

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

Land Case No.2 of 1995

BETWEEN: JAMES JETHRO ARUDARE & FAMILY
Counter Claimant 1

AND: AUGUSTINE GARAE & FAMILY
Counter Claimant 2

AND: ROBINSON TARIALA & FAMILY
Counter Claimant 3

AND: KENSLEY BANGA & FAMILY
Counter Claimant 4

AND: SIMON HAKWA & FAMILY
Counter Claimant 5

Coram: Magistrate Edwin A Macreveth
Island Court Justice Willie Garae
Island Court Justice Edwin Garae
Island Court Justice Timothy Taitai

Clerk: Wilson Andrew

Date of hearing: 25th July – 1st of August, 2012

Date of decision: 1st of August, 2012

J U D G M E N T

The land in dispute is situated at the southern part of the Island of Ambae commonly known as *Redcliff*. It is located between the creek of *Matan Wando* and *Waimaeto* creek covering the Redcliff airstrip. The parties in this dispute are claiming land ownership and right of use of land.

Its territorial boundary is generally described to commence on the north at *Waimauri* creek on the western side where it runs down meeting *Waimaeto* creek leading to the coastal area at *Lo one noi Qwak Vinat*. Its border on the southern part is bounded by the sea shore which follows eastwards to *Matan Wando* creek located at the eastern side. It then follows the creek inland to *Tori Sovi* joining up again at *Waimauri* creek.

The land upon its publicity by the original claimant Laurent Silas had attracted 8 other parties to file a claim over the advertised land areas. At the course of a pre trial conference, the original claimant and 3 other registered defendants with leave of the court then decided to entirely withdraw their claim. That decision saw the number of claimants reduced to five parties.

A brief summary of the relevant laws and custom processes and usages of the contested area are discussed below.

THE LAW & CUSTOM

The Law

The applicable laws or provisions of relevancy to land matters are summarised in the following words.

Article 95(3) of the 1980 Constitution stipulates that "*customary law shall continue to have effect as part of the law of the Republic of Vanuatu*". Customary land is defined in the Customary Land Tribunals Act as: "*land owned or occupied, or an interest in lands held, by one or more persons in accordance with the rules of custom*". Article 73 of the Constitution declares "*all lands in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants*" and Article 74 affirms that "*the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu*".

The above Articles makes it plain that customary land is communally owned by "*indigenous custom owners and their descendants*" determined according to "*rules of custom*". 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 will determine the matter according to substantial justice and whenever possible in conformity with custom.

Section 10 of the Island Court Act, Cap 167 provides 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 the rules of custom

The rules of custom forming the basis of land ownership and use practiced in the disputed area are 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 eternally own by the clan and its descendants.

It is common knowledge that the first person and his family who lived, occupied and built a nasara at the particular territory become 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 original ancestor.

Land is also acquired through other traditional processes. For example, a family who takes charge in meeting funeral expenses of a person would as a matter of reciprocity be given land for use for certain period of time only if consensus is reached by both parties. Land may be given to a woman as a gift upon her marriage for use.

Land is culturally inherited patrilineally from the chief or original ancestor to the eldest son upon death. The son, who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings, tribal members and other relations. This is a male predominated system which is twinned with the land tenure system handed down from generations to 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 rights.

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 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. A woman having origins and birth right to a chiefly line may also be given this chiefly name of *Moli*. There are different stages of status in hierarchy for a chief to acquire.

Pig killing ceremonies would normally occur at a nasara. A segregated 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 mark a chiefly 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. A chief and his successors upon their death would normally be buried at the nasara separately from the rest of the ordinary people.

Visitation of the land boundaries

The court after courtroom hearing paid a visit to the land to inspect its boundaries and test the gathered information with direct evidence at the site. It is noted that most part of the land has considerably been developed with subsistence farming of cocoa, coconut palms and other local commodities. Nasaras, graves, land marks and other environmental backgrounds have also been viewed.

Given the basic understanding of the traditional processes and the law, the relevant facts submitted before the tribunal are summarised as follows.

Counter Claimant 1

James Jethro Arudare is disputing ownership of the land areas located between Waimaeto creek to Matan Wando creek. He told the court that he believes it to be owned by his original ancestor chief Boe Sasavi (Vire Aulu). He is claiming through the matrilineal line of her grand mother Bessie Bani Natuki descendant of chief Boe Sasavi and tribe. Boe Sasavi and his family had first settled the disputed land for unknown period of time prior to the coming of other tribes. He had created a nasara and lived at the top of the hill of Vutialau where during his reign could over look the plain and watch out into the horizon for incoming enemies.

