

1957/05/29

29th May 1957

JOINT COURT OF THE NEW HEBRIDES.

NATIVE LAND JURISDICTION.

Dispute between the villages of SASAKE and MANGITA as to the Ownership of the land, situated between the two villages on the Island of EMAE, Central District No. 1.

The dispute came before the Court in accordance with Article 21 (1) of the Anglo-French Protocol, 1914. Formal consent attached hereto.

At 8 a.m. on the morning of Tuesday, May 28th, 1957, the Court, composed of Judges GUESDON and BROWNLEES visited the two villages and as much of the land in dispute (broadly between Sasake and the sea, for a width of approximately 2 Kilometres) as time permitted. It was agreed that the Chiefs TISIMORI of Mangita and Assistant (but apparently acting) Chief VARATIAMATA of Sasake, should represent their respective villages.

Inspection of the land showed that whilst it was the desire of both villages to have a clearly demarcated boundary between them, there was not anything remotely approaching agreement as to where this line should be. Not only was there frequently dispute as to which village or person owned particular groups of coconuts, but where there was agreement these groups were so mixed and scattered as to give, from the aspect of village ownership, a most mosaic picture. Even were the Court (and this appeared to be almost an impossibility however much time and survey assistance be given to the purpose, in view of the almost invariably conflicting evidence - evidence based on legend in most cases) able to adjudicate as to the ownership by village of such individual groups of coconuts the result would be such a mingling of lands as to lead to interminable future disputes arising out of trespass etc. If ever a case cried out to be approached in a spirit of compromise by both sides, with the object of achieving a well defined single boundary acceptable, if not liked, by both parties, this was it. A judgment based on this principle, given the mosaic and confused pattern of landusers already referred to, must inevitably cause disappointment to both villages. However, it is not only the fairest one but the only one likely to bring an end to the interminable wrangling between the two villages.

At 1.15 p.m. on Tuesday, May 28th. the Court concluded its inspection of the land.

At 3 p.m. on the same day the Court sat to take formal evidence in the lakemal of the village of SANGAVA. Judges' notes attached; there were no facilities for the obtaining of a formal transcript.

J U D G M E N T.

The evidence in this case is based in great measure on legend, handed down through the generations by word of mouth. Despite the fact that the two principal witnesses, the Chief of Mangita and the acting Chief of Sasake, were interested parties, the Court feels that they gave as vivid and accurate an account of the circumstances, as they knew them, as possible. Differences on major points there certainly were in their evidence, but it was very probable that these differences were the natural result of the manner in which the witnesses had obtained their information, rather than a desire to mislead the Court. The following points were agreed upon:-

That the ancestors of the two villages had at one time shared the same village of LAUNAVESANGA and that at a later date the ancestors of the present village of Mangita controlled the land in dispute. Further, the people of Mangita departed from the

vicinity to live at VAITINI, about half way down the Island. It is as from the date of this departure, and as to the cause thereof, that divergences appear in the respective histories.

For Mangita it was submitted that they were driven away in battle by Sasake to Vaitini, and that therefore in accordance with native law and custom ~~their~~ their title to the land had never been extinguished, but had merely lapsed until they were able to return and re-enter into possession. This they eventually did, whereupon their title was recognized in 1928 by the then Chief of Sasake, VATIMATA, paying to the Chief of Mangita Willie TIVEA and his assistant TITON GOA £ 20 for the outright purchase of Sangalivu, near the present site of Mangita, and a rent of £ 12 for the enjoyment of the coco-nuts planted by Sasake on the land during the stay of Mangita at Vaitini. Although no further rents were paid, Sasake continued to respect Mangita's title to the land until the appointment of Variatiamati as Chief of Sasake in 1942. As the result of his aggressive action appeal was made to Government by Mangita, whereupon Mr. Seagoe, the then British District Agent, gave an administrative ruling (having no force in law) that Mangita land extended to the verge of Sasake village itself - now marked by a pig fence. This ruling was not observed by Sasake, who continued to use some of the land so awarded to Mangita. Further representations were made to Government, whereupon the ruling was confirmed by D.A.A. Challons and Jamin in 1953, but was again disregarded by Sasake.

