

IN THE MALEKULA ISLAND COURT  
HELD AT LAKATORO/ MALEKULA

(Civil Jurisdiction)

Civil Case #. 22/05  
Judg. #

BETWEEN : JOHNBROWN SARAKEN  
(Claimant)

AND: FRENDRY NATHANIEL  
(Defendant)

IN THE MATTER OF: DISPUTE OVER COCONAS PLANTATION

Coram: Jastis Douglas Fatdal  
Jastis Endy Shem  
Jastis Maxwell Arhampath

Clerk: Wendy W. Raptigh

**JUDGMENT**

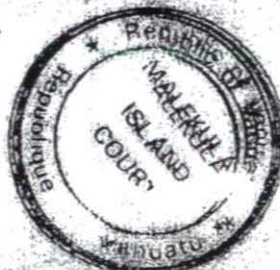
**Brief background blong case:**

Civil Case # 22/05 hemi bin pending before long Malekula Island Court since 2005. Case hemi bin set blong go for trial long 23<sup>rd</sup> October, 2008 but Frendly hemi no turn up be representative blong hem nomo so Court iadjourn lgo long 30<sup>th</sup> October, 2008, stating long 1.30pm long aftanun blong trial isave tekem ples watem presence blong tugeta parties watem ol witnesses blong ol.

**Issue: Whu igat raet long ol coconas long Posposi mo long Oranwar?**

**Smol Histri blong case:**

Claimant – Johnbrown hemi stap kleim se hemi gat raet ova long property long tingting se from Jif Jephet Saraken I adoptem hem. Johnbrown hemi blong Peterar mo hemi adopted ikam long Betelep. Hemi stap kleim se Jif Jephet I mekem ol requirements long custom we hemi biliv se hemia nao iregistered long custom. Igat wan ceremony ltekem ples long 5 dei afta we hemi bon. Jif Jephet kilim wan faol mo mama we llukaotem mama blong mi iwashem hand blong hem long hem. Long 10 dei afta birth Jif Jephet lputum yam blong ol mama we ol stap givim kaekae long biological mama blong hem. Long 30 deis afta birth Jif Jephet imekem blgfala kaekae bakeken mo sem taem lpayem Jif Lepen 5 paon (VT1,000) long year 1947 mo hemi kleim se sem taem hemi out long mama blong hem mo go titi long mama Presila, wife blong Jif Jephet. Wife blong Jif



Jephet tu ibin givim birth long Roy be afta Roy ided 3 dela afta adoption itekem ples. Jif Jephet imekem circumcise blong Johnbrown mo pem woman blong hem – 60 paon mo igivim seven pls graon long hem. Long ol graon ia lgat Pospose, Petervat, Topaen, Temejror, Oranwar, Santar mo Mele. Tufala pis graon wei coconas istap long hem mo hemia nao we Defendant istopem Johnbrown blong no go wok insaed hemi long Pospose mo Oranwar. Johnbrown hemi go on tu blong talem se, long ol important mitings blong family mo village hem nao istap act mo toktok long behaf blong family ol taem. Hemi appointed tu olsem wan Jif blong famili blong hem. Johnbrown itekem tri witness blong hem. Tu long ol witniss blong hem, Jethro Lepen mo Serge Malteyan tugeta iwitness se Itru Jif Japeth iadoptem Johnbrown, base long reason se Johnbrown inomo go bak long olgeta long bush (Peterar), hemi stap ful taem wetem Jif Jephet long Beterlep. Jethro hemi brata blong Johnbrown mo hemi witnissim taem wei Jif Jephet itekemaot Johnbrown long famili blong ol mo tekem lgo wetem hem long Beterlep. Serge Malteyan hemi witnissim ol ceremony we Jif Jephet istap mekem blong Johnbrown olsem circumcison wetem maret blong Johnbrown.

Defendant – Friendly Saraken hemi talem long statement blong hem se hem wetem ol full famili blong Saraken oli no save long adoption blong Johnbrown Saraken. Ol custom bisniss blong ol taem blong birth olsem 5 deis, 10 deis mo 30 deis feast hemi no tru from hemia ino custom blong smol nambas. Hemi go on blong talem se custom hemi neva witnissim adoption ia blong Johnbrown. Long saed we Johnbrown itekem ples blong Roy tri deis afta we Roy ibon mo lded, hemi no tru from Roy hemi bon long 1942 mo ded long niu year 1946 January. Defendant ifurther on blong talem se ol coconas long Posposi mo Oranwar oli planem bifo birth blong Lecos long 1910, mo Nathaniel long 1921 mo Jenneth long 1940. Iminim se 37 year bifo Johnbrown ibon. Further more hemi talem stat long ol fes court 1957 (village Courts) kasem 1986 June 18<sup>th</sup>, Supreme Court (namba 10 court) Nathaniel Japheth hemi witnissim se emi man Beterlep, em emi land owner mo hem hemi blad line blong Saraken. Igat 3 witness we oli kam blong supportem case blong defendant. Fes witness Samson Ulnaim italem se Waef blong Jif Jephet nao hemi wantem adoptem Johnbrown be ino Johnbrown mo tu ise Itru se Johnbrown lsave ol histri blong case be hemia ino mimin se rael blong Jif Jephet igivim long Johnbrown. 2<sup>nd</sup> witness Nicolsen Silas hemi kam tokbaot long saed blong graon. 3<sup>rd</sup> witness Jennet Saraken hemi talem se ino tru se Johnbrown ititi long mama blong Roy. Roy hemi bon sam year finis afta ljes ded long wan niu year.