He explains that Boe Sasavi had two sons by the name of Qwak Vinat and Boe Boe. To re enforce his control over the land he then directed his sons to take custody and control of the area by dividing the land into two boundaries. Boe Boe had custody of the land areas situated at Lovuntavoa Bulie Sese to the creek of Matan Wando and Matai Kamali Moli Wmao. While the other brother occupied land territories beginning from Wai Maeto creek to Lovuntavoa. Both sons have also created their own nasaras and earned chiefly titles such as *Molilo Wangne* and *Vire Quaravu* at their respective territories where they were also buried.

Around the 1800's tribal war escalated inland Voutauta (in land above Lolocar area) causing several tribes to move down seawards to find refuge at the land territory of chief Boe Sasavi and his tribesmen. These immigrants had been allowed to settle at the area and continued to till the land causing significant subsistence

farming thereon to date with their descendants. None of these tribes had purchased or entered into some form of customary accord with his clan over their occupation of land areas except Charlie Tariala who purchased a plot of land from his ancestor Qwak Vinat at Lo one area in 1907 after returning from Queensland, Australia. He produced a family tree tracing his early generations to the present.

By way of conclusion, he submitted that there are no other surviving bloodline from the patrilineal lineage of Boe Sasavi except from the matrilineal line of his grand mother Bessie Bani Natuki descending directly down to his present generation.

He called 5 witnesses to testify in his favour. Kevin Tari in his statement said that sometimes in the year of 1907 Charlie Tariala after returning from Queensland, Australia had purchased a plot of land from Qwak Vinat original owner of the land with the value of 109 pieces of gold. The allocated territory begins at Lo one extending up to Lovuntavoa. Qwak Vinat upon his death was buried at his nasara at Lo one.

Witness, Japhet Arudare told the tribunal that he believes the land truly and traditionally belongs to chief Boe Sasavi and his descendants. He stressed that other claimants to the land in dispute have migrated into the area to escape tribal war that had occurred at their original land up at the mountains. Stephen Beru explained that it is common knowledge among the claimants and the local dwellers of the area of Redcliff that the land in dispute is traditionally owned by high chief Boe Sasavi and his present generations. His grand father had also informed him of this history. Witness, Roger Toa and George Toa made similar statements.

This party and his witnesses had maintained their proper statements during cross examination process. A visit was paid to the land and found prove of nasaras, graves and other identical background of his ancestors as told in court.

Counter Claimant 2

Augustine Garae is appearing on behalf of family is disputing certain parcels of the land in issue . He is claiming ownership of the following land territories.

1. Losinwoi Tamata Vatu land and
2. Lovuikavike, Lovuimele and Lo one land areas

In his presentation concerning Losinwoi land areas, he led evidence that the original owners of the land are Tuku Tamat and Tuku Lis. These duo have adopted his great grand father chief David Garae because they had no surviving issues. In exchange of such ceremony David Garae and his family donated a tusked pig to seal the agreement witnessed by Moli Doro and Cathleen among other attendants. He also took charge in meeting their funeral expenses and had inherited the land upon their deaths. David Garae then took control of the land since 1910.

Besides, he also related to the court a story which saw Mr Carlet (an early European trader) murdering a native called Tom Dare Vanua after getting into differences over Cathleen's relationship with him. After the incident, relatives of the victim put the blame on to chief David Garae for failure of deflecting the dispute. To prevent further hostility and for purposes of restoring peace amongst the local dwellers 10 pigs were paid to Tom Dare's relatives. And upon settlement of such peace ceremony, chiefs of the area then decided to hand ownership rights of the land located between creek Solgave and Losinwoi to chief David Garae. He added on that in remembrance of such reconciliation the land was named as *Tamata Vatu Land* marked and inaugurated by a laying of stones still in existence at date.

He is as well claiming three other pieces of land by way of another adoption of Paul Garae by Boe Sasavi tribe customary owners of the land through this man Philip Viredali Qui. In support of his claim he tendered an old document accounting records of certain land transactions dated 25th September, 1965 between Paul Garae, Philip Qui and other family members purporting it as prove of the said adoption.

He called 3 witnesses to testify in support of his claim. Eric Tari witnessed that Banga Maeto's son is chief David Garae whose son is Paul Garae adopted by Philip Viredali Qui. Following the adoption, Paul Garae was given the chiefly name of Boe Sasavi.

