

**IN THE MALEKULA ISLAND COURT
OF THE REPUBLIC OF VANUATU
HELD AT LAKATORO/ MALEKULA
(Civil Jurisdiction)**

Civil Case No. 13/07
Judg. No. 5/08

BETWEEN

MALSRAKE JOSELITO
(Long bahaf blong Malsrake family)
(Claimant)

AND

HILAIRE NIOVENMAL
(Counter Claimant)

ELIE BAHORMAL
(2nd Counter Claimant)

JEAN CERIAQUE MALTALIMARE
(3rd Counter Claimant)

IN THE MATTER OF: DISPUTE OVA JIFLY TITLE

Coram: Jastis Douglas Fatdal
Jastis Robert Niptick
Jastis Pierre Kai

Clerk: Wendy W. Raptigh

JUDGMENT

Brief background blong case:

Case before long Court ia hemi gat 4 claimant evri wan. Olgeta evri wan blong Walla, hemia long North East part blong Malekula. Case ibin registered long year 2007

Issue:

Case bifo long Court ia hemi blong finemaot se, hu ia nao igat rael blong karem title blong paramount Jif between tufala claimant ia antap?

History blong case:

Case blong Original claimant- Malsrake Niovenmal

Mifala Famiy Malsrake igat bigfala honor mo respect blong declaraemaot histri, generesen blong mifala abaot Chiefly teaeol blong Pongsine Nakamal.

Generasen we ikamaot long mainland Tonmalver Sanaliv igo long smol aeland Wala. Bouhar, Maltawo, Malsrake, Raphael, Pierre Marie, Jean Guy, Brian.

Bouhor mo Sanaim tufala ipikinini blong kastom Chief blong Tonmalve, Sanaliv (Nbel Oraor) Bouhor hemi out long Sanaliv (big aeland) hemi go daon long Melvarvar (Seinabou), hemi flot long bamboo mo go so long point blong Loret.

Hemi follem rod mo go stap wetem Sevri long Lolomasing Aop. Bouhor mo Sevri tufala ikamaot nomo long sem nasara blong big aeland Sanaliv. Tufala istap gogo nao Bouhor iaot long Lolomasing mo go stap long Pongsine.

Long Pongsine Bouhor iaot long Lolomasing mo go stap long Pongsine. Long Pongsine Bouhor igat fes pikinini blong hem Maltawo. Long Lolomasing Sevri igat fes pikinini blong hem Meltekru. Year oli pas gogo Meltekru iaot long Lolomasing mo go stap wetem Bouhor mo pikinini blong hem Maltawo long Pongsine. Nao trifala istatem blong bildimap nakamal or nibaur ia Pongsine.

Year oli pas nao Momgire, Malsrake, Raphael mo las generation we hemi Bryan hemi bon long Noumea, New Caledonia.

Long saed histri blong Sanaim hemi no gat pikinini nao hemi jes tekem bak nomo Malsrake igo bak long Sanaliv (big aeland), from se evri graon imas stap oltaem long raet blad laen blong bigfala custom Chief blong Tonmalver (Sanaliv).

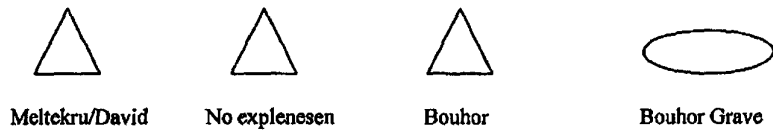
Long saed histri blong Sevri:

Sevri ibonem Meltekru, Meltekru ibonem Balpal, Balpal ibonem Maltawer, Maltawer ibonem David nao generation blong Sevri ifinis nomo long David. David ino gat pikinini mo hemi adoptem no. 3 generation blong Rapheal we hemi Gilbert. Mo taem we Gilbert ided evri graon mo taetol blong hem imas kambak long laen blong Bouhor. Today mi nao Pierre Marie mi stret blad laen blong bigfala custom Chief blong Pongsine nakamal long Wala island mi save stanap long raet custom blong hem.

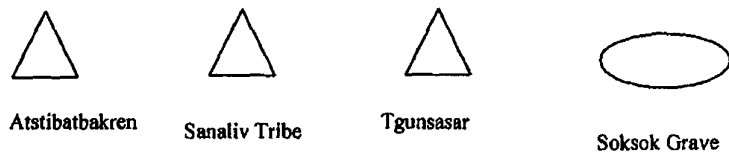
Hemia nao olgeta ston long Pongsine nakamal mo folem explenesen blong olgeta parties long 3 fala ston we oli stap long foret blong nakamal ia.

