

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

Land Case no.2 of 1998

IN THE MATTER OF THE ISLAND COURT ACT CAP 167
FOR A DECLARATION OF OWNERSHIP OF MOLIKAKALIVATU LAND

ISON BANGA & FAMILY
Undisputed Claimant

Coram: Magistrate Edwin A Macreveth
Island Court Justice Willie Garae
Island Court Justice Joseph Garae
Island Court Justice Stanley Doro

Clerk: Wilson Andrew

Date of hearing: 4th of July, 2012

JUDGMENT/DECLARATION

By way of a conference on the 2nd of July, 2012 it was discovered that the land of Molikakalivatu had remained free of dispute since its publicity by the claimant dated 25th of February, 1999. In that pre trial conference Mr Manley Tari a party to Land Case no.1 of 1998 (Kwalusuku land dispute) with leave of the court elected to pay the required court fee to be joined as a counter claimant. However, after the court dismissed his claim in land case no.1 of 1998 he then made another application to the court entirely withdrawing his intention to counter claim ownership of the land in question. Having done so, the original claimant's case continued to remain undisputed.

The advertised land

The land of Molikakalivatu is situated between two dry creeks one on the east running down south to Nopuratov pool on the eastern side and another creek on the western side running down to the sea shore to Lokoqwele. From there, it passes Losingovutu further down and then turns eastwards by joining up at Nopuratov pool again on the east. Its northern border is demarcated by a cattle fence meeting each creek. It is noted that some part of the land is been developed with cattle farming, coconut plantations, cash crops and subsistence gardening. The land is also

referred to as Title no. 3205. Refer to the declared map attached herein for better specifications.

A brief discussion of the relevant laws and custom processes and usages of the contested area are outlined below.

THE LAW & CUSTOM

The Law.

Article 95 (3) of the 1980 Constitution says that customary law shall continue to have effect as part of the law of the Republic of Vanuatu. Article 73 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 75 adds on that only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.

The function of the tribunal is to resolve proceedings according to law. Where there is no rule of law applicable to a matter before it, the court shall determine the matter according to substantial justice and whenever possible in conformity with custom.

Section 10 of the Island Court Act, Cap 167 tells us that customary matters and beliefs prevailing in a territorial jurisdiction of an Island Court are applicable in the court; so far as they are not in conflict with the written law and are not contrary to justice, morality and good order.

The findings on rules of custom forming the basis for land ownership

The advanced information regarding customary principles of land ownership and use are summarised in the forthcoming paragraphs.

The rules of custom forming the basis of land ownership practiced in the area of Red Cliff is founded on the patrilineal system. Meaning rights to claim ownership of land is acquired from the father's line. Ownership of customary land is communal or collectively owned based on common descent, residence within a nasara and participation in common activities. All members of the clan shared undivided interests on the land. Land in custom cannot be transferred to another tribe or family. The land is own indefinitely by the clan and its descendants.

It is the common practice that the first person and his family who explore, live, build a nasara and take control of a particular territory becomes the original owners or ancestors of the land. It makes no difference if they left again for some other reasons, they would still be recognised as the custom owners. Tribal members who form the land owning unit are all related by blood relationship for having descended from a common ancestor. Land is also acquired through other custom processes. For example, a family who takes charge in meeting funeral expenses of a person may be given land use rights.

Land is traditionally inherited patrilineally from the chief or original ancestor to the eldest son upon death. The successor bears the responsibility for providing equal distribution of the land to the surviving descendants of the clan and other kinships. This is a male predominated system which is twinned with the land tenure system passed on from ages past to the present generation.

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

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 pig killing ceremony. The common chiefly name is *Moli* a naming word that would procedurally be received by a man at an ordination during a pig killing feast. There are different stages of status in hierarchy for a chief to acquire.

Pig killing ceremonies would normally occur at a nasara. A segregate area from the public confined only to chiefs and men having high status in the society. The first ever built nasara of a tribe becomes the original nasara. The higher the number of pigs is slaughtered it would practically marks a chief's rank at a higher grading step. A nasara is usually identified by man made features like erected stones, natural plants such as namele palms and other identical phenomena.