Samuel Natu stated that David Garae had purchased the land of Losinwoi from Tuku Tamat in exchange of a tusked pig. Chief David Garae had also paid 10 pigs to the family of Tom Dare Vanua after being murdered by Carlet. He explained that following that compensation the land is now regarded as land belonging to chief David Garae and his descendants. Witness, Lesley Garae made a similar statement confirming the basis of ownership.

The court had inspected nasaras, graves and other environmental features identified by this claimant during the walk party to the claimed land.

This party and his witnesses in whole lack in providing evidence to justify his claim. His witness are not certain about their advanced statements. They are quite hesitant to answer questions and have made contradictory statements. More explanation on this party's standing is presented below.

Counter claimant 3

Robinson Tariala is disputing ownership of a plot of land at Lo one claiming it to have been purchased by his ancestor Charlie Tariala in 1907 from Qwak Vinat son of chief Boe Sasavi customary owner of the land. He had entered into such land transaction after returning from Queensland, Australia. His primary intention for securing such piece of land was to build a church for purposes of spreading the gospel of Jesus Christ.

The land comprising of 3 separate plots namely *Lo one*, *Lovuntavoa* and *Bulei sese* had amounted to a total value of 109 pieces of gold as purchasing price. A plantation of coconut palms and other developments have been caused to the land. His descendants have continued to dwell the land to date.

Japhet Arudare confirmed that it is correct that Charlie Tariala did purchased a piece of land consisting of three adjoining land areas from Qwak Vinat son of chief Boe Sasavi with a value of 109 pieces of gold as payment. This fact is witnessed and also confirmed by Joseph Tariliu, Roger Toamala and Paul Bul in their statements made to the court.

This claimant and his witnesses during questioning had maintained their statements confirming that Charlie Tariala had purchased a piece of land from Qwak Vinat owner of the land at *Lo one*. The claimed land limits, graves and nasaras of Qwak Vinat and Charlie Tariala were not visited given the fact that they are not in any manner disputed by the rest of the contestants.

Counter Claimant 4

This party is represented by Kensley Banga. His history suggests that sometimes in the years of 1800's an early European trader, Mr Carlet had approached the local dwellers of the area seeking for a wife. Chief Boe Velevele then approached his great grand father Ture Moli of Natakaro if he could allow his daughter Qweref Boe to marry Carlet. This negotiation was successful and chief Boe Velevele agreed to give away a marked plot of land located at Matan Wando stretching inland to Qweref Boe as a customary gift for use during her marriage. The marriage ceremony was celebrated at Boe Velevele's nasara at Matan Wando.

After years of trading in the area, Mr Carlet and his wife Qweref Boe later moved to Pinalum, Malekula island for further business investments. Prior to her death she bequeathed and handed over the land to David Banga father of CC4.

He submitted in summation of his claim that if the court decides not to grant his family a right of ownership then the court should also consider a right of use over the land in accordance with the basic rules of custom usage of land tenure system practiced in the area.

His witness chief Samuel Natu made confirmation of the story and land areas claimed as told as correct.

Kensley Banga and his witnesses statements have remained unchallenged throughout the trail stages. Most of the parties had elected not to question his claim with the understanding that his claim is a straight forward claim.

Counter Claimant 5

Stanley Garae is appearing on behalf of Harre Hakwa and Simon Hakwa and their descendants. They are disputing the ownership of the land as advertised claiming it as land belonging to chief Boe Sasavi, their original ancestor. He held that Ket Kan Boe begat two girls by the name of Lizie (Qwevira Hurione) and Qwoi Moli Losingo. Lizie's son is Harre Hakwa ancestor of Thomas whose surviving descendant is Simon Hakwa. Qwoi Moli Losingo's direct descendant among others is Jethro Arudare, CC1.

He contended that CC1 and his descendants have no bona fide right in this claim of ownership since Bessie Bani Natuki has been adopted out of the family bloodline by one Tari Dede. The land claimed is located at Matan Wando creek to Waimaeto creek stretching encompassing surrounding areas from Marae Memeha to Vutialau. A family tree is produced explaining his relations from past to date.

Thomas Tari said that it is correct that Bessie Bani Natuki was adopted by Tari Dede. Following such arrangement Bessie Natuki was given the traditional family name of Qwoi Dede. Moli Simon in his statement provided that he had heard from his father that Cathleen had purchased a plot of land from Harre Hakwa in the amount of 28 pounds. We noted that this statement was heavily disputed by CC1 as baseless for lack of witness and record to the event. A further witness Jackson Garae was called to give evidence but his statement we noted to be irrelevant and thus need not be copied here.

