

IN THE MALEKULA ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Land Jurisdiction)

Land Case No.1 of 1985

BETWEEN: HAIDING MANASSAH

Original claimant

AND : HARRY KOKO

Counter claimant 1

GEORGE TELESSY

Counter claimant 2

HARANG LUAN

Counter claimant 3

FAMILY HEROMALOSE & ABONG

Counter claimant 4

DALEY PHILIP & LITOUNG LUCIEN

Counter claimant 5

MANLEU MALWAS

Counter claimant 6

Coram: Magistrate Edwin Macreveth
Assessors: Justice Graham Obediah
Justice Frederick William
Justice Maxwell Arhambat

Clerk: Wendy Raptigh

JUDGMENT

The land disputed by the parties is situated on the south eastern part of the island of Malekula. It lies between Lamap and Blacksand registered as *Asuk land*. Its land boundaries commence at Black sand's coastal area moving southwards to Naliob river. It follows Naliob river westwards inland to Pime. It extends farther southeastwards and stops at a spot then runs in a parallel line northwards to Malao. It links Malao to Barias Saraivire, Rugunrur, pass Nafmefus river, Limot creek and to Talam. From Talam it runs eastwards to Barmanbuas down to Blacksand at Varsaror-Barang. For specification purposes refer to the advertised map filed therein by the original claimant.

There are 6 parties vying for the ownership of the advertised land by the original claimant. The issue for determination is of ownership.

HISTORY AND CUSTOM

Before embarking on the subject matter; and for ease of better understanding the reasoning of this judgment, a brief discussion of history and custom practices are outlined below.

There are two main tribes of this island of Malekula namely, the *Big Nambas* and *Smol Nambas*. The claimants to this case belong to the smol nambas tribe. They are therefore expected to practice the smol nambas custom usages and processes. In this region, 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 its nasaras. Within an original or big nasara there are small nasaras or *Smol faea* which are associated in some respect with the original nasara and its paramount chief. The same word smol faea is interchangeably used for referring to a subordinate or lower chief. The same token is applied with the word *Big faea* meaning higher chief. Individuals within a tribe are closely tied up with his territory by affinity and consanguinity through blood and marriage.

The paramount chief has his own nasara and a land boundary. There would be other stones used by other supporting or promoting chiefs within its surroundings. He would also have subordinate chiefs or smol faea whom have their own nasaras and an allotted piece of land. A chief earns his chiefly name or title by way of performing a pig killing ceremony. There are namangi ranks for a chief to climb to the highest title. Pig killing ceremonies or namangis are normally carried out at a nasara whereby stones are erected in celebrity of the event. During a namangi ritual other chiefs from other nasaras will also

appeared with their pigs in support and witness of the performing chief. The slaughtering of their pigs will also be marked with stones in the surrounding of the nasara. Nasaras do not differ in terms of rank but displayed for similar purposes. A first created nasara of a chief becomes his original nasara.

The principal chief cannot overrule or take possession of his subordinate chief's land. Neither can he claim a smol faea's land or nasara unless there are no surviving issue of such chiefly line. Any other tribe that comes into the area and resides would remain under the guardianship and control of the smol faea and be part of it. All smol faeas are accountable to the big faea in respect of every social affairs.

By custom, a smol faea remains a smol faea and cannot become a big faea. The big chief has his own bloodline which is passed from generations to another. Equally a nasara belonging to the high chief remains under his bloodline's ownership. Similarly, a lower chief has his own nasara. A big chief cannot share his tabu faea rite with a smol faea. This secret ritual is strictly considered as a *Tabu*. Land cannot be transferred from one tribe or bloodline to another.

Land is customarily transferred or inherited patrilineally from the paramount chief to the eldest son and so on. The same system is applied with regards to land conveyance or inheritance for a lower chief. This is a male dominated structure which is closely intertwined with the land tenure system. This cultural doctrine cannot be altered nor modified but flows infinitely from generations to generation.

The matrilineal lineage could only be adopted on the ground that it is proven before a court that there is no surviving male issue of a tribe or nasara. However, if the circumstance reveals that there are existing descendants of the patrilineal lineage then, upon being satisfied, the applicant would be placed under a customary obligation to perform a specific custom ceremony 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 performance in order that the right to utilize the land can be transferred to the matrilineal bloodline. A granted right would only bestow a right to use land.

