

CF

IN THE EFATE ISLAND COURT
PORT VILA
VANUATU

LAND CASE No. 3 OF 1994

EHUT TASARIKI & EBUT WEST LAND

BETWEEN: CHIEF TANGRARO ORIGINAL CLAIMANT
AND: X (UNKNOWN) COUNTERCLAIMANT

Coram: Senior Magistrate Rita Bill NAVITI
Island Court Justices: Justice Eddy KARIS OF Eton;
Justice HARRY JOSUAH of ETON
Justice ANNE CARLO of PANGO

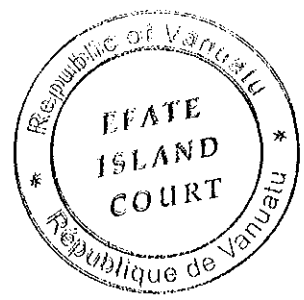
JUDGMENT
ON
UNDISPUTED PORTION OF THE LAND CLAIMED

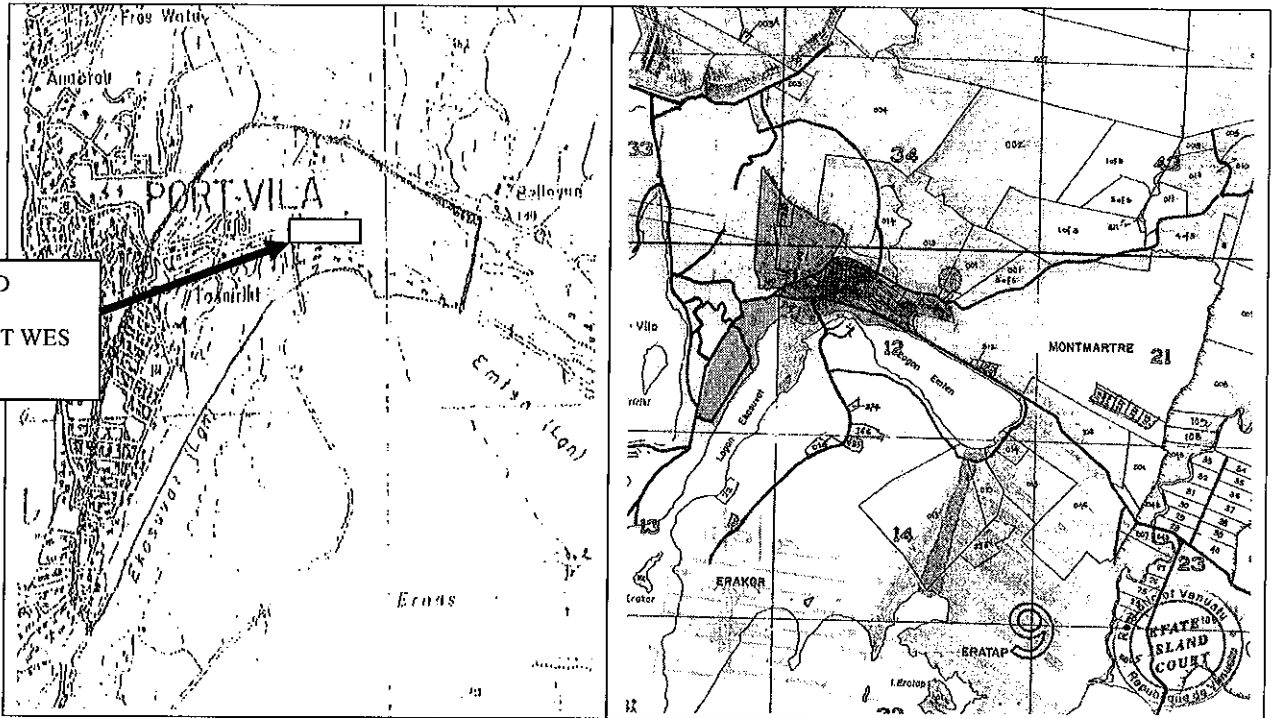
BACKGROUND:

This matter was filed on 8 July 1993 by old Kalosil TANGRARO and Kalsaf TANGRARO. According to the file itself it remains unchallenged until today. The claim covered Titles 376 and 81 for a total land mass of approximately 245 ha. The boundaries subject of the land was as below:

Boundaries:

Below is the original sketch map.