PLAINTIFF RESPOND

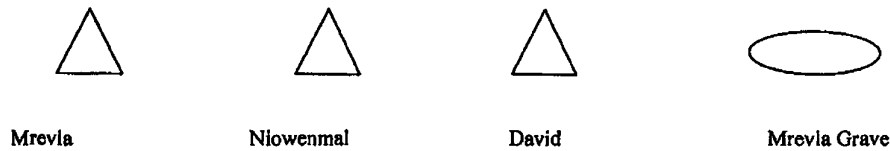
PLAINTIFF RESPOND



NAMBA 1 DEFENDANT RESPOND



NAMBA 2 DEFENDANT RESPOND



NAMBA 3 DEFENDANT RESPOND



Witness- George Noronmal blong Wala

Olfala Bahor hemi founda blong Pongsing. Hemi bin mekem wan trabol oli ronem hem nao ikam safe long nakamal blong mi- Nawhu. Afta mifala tekem hem mo go putum long nakamal Jinetra.

Case blong 1st Counter Claimant- Hilaire Niowenmal

Long year 2000 president blong Council of Jif blong Wala we emi Stephane Lelecteir, we plaintiff hemi Pierre Marie Serake. Oli presenten wan pepa blong Kot of oda blong police prosecutor we hemi kam from Lakatoro blong lukluk long nakamal Pongsine, date hemi Monday 17th January, 2000. Long taem blong miting ya mi bin declerem se mi kam from South Pentecost long Panbo reva, wetem tabu fish we hemi shark, long taem we ol kastom aktiviti oli happen yet. Long namba 27th October mi bin gobak long South Pentecost mo lukim ol famili blong mi. Mi mekem custom ceremony mo mi registerem bak mi long boundary blong mi- Vaul reva to Panbo reva. Long boundary blong mi long South Pentecost, emi wan boundary Anciente Patrimoine we iklan mo famili ilidim. Mifala igat wan nasara nomo we nem blong hem hemi Raprap. Mifala iwan tok blad

system nomo. Afta long ol Kastom ceremony wetem ol famili blong mi long South Pentecost Philip Deni emi presentem long mi pepa blong land boundri mo italem long mi se stat tedei sapos yu go bak long Malekula, yu nao fes man blong mi we -yukam taon wetem tabu fish, emi shark mo yu friman.

Famili tri

1. Uldera
2. Lowo
3. 3 generation ia
4. famili imaret bak famili
5. Atsipat Bakren
6. Malmetenial
7. Niowenmal
8. Rakrak Mael Calixto
9. Hiliare
10. Pascaline
11. Baltazare

Case blong 2nd Counter Claimant- Bahormal Pauline mo Bahormal Fabrice

Mifala family Mrewla, we blad blong hem ilaef tru long mifala tudei, igat honour mo respect blong declaremaot histri, generesen blong mifala abaot chiefly taetol blong Pongsine nakamal.

Mitufala italemaot long honourable Kot ia se Walla Island emi wan refugis aeland nam mifala ifumapem island ia Walla.

Mitufala italemaot long honourable Kot ia se nakamal blong Pongsine igat tri (3) ston (navot) long hem (1) beared body blong big chief mo founda blong nakamal ia. Trifala ston or navot iminim:

(foret) Big chief

(medel) Man jes kam

(biaen) Smol faea

Mitufala iwantem talemaot long Kot se nakamal blong Pongsine nao I resivim mo save gud long evriwan Sanaliv we oli travel long big island mo kam long Wala island mo stanamap Nakamal blong olgeta. Then afta nasara Sanliv long smol aeland Walla we emi last nasara blong Walla island.

Wan founder bigfala chief blong wan nakamal hemi mas silip insaed long nakamal blong hem taem hemi ded.

Mitufala iwantem talemaot long Kot ia se folem polisy blong Malvatumauri council of chief emi talem long article 7, section 1 ise “chief wei stanap imas be line blong chief or blad line blong chief”.

Generation blong famili Mrewla:

DESMAITES – MREWLA – BAHORMAL – LAURENT – RENE – PAULINE - RENE

Mitufala, Paulin mo Fabrice famili Mrewla we blad blong hem ilaef tudei long mifala italemaot long honourable Kot se:

Famili Mrewla emi pruvum hem wan long plenty Kots finis we sam relative we igat decision

blong emi stap se Mrewla emi founda mo Jifly taetol blong Pongsine nakamal. Nakamal blong Pongsine emi second nakamal blong Amel Lowo Walla island. Planty famili long deferen nasara long Walla island oli save gud long Mrewla.