The Sasake account of the Mangita departure for Vaitini is as follows:

Nasusuaki (claimed by Mangita to be identical with Mangita) attacked Mangita and when ~~XXXX~~ the latter was very hard pressed indeed it appealed to Sasake for help. This was forthcoming in the form of 60 warriors, who suffered heavy casualties, but as the result of whose efforts Mangita was successful. In gratitude, Variatelu, the then Chief of Mangita, ceded all the land now disputed over to Sasake and removed his people to Vaitini. There they did not flourish and when there were only a very few Magitans left, of whom only one, a woman, was related to the chiefly line of Mangita, Valiatapi, Chief of Sasake, permitted them all come to live in Sasake. These people, and stress was repeatedly laid by the Sasake Chief in his evidence on their smallness of number, leased parts of the disputed land from Sasake, paying annual rent in kind. In 1942 TIMASORI, actually a Sasake man, was made Chief of Mangita by the Chief of Sasake, supported by some other Chiefs of the island. TIMASORI then established his village on its present site and proceeded to usurp Sasake land. The Seagoe line was quite arbitrary and fixed without the concurrence of Sasake; when Mr. Challons sent Assessors to fix the boundary in 1953 or 1954 Sasake was again ignored, except that one of the assessors, Sam was a Sasake man. Sam was a brother of the Chief, but this did not give him any authority to act on Sasake's behalf.

The Sasake version of the establishment of the present village of Mangita is not generally disputed by Mangita's Chief, TISAMORI, except that he states that he was a Mangita man living just outside Sasake village in 1942, and that he did not found the village solely with people from Sasake, but also with a few descendants of the old Mangita who were scattered in other villages.

The Chiefs of the other villages on EMAE were called individually by the Court to throw what light they could on the dispute. Their evidence was rather confused when dealing with the ancient history of the villages, and the title to the land. They were more precise when dealing with recent events, such as the establishment of the present Mangita, but contradictory. MATURI, Chief of Finung and TIMBAKORA, Chief of Sangava thought that Tisamori was a Mangita man and properly installed as Chief; NAMBAKAU, Chief of Tongameya, and TIMAKATA Chief of Makata doubted the correctness of his claim to be Chief of Mangita.

The historical background, on which both claims are based, remains confused. The cynical might not only doubt the legend of a grateful Mangita going into voluntary exile to make its land available to Sasake, as depicted by the latter, but also that of a meticulous, honest Sasake gathering into its fold the surviving Mangitans, returning to them their land and humbly paying rent to so few for the use of coconuts which they of Sasake had themselves planted, as described by Mangita.

The Court finds that whilst both villages have undoubtedly customary rights over various parts of the disputed land, neither has proved to the satisfaction of the Court exclusive rights to all of the land. The Court further finds, as a fact, that the land to which each village has title is so intermixed and obscure as to make it impossible, apart from the undesirability of such a course, to partition the land into innumerable small parcels between the claimants on merit, irrespective of how much time and labour the Court, aided by the Survey Department, might be able to devote to the task.

The Court has studied the aerial photographs of the area taken during the last war, and from these it is apparent that the village of Sasake is almost exactly one kilometre from the nearest point of the coast at high tide. The Court has ~~also~~ also, from its own observations on the spot and interpretation of these aerial photographs, somewhat outdated though these latter are, obtained a rough idea of the particular areas under coconut. Bearing this in mind, and after careful consideration of the populations, the existing undisputed ownership by Sasake village of other land nearby and the need for a boundary easily recognisable by both parties, orders that the boundary between Sasake and Mangita villages shall be:-

Commencing at a point A, 650 metres from the nearest point on the ~~seashore~~ seashore at high tide, a line running across the width of the land in dispute, such line to be parallel to the seashore at high tide at a distance of 650 metres.

The present dispute before the Court is essentially one between the two villages of Sasake and Mangita and consequently this Judgment relates solely to village and not individual ownership.

Dated at VILA, this 29th. of MAY, 1957.

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The French Judge.

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The British Judge.