With regards to adoption, it is traditional and highly recognized that adoption is secondary or an exception to the general rule regarding land ownership. In custom, having being adopted such acceptance cannot be construed to have being integrated into or be part of a tribe or bloodline. Adoption is only a sign of acceptance to live under the guardianship of another family. An acceptance would only extent to the right to use the land excluding ownership. The principal rule is that a patrilineal bloodline from nasara cannot be modified or

transferred to another tribe. Such bloodline remains the root of one's heritage to the land. Adoption will only be accepted provided it is made within the family bloodline.

There are Policies adopted by the Malvatumauri Council of Chiefs and other regional bodies such as the Malmatenuvu Council of Chiefs in relation to ownership of land. These committees share the same principles as explained. Adoption must only be made within the family or bloodline itself.

History also provides that there are customary boundaries recognized to be in existence during the period involving the movement of tribes and the creation of *nasaras*. Boundaries are usually indicated by creeks, rivers, dense forests, rocks or other physical phenomena. Additionally, it is generally accepted that a moving clan is sometimes allowed to perform pig killing ceremonies on others' soil or *nasaras*. But, such occasion cannot entitle that individual to claim ownership over that land or *nasara* of performance.

With this brief summary of the custom practices and usages, we now present each party's claim commencing with the primary disputant.

ORIGINAL CLAIMANT

Hiding Manassah is claiming a total of 3 *nasaras* and their land boundaries as described above. In his presentation to the Court he submitted evidence that his ancestors have drifted ashore from a boat or raft to the point of *Asuk*. There are 15 of them with their wives. Their origin is not known. Upon their arrival to this new uninhabited area they began searching for shelter. They discovered a cave and settled there for sometimes. The cave was named as *Navub-Nadram* meaning mounted soil for yam.

It happened that one of these migrants' wife had physical difficulties of bearing children. Due to her complications, she was usually subjected to hatred and shame. In an occasion, while weaving mats under a *Narara tree*, she saw a child perching at its branches. After witnessing this incredible event she suddenly felt pain at her stomach. She realized that she was on labour and quickly called at her home. At their house she gave birth to a baby boy who was named as *Manvilor*.

He is originated from his first ancestor *Manvilor*. His son *Tamboni* performed his *namangi* ceremony at the *nasara* of *Asuk*. The land was purchased by white traders with some Tobacco, a Musket and other goods. Due to tribal war and fight with early traders in the area they then moved inland. Their movement saw the creation of two more *nasaras* known as *Permau* and *Barmanbruas*. There are

other villages or settlements beside these main nasaras. A family tree was produced in illustration of his ancestral descendants to the present generation.

His father Manjab was adopted by Raileg and Alicraft whom had no infant. Manjab is the son of Raiding and Latif who are still part of the family line . A custom ceremony was held to mark this adoption. Raileg handed over a pig and some local items to Raiding and the wife.

He contended that the land is originally owned by his ancestors since their colonization of the land prior to the arrival of European settlers on the area. None one else lived in the area prior to their settlement at Asuk. A relative Bongmeme Ngelu from his big faea was a prominent leader during the colonization of the area by planters such as master Noel Curio and his predecessors. He went on to explain that from the early 1950's Bongmeme and other relatives such as Solomon Willy have been negotiating for the return of the land to them as indigenous owners.

In support of his claim he produced a list of well known names of places in his claimed boundaries and their customary meanings .A subsequent document outlined customary places of the area and custom stories. He also provided a list of crops and fruit trees cultivated by his ancestor in the various villages settled.

He does not dispute the land claimed by Philip and Malwas. The reason for including their claimed area in his map was to safeguard their overall interest. He further clarified that he is claiming the whole area because they share undisputed customary boundaries .They all belong to the Malesif clan and share the same language and custom practices.

Amongst other evidences, he also tendered a record of judgments from various informal courts which have held that the ownership of land be in his favour. Such document highlights that in 1974 the land was contested by two claimants Bongmel and George & Simo. Two other meetings took place in 1978 at Aulua and at Bavolau in 1979. Another court was held on the 10th of August, 1984 in his favour with other claimants like Philip Daley. The final decision was made on the 16th of November, 1988. All courts have recognized him as the traditional landowner.

He emphasized beside these decisions, people normally asked him permission before using the resources on the land. For examples, in 2002 Mr Perronet had contracted him to use coral. A copy of such agreement is filed and marked as OC 1. Solomon Willy was allowed to use a parcel of the land for subsistence farming back in the late 1960's.