Mifala itribe long South Malekula (Unua) ikam long Walla island mo kam shoa long Tsitsung Serser Loret we tedei mifala istap olsem kastom hona long pasis ia. Nao big chief blong Awop iricivem mifala istap olsem kastom hona long pasis ia. Nao big chief blong Awop iricivim mifala mo karem mifala igo stap long Tsinawep.

Afta long Tsinawep big chief emi gat wan tingting nao italem long pikinini blong hem Meltekrou se yu karem olketa mo oli go statem nakamal ia we nem blong hem Pongsine we mifala I founda long hem mo mifala ipruvum long kot finis. Afta long gudfala laef long Pongsine, mifala I recievim wan famili we tribe ikam antap South Malekula mo hemi ded evriean (blad blong hem inomo laef tudei).

Mrewla founda mo Jif blong Pongsine emi laef gud wetem ol pipol blong hem. Nao hemi rescivim wan tribe blong Pentecost we hemi kam stap long nakamal blong Aim festaem then afta ijies muv ikam long Pongsine we taem ia nakamal istap mo laef finis. Mrewla hemi risivim sam tribe blong Sanaliv we oli kam long Pongsine we mifala ikarem sam kastom raet long hem olsem graon nomo we mifala iresivim olketa. Famili Mrewla iwantem talemaot long Kot se folem kastom blong yumi especially North East, founda jif blong one nakamal hemi mas silip insaed long nakamal blong hem, iolsem we tudei Mrewla isilip insaed long Pongsine nakamal we evri family mo long diferen nasara oli save gud long hem.

Lastly, honourable Kot, counter claim stetmen blong mitufala, Paulin mo Fabrice famili Mrewla, hem base mainly long blad line we polisy blong Malvatumauri irekwaerem long Article 7, section 1.

Hemioa nao olketa stone (Navot) insaed long Pongsine Nakamal

Foret aotsaed	foret	Medel	Biaen	Bian aotsaed
Entrance door	Big Jif (fes faea)	Man jes kam	Sec faea	

*Famili Mrewla iclaim fes faea Mrewla Grev

Witness 1: Etienne Tiasinmal blong Walla mainland

Mi kamaot long Tonmaliu, Sanaliu, hem no fes taem mi fesem Serake. Serake hemi no follem tribe blong Sanaliu we igo long smol island. Serake isilip outsaed long nasara blong Pelut so mi no ting se hemi shud claim Pongsing, ino even aotsaed long nasara blong Lowe.

Witness 2: Jerome Siptelei blong Walla

Mi witnessim se Barhormal ibig Jif blong nakamal blong hem Pongsine. Mi stap long Aima, mi boss long Aima.

Witness 3 Philip Malsoklei blong Walla.

Sanaliu tribe we igo long Pongsine oli go oli luk Mrelawa nomo stap.

Witness 4: Emes Bangus blong Sanaliu, Wala mainland

Mifala ikam long Walla island Mrelawa nao receivim mifala igo long Pongsine.

Witness 5 Christion Samuel blong Walla

Hemi tru se Mirelawa hemi jif blong Pongsine.

Witness 6: Joseph Sourvinmal blong Walla

Mirelawa nao ol ofala bifo oli kam oli se istap insaed long nakamal blong Pongsine. Hemibig Jif. Fes nasara long Walla Island Ama I tap long hem.

Case blong 3rd counter claimant-Family Maltalimare

Family Maltalimare istap clemem kastom raet mo pik faea insaed long Pongsine nakamal olsem big Jif.

Follem kastom raet family Maltalimare istap putum aot stetment ia long kot se Maltalimare hemi big jif long big faea insaed long nakamal blong Melnega long Tanmeliu, Pinalum.

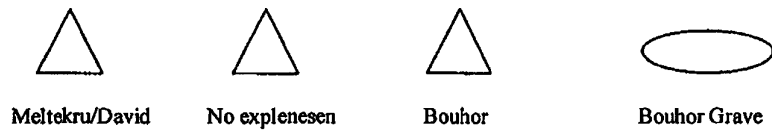
Maltalimare itekem wan woman Ama nem blong em Germain igat bel. Wanfala taem igat raorao betwin ol famili nao Germain ironwe wetem bel blong em mo go back long Ama long famili Souvrinmal Pio. Istap samfala taem bakegen nao Maltalipongsin or David igo mo askem Germain long famili Souvrinmal Pi oblong tekem olsem woman blong hem. Maltalipongsin emi pem Germain wetem 1 pig bormaly bakegen nao istap more samfala taem nao ibonem Ceriaque.