Sketch map filed in 1993

Sketch map filed in 2010

It is alleged to start from:

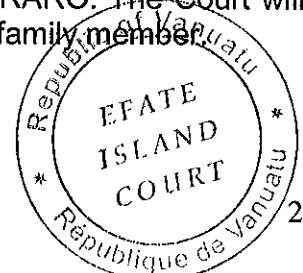
- ERNANGIR (now NO. 3) ,
- to EFATKEPIL up to
- EKASUFAT then run to
- EMATNASIE (now Chief Nakamal); further to
- ETASRIK, then to
- ESELNAR, it continues to
- EKPUTWES, then to
- ESIRSAK, to
- ELAKTNTALI POMOU, then
- EMALUS then to
- EWENESU back to
- ERNANGIR. This is title 81

ISSUE:

The issue is whether EHUT TASRIK and EBUT WES land included in title 81 is a customary property in land of TANGRARO family without opposition and/or objection.

PROCEDURES:

The court must satisfy itself that all people present in the courtroom do not raise any objection to the original claim lodged by family TANGRARO. The Court will then record the declared boundaries and affiliation of each family member.



LAWS:

1980, CONSTITUTION OF THE REPUBLIC OF VANUATU

Article 73. All land in the Republic of Vanuatu belongs to the **indigenous custom owners and their descendants.**

Island Court Act Cap 167

THE FACTS:

EHUT TASRIK and **EBUT WES** lands is a minor piece of land compare to the original boundaries situated at the East shore of Vila Bay.

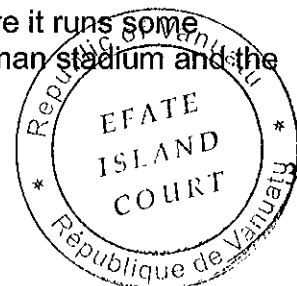
The boundaries of EHUT TASRIK runs from:

- A. The "**Benwara**" tree at some distance from the mouth of the cross road at USP (University of the South Pacific) that leads to College de Montmatre; marked "**A**" on the attached map. It then runs in parallel with the road to Montmatre reaching the left upper corner of title 376 marked "**B**".
- B. "**B**" is on the left side of the road. On the right side of that same road there is a Gate of a private property's fence identified by planted line of sea oak trees at the entrance. From there it runs straight down south with the boundary of title 376 to "**C**";
- C. "**C**" is a "**Whitewood**" tree close to the Korman stadium. It coincide with the left down corner of the title 376; then it returns running parallel with the main road back to point "**A**" above.

The boundaries of EBUT WES starts from:

- D. The right upper corner of title 376 marked "**D**" is a "**Benwara**" tree few meters passed the sign "**El-Manaro**" (on the left) of the road to Montmatre It continues to "**E**";
- E. "**E**" is marked by a coconut tree standing alone, half way to College de Montmatre, on the right side of the main road; it then runs to "**F**";
- F. "**F**" is marked by the corner post of Montmatre's cattle fence. It then runs West to "**G**";
- G. "**G**" is down at 2nd Lagoon, about few meters in land up the hill from Michel Trua's property, then to "**H**";
- H. "**H**" is a very young coconut tree planted about 2 years ago closer yet behind Michel Trua's fence; It then runs parallel to the main road but outside the urban declared boundaries back to "**I**";
- I. "**I**" is a house that makes cement bricks outside the Korman stadium's fence. From there it runs parallel with the Korman Stadium but some meters in land of the fence to "**J**";
- J. "**J**" is a big stone behind the Korman Stadium; from there it runs some distance in land in parallel with the fence protecting Korman stadium and the surveyed boundaries of title 376 up to "**K**";

EHUT TASRIK & EBUT TAS12/16/2011



K. "K" is marked by pawpaw trees joining this boundaries to that of title 376; it then runs with the boundaries of title 376 back to "D"

On 19 December 1994 the Efate Island Court made a declaration on title 376 which is part and parcel of the same claim in favor of Joseph Kalvat under order 6 Rules 9 and 11 of the Island Courts (Civil Procedure) Rule 1984 without the knowledge and consent of the family TANGRARO. That declaration removed 26 ha. of the original claim leaving 219 ha within the claim,

One wonders why the Efate Island ^{Court} deems fit to make a partial declaration within the same dispute, limiting itself to a title; whereas it is warranted to determine customary ownership of custom boundaries of land.