On cross examination, he was noted to have maintained his statement and had no difficulties in answering questions posed by other parties. His whole claim remained undiscredited. He explained that he is a smol faea to Philip Daley being the big faea.

He called 3 witnesses to support of his claim. Subles Haiding gave evidence that he was one of the personal involved in the struggle for the re possession of the land during the era of colonialism and independence. He re affirmed that Haiding's claim is correct and truthful. Mamran Haiding provided similar statement and stated that although Manvilor's descendants have migrated inland they continued to come down at Asuk to fetch sea water and fish.

Solomon Willy elicited evidence that in 1960 he started working at Barmandarine as a plantation labourer. Around this period, Vanisvai and Bongmeme were already holding discussions over the land's ownership and its re possession. While working for sometimes at Curio's plantation he had wanted to do subsistence farming in the nearby land just outside the plantation. He vividly recalled that Noel Curio had advised him to provide gifts to the land owners in exchange for the use. He has also witnessed an incident which saw Manjab (father of claimant) and other relatives destroying Curio's fence, in 1975.

His original nasara Asuk was visited.

COUNTER CLAIMANT 1

Harry koko is claiming the nasara of Mabush and its boundaries as mapped herein. The basis of his claim is by way of a customary will. He provided that the above nasara belongs to the Nabot tribe whose descendants are still living in Fiji at present. Kubargh Aidradram whom originated from the Nabot family had moved from the nasara at Barmandarine to his nasara at Penesies at Lamap. Following this movement a pig killing event was held with the planting of 2 stones in honour of the occasion.

He told the Court that Abong a descendant of Nabot had given him the right to own the land. A family tree was produced tracing Nabot's descendants. Abong had gone to work on Sugar cane plantations in Queensland around 1892. Upon his return he decided to permanently reside in Fiji.

He was noted to have difficulties in answering questions. He seemed confused about his standing in this case. All other claimants have objected to his overall claim. They made remarks saying that Harry has no custom standing. They have

never heard of such a customary will except at date. He admits that he is from another tribe.

Three witnesses were called to speak for his side. Hyacinth Nalo statement's was not of relevance to the claimant's claim. While, Haissorgh Lambert and Owen Koko only gave a confirmation statement that the land now belongs Harry koko. Most question posed to them touched on other's claim.

The Court visited his claimed nasara which is found to be false.

COUNTER CLAIMANT 2

George Telesy is claiming the nasara of *Moahalao* through the tribe of chief *Meleun Lasso*. The land claimed is marked as Lasso land filed herein. He claims to be the fifth generation of this chieftomship. A family chart showing this family line has been produced. The terrain encompasses two settlements. His ancestors have moved from *Moahalao* to *Lamsulun* due to escalation of fight over the territories. There are no other bloodline of this tribe or nasara.

On cross examination he clarified that his custom tree (totem) is called *Naschal*. He also poses a devil by the name of *Guairai*. There are 3 stones at the nasara of *Maohalao*. He strongly argued that there are no other nasaras in his claimed territories. It was noted at the course of questioning from Counter claimant 5 that such stones were only erected this year. Philip had asked his boys to remove this newly built nasara. This claimant could not provide this Court with a clear custom practices concerning the connection of his nasaras and his chiefly line. He seemed to have uncertainty over his map.

He called 5 witnesses to testify on his behalf. All his supporters provided similar statements of confirmation that the nasara of *Maohalao* belongs to the Lasso people. Its boundaries are part of the *Navsagh* clan (*Navsagh* is used fro referring to the general public of the area of *Lamap* extending down to *Maskelyne* island including nearby islands and some part of the mainland). Most of the defendants have elected not to ask questions. However, out of the few questions, we found witness *Vebong Frederick's* statement to contradict all witnesses statements and the claimant himself. He has genuinely told this Court that he has no knowledge of the claim that there is a nasara for Telesy. The true history of the place or land remains with the original claimant *Haiding*.

Again the witnesses had very little knowledge of this claim. They have no knowledge of the custom processes regarding the system and relationship between big chiefs and their subordinate chiefs (*smol faea*). Witness, *Talis Moise*

has also supported his claimant that there are no other nasaras in the claim. He stressed that this will be proven during the visit.

His claimed nasara could not be visited as the stones have been removed by the relatives of counter claimant 5.