Given the basic understanding of the traditional processes and the law, we now present the relevant facts as submitted before the tribunal.

The undisputed facts

Ison Banga is appearing on behalf of his family claiming through his original ancestor Viravai. He led evidence that the land originally belongs to his ancestor Joel Tangakiak. Tangakiak made an agreement with the SDA mission to use the land of his forefathers.

He believes that the land belongs to his forefather Viravai whom was buried on the land. His ancestor has also created and owns a nasara known as Natariboe in the area. He explains that such name is a chiefly name given to his grand parent after having performed a pig killing ceremony having 100 pigs.

This chief first ever pig killing ceremony occurred at the nasara of Takumolibagas. He said that there is a erected stone marking the event which can still be viewed today. Such ritual stone is known as Durukmeamea meaning red pig.

His family had been occupying the land for centuries since time immemorial. Coconut palms and other identical trees still stand today on the land cultivated by his forefathers.

His witness, Anderson Tari in support of his claim confirms that his father Johnson Tari and Silas Aru are witnesses to the signing agreement with the SDA mission for the use of the land. Pastor Grave Trey and Stanley Bruce had represented the SDA mission during the signing ceremony. It is his belief that Manly Tari and Thomas Malatai are not natives of Molikakalivatu land.

In light of the foregoing facts, the court is satisfied on the grounds of probabilities that Ison Banga and his witnesses have substantiated sufficient evidence proving that the claimed land truly belongs to his family and descendants.

DECLARATION

Having heard the claimant and his witness and pursuant to the Island Court Civil Procedure Rules (Amendment) Rules no 1 of 1993, under the Amendment of Order 6 Rule 11, IT IS HEREBY this day declared as follows;

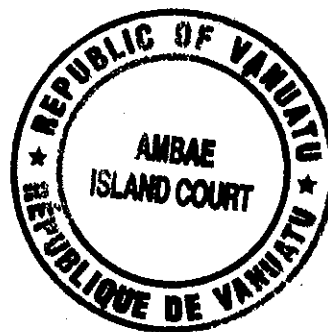
1. That Ison Banga and his descendants are the customary owners of the land of Molikakalivatu as claimed accordingly.
2. That the declared boundary shall be the same territory as described above.

3. That this judgment be advertised in the manner prescribed in rule 8 for a period of 60 days with costs of advertisement to the declared owners. If no appeal is lodged after 60 days from the delivery of this declaration the presiding Magistrate will then send the judgment to be registered at the lands Records Office and at the Supreme Court Registry.

It is reminded that this declaration does not also affect other property rights on the land, such as rights of local occupants to harvest coconuts, garden, graze cattle and other existing development thereon the declared land.

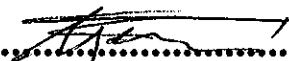
However, all occupants or dwellers of the declared land must bear in mind that these rights may be waived or varied at the discretion of the owners. The exercise of these rights is limited to existing properties prior to this declaration. It is further directed that that all persons currently in use of the land undertake to cause appropriate arrangements with the declared owners to accommodate their continuous use of the land.

Attached to this decision is a copy of the declared land boundaries (see, shaded land area) to the declared owners.



Dated at Redcliff, south Ambae this 04th day of July, 2012


BY THE COURT


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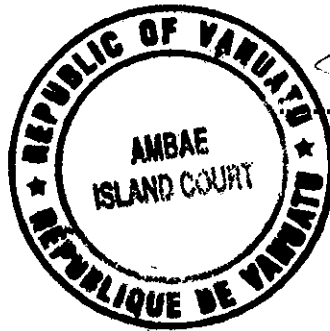
Justice Willie Garae

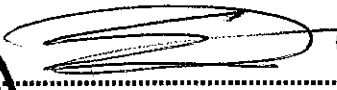

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Justice Edwin Garae


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Justice Stanley Doro




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Edwin A Macreveth
Presiding Magistrate