A number of land marks, grave yards, nasaras of Boe Sasavi's descendants were identified and visited on land.

ANALYSIS OF EVIDENCE & FINDINGS

By law, the primary disputant in principle bears the burden of proof on grounds of probabilities to substantiate his claim with clear and relevant evidence. But also he who asserts a fact must as well prove it by way of evidence.

This tribunal is to resolve the dispute according to law, substantial justice and whenever possible in conformity with rules of custom forming the basis of land ownership and use prevailing in the disputed land. But also bearing in mind that so far as they are not in conflict with the written law and are not contrary to justice, morality and good order.

Having made these clarifications, we now highlight the findings below in the usual order of presentation.

Counter Claimant 1

Our immediate finding is that there is overwhelming evidence advanced by the majority of the claimants confirming CC1's basis of ownership over the disputed land. For illustration purposes, CC3, CC4 and CC5 have made confirmation and supporting statements that the land actually belongs to his original ancestor chief Boe Sasavi of the nasara of Vutialau. Two parties are disputing this party's claim.

The first one is CC2 who alleges that his ancestor Paul Garae had been adopted to Boe Sasavi tribe through Philip Viredali Qui. He has also argued that the man who sold the land at Lo one to Charlie Tariala was Vulu Viredali and not Qwak Vinat. His argued history could not be sustained given our consideration of his entire claim as follows.

First, such attacking statement has in particular been heavily opposed by CC1, CC5 and other claimants all confirming in rebuttal with supporting information that Philip Qui's father is Qwak Vinat not Vulu Viredali. There is confirmation also that Qwak Vinat is not from Raga but a indigenous owner of the land and is the biological son of chief Boe Sasavi of Vutialau nasara.

In addition, it is very unlikely that Qwak Vinat is from Pentecost. One reason for such rationality is that chiefs of the area would have never allowed someone from Pentecost to sell their land. Those reasons had outbalanced his allegations. We are therefore in favour of the story that Qwak Vinat is indeed a native of Lo one area as told by the supporting parties.

The second party objecting to CC1's claim is CC5 arguing that CC1 has no right to claim land on reason that Bessie Bani Natuki had been adopted by Tari Dede. The court found no sufficient evidence to prove such assertion. Even if the court is to accept such story as correct, it would not make any much difference to CC1's status because Bessie Natuki would still be considered a bloodline of Boe Sasavi. Her descendants like CC1 would therefore have a legitimate right to claim ownership as in the circumstance of his case.

A further credit to CC1 is that his story is very logic, clear and well established by his supplied evidence. An outstanding piece of evidence which has caused us persuasion was the fact that chief Boe Sasavi had divided the land to his two sons Qwak Vinat and Boe Boe. According to the history Qwak Vinat had occupation of the eastern side of the land leading down to Lo one area. This information had remarkably correspond or corroborate to the very fact that Charlie Tariala had purchased land from him at Lo one which was the land area remaining under his actual custody. That is in one sense a convincing evidence favourable to CC1.

Thirdly noted are the fact that there is proof of nasaras of chief Boe Sasavi located at Lovutialau and his sons nasaras visited also on the land.

In conclusion, he has produced information which we have considered to be consistent and more constructive than his opponents. His witnesses appeared to be very competent and had maintained their supporting statements without been sidetracked by opposing questions.

Counter Claimant 2

Turning to this defendant's case; the basis of his claim we noted is completely founded upon adoptions and a compensation as a form of land payment.

First and foremost, it is quite obvious that this party is claiming land which is not originally owned by his forefathers or tribe. In our case, he is claiming land of third parties alleging them to be the traditional owners of the land they now claim in this court.

The position of the court on his standing is to hold that those alleged owners such as Tom Dare Vanua, Tuku Tamat and Tuku Lis cannot be considered as actual customary owners in the absence of proper court declaration or other supporting evidence giving effect to an affirmation of ownership. The court would want to see the descendants of those alleged owners to appear before the tribunal confirming their right of ownership. None of this exercise is seen to have been utilised by this claimant.

Therefore, given his position in this case, he would completely have no customary and legal standing in this claim for land ownership. The court has reminded itself of the traditional land usage principle saying that land is not transferable to other persons or tribe. Meaning he cannot claim land ownership of Losinwoi Tamata Vatu, Lovuikavike, Lovuimele and Lo one land areas.