COUNTER CLAIMANT 3

Harang Luan is claiming the nasara of *Pomu* in the land of *Srosargh* as mapped. This nasara has a devil called *Naigh* (fish). He is originated from a tree called *Dreve*. His first chiefly ancestor is known as *Meleun Amog*, who earned one of the highest customary chiefly title. He is the descendant of this bloodline. A family diagram was drawn in illustration to trace his relationship. There is only 1 nasara in the contested area.

On cross examination, this claimant could not provide the Court with a clear custom practices concerning the connection of his nasaras and his chiefly lines. He is not quite certain of his claim boundaries. He has only produced a half page claim.

He called the same 5 above witnesses to testify on his behalf. All provided similar statements of confirmation that the nasara of *Pomu* belongs to the *Srosargh* people and that its boundaries are part of the *Navsagh* (Lamap) clan. Most of the defendants had not asked questions due to the fact that these same witnesses have very little knowledge of the custom practices and the claim.

From observation, it is noticed that they have no knowledge of the custom processes regarding the system and relationship between big chiefs and their subordinate chiefs. The original claimant, counter claimant 5 and 6 have made comments that this claim is false and had no value. This claimant's history is new to them. They remained silent on this issue.

At the visit Philip had shown the Court his claimed nasaras. *Pomu* could not be visited due to the fact that the rocks have been removed.

COUNTER CLAIMANT 4

Along Marcellin representative of the defendant told the Court that he is claiming the nasara of *Asuk*. *Melimai* was the first ever man to set up the nasara of *Asuk*. He was ordained with the chief title *Goulgoul Asuk*. A family tree was tendered tracing the generations to date. He added that he is the fifth generation

of this chiefly bloodline. Since the male bloodline has no surviving issue, he would in custom inherit the land through the mother's bloodline.

Melimai had two children, a son Batick Sae and a daughter Levet Asuk. Batick died without having any issue. He now claims the bloodline of the great grand mother Levet Asuk. He contended that is the custom owner of the plantation and land of Asuk. To reinforce his argument, he tendered a lease documents marked as CC5 (A-D). He further argued that the Magistrates Court has given him the ownership of the land in the Civil Case No. 42 of 1994. He submitted that lease documents have also recognized him as the landowner.

On examination, he maintained his argument that he has a complete right in custom to claim and own the land of Asuk. In general, this claimant has no knowledge of the custom practices of the area. He has no understanding of his chiefly lines and the land boundaries. He also stated that Goulgoul Asuk had not performed his namangi ceremony at Asuk.

The same witnesses spoke for this defendant providing similar evidence that the nasara of Asuk belongs to the Asuk people. Its boundaries are part of the *Navsagh* clan. Few questions are posed on the same reasons as foretold.

On the other hand, Tali Moise and Herve Lemang has made contradictory statements against the claimant saying that the claimed boundaries are wrong. The original claimant and counter claimant 5 and 6 have made comments that this claim is false and had no value. They would advance their reason for such objection in their turn.

The nasara of Asuk was visited.

COUNTER CLAIMANT 5

Philip Daley in his genesis stated that before the creation of *Manveregh*, there lived a man and his wife. This couple had built a house near a red tree called *Maraire*. It occurred one early morning when they hear a noise resembling that of a baby cry. To their curiosity they discovered a baby boy by the roots of that tree. They brought the child home and took care of him. Because he has been using a mat woven out of a half coconut leaves till his maturity to sleep he was named after this half coconut leave mat as *Manveregh*. The place was also named as *Manveregh*.

The land of *Manveregh* lies from the creek or river *Lemetmetsits* bordering with the land of *Malwas*. It then runs down to the sea coast at *Bargharinarmar*. It

stops at Penite at the northern area. He tendered a map extracted from a text showing the land of Manveregh filed therein.

Manveregh got married and had a son Baho whose original nasara is Barmasmasgavul. Another nasara is called Ruan by which one of its supporting stones is claimed by George Telesy as Mohalao. There are other settlements comprising of 6 villages.

The land belongs to his grandfather Batick Lowlow. His father Bongmeme had been a longtime negotiator of the land before 1957 and during Master Noel Curio's occupation. He argues that the area of Navsagh is not part of *Lafghal* which is governed by the clan of Malesif. The area of *Lafghal* starts at the river of Habuang down to Lovru at Akamb mainland.

