

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

Land Case No. 11 of 1993

BETWEEN: ALFRED RORY

Original claimant

AND: SIMON RORY

Counter claimant 1

ARINE SIVE

Counter claimant 2

FAMILY RORY

Counter claimant 3

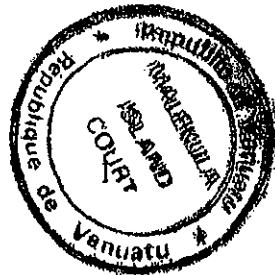
Coram: Magistrate Edwin Macreveth
Justice Lorna Bongvivi
Justice Douglas Vatdal
Justice Eveline Seth

Clerk: Wendy Raptigh

Date of Hearing: 5th - 11th of November, 2007

J U D G M E N T

The land in dispute is situated at the northern part of the island of Malekula. This customary land is registered before this court with the name of *Lebou*. The land boundary is generally described to commence at Rove bridge on the main road running down the creek of Botnevihi, Labetane and down to Labakor at the coastal line on the east. From there it follows the sea shore to Laboung northwards at Onovare. It then rounds up at the main road again being the boundary limit on the western side. For specification purposes refer to the advertised and sketch maps filed therein by the original claimant.



It our note that the primary claimant's original advertised map on the 29th of January, 1996 previously covered the entire land of Lebou. This map was then specifically reduced down to only cover the disputed areas of Botnevihi, Labetane, Laboung and Labakor according to his second publicity dated 25th of April, 2007. This latest advertisement invited 3 claimants to register a counter claim. The majority of the parties are vying for the ownership of the land in dispute. Therefore, the contentious issue for determination by this court is land ownership.

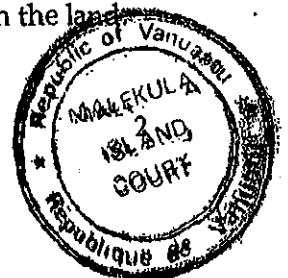
THE LAW, CUSTOM AND HISTORY

It is our immediate note that the area of concern does not have a land policy. In spite of such missing guidelines, there is significant information gathered from the hearing regarding customary principles of land ownership. We have also consulted the Land Policies adopted by the National Council of chiefs, Malvatumaori. Upon thorough reading we noted that such guiding land values share a similar approach to the recognized custom practices of this district as discussed below.

Briefly, the relevant law under Article 73 of the 1980 Constitution stipulates that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. Article 74 provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu. Article 95(3) states that customary law shall continue to have effect as part of the law of this jurisdiction.

Turning to the customary practices, generally the island of Malekula is predominantly a patrilineal society. There are two main tribes in the island of Malekula, namely *Big nambas* and *Smol nambas*. The inhabitants of the area of dispute belong to the big nambas ethnic. Ownership of customary land is communal or collectively owned based on common descent, residence within a nasara and participation in common activities. A tribe or bloodline is identified with the land through the nasaras. Individuals within the clan are closely tied up with their territory by affinity and consanguinity through blood and marriage. A group of persons belong to a family line and a territory is sometimes identified with a totem, such as a plant or an animal.

It is the common trend that the first person to explore, live and control a land boundary would eventually become the original chief of the territory. This chief on behalf of his tribe or family would normally be referred or regarded by the public as the original custom owner of the land. He would become the paramount chief or sometimes referred to as *big faea* of the land boundary. The members of his tribe or group communally own undivided interests in the land.



The tribe which forms the land owning unit is normally based on blood relationship, meaning, they are all related by blood and having descended from a common or original ancestor. This family unit would be regarded as the big faea having a single bloodline. In practice, the first person and his family to arrive at the disputed land and built a nasara there, are the custom owners of the land. It makes no difference whether they left again for some other reasons, they would be designated as the custom owners.

