

BETWEEN : PETER TAURAKOTO
(Appellant)

AND : CHIEF MORMOR and his FAMILY GROUP
(Respondent)

(Custom Advisers :
Jack Kalotiti & Noel Mariasua)

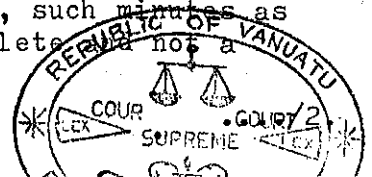
JUDGMENT

In this appeal the Appellants grounds of appeal are as follows:

1. Justice TABIA KALSAKAU was biased and should have disqualified himself from sitting in this land case for the reason that he was directly concerned as to the result of the case by virtue of his being the Secretary of the Vaturisu - Efate Council of Chiefs, which body had on or about 24 September 1984 passed a resolution supporting Chief MORMOR in his defence herein.
2. Orders 2 and 3 are defective and against the substantial weight of evidence and in particular the Island Court misdirected itself:-
 - (a) in failing to give reasons at all
 - (b) in failing to state or determine how MORMOR acquired chiefly rights, and if so, how the same relate to Mangaliliu Plantation.
 - (c) in failing to properly determine the lineal succession and/or chain of customary title to the plantation
 - (d) in taking into account irrelevant considerations and failing to deal properly with the evidence before it.
3. The Island Court exceeded its jurisdiction by seeking to impose joint-venture and development conditions as between an adjudicated custom owner and others. It will be submitted on the hearing of this Appeal that the Island Court should have confined itself to determining the true custom ownership (which it failed to do) and that the consequential orders that could validly have been made are orders relating to possession and costs.
4. The Island Court generally failed to respect the Islands Courts (Civil Procedure) Rules 1984 and the Appellant was substantially prejudiced by the Island Courts various failures to exercise its jurisdiction properly.

In particular there were irregularities as to:-

- (a) the making of minutes of proceedings, such minutes as were kept being inadequate or incomplete true record of the evidence given,



- (b) the amendment of the Judgment (order 4) by Justice TABIA KALSAKAU in the Court Register after the same had been read in Court was improper and suspicious.

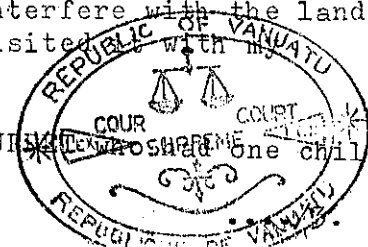
The land in dispute, are Lot 104 and 3078 and 103, The latter was sold by the Community of Lelepa, consisting of 30 acres and 9 roods close to the shore, opposite the island of Lelepa, North Efate. It is set out on a survey map as Lot 103. Lots 104 and 3078 were sold by Natives of Lelepa in 1904 to Messers Meeham and McKall.

In this Appeal the parties hold totally different views as to their rights of the disputed land. I will deal with the case for the Appellants, then the Respondents and then express my opinion as to whom I consider to be the true customary owners, having, of course, first consulted my custom advisers.

The case for the Appellants, submitted by Mr Vasaris, their solicitor, was the evidence of PETER TAURAKOTO, hereafter called (W 1). The summary of (W 1)'s evidence was clearly stated. He impressed in cross examination, unfavourable to him.

Briefly he said:-

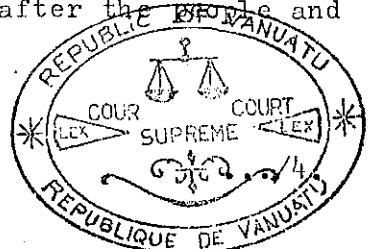
- (1) that during at least the last two hundred years there was clan fighting and disease on the mainland which resulted in many people going to Lelepa Island for safety. They came from many areas of Vanuatu. He admitted that his ancestors came from Tongoa and stated that the Respondents ancestors came from Makira, which evidence is not denied by the Respondent.
- (2) he stated that MAKTAU, the mother of the Respondent, was an illegitimate child, on whose hearsay evidence, he MORMOR, bases his claim. Whether this was so, in my view does not effect my opinion, but such evidence was corroborated by two other of the Appellants witnesses. If it were true the complete claim of the Respondents would fail *ab initio* (from the beginning).
- (3) that he would be able to show that his great-grand-father came from Mangaliliu. Mr Boulekone who appeared for the Respondents conceded this point.
- (4) that the Paramount Chief of Mangaliliu was TARILIU METAPONG who gave full rights to the Chief and Lelepa Community; that he died and was buried at Lelepa.
- (5) that Chief MANAREWO was a supporting Chief and was the last living soul out of Mangaliliu. He died and was buried at Lelepa and he gave the same rights to the Community of Lelepa as Chief TARILIU METAPONG.
- (6) that the Respondent committed adultery and was fined by the village council and went to Mangaliliu to hide from the public. This offence is proved and shown in the Judgment book of the council (Exhibit 10). That his family followed him and he has since attempted to establish a claim to Mangaliliu even to the extent of breaching Court Orders not to interfere with the land. I observed a piggery on the land when I visited with the custom advisers.
- (7) that KALKAT SAPOUSA was the only son of TUI SAPOUSA and he had one child



called LECTOTANIK whose first born was GEORGE KALTAUA MUNELEPA who, following the male line is the true custom owner of Mangaliliu Plantation.

- (8) his sister LEINAPONGI had four children of which one named LEIPAN TOUNAPAU survived, whose son is METO LANGAS. That he has by virtue of his relationship some rights only to Mangaliliu as have the other signatories in Exhibit 1.
- (9) that Chief TARILIU METAPONG told Chief MATEMATSERA that he handed over