#### **Ol findings blong Court:**

Long statement blong Johnbrown Saraken we i stap tokbaut property olsem coconut long Posposi mo long Oranwar mo includim adopsen blong hem, Court ifinem i stret olsem wei i happen long way blong wan adopsen long kastom, for example ol custom bisniss blong taem pikinini hemi bon hemia, 5 deis feast, 10 deis feast mo 30 deis feast hemi custom blong smol nambas.



Long saed blong dates blong birth blong Johnbrown wetem Roy tugeta claimant idisputem ol dates ia, be Court iluk se hemia ino issue.

Long saed blong circumcision ceremony wetem maret ceremony hemia se Jif Jephet iperformem ol ceremony ia, Frendly Nathaniel hemi no disputem.

Long saed blong ol witness – fes witness blong defendant Samson Ulnaim hemi wan long ol witnesses blong Johnbrown tu long taem we oli go long Santo mo Nathaniel istap talem se evri ting blong custom istap long han blong Johnbrown. Samson hemi nomo toktok baot hemia long Court.

Wetem ol toktok ya court i notem ol points ia;

1) Court i fainemaut se Jif Jephet i serem ol property finis long tugeta saed – Johnbrown wetem Frendly Nathaniel.

2) Tufala witness we i witnisim friendly;

a) Witniss Samson i witnessim wei em i karem Johnbrown long truck blong em blong go lukim Nathaniel. Be long court em i dinaiem wanem nao ol toktok wei Nathaniel italem.

b) Witness Jennet i talem long court se yes mama Presila i agri blong tekemaut Johnbrown blong kam olsem pikinini blong em be Jif Jephet nao ino wantem

3) Court i fainemaut se sam long ol toktok blong Frendly Nathaniel i blong no wantem talemaut stret se Johnbrown Saraken i bin adopted i kam long Family Saraken.

4) Follem ol points ya court i fainemaut se Johnbrown Saraken i adopted i kam long family Saraken blong mekem se em i kat raet ya blong toktok long any long ol kot long behalf blong Family Saraken mo tu Jif Jephet imekem evri custom ceremony blong hem olsem we Johnbrown hemi stret pikinini blong hem.

#### **Law we Court i applaem:**

**CAP 167 (s.10) – Application of customary law**

Subject to the provisions of this Act, an 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 justice, morality and good order.

#### **Translate:**

**CAP 167 (s.10) – Kot hemi mas applaem kastom**

Subject long seksen blong Act ia, aelan kot hemi mas aplaem kastom we istap insaed long eria blong paoa blong hem, spos oli no gat conflict wetem eni loa we oli stap raetem, mo no gat konflik tu wetem jastis, morality mo gudfala orda.





**Apply Law Igo long fact:**

Section blong Law we Court ia istap applyem tudei hemia antap – CAP 167 (s.10).

Hemi common sense nomo se whua iplanem coconas, hem nao property ia iblong hem.

Hemi common sense tu se wan man ino save kam stap plant or usum wan proeprty we ino blong hem, hemi save usum nomo sapos hemi gat wan raet long custom blong usum property ia. Olgeta points ya nao oli ol gudfala orda we hemi ol custom practice blong long taem finis ikam.

Court em i no lukluk long Dispute blong ground mo compensesion court i lukluk mainly long dispute blong coconas plantation.

**Last toktok:**

Dispute ia hemi causem plante division between olgeta Clemens, Court iwantem se bae peace imas stap ol taem. Eni wan insaed long family we bae itraem blong brekem order ia hemi save pass long Court from contempt blong Court Order mo fine or go long kalabus.

**Decision:**

Wetem ol toktok ya court ikam blong mekem decision se:

**From tudei Friday 27/11/08 Court i mekem order se yu Johnbrown Saraken bae yu ko back blong tekem mo usum ol property we olfala Chif Japeth i givim raet ya long yu blong usum ol coconut long Posposi wetem Oranwor olsem we i stap long claim blong yu.**

**Yu Frendly Nathaniel bae yu ko bak blong tekem mo usum ol property blong olfala Nathaniel we yu bin stap usum finis.**

**Court i mekem Order tu se yu Johnbrown yu no save ko blong tekem or usum ol property blong Frendly Nathaniel mo yu Frendly Nathaniel yu no save ko tekem mo usum ol property we blong Johnbrown olsem we i stap long claim blong em.**

**Court i wantem talem se sapos one long tugeta ino agri long decision ya yu kat 30 days blong mekem appeal.**

NOVEMBER  
DATED LONG LAKATORO, 27<sup>TH</sup> ~~DECEMBER~~, 2008

Endy.S  
Jastis Endy Shem

[Signature]  
Jastis Maxwell Arhampath

[Signature]  
Jastis Douglas fatdal