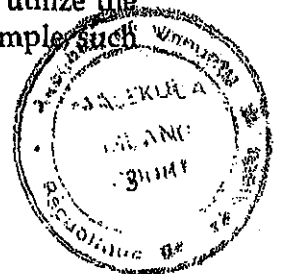
The paramount chief has control and authority over his land boundary. Any incoming tribes accepted into the area would remain under the control and authority of the principal chief. They would be classified as subordinate chiefs also referred to as *smol faeus* and are accountable to the head chief in respect of every social affairs.

Chiefs are usually nominated on the basis of custom values, wealth, bravery and other common characteristics. The land owning chief and his subordinates would all have nakamals and nasaras. A man earns his chiefly title or name by way of performing a namangi (*magi*) or pig killing ceremony. The common chiefly name is *Mal, Mel* or *Mulon* a naming word that would procedurally be received by a man at an ordination during a magi feast. There are different stages of status in hierarchy for a chief to acquire. Pig killing ceremonies would normally occur at a nasara. The first ever built nasara of a tribe becomes the original nasara. A nasara is usually identified by man made features such as erected stones, natural plants such as namele palms and other identical phenomena.

Land is traditionally transferred or inherited patrilinealy from the chief or original ancestor to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings, relatives and kinships. This is a male predominated system which is twinned with the land tenure system handed down from generation to generation.

The only exceptional condition to the general principle of land ownership is that in the situation where there are no more surviving male heirs to the land then, ownership will pass on to the matrilineal offspring. This is typically seen where a woman's children having bloodline to the extinct patrilineal line are given land acquisition.

Conversely and by custom, the matrilineal descendants cannot claim land ownership if, there are surviving male descendants. Any claim following the matrilineal lineage would be culturally limited to a claim of right to utilize the land. Conditions are normally attached to that right of use as well. Example



a claimant is duty bound to perform a customary rite of recognition to the uncles in exchange, prior to any use of the land.

We now dwell with the issue of adoption. The traditional position is that an adopted male child would have the right to acquire land ownership on condition that his adoption is arranged within the family bloodline itself. Also, a claim of ownership of an adopted child would prevail, in the circumstance where there are no other surviving bloodline of the land owning unit. An adopted claimant having no connection to the original ancestor or bloodline cannot inherit land of the father upon death but would be granted limited right to use the land.

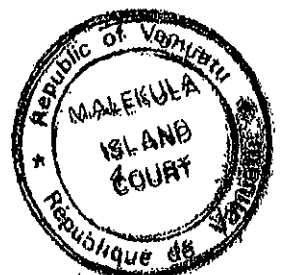
Beside the application of law and custom principles, the court in determining the issue of ownership has reminded itself of the relevant provisions stipulated under section 10 of the Island Court Act, Cap 167. It reads that subject to the provisions of the act, the Island Court shall administer the customary law prevailing within the territorial jurisdiction of the court so far as the same is not in conflict with any written law and is not contrary to written justice, morality and good order.

Given the basic understanding of the traditional processes and the law, the relevant information submitted before the tribunal is as follows.

The original claimant

Alfred Rory, in his presentation led evidence that he has customary rights to own and use parts of the following land areas such as Botnevih, Labetane, Laboung and Labakor situated in the territory of Lebou. The reasons for his claim is sourced from two women of Lebou land whom had been married to Vao island. One of these ladies espoused Ririhal Rory a local from north west Malekula, residing at Vao in the nasara of Venu . The couple had four sons named as Tinehat, Meltetile, Lengor and Sive. Following this marriage relationship, Sive built closer familial ties with one Tour a native of the land of Lebou. While living with Tour they built the nasara of Laboung. A forefather Joseph Rory, was buried at the nakamal of Laboung.

He added that due to tribal war at Lebou Tour had escaped to Vao and sought refuge with Sive and his family at Vao. A child was killed and eaten during a *Tataour*, a customary rite to commemorate Tour's brother who died during the fight. Tour before dying had told Sive that upon his death, he will be buried at Sive's nakamal at Vao. In exchange for his generosity Sive is to hold and use some part of the land of four parcels of land at Lebou.



A family tree is made available to the court for illustration of his ancient relations to the present generation.

Witness chief Edwin Melteres told the tribunal that he is a descendant of Tour of Lebou. He supports Rory's claim to own and use the subject parcels of land at Lebou. On questioning he explained that he is the rightful owner of the land in question.

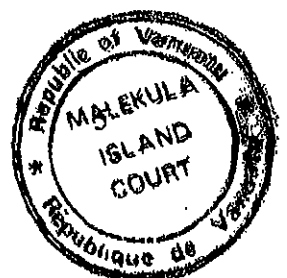
Counter claimant 1

Rory Simon in his genesis told the court that once upon a time there lived chief Rouvounne and the wife at the nasara of Beterihi. The couple had two sons, Malvert and Rong. At an occasion, while hitting natapoa nuts, Rong caught himself into stealing nuts from the eldest. This caused the complainant to use abusive words to the other. The father upon learning of this behaviour, he decided to separate the two sons. Rong the youngest settled at Venu while the eldest remained with the parents at Beterihi. They later built nasaras at each respective areas of residence.

Emile did no have any child. So, he had adopted Rory Simon from the nasara of Venu. This adoption had occurred when Simon was in his infancy. Simon had lived his whole life with Emile as father until Emile's death. The areas of Botnevih Aoute, Tavovelelaw and Labakor are owned by Emile. Following his adoption he has absolute right over the said land areas. Emile is the eldest person in the nasara of Venu whereas Marco is the oldest in the nasara of Beterihi.

He added thereon Melterow wedded Lesalkon having a son, Emile. Lesalkon re married Telukluk after her husband's death giving birth to Thomas. He argues that Alfred was never adopted. Alfred's alleged adoption is false by reason that he is the son of a man from the island of Ambae known as Chanel. Marie Rose was already conceived when she later married Thomas. He argues that by custom Alfred could only claim land at his father's land on the island of Ambae.

Desinmal a later descendant of Rong has espoused Leracrail without having any issue. Leracrail re married Ririhal Rory of north west Malekula and lived at the village of Venu. Tinehat one of Ririhal's son had prior to his death, communicated all customary knowledge to Melterow father of Emile. Meltemal's son Molvonote was nominated to replace Rong. Molvonote has lived his entire life at the nasara of Venu unto his death.



His only witness chief Meltemal Clovis in his statement testified that family Meltemal still retains the bloodline of Desinmal through Malvonote. Malvonote who has no child was replaced by Simon following the bloodline generation of the original nasara of Beterihi.

Counter claimant 2

Belbong Hugo speaking on behalf of family Arine Sive provided that once upon a time there were two brothers by the name of Metel and Veleh living at the island of Tolamp. Veleh upon noticing smoking fire at the island of Vao decided to explore his curiosity. He sailed across to Vao and used a cave known as Berene as sleeping house. From there he later meet Rukorutal's daughter who then became his wife. The couple afterward moved to Noroure where her wife begat three sons named as Teren, Teterwah and Bong.

It was around this period of time that magical man Bilack caused tidal wave into the area which eventually sank the island of Tolamp. Veleh and his family temporarily shifted to Bouhute. After the disaster, they re settled Noroure. He went on to state that two brothers from Lebou called Revtartara and Teibong had arrived at Noroure. Revtartara lived with Teren while Teibong resided with Teterwah at Bouhute. A pig killing ceremony was organized at the area which also involved the two natives of Lebou.

Netinmal's sons are Toutisinemal and Tetesinemal. The later died without having a child. His widowed wife remarried Ririhal Rory with three children namely, Tinehat, Meltetile and Lengor. Ririhal had a second marriage with Leatov, of Atchin having a son Sive.