Turning to his claimed adoption, the court upon verification and determination of his tendered document dated 25th September, 1965 concluded that it merely consists of land account transaction made by certain people like Philip Qui Sasavi, Paul Garae and other named personnel. It barely discloses any relevant and propounding information to suggest that there was an adoption of Paul Garae by Philip Qui Sasavi. Noted also, we found no backup information from his witnesses to confirm such assertion.

Equally, a right to use or own the land could neither be granted given distorted evidence relating to the family tree of Philip Qui Sasavi. On file record, his family tree named Vulu Viredali Qui as father of Philip Qui, Takaro Mavute and Boe Alau. Vulu Viredali's wife is named as Mwetalaetiu instead of Qwoi Moli Karea as told by CC1 & CC5.

These factors have shaded doubts with questions in our mind arriving at a conclusion that he is perhaps fabricating evidence. That is to say that he has attempted to hook on his family tree into Boe Sasavi's tribal line. He could not be right in light of the available family trees as advanced by CC1 and CC5 thoroughly tracing Boe Sasavi's genealogy diagram.

Further, he also contested that Qwak Vinat is originated from the Island of Pentecost. Such opposing statement has in particular been heavily opposed by CC1,CC5 and other claimants all confirming in rebuttal with supporting information that Philip Qui's father is Qwak Vinat not Vulu Viredali. Qwak Vinat is not from Raga but a indigenous owner of the land and is the biological son of chief Boe Sasavi of Vutialau nasara.

Our finding on this matter is that it is very unlikely that Qwak Vinat is from Pentecost. One reason for such rationality is that if so, we believe that no doubt past chiefs of the area would have never allowed someone from Pentecost to sell their land. We are therefore , in favour of the story that Qwak Vinat is indeed a native of Lo one area as told by the supporting parties.

Moving on to his produced family tree. The court's investigation into the gathered evidence could only indicate information contrary to his told version of history. In other words, the majority of the claimants do not support his drawn family chart with the alleged originality of Qwak Vinat. By far, he has fallen short of establishing that he is connected to tribe Boe Sasavi through the told adoption.

Besides also, this claimant and his witnesses are not quite certain with the presented history. We have noted during cross examination the following information from his witnesses. Witness, Eric Tari had stated that it was Qwak Vinat who sold the land at Lo one to Charlie Tariala. He has never heard that he has origins of Raga island.

Augustine Garae is claiming a handful pieces of land but failed to clearly indicate the exact boundaries of each land areas. Chief Samuel Natu is another witness who seemed to be not quite familiar with Augustine Garae's disputed land territories. He has also made a supporting statement in favour of CC4's claimed land limits which we noted it to have elapsed into CC2's claimed territories. This displayed step had substantially demoted CC2's claimed territory.

Also, it is our opinion that his claimed land limits seemed to have lately been created by the planting of Natapoa trees by David Garae and with the assistance of one Veveo as mapped and found on land. They do not reflect any traditional land marks which would typically be set at creeks mountains or valleys ect... A particular example, is the boundary marks of Tamata Vatu land whose alleged land marks cut across all boundaries claimed by the rest of the disputants of this case.

By comparison to this claimant's defended boundary marks with other parties; CC1,CC4 CC5 land marks are more meaningful or consistent to the court in the sense that they have clear cut territorial land marks given with logical explanation.

More importantly, to reflect back to the relevant laws of this country as enshrined under the constitution of 1980. Article 73 stipulates that "*all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants*". It simply means that land must always be seen to belong to the original and indigenous custom owners and their descendants. In our case, Augustine Garae and his family cannot be classified as an indigenous custom owners of the land territories he now claims.

In conclusion, this party's entire claim for land ownership is not well founded. He has fallen short of providing the very basic and consistent information required to prove his case.

Counter Claimant 3

This claimant's case is not disputed by party CC1 , CC3, CC4 & CC5.They have all acknowledged and made confirmation of the sale of land between Qwak Vinat and Charlie Tariala over Lo one land. As a result of the offer and acceptance, a coconut palm plantation had been cultivated in the area and other development carried out thereon.

Our finding is that there is sufficient evidence proving that there was a land transaction that had taken place in 1907 between Charlie Tariala and Qwak Vinat owner of the land of Lo one and other adjacent areas.

The only parties who has made opposing statements is the allegation as advanced by CC2 that Qwak Vinat who sold the land area at Lo one is a native from Pentecost island. Again as discussed earlier on, that argument no longer stands.

