership cannot be honoured.

COUNTER CLAIMANT 6

Morten Ken is claiming through the matrilineal system by the fact that his mother Lemasing is the daughter of chief Malnaul a descendant of the nasara of Kenar. The area of land claimed covers Amel Tokorok, Amel Berek and Amel Tamat creek. He stated that these nasaras are small nakamals or faea of the original nasara of Venave.

Beside his claim he gave supporting evidence approving that Daniel was adopted by Belenmal of Venave. He has refuted other adoptions relating to Saires and Moriel that such stories are false. The majority of questions posed to him at the course of examination related to other parties claim. Except when questioned by the Court, he proceeded in admitting that there are surviving blood lines of chief Malnaul, one Jack

Bares who has living children according to his family tree. He named one John Richard and Ata Colton. It is noted that Lucy Staky has also mentioned this information during examination that Malnaul's daughter is Lemasing.

His witness, Walter Kilman re affirmed in his statement that the Morten's claim is correct. The majority of the parties elected not to question him on the ground that he has appeared with the same statement in previous claims. Johna Muramur gave affirmation that it is proper that Morten is a bloodline of Malnaul. Both witnesses have opted not to answer questions touching this claimant's statement of claim.

We have accepted his right to claim through the matrilineal system as an exception to the general rule. However, there are customary obligations that requires strict performances in order that the right to own the land can be transferred to the mother's children. Such a duty would require the claimant to pay his right to use the land by way of a custom ceremony. This is a fundamental element of custom which was not envisaged by this party. There is no evidence that this obligation was performed and his evidence is also silent on the questions as to whom, where and when was this right recognized or discussed.

Given his evidence coupled with the site visits, it is ruled that his claim is barred by the fact that there are surviving issues of the clan living today. It is traditional that the matrilineal structure would only be adopted and applied where there is no living descendant of the bloodline. With those points, we are concluding that Morten ken has no customary standing to claim ownership over such land except the right of use. We are of the view that Jack Bares and his immediate kindred are in a better position to make such claim for ownership. It is to be noted that the nasaras of Venave and Kenar are located outside the boundary claimed and they are not part of our judgment.

COUNTER CLAIMANT 7

Family Edwin is claiming through the patrilineal system by tracing his generation to Malturvet as the founder of the nasara of Tovorurum. He claims that he has originated from this stone Melevkos which produced the first two humans, a female and a male. They were nurtured by a lisepsep (alien). At their adulthood the male was named as Malturvet while the woman was named as Leturvet. Malturvet is interpreted as 'stampa blong ples' man of the origin. These two persons created the first nasara, Tovorurum and later married each other. Following this unaccepted marriage, they were sent away in exile by the lisepsep. In doing so, the second nasara of Venave was created. A subsequent statement was produced to the Court to illustrate the process and history leading to the formation of Venave. He pointed out that the nasara of Selecocogas was set up by the tribes settling in Tovorurum after moving to Venave.

He told the court a tale about 2 couples who caught two piglets after retiring from a plan to attend a dance festivity at Penditak. Unfortunately, the plan failed because the wife tripped and twisted her foot on a tree root as it was night time. This accident eventually caused them to settle there and named the place as Selcocogas. After some years, these

two pigs had multiplied so, a custom ceremony was held whereby the two husbands exchanged pigs between each other for their namangi pig killing ritual and each gave each other a chiefly name or title. One was named Sesakmal while the later was named Duwenmal. Based on this history, he believes he has the right to claim these nasaras. A family tree was produced to underline his parentage. His claim covers area from the Commercial Centre to La Catzcatz river .It is noted that there are around 20 nasaras contained therein. Conversely, most of the land claimed rests outside the boundary placed before this court for its determination. Those areas will not form part of our judgment.

Beside his claim over Venave he has conceded in his statement that Lucy Staky is the only surviving blood of Venave. He re iterated that following the adoption of Saires by chief Belenmal, Saires and Moriel now have the right to claim such nasara. Additionally, he further discussed that there is no surviving issue of the nasara of Celcocogas. He argued that such ancestry does not extent to include family Natunmal, contestant 4.

On cross examination, he could not describe when and where his ancestral chiefs have performed their pig killing ceremonies including their various promotions. For example, it was revealed and confirmed in court the chief Saikon classified as the sixth generation has recently died and upon interrogation he has no word about his promotions.

He called one witness to give evidence in his support. Aisen Jimmy's testimony was not of any assistance to the party's case. Such statement was a counter argument targeting or criticizing counter claimant 3, Malvomu that the story a propos to his adoption is a fake story. Moreover, he stated that Willie Watchin his grand father is the son of Malvijrie and not Malvonu. He illustrated his point by telling the Court that Malvijrie prior to Malvonu's death was having love affairs with Malvomu's wife while Malvomu was infected by a venereal disease. This claimant has identified various nasaras which he claims including various fruit trees and objects used or cultivated by his ancestors during the field trip.

Having said the above, the immediate issue that necessitates consideration of the custom law is whether there are traditional boundaries that existed during the past. As emphasized, custom boundaries do exist between tribes .Clans scarcely travel or settle beyond other's land and their vicinities due to tribal wars fought over territories and the practice of cannibalism except on the basis of marriage ties. Even today the claimants and their relatives work the land in observation of those recognized territory.