Following a row over a pig, Tinehat murdered one Molounsulahe son of Molun Torala. Ririhal Rory voluntarily allowed Molun Turala to adopt his youngest son, Sive in exchange for the death. Sive has taken part in pig killing ceremonies held at Bouhute and Noroure. He was also given some terrains belonging to Teibong at Lebou. Arine Sive had continuously retained the earned chiefly title from ancestor Sive until around 1985 or 1986 during the last namangi event.

Tinehat and Sive had in the past agreed to exchange some piece of land between them. In this agreement Sive was to give 4 piece of land situated at Lebou while Tinehat is to exchange 6 parcels of land at the island of Vao. He related a story seeing Clodil and wife Rose Marie disputing an orange tree belonging to one Talmare. Talmare with frustration chopped down the said fruit tree. This incident saw the matter reported to the chiefs. It was held in a meeting that every exchanged parcels of land be returned to the proper owner.



Sive had afterwards settled at Vunack. Pig killing rituals have also performed and celebrated there. Arine Sive has perpetually occupied the land of Vunak to date. A family tree is produced highlighting his past to the present relatives.

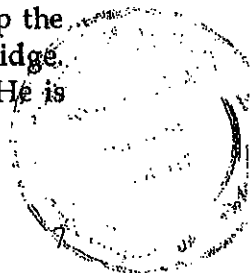
To reinforce his account, he claims that the contested area belonged to Arine Sive. Three past meetings have already been decided in his favour. In 1966 a village court held that a peace ceremony be performed to his family. It follows again, in 1977 that the chiefs have declared him owner of the land of Botnevih. These events are documented and filed herein as exhibits. He could recall that another meeting was held with Maxim Karlot Korman and witnessed by certain chiefs like, Malres, Teinmal, Marcel and others.

He called four witnesses to testify in support of his claim. Meltekamu Mada says he is a descendant of Revtartara. Arine Sive has performed the last namagi around 1985. Rory Petro re confirmed the story relating to the orange tree. Following this incident all land exchanged were to be returned to the rightful owner as ordered by chief Belbong. However, Tinehat refused to return all land given by Sive at the mainland, at Lebou. His brothers have continued to utilize those parcels of land to the present. His father Emile Tinehat is the eldest son from Family Rory. Sive has been exchanged to the land of Vunak in replacement of late Molunsulahe. Adding on, he submitted that his family tree would only be dated back to Ririhal a native of north west Malekula.

Samuel Neirove, 45 years of age provided that his mother is originated from the nakamal or *natamb* of Vunak at nasara of Venu, Vao Island. His mother Lelek is sister to Arine Sive of Vunak. Molunturala is a migrant from the island of Tolamb. Alfred Rory has no rights to the four claimed parcels of land by reason that the said terrains were once owned by Sive were handed down to Talmare and then later inherited by Arine Sive until 1980. Arine Sive was unlawfully and forcefully removed from the land as a result of Alfred's political affiliation with UMP. There are countless number of properties sitting on the land at date planted by Lelek, Talmare and other relatives. Mathieu Atotonie witnessed that Ririhal Rory is a native of Orpatare, north west Malekula.

Counter claimant 3

Yannick Rory spoke on behalf of family Rory. His claimed boundary is described to commence from the river mouth at Viavor. It follows the seashore to Labakor, Laboung, Honovare, Langolnambe to Lavor passage. From there it runs up the creek to La Lol Naghav and Botghatambol creek joining up again at Rove bridge. Its limit is bounded by the river to its mouth at the shoreline at Viavor. He is disputing the same areas claimed by the original claimant.



The basis of his claim is by way of the patrilineal lineage of the first ancestor Toutousinimal son of Rory. Toutousinimal is originated from the nakamal of Latangariv, Vao Island. Toutousinimal wedded lady Leatlebou from the land of Lebou. The couple begat four sons namely, Tinehat, Lengor, Sive and Meltetile. These sons have ruled and occupied the land belonging to their mother for ages.