The relevant articles of the constitution regarding land ownership and use as quoted above under Articles 73- 75 have been taken into consideration. In custom, land cannot be transferred to another tribe or family. It makes no difference whether it was sold, leased or contracted through some other means of tenure. It will still be designated by law and custom and is returnable to the indigenous customary owners and their descendants. In principle, the land's ownership would perpetually remain under the authority of clan and its descendants for an indefinite end of time.

In light of the foregoing facts, this party would only be granted a right to use the land in consideration of the land purchasing agreement.

Counter Claimant 4

This disputant is claiming land rights for use on the basis of customary rights conferred upon his female ancestor Qweref Boe. As explained, part of the land of Matan Wando was allotted by chief Boe Velevele to her as a marriage gift. In custom, such a land right would only amount to a right for use rather than ownership and is absolutely not transferable to other clan. We are told that Boe Velevele and his family are the traditional owners of the land. None of their relatives or descendants had come to court as a witness or claimant to the case.

The only parties who is also claiming the land is Augustine Garae, CC2. However, his own principal witness chief Samuel Natu has made confirmation of the land marks and story told by CC4 as truthful and correct. In addition, CC4 has a clear land marks compared to CC2 uncertainty over land boundaries. CC2 also failed to challenged CC4's claimed territories during examination, when he failed to ask questions pertaining to his claim. That step left CC4's claim free of dispute giving merit to the case.

Having reached a conclusion regarding CC2's claimed territories, this party's claim for a right of use is without hesitation accepted by virtue of the fact that this is a recognised system of the land tenure system long observed by the people of the territory.

Needless to re iterate it here however, the relevant articles of the Constitution regarding land ownership and use as quoted above (Art 73 - 75) must always act as our guide. Noting also, that land in custom is not transferable to another tribe. As explained above, it makes no difference whether land was sold, leased, given as a gift or contracted through some other forms of tenure. It will still be designated by law and custom and is returnable to the indigenous customary owners and their descendants.

Those discussed reasoning do fall in line with this party's claim for a right of use and it must be so accordingly as sought.

Counter Claimant 5

Turning to this party's case; it is apparent that there is no real issue over this claimant's claim over the land given our reached finding that the land is owned by Boe Sasavi and his descendants, CC1. The only question posed here that this court has to dwell on is whether Harre Hakwa and Simon Hakwa are bloodlines of chief Boe Sasavi.

Our observation on the appearances of Jethro Arudare, CC1 and Stanley Garae representative of CC5 has thrown the court into some doubt over the status and

connection of the claimants to the Sasavi Tribe. The court found no clear cut information explaining any possible existing relationship between CC1 and CC5.

To illustrate, the only available information could only tell the court that CC1 and CC5 had almost similar family trees. Except, that CC5 had included a few additional names to the Boe Sasavi familial tree giving linkage to Simon Hakwa as a direct descendant of Boe Sasavi from the mother line via Lizie (Qwevira Hurione). That single piece of information could not persuade the court to reach a precise decisive conclusion given absence of backup information from his witnesses whom appeared to have very limited knowledge over the subject.

Even by way of cross examination, we are left with very little assistance as CC1 generally did not say much in relation to Simon Hakwa's claim. The family tree produced by CC5 had remained in dispute. This unwillingness on the part of CC1 we suspect to may have been caused by some existing internal differences between the disputing parties.

Added to the situation, the claimant himself, Simon Hakwa whom we are told was present during the court hearing had for unknown reasons chosen not to appear as a witness or as the main claimant to testify and make confirmation of his claimed connection to the Boe Sasavi tribe. Those are the general weaknesses played on the part of this defendant which left his entire case unsettled.

For the reasons discussed, his claim must therefore fall.

DECLARATION

In light of the totality of the gathered findings and in application of the law and custom practiced in the subject area, the court hereby this day declares as follows;



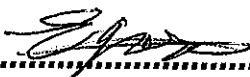

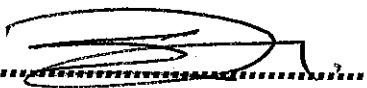
1. That James Jethro Arudare, CC1 representing Boe Sasavi tribe and its descendants are declared as custom owners of land described to commence *on the north at Waimauri creek on the western side where it runs down meeting Waimaeto creek leading to the coastal area at Lo one noi Qwak Vinat. Its border on the southern part is bounded by the sea shore which follows eastwards to Matan Wando creek located at the eastern side. It then follows the creek inland to Tori Sovi joining up again at Waimauri creek.*
2. That Augustine Garae, CC2 and Simon Hakwa, CC5 claims of ownership are entirely dismissed.
3. That Robinson Tariala and his family, CC3 are granted the right to use the land of *Lo one* and adjoining areas of *Bulei Sese* and *Lovuntavoa* as claimed (see, description of land boundary on file).