There only 3 tribes in this disputed land known as *Manveregh*, *Manvilor* and *Malwas*. These 3 tribes have good customary relationships, speak a similar dialect (*Naoujinganiange*) and practice similar namangi ceremonies. There are more than two nasaras in the area claimed. His land has a devil called *Avong Benamar*.

He counter argued that other claimants such as Harry Koko, George Telesy and Haran Luan are new comers to the claim and have false history. On questioning he explained that there many nasaras and settlements in the area of Malesif. He is the paramount chief of the area while the primary claimant and counter claimant 6 are his smol faeas. He does not dispute their boundaries. He explained that Counter claimants 1, 2, 3 and 4 are from the Navsagh land at Lamap. They do not have any nasara or other connection to the area.

Three witnesses were sworn in to speak in his support. Lucien Litoung testified that he has witnessed and visited the nasara of Bargharinarmar following a Court decision in 1982 made in his favour. This site still has a oak tree. In 1984 five witnesses from Navsagh, Lamap had been taken on a sital visit lead by Bongmeme who showed them the two nasaras of Barmasmasgavul and Malao. He re iterated that George Telesy and Haran luan have no knowledge of these nasaras and the area itself.

Witness Bongmeme Ngelu stated that he is well versed with the territories of the land. He has been surveying its boundaries with his father Vaniavai in the 1950's. He attended several meetings concerning the land with the French Administration stationed at Lamap with the company of one Morris and Timothy of Tongoa Shepherds. These two named person were working for Noel Curio. This planter had once told him that the land belongs to his father.

While, Francisco Vebong argued that claimant Telesy and Luan have no custom standing in the claim. These claimants and himself belong to the Navsagh area. He pointed out that he shares the same nasara of Bangauf with Haran Luan. He questions their irregular steps towards this claim. He concluded that the true owners of the claimed land are Philip and Lucien.

Few questions are asked to the witnesses. It was noted that Haran Luan had never challenged the above statement concerning his status and identity. The nasaras of Ruan and Barmasmasghavul were visited proving to other claimants such as George Telesy and Harang Luan that there are nasaras within the area claimed. Barmasmasghavul has a dancing site. Moahalao is part of Ruan.

COUNTER CLAIMANT 6

Once upon a time there lived a man and his wife who could not have a child. They had planted yams beside a footpath. It happened that during harvest season while digging yams the wife accidentally found a baby boy beside these yams. She took care of the baby and was named as *Malwas* (meaning wild yam). Malwas married and had a son Raiding whose wife is Litaur. A family tree is filed showing other generations of this family unit.

He is claiming a total of 3 nasaras namely, Rvabur as the original nasara, Bangisurf and Bniblar in the claimed territories. He also provided famous places Such as Lrebat, Labulvar saberu and Baria sa Masingnauf. His tribe first moved to Banisurf from Rvabur and onto Bniblar. He was born at Bar Raburial.

Few questions were asked during examination due to the fact that his claimed nasaras are not disputed. Two witnesses were called to assist his case. Bongman Subles reaffirmed the claim as true and correct, that there are 3 nasaras at the land of Malwas. Arno Navok in his statement questioned the coming of other claimants such as Harang Luan. He argued that they have no connection to the land and are indigenous of the Navsagh region which its land area does not extend into the land in dispute. This argument was never challenged by the respective person.

His nasara could not be visited due to the fact that it is not disputed by other parties. Other claimants like Philip has seen these nasaras and confirm them to be in existence at present.

FINDINGS & APPLICATION

Given their evidence, the Court will now determine each claimant's position in application of the custom law or processes.

Haiding Manassah

The basis of the original's claimant is founded on the patrilineal structure. He is claiming 3 nasaras. He is claiming the bloodline of Manvilor as his first chiefly ancestor.

His adoption was not challenged by other parties throughout the presentation of his case. We found no inconsistency with this adoption by virtue of the fact that it is done within the family bloodline itself. Its procedures have been undertaken in conformity with the custom practice in the area. For instance, a custom ceremony was held to commemorate the adoption.

There is available information indicating that the claimant is a longtime negotiator and traditional claimant of the land. That particular information was re instated and confirmed by witness Solomon Willy and Bongmeme Ngelu. This is also illustrated by the record of judgments from various informal courts deciding in his favour. The Court is not fortunate to examine and peruse the said judgments due to unavailability of written judgments. However, it is implied that there was no other information other than the evidence presented in this proceeding. Beside these decisions, he was long recognized as the owner of the land of Asuk. People would ask him permission before using the resources of the land as afore mentioned.