He submitted in support of his claim that there are identical phenomena in place to prove his case. To name a few, his list provides that there are remains of an old yard of Leatlebou. A stone belonging to Molunturala at Honovare marking the commencement of the inter relationship with the natives of Lebou. More explanation to these outlined features are detailed at page 35 to 41. A family diagram is drawn to the court's attention identifying eight (8) generations altogether from his past to the present. There are numbers of exhibits enclosed in his filed statements.

The vast part of his statement of claim contains counter arguments against other opposing parties to the claim such as Alfred Rory and third parties not involved in this proceeding. His statement provides that Alfred son of Thomas was never adopted by Emile Rory. Alfred is the son of Chanel from the island of Ambae and he is also considered as the grandson of Telukluk of Tonmalevar.

It is to note that all advanced arguments concerning third parties will not form part of the court's consideration in this matter. He explained that he has no witnesses since his intended witnesses have aligned themselves with the other claimants.

ANALYSIS OF MATERIAL AND FINDINGS

In consideration of the presented facts and the application of the principles of custom regarding land ownership and the law the findings are as follows:

The primary claimant

This party's claim is founded in the patrilineal line of Ririhal who had espoused a lady from Lebou. It was following this marriage relationship that Ririhal and his sons built familial ties with one Tour of Lebou. Sive and Tour had built the nasara of Laboung and performed pig killing rites there. A late descendant Joseph Rory was buried at the nakamal of Laboung. Our verification result of the area is that we found no nasara remains during the visit except the said grave. Other parties have disagreed with his perception pointing out that there no



nasara had ever existed except a customary market place where goods from inland natives are exchanged with early inhabitants of Vao.

His facts as told, is that Tour had before dying told Sive that upon his death, he will be buried at Sive's nakamal at Vao. In exchange for his generosity Sive is to hold and use some part of the land of four parcels of land at Lebou. It is apparent that following this social relations that Alfred Rory is claiming the land areas of Botnevih, Labetane, Laboung and Labakor situated in the territory of Lebou.

Having said that, the most crucial question to answer is whether this party has any customary right to claim ownership. The answer is in the negative by virtue of the following grounds.

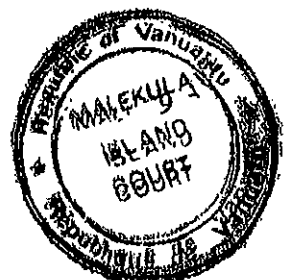
Firstly, by custom he would only claim ownership following the patrilineal line of his forefather Ririhal an indigenous native of Orpatare north west Malekula.

Secondly, it is uncertain as to whether Tour is the original owner of Lebou. There is no doubt about Tour's place of origin given the advanced material. However, it vital that this defendant prove Tour's status and originality. Merely saying that tour is the owner of Botnevih, Labetane, Laboung and Labakor is not enough. It is required of this claimant to prove for example, that Tour or his ancestors were the first persons to arrive at the disputed land and built a nasara there. Such a task would have assisted this party's claim and the court in admitting available facts. There is absence of information of those kind disclosed to this tribunal.

Thirdly, it is disputed by witness Meltokamu Mada and CC2 that chief Edwin is the customary owner of Lebou. No court has ever decided the land in his favour. This objection leaves the land of Lebou to remain under dispute. The same point of explanation would apply to a claim following the mother's connection to the land.

We now determine the issue of adoption. We are in doubt of his alleged adoption. There was no information made available before us to show that a ceremony was actually held in witness of the adoption. On the other hand, his alleged adoption is largely disputed by the rests of the parties labeling it as false. He has advanced no positive answer on the contrary. Upon visit we found that Alfred Rory has taken over certain coconut plantations belonging to Arine Sive. The majority of the parties share the same facts.

Moving on to the issue as to who should inherit the right to the land in question. It is immaterial at this end to determined as to who is the eldest son from the lineage of Rory. This is a separate matter that would be more appropriately dealt



with in a separate court. This court's duty in this proceeding is to find the rightful owners of the land.

Also, there is no need to assess the argument pertaining to his parental status, given our finding that such adoption has never existed.