4. That Kensley Banga and his family, CC4 are granted the right of use over the claimed land territories at Matan Wando. (see, description of land boundary on file).
5. Dismissed parties and any other person currently in use of the land must cause appropriate arrangements with the declared owners for the accommodation of their continuous use.
6. Parties are to pay their own costs necessitated by this proceeding.
7. Any party aggrieved by the decision of this court has the right to appeal in 30 days period at the receipt of this judgment.

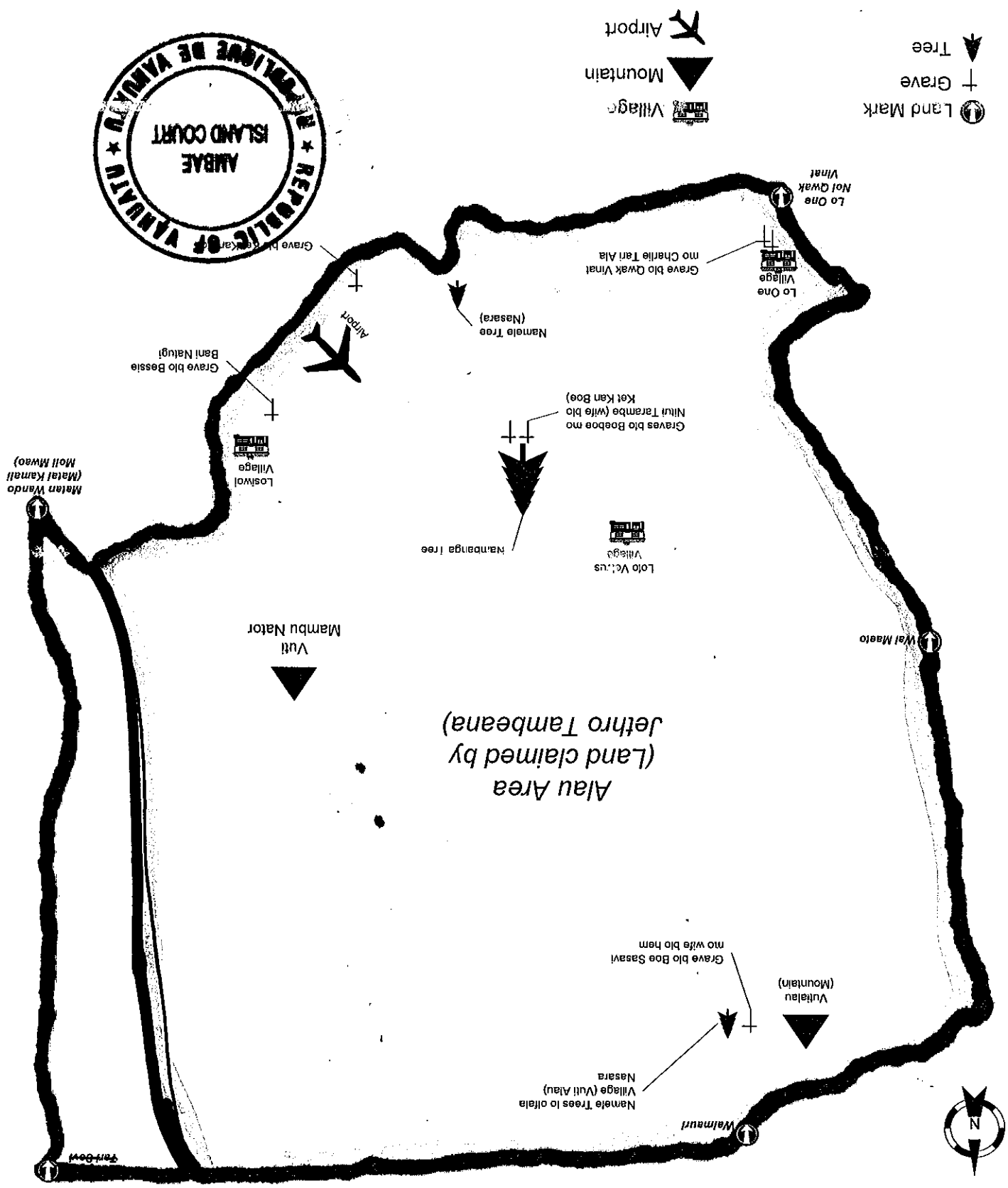
Attached to this decision is a copy of the advertised sketch map with the declared land boundaries to the respective parties.