Common sense dictates that such a declaration of customary ownership should be made over custom boundaries and if undisputed the declaration should include all the parties respectively who have registered the cause. The court will elaborate on this issue later in this Judgment.

However that declaration was advertised in February 2005 giving 60 days period as required by the Island Court rules. No appeal has been lodged.

Part of the registered land, approximately 219 ha, was alleged to have remained unchallenged from the declaration in 1994 up to 2010 when suddenly the original claim was again strike by another declaration removing approximately 135 Ha. from the land masse in favor of Land Case 1 of 1995 entitled "**Bouva and Bellevue**"; reducing it to around 84 Ha. Again without knowledge and consent of family TANGRARO.

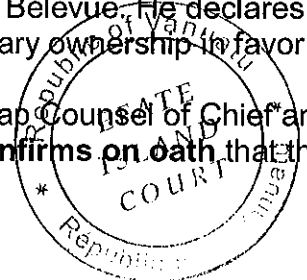
Evidence filed shows that a plot of land in the same area was sold on 27 June 1880 by TANGRARO and TAGBAR both natives of the tribe of Erakor to Mssrs ZAEPFEEL and CHEVILLARD.

Chief TANGRARO seeks a declaration from this court that the land **EHUT TASRIK AND EBUT WES** is thus not disputed; everyone in this area acknowledges that TANGRARO and his brother TAGBAR were the custom owners who sold it to ZAEPFEEL and CHEVILLARD.

He produces the following two witnesses:

1. **Chief JOHN KALWAT KALOMTAK** who is the current chairman of Bouffa/Belvue land estate and custom owner of certain lands in the same area. Chief KALWAT **confirms on oath** that TANGRARO was an assistant chief of Chief KALOMTAK who was his ancestor and paramount chief of this area. He added that there is no dispute over the claim registered by TANGRARO. And that the land in question shares the same boundaries with KALOMTAK's land of Bouffa and Belevue. He declares that he does not object to a declaration of customary ownership in favor of the descendants of TANGRARO.
2. **Chief THOMAS TAU** who is the chairman of Eratap ^{Counsel of Chief} and vice chairman of Bouffa/Belevue land. He also **confirms on oath** that the

EHUT TASRIK & EBUT TAS12/16/2011

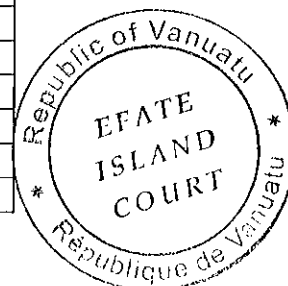


land in question is not disputed and he knows that the land belongs to family TANGRARO from **immemorial time**. He does not object to a declaration of customary ownership in favor of the descendants of TANGRARO.

Mr. Ray Simeon spoke on behalf of Family **TANGRARO**. He introduces Chief **TOM KALOSIL** who is the current chief and son of chief Tangraro and **KALSAF** the brother of Chief Tangraro who has registered this claim in 1993 but has since passed away. He submits that their history remains unchallenged for 18 years; it has thus reached maturity and the court should not hesitate to make the declaration sought.

He listed the descendants of TANGRARO has follows:

TAKAU married LEIMERMAN		
TANGRARO		
SURI (1st wife)		ERU (2nd wife)
TOUMAL		SIMEON
WABEB		ERU
OLIVE		KALOSIL
LIERAU		KALSAF
ROSSI		LIRONGO
WAOUTE		MERIAM
		MARETH
GARINE		LITGASIK
DICK		
JUNANE		SIMA
BINAWES		TOM
ROGER		LITIPON
TOUMAL		KALSEF
PRETIN		RAY
ANNA		LITANG
		SPETAL
PATRICK		
TANGRARO GRAHAM		SHERLIN
ANDRE		TARU
		NALEMAN
ROAS		LITGASIK
ENID		KALOSIL
WAOUTE		LEIMERMAN
ANNA LISA		STEPHANIE
PRETIN		SAMANTHA
ROSSETTE		SURI
ROGER		SURI
MELANIE		
WHEA		



LAND VISITATION:

When visiting the boundaries of the said land on 15 December 2011, the court realized that a major part of the land was removed from the initial sketch map; therefore the court proceeded to hear the original claimants on oath on whether they were made aware of the 2 previous declarations and whether they consent to the reduction in land mass.