It is noted that he is well familiar with the land and its boundaries. He could trace his movements from one place to another. Amongst others, he has also produced a list of names providing his claimed territories and their customary meanings. There are number of crops and fruit trees cultivated by his ancestors in the various villages settled. These trees are proven identities to his claim. The Court had the privilege to visit his original nasara, Asuk.

In light of his presented evidence and in application of the custom, the Court is satisfied that has adduced sufficient and relevant proof for his claim. For such effort, his claim must prevail.

Harry Koko

The basis of his claim is by way of a customary will. The question posed here is whether custom would permit him to claim such land.

Having perused his evidence, he could only provide hearsay statements that Abong a descendant of Nabet had given him the right to own the land. There is no other available information corroborating his claim. There is no specific ceremony performed for that transfer of land ownership. This claimed testament was never witness by a chief, other person or recorded. It is also unclear whether any ceremony at all has taken place.

His claim would have had significant impact though if, a member of the bloodline is called as a witness to the will. By doing so, such an effort would inevitably give some weight to his claim. That option was not employed by this contestant.

Secondly, custom would not allow any transfer of land ownership from one tribe to another. The facts clearly provide that Harry Koko is not part of the bloodline or nasara. By way of custom, he has no right to claim ownership of the land. Alternatively, if, this claim nasara is to be believed and accepted, yet he cannot inherit such land, as there is proof of surviving issues of the alleged nasara of Mabush residing in Fiji.

Thirdly he had difficulties in answering questions and was uncertain with the location of the claimed nasara during the visit. He could only locate us a huge boulder on the side of a steeply slope. Having carefully verified its surroundings, it is concluded that such site does not constitute a nasara. Traditionally and with judicial notice nasaras are never built on a steep slope. All other claimants are in support of this version.

More importantly, it is also obvious from his statement that he is to look after the land and not to own or claim it. The following sentence is extracted from his statement of claim "*Harry Koko I karem full right blong lukaotem mo defendem ground blong mabush nasara*". This sentence speaks for its own literal meaning.

Given the findings and in application of the custom practices, we are in doubt of his claim. He has no custom standing over the land and in that circumstance, his claim must entirely fall.

George Telesy

In custom he has the right to claim through the patrilineal line. However, such basis of right must be proved by way of evidence. The following findings are gathered from his evidence.

Firstly, there is prove of such a nasara as claimed despite the removal of 3 stones by counter claimant 5 and his followers. There is common agreement between Philip and this claimant that there are stones in the area. Philip is claiming them as part of his nasara Ruan.

However, despite such accord there are looming weaknesses found on his claim. To begin, he could not supply this Court with a clear custom practice concerning his nasara and his chiefly line. For instance, he has no knowledge as to whether he is a smol chief or a paramount chief. This includes relationship between big chiefs and their subordinate chiefs and their nasaras. Traditionally such a nasara cannot stand by on its own. Its described size would confirm that it is not an original nasara. The reason is that it would sound invalid and impracticable for a high ranking chief, Meleun to perform his pig killing ceremonies before 3 stones alone. There must be other surrounding stones whereby other witnessing or promoting chiefs would come to perform their part towards the namangi ritual.

In comparison, witness Vebong Frederick's statement has contradicted all his witnesses statements and his claim. This witness has genuinely confessed on interrogation that he has no knowledge of the claim and the nasara. He honestly submitted that the true history of the place or land remains with the original claimant Haiding Manassah.

Another setback is witnessed over the argument that there are no other nasaras in the claimed spot. The contrary was proven during the field trip when Philip located to the panel of assessors the nasara of Ruan just around its environs. This is an indication suggesting that this disputant has no acquaintance of the land.

Further more, neither could he clearly identify his claim boundaries. The claimed map seemed to distort traditional boundaries. Its borders are in parallel lines crossing several landmarks claimed by other claimants. Witness Herve Lemang has admitted that the boundaries are wrong.

In consideration of the foregoing findings and in application of custom usages, it is concluded that this claimant has not furnished this Court with accurate evidence. The finding facts speak for themselves in this case and thereby direct the Court to pronounce that there is no existence of such alleged nasara of Moahalao. The site is a division of the main nasara claimed by Philip.

Harang Luan

This disputant has the right to claim following the patrilineal line. The following findings are gathered from his evidence.