Dated at Redcliff, south Ambae this 01st day of August, 2012

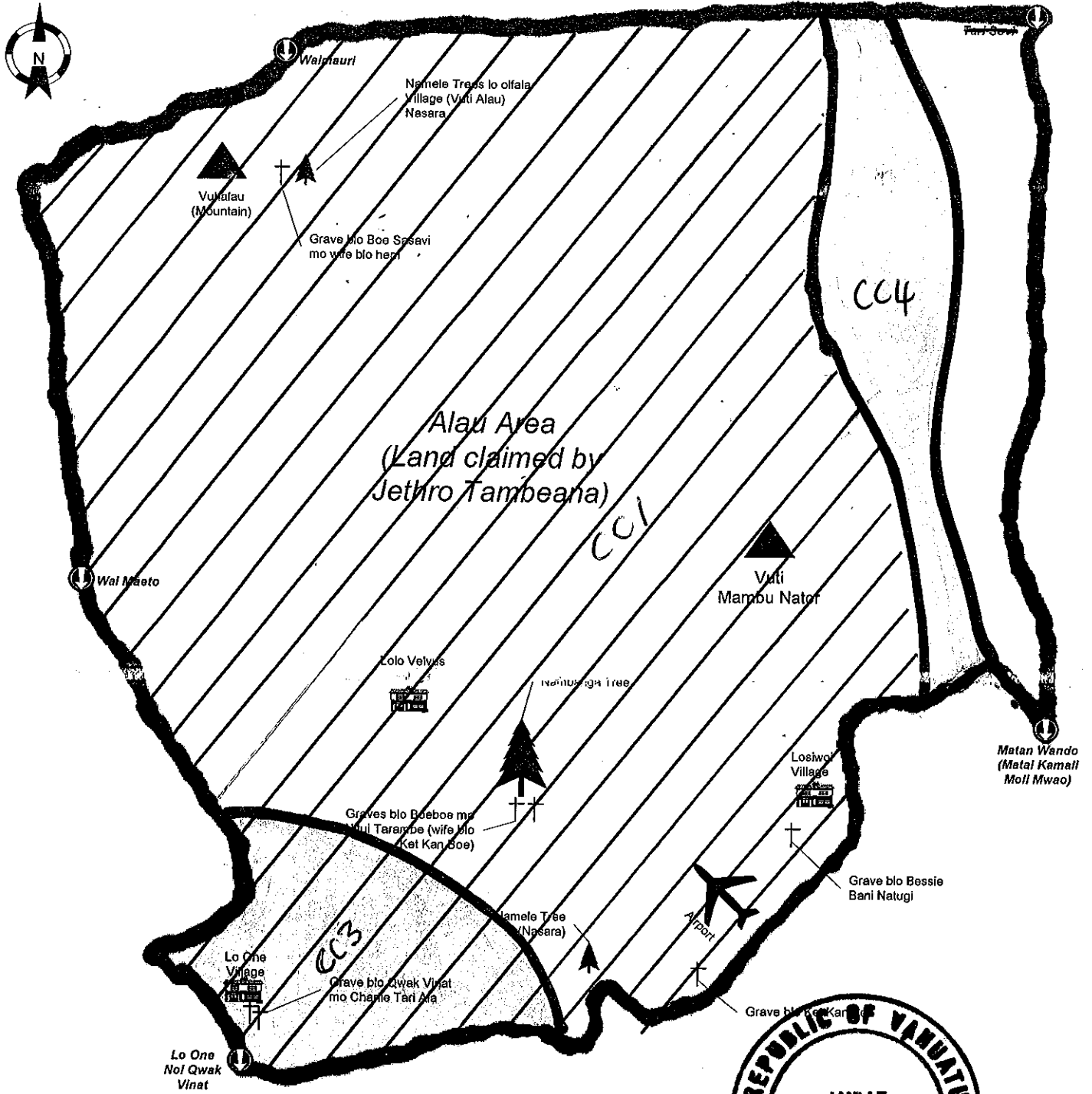
BY THE COURT

 Justice Willie Garae		 Justice Edwin Garae
 Justice Timothy. Taitai		 Edwin A Macreveth Presiding Magistrate

Advertised map.



Declared Land map



- Land Mark
- Grave
- Tree

- Village
- Mountain
- Airport

KEY

- Land declared to CC1 (ownership)
- (Right of use)
- (Right of use)