Taem Ceriaque ibon oli kilim Tamtam blong em long Lowo mo David imekem kaekae blong em long wan kastom ceremony we everiman Pongsine mo Aim nakamal save gud long em.

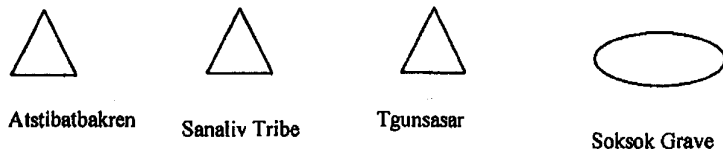
Ceriaque ibonem Jean Ceriaque mo Jean Ceriaque ibonem Arlino.

Hemia nao olgeta ston long Pongsine nakamal mo folem explenesen blong olgeta parties long 3 fala ston we oli stap long foret blong nakamal ia.

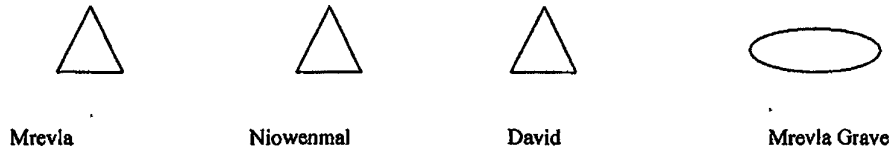
PLAINTIFF RESPOND



NAMBA 1 DEFENDANT RESPOND



NAMBA 2 DEFENDANT RESPOND



NAMBA 3 DEFENDANT RESPOND



Witness 1: Julian Malere blong Walla

David nao hemi resivim mi long Wala Island. Hemi tekem mifala igo long Pongsine. Mi kam long Sanaliu nao mi go long smol Island.

Ol findings blong Court:

Island Kot iharem ol toktok blong fourfala parti wetem ol witness blong olgeta mo fianemaot se ikat sam long ol pati oli no man ples. Kot ifainemaot tu se ikat 2 kaonsel blong ol Jif ibin tekem 2 separate decision finis long matter ia, ikat Walla koonsel blong Jif mo Rano Kaonsel blong Jif. Decision ibin ko long 2 different pipol. This Court bae hemi lukluk mo givim decision blong hem base long trial insaed long Kot.

-Family Hilaire Niovenmal yu bin indicate long Kot se yu kam long Pentecost. Kot irespond long yu se yu no man Pongsine nakamal.

-Family Jean Ceriaque yu bin indicate long Kot se yu kam long Pinalum. Kot irespond long yu se yu no man Pongsine nakamal.

-Family Elie Bahormal yu ibin indicatem long Kot se yu kam long Bankir, South Malekula. Kot irespond long yu se yu no man Pongsine nakamal.

-Family Malsrake Joselito yu bin indicatem long Kot se yu smol faea blong Pongsine nakamal.

-Igat family David we Kot inotem se hemi stret blad mo hem nao iman Pongsine nakamal. Hemi stret man blong tekem taetol blong Jif be Court inotem se hemi no gat eni stret pikinini wei bladline blong hem ilaef istap.

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). Common practice mo custom insaed long nasara ya, long bifo ikam kasem tudei oltaem fes bon son nao hemi stap inheritem title blong Jif. Ino eni fes bon but fes bon follem bladline. Pikinini boe we mama igat bel long hem finis afta ikam in long wan nasara bae pikinini boe ya imas putum hem daon mo kam andanit long authority blong ol stret bladline.

Nara kastom practice tu se man wei kam long nara ples or Island bae ino save karem taetol ia blong ikam wan Jif blong ol pipol, hem oltaem hemi mas kam stap andanit long stret man ples long area ia, we spos big faea inomo gat then bae smol faea inext person we isave tekem rant ia.

Olgeta points ya nao oli ol gudfala orda we hemi ol custom practice blong long taem finis ikam we Court ia tudei bae ifollem.

Las 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 or fine or go long kalabus.

DECISION:

Afta we Court iharem ol toktok blong tugeta claimant mo harem ol toktok blong ol witnesses, Court istap mekem declaration olsem:

- **Family Malsrake Joselito we hemi smol faea Kot i declared tedei se hem nao ikarem taetol blong paramount Jif long Pongsine Nakamal.**

- **Sipos eni parti we ino agri long decision ia hemi gat 14 deis blong mekem appeal blong hem igo long higher Court.**

Dated long Lakatoro this 27th dei blong February, 2008

**JASTIS PIERRE KAI
JASTIS DOUGLAS FATDAL
JASTIS ROBERT NIPTICK**