Firstly, the claimant has not challenged forwarded arguments from counter claimant 5 and 6 concerning the removal of 3 stones on the alleged nasara site. There was information that such a nasara by the name of Pomu had never existed in history. They are well familiar with the area being hunting ground for many years and have never heard of the existence of such nasara. These unchallenged evidence advanced in the course of examination are accepted.

Secondly, it is traditional that a nasara cannot stand by itself without other supporting stones. Given its described size and the natural surroundings, it is held that it is not an original nasara. It is impractical for two highest ranking chiefs, Meleun to perform their pig killing ceremonies before 3 stones alone. There must be other stones whereby other witnessing or promoting chiefs had to perform their part towards the namangi ceremony. The Court has received some photographs of the questioned stone. These photographs were only disclosed after the Court proceeding and the visit. Such exhibits are not considered as part of the evidence.

Similarly, this defendant and his witnesses have no knowledge of the custom practiced in this smol nambas region. For instance, they have no information as to whether he is a smol chief or a paramount chief. Neither could he clearly identify his claim boundaries. His claimed map looked unusual given the fact that it is demarcated in a parallel line crossing several boundaries claimed by other claimants. There are no explanatory reasons for such survey. According to Herve Lemang the boundaries are incorrect.

Another weakness is witnessed over the argument that there are no other nasaras in the claimed spot. Philip has proved them wrong that there are other nasaras in the area claimed when he showed us the nasaras of Ruan and Barmasmasgavul.

Attention is also paid to Francisco Vebong's statement. This statement is vital in the sense it was not challenged. He witnessed that claimant Telesy and Luan have no custom standing in the claim. He explained that the above defendants and himself have origins to the Navsagh tribe which lies outside the claimed land. He further pointed out that he shares the same nasara of Bangauf with Harang Luan. He questions their irregular steps towards this claim. Harang did not respond over this piece of evidence.

Given the findings, the Court is in doubtful of his history. With careful consideration of the totality of facts, it is concluded that such a nasara has been fabricated in attempts to cover the truth. His irregular action is ostensibly manipulated to deny the all truth. Yet if the Court is to accept his concept that there is a nasara, such a site would nonetheless not affect this ruling. Coupled with other advanced outstanding evidence and discussions, there is a high degree of probability that the questioned nasara forms part of the nasaras claimed by Philip and Litoung.

Abong Marcellin

Counter claimant 4 is claiming the nasara of Asuk by way of the matrilineal lineage. He is claiming as the bloodline of the great grand mother Levet Asuk on the ground that there are no surviving male bloodline. Levet Asuk is the daughter of chief Goulgoul Asuk.

The immediate point of discussion is whether he has the right to claim through the mother's line in custom. The answer would be in the positive as there are no other bloodline of the claimed chiefly line. Nevertheless, this right is not conclusive by reason that is a dispute with the primary claimant over the nasara of Asuk.

This situation has directed the Court into deeper consideration given the two confronting issues. One might think it appropriate to accept this party's claim and may be direct him to work together with the principal claimant. The Court is very cautious to remind itself that both contestant of this nasara are claiming separate family trees and such option would be ineffective.

Given the circumstances, it is uncertain as to why there are two different family trees originating from the same nasara. The answer to this puzzle might be presumably that both may have familial connections with each other but, such past relations have faded away. Yet again, the Court cannot make conclusions on implications alone without other form of collaborating evidence. In the absence of such type of supporting facts, it is left to the findings of his case to decide his position over the claim.

Additionally, this applicant and his witnesses do not have the knowledge of the custom practices of the area like his former disputants.

On the other hand, he has stated in Court that Goulgoul Asuk had no performed his namagi ceremony at Asuk nasara. That fact would automatically prove that Goulgoul Asuk had never set up a nasara at Asuk. It is questionable as how would he earned a chiefly title *Goulgoul Asuk* named after the nasara without

performing a pig killing at his own nasara. Another supporting finding is that there would never be a nasara because none of his ancestors had performed any namangi ceremony at Asuk. There is no information unveiling these questions. Based on the field trip, such nasara is a big or original nasara given its grandeur and the surrounding heap of stones. The concluding answer would be that this claimant has no nasara.

Turning to his argument regarding Civil case no.42 of 1994 is that it is just a restraining order made in the absence of the defendant. The subject matter for determination was not of land ownership. Other related documents would not as well prove the same.

Furthermore, his claimed map seemed not to follow traditional boundaries. The claimed boundaries are in a parallel line crossing several boundaries claimed by other claimants. He failed to provide clear explanation of his alleged sketch map.

In light of foregoing the findings, the Court is not persuaded but to find his claim to be unfounded. The nasara of Asuk is created by the ancestors of the main claimant.

Philip Daley

The basis of his claim is through the bloodline of his chiefly ancestor Manveregh of the nasara of Barmasmasghavul.

It is noted throughout the course of his presentation that the majority of his evidence in chief has not been challenged by other parties. He was confident and had no difficulties in answering questions. He is well versed with his claimed area and the custom processes practiced in the area. For example, he provided that there only 3 tribes in this disputed land, such as Manveregh, Manvilor and Malwas. These 3 tribes have good customary relationships, speak a similar dialect (*Naoujinganiange*) and practice similar namangi ceremonies. With this unchallenged information, the court is of the view that the area of Navsagh is not part of *Lafghal* but governed by the clan of Malesif.

There are more than two nasaras in his claimed area. There many nasaras and settlements in the area of Malesif. He is the paramount or big chief of the area while, the primary claimant and counter claimant 6 are his smol chiefs. He does not dispute their boundaries.

It is also discovered that the statement made in relation to his father Bongmeme being a longtime negotiator of the land during master Noel Curio's occupation

was not disputed. There is also evidence of a nasara site marked with an identical oak tree. The statement communicated by Lucien Litoung has had some direct proof which transpired from the facts and the field visit that George Telesy and Haran Luan have no knowledge of the claimed nasaras.

Upon visiting the nasaras of Ruan and Barmasmasghavul, he has actually proved to the aforesaid disputants that there are nasaras within the disputed area. Barmasmasghavul has a dancing place and contains other stones within its vicinities. Having studied their surroundings, it is obvious that such sites are indeed nasaras.

In consideration of his presented evidence, there is consistency in his claim. He has supplied the Court with all relevant information proving his claim. His claim must stand as sought.

Counter claimant 6

This party is claiming a male chiefly bloodline of 3 nasaras namely, Rvabur as the original nasara, Bangisurf and Bniblar . In support of his claim we found the following findings.

Firstly, he has provided names of famous places such as, Lrebat, Labulvar saberu and Baria sa Masingnauf. His tribe movements showed that they first moved to Banisurf from Rvabur and onto Bniblar. His original nasara is Rvabur. Chief Raiding performed his pig killing ceremony at Rvabur. He practices the smol nambas custom practices and usages. He is a smol fea to Philip Daley being the big faea. There only 3 tribes in this disputed land, such as Manveregh, Manvilor and Malwas. These 3 tribes had good customary relationships, speak a similar dialect (*Naoujinganiange*) and practice similar namangi ceremonies.

His nasaras could not visited due to the fact that they are not disputed by all parties except that the boundary is claimed by Harang Luan whom has been ruled out of this claim. Other claimants like Philip and the plaintiff have seen these nasaras.

Arno Navok's statement questioning the coming of Harang Luan in having no connection to the land was never challenged by the respective person. Having examined his overall claim, the Court is satisfied that the claimant has substantiated the required facts in justification his claim. Most of his statements have not been challenged. As such, his evidence are accepted as found.

CONCLUSION

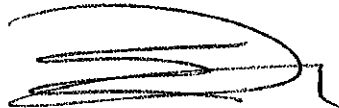
In consideration of the gathered evidence and in application of the relevant custom practiced in the smol nambas tribe, it is hereby declared in the following words:

1. That the original claimant, Haiding Manassah is the custom owner of the land of Asuk ,
2. That Daley Philip & Lucien Litoung have custom ownership of the land of Manveregh as claimed and
3. That Manleu Malwas is the custom owner of the land of Malwas as claimed, accordingly.
4. That all other claimants cases are entirely dismissed.
5. For ease of clarification, any claimed area of land lying outside the original advertised land will not form part of this judgment.
6. That all persons working the declared lands must undertake to make appropriate arrangements with the declared owners to accommodate their continuous use of the land.

All costs or expenses necessitated by this proceeding will fall as found. Any party wishing to appeal this decision must do so within a period of 30 days from today.

Dated at Lakatoro this 9th day of November, 2005

BY THE COURT



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EDWIN MACREVETH
Supervising Magistrate