Both **Mr. KALSAF TANGRARO** who, with old Tangraro lodged this claim in 1993 and Chief **TOM KALOSIL TANGRARO** who took over the chiefly title of the family after the death of Kalosil Tangraro, told the court on oath that they were not aware of the declaration made in 1994 and the one recently made in 2010 to reduce their land. They also state that their family did not receive any money for the acquisition of land by Government over the lower part of the land which is now an urban area.

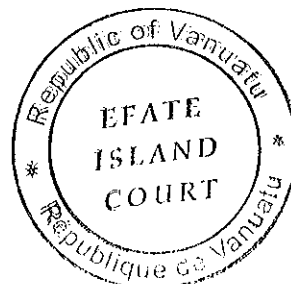
It has come to the knowledge of this court that the declaration made in Land Case 1 of 1995 affected this case. Furthermore there is grave concern by this court over the procedure used to issue the declaration in 2010. The declaration made might be ultra vires.

DECISION

It transpired from the evidence that two declarations were made in isolation; therefore the other part of the land subject of land case No. 3 of 1994 remains disputed except for EHUT TASRIK & EBUT WES land which is now cleared of any disputes.

This court is satisfied:

1. THAT the land was properly registered with the Efate Island Court on 8 July 1993 under Land case No. 3 of 1994 ;
2. THAT the declaration made in 1994 was not subject to an appeal; but was made in isolation;
3. THAT the declaration made in 2010 in the Land case 1 of 1995 above was also made in isolation;
4. THAT there was no opposing party registered in Land case 3 of 1994; however the boundaries of the land in Land Case No. 1 of 1995 encroach greatly on this land.
5. THAT Family TANGRARO was wrongly led to believe that it cannot claim its customary right in public land;



DECLARATION

1. Declare that CHIEF TANGRARO is the true custom owner of the EHUT TASIRIKI and EBUT WES lands (Attached map);
2. The remaining part of the land subject of the initial customary map, (title 376 and Bouffal/Belevue) for which declarations were made in 1994 and 2010 respectively without prior knowledge and consent of the claimant FAMILY TANGRARO, remains a legal issue for this court to determine;
3. The Claimant "FAMILY TANGRARO" is at liberty to pursue his claim for other part of this land should he wishes or file a discontinuance notice;
4. FAMILY TANGRARO is composed of the descendants of TANGRARO son of TAKAU and LEIMERMAN listed above:

Any objection must be registered with the Island court 60 days from the date of its publication on media.

Port Vila this, 16 day of December 2011

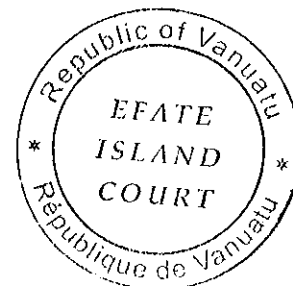
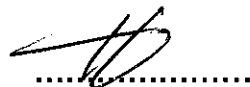
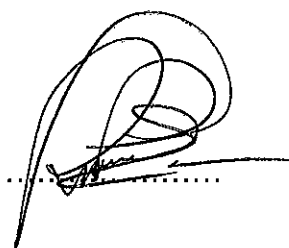
Senior Magistrate Rita Bill NAVITI