In consideration of the social relationships and other custom processes as highlighted above, he will therefore have no legal or customary stand to claim land ownership. The original claimant would only be entitled to a lesser right to use the land.

Counter claimant 1

The first issue for assessment is whether he has any customary right on the land in contest. The answer is in the negative given the following information.

Our analysis of his overall evidence indicates that he does not have any complete right following his original ancestor due to the fact that Desinmal's bloodline has gone extinct. The surviving descendants are descents of Ririhal. Traditionally he would only claim ownership following the patrilineal line of his forefather Ririhal of Orpatare north west Malekula. Alternatively, he may claim land belonging to his ancestors from the nasara of Betirihi. He cannot either claim Emile's allocated land because ownership of Lebou's land is currently at dispute.

Secondly, he has no bloodline relationship with the original owners of the claimed areas.

Turning to his adoption, there is sufficient evidence proving that such adoption has at once taken place. CC2 and CC3 have confirmed and acknowledged his adoption as correct. On land he has been allocated two different areas of cultivation.

In consideration of his presentation, and in application of the fundamental rules of custom forming ownership of land, his claim for ownership will not stand.

Counter claimant 2

We noted that Sive's adoption into Molunturala's family is free of dispute and we have accepted it as told.



The basis of Arine's claim is sourced from customary relationships with Revtartara and Teibong natives of Lebou. Revtartara lived with Teren while Teibong resided with Tetervah at Bouhute. A namangi ceremony was organized at the area which also involved the two natives of Lebou. Given the associations Sive was also allocated some terrains of land belonging to Teibong at Lebou. Arine Sive had continuously retained the earned chiefly title from ancestor Sive until around 1985 or 1986 in the last namangi event.

From the facts of his case, his original descendants Metel and Veleh have migrated from the sank island of Tolamb. They came to settle at Vao island. On the other hand, it is obvious that Arine sive's great grand father is Ririhal who is confirmed to have origin from Orpatare. Realistically, this defendant has no bloodline link to the original ancestor of the land of Lebou.

Further there is doubt over his forwarded documents alleging them to have declared him custom owner of the subject land. The question we demand is on what basis did the chiefs reached their decisions. That essential information could not be seen by this court. Uncertainty also rest with these meetings because none of the concerned parties were summoned to be part of the cases.

Moreover, it is questionable as to whether Revtartara and Teibong are original natives of Lebou. The court does accept that they have come from the land of Lebou. However, it is required of this defendant to prove the originality of the duo. There is absence of information of those kind supplied to this tribunal. The fact is that Lebou land ownership is still in dispute for instance, chief Edwin Melteres is one of the claimant.

In determination of his position in light of the law and custom, he would only be guaranteed to a right to use over the four piece of land.

Counter claimant 3

We firstly noted that his claimed boundary has exceeded the original claim of the primary disputant. Yet he is disputing the same areas such as Botnevih, Labetane, Laboung and Labakor as claimed by the original claimant.

The root of his claim is by way of the patrilineal lineage of the first ancestor Toutousinimal son of Rory. Toutousinimal is originated from the nakamal of Latangariv, Vao Island. The same point of custom practice adopted and applied above will also take effect in this context.



According to the custom principles forming the basis of land ownership practiced in this region, this defendant cannot land ownership. The ancestor Toutousinemat is originated from the nakamal of Latangariv, Vao island. Practically, land ownership only comes by way of the patrilineal lineage unless the contrary is proven otherwise. Meaning, family Rory would only have the right to claim land ownership at the great grand father's land at Vao or north west, Malekula.

It would seem on the other side that the claim is also anchored on connections from the matrilineal line of Leatlebou an indigenous lady of Lebou. Following this inter marriage custom processes and familial connection were reached and maintained. It was through these social relations that Tinehat, Lengor, Sive and Meltetile were allowed to use and occupy the contested plots of land.

The same question is posed here. That is whether Leatlebou has come from the original owner of the land. It is vitally important that this defendant prove the originality of Leatlebou. For instance, that she or her ancestors were the first persons to arrive at the disputed land and built a nasara there. There is nothing advanced in those words thus, leaving the land of Lebou in dispute.

In whole, family Rory could only claim a right of use and not ownership.

DECLARATION

From the totality of the relevant evidence forwarded to this court, our attentive observation shows that there are several natives of Lebou claimed by the contestants to this case to being the customary owners. It could not be proved by way of evidence that those third parties are the original owners of the four parcels of land. Each party is reminded that he who asserts a fact must prove it with evidence.

Most remarkably noticed as well is that all disputants have come from the same family of Rory. The question remains as to who is really telling the truth. Common sense would dictate that they should all be claiming the same family tree and history but not separate histories as seen in this case. The credibility of their claim is at test.

It is clear that their ancestors namely, Tinehat, Meltetile, Lengor and Sive had in fact been given land to use at Lebou following the discussed relationships. They have been given definite land areas with clear limits for subsistence cultivation. However, as centuries went by other relatives and adopted sons were also allowed to work the land. As the family grew in multitude, land scarcity be-



a major social problem. This situation allowed other family members to use any available opportunities to acquire land as seen in this case.

By application of the law and custom all claimants cannot have ownership of the terrains. It is enshrined under Article 73 of the 1980 Constitution that all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants. In our case ownership the four parcels of Lebou land is still in dispute. Article 74 further stipulates that the rule of custom shall form the basis of ownership and use of land in Vanuatu. The custom practice of the area provides that the first person and his family to arrive at the disputed land and built a nasara there, are the custom owners of the land. The claimants to this case are not the original indigenous descendants of the land of Lebou. Article 95(3) states that customary law shall continue to have effect as part of the law of this jurisdiction.

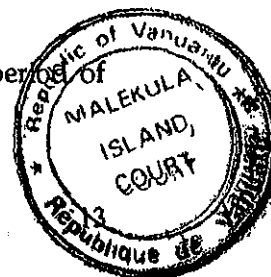
It is evident that Rory family have been utilizing the land and causing major developments to it for centuries. However, due to internal differences within the family unit dispute arose in their midst resulting in this claim. Some of the claimants such as Arine Sive have been forcefully evicted from their own properties in the land by other family members. In this claim, they are claiming the respective areas of cultivation.

Alfred Rory has unlawfully entered Arine's properties upon the land around 1980. It is a pity for the victim for being deprived of his own property. It is now 27 years down the road to see that the original claimant has also caused further development to the said properties. Evicting him would adversely cause him great loss. Nonetheless, CC2 should be compensated for his lost properties.

In whole, generally our finding upon determination of the entire presentation is that we are not satisfied with their claim of ownership given the application of the law and custom long practiced in the area.

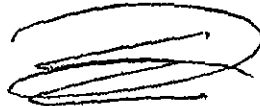
Having so pronounced, it is hereby ordered and declared in the following words.

1. That the parties claim for ownership are entirely dismissed.
2. That all claimants to this case only be given right of use over the four (4) parcels of land as claimed.
3. All costs necessitated by this proceeding will fall as found.
4. Any party wishing to appeal this decision must do so within a period of 30 days from today.

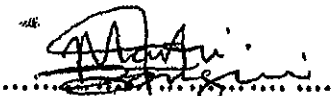
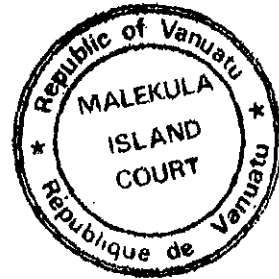


Dated at Lakatoro this 30th day of November, 2007

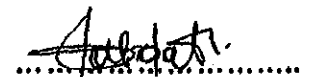
BY THE COURT



.....
Edwin Macreveth
Presiding Magistrate



.....
Justice Lorma Bongvivi



.....
Justice Douglas Vatdal



.....
Justice Eveline Seth