In application of the practice observed in the precedent, there is probability that such movement may have taken place around such period as evidenced by the locality of his identities. Yet in essence, family Edwin cannot claim those nasaras on the fact that there is overwhelming evidence communicated to the Court that Celcocogas and Venave are considered as original nasaras beside Tovorum belonging to Family Edwin.

Secondly, the claimant cannot merely claim those nasaras based on his voyage to these areas. We satisfied that there are people living on these lands prior to the movement of

his tribesmen. Our finding suggests that Venave, Tovorun and Celcocogas are original nasaras demarcated with traditional boundaries separating each others.

Thirdly, Family Edwin seemed to have confusion as to which nasara he should claim. For instance, he as agreed that there are bloodline of Venave in existence .On the contrary, despite of his acknowledgement of the truth, he is also claiming the nasara of Venane. It is apparent that he has an unjustifiable or oppressive claim.

Finally but not the least, he has fallen short to furnish this Court with a detailed information as to which nasaras his ancestral chiefs had been ordained with their chiefly titles. Moreover, his family tree could not correspond or match with the period of time involved in the movement and the construction of the nasaras claimed. In light of the foregoing discussions and in application of the findings facts and the custom, it is our conclusion that his claim cannot prevail.

COUNTER CLAIMANT 8

Family Saires was represented by Philip Saires. The basis for his claim is by way of adoption by chief Belenmal of Venave. He is claiming the area of land beginning from La Catzcatz river to Batnamol. He has indicated in court that he claiming the same area of land as claimed by claimant 7. As such we have opted not to re iterate the same history but to focus on other parts of his evidence. His statement declared that Saires is originated from the nasara of Merkatembal. Chief Belenmal adopted his grand father Saires, who then adopted Moriel a son born to Edwin from the nasara of Tovorun. Seven pounds was given to family Edwin at the event of the adoption ceremony. Such monetary value was made due to the fact that early missionaries had prohibited the locals not to perform custom rituals.

At the stage of examination, his status was very much disputed by constants 1- 4 including the primary opponent. He was also questioned as to why he has chosen to claim on his own foot rather jointly with May Abel who is also claiming through Saires. In defence he replied by arguing that he has a right in law to make a claim. Amsen Tomlie is the only witness to his case. His statement was in the nature of a counter argument giving clarification on Morten's family line and their next of kin. Only two parties have asked him a few questions touching his proper statement.

In consideration of his position to claim, the same principles of custom discussed will be applied. That is to say that adoption is an exception to the general rule as regards to land ownership unless there is evidence that there are not surviving bloodline of the tribe of Belenmal. The evidence placed before us provides that there are living descendants of Belenmal of Venave. Based on this fact and in consideration of the custom rules, his claim must fall.

CONCLUSION

Given the evidence placed before this court our duty is to explore the truth behind these histories and apply of the customary rules and procedures recognized in this area. In this case, we have noted some similarities in their claims. Everyone has produced each a history linking them to the visited nasaras. It is noted that some parties have opposed others evidence whereas others have testified on behalf of other claimants. Some claimants have produced and explained the customary basis on how the right was acquired, when and how. While other contestants have not elicited sufficient and relevant evidence to the level of proof required by the court.

It is the accepted practice recognized in this island that ownership of land is inherited through the patrilineal system. The only exception to this doctrine is that the matrilineal system and adoption which would be adopted and applied only where there is no surviving descendant of the patriarch. We have been cautious to strictly apply such custom to the relevant evidence produced before this court and in doing so, it is hereby ruled:

1. That Kalorib Alanson be the owner of the land boundary commencing from the dried creek to Darmalap marked with a mango tree running in a straight line down the sea coast to La Catzcatz river mouth up to the main road.
2. That Donel Malingmen is declared custom owner of the land as marked and mapped from the mango tree at Mereru main road to Dedcon down the sea coast. That includes the nasara of Amel Berev.
3. That family Noel Simeon is declared land owner of the area claimed as mapped.
4. That Family Natunmal as the right of ownership over the land mapped and marked in his claim from La Catzcatz river running in a parallel line to the sea shore to the mango tree at the main road at Mereru.
5. That other unsuccessful counter claimants have the right to work the land provided that proper arrangements are accommodated in consultation with the declared custom owners since, they have been working the land for generations and made vital developments thereon.
6. That the claimed lands located outside the disputed boundary are to be filed and registered at the Land Tribunal for its determination.

Attached is a map marked as annexure 'A' sketched by the Court to assist in specifying the claimed land and their declared custom owners.

The parties are to pay their own costs. Any appeal must be undertaken within a period of 60 days at the receipt of this decision.

Dated at Lakatoro this 30th of June, 2004

BY ORDER OF THE COURT



Endy.S.
.....
Justice ENDY SEM

Philip Tale
.....
Justice PHILIP TALE

Wilfred Rory
.....
Justice WILFRED RORY

Edwin Macreveth
.....
Magistrate EDWIN MACREVETH

Naaara Maelemb

Annexure A

Namal Toy

PAIENOMOL

Darmalap

DRY CREEK

Amel kams

La Catz G.P.S. river

MAIN ROAD

Amigo tree

Amel berry

Dealcan

S E A SHORE

KEY :

land declared to Kelenb

land declared to Donel Aulijunon

land declared to Noel Smean

land declared to Family Nuhuan