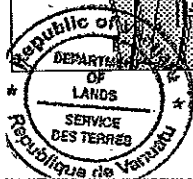
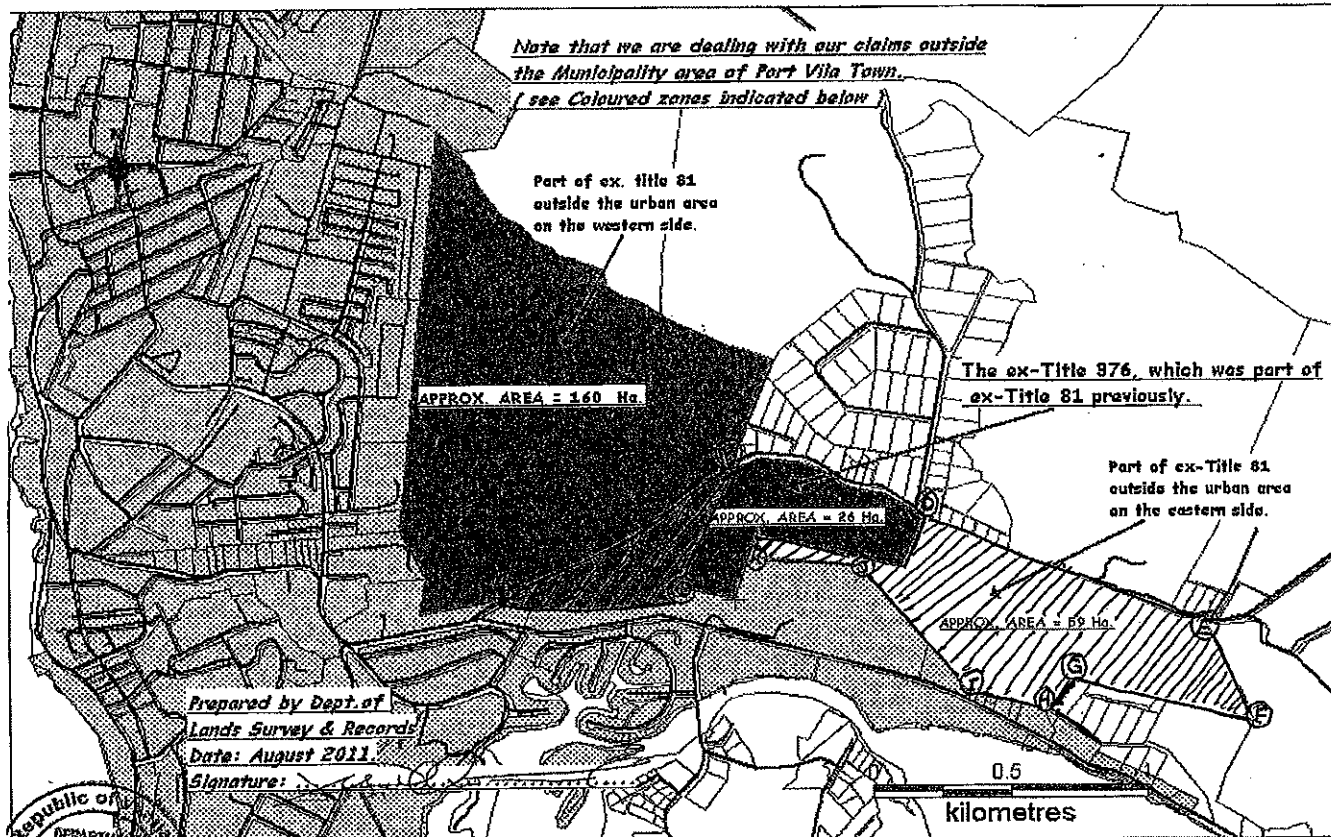
Island Court Justices:

Justice Eddy KARIS OF Eton;

Justice HARRY JOSUAH of ETON

Justice ANNE CARLO of PANGO





M.K. Williams
SURVEYOR
August 2011

EHUT TASRIK runs from:

- The "Benwara" tree at about 50 m from the mouth of the cross road that lead to College de Montmatre; marked "A" on the map below. It then runs in parallel with the road to Montmatre reaching the left upper corner of title 376 marked "B".
- "B" is on the left side of the road where there was a Gate of a private property's fence branded by planted line of pin trees at the entrance leading into its yard. From there it runs straight down south with the boundary of title 376 to "C";
- "C" is a "Whitewood" tree closed to the Korman stadium. It coincide with the left down corner of the title 376; then it returns running parallel with the main road back to point "A" above.

EBUT WES runs from:

- The right upper corner of title 376 at a "Benwara" tree around 50 m from the sign "El-Manuro" (on the left) of the road to Montmatre marked "D". It continues to "E";
- "E" is marked by a coconut tree standing alone, half way to College de Montmatre, on the right side of the main road; it then runs to "F";
- "F" is marked by the corner post of Montmatre's cattle fence. It then runs West to "G";
- "G" is down at 2nd Lagoon, about 200 m in land up the hill from Michel Trua's property, then to "H";
- "H" is a very young coconut tree planted about 2 years ago closer yet behind Michel Trua's fence; It then runs parallel to the main road but outside the urban declared boundaries back to "I";
- "I" is a house that makes cement bricks outside the Korman stadium's fence. From there it runs parallel with the Korman Stadium but about 100 m in land of the fence to "J";
- "J" is a big stone behind the Korman Stadium; from there it runs 200 m in land in parallel with the fence protecting Korman stadium and the surveyed boundaries of title 376 up to "K";
- "K" is marked by pawpaw trees (straight line south direction to cricket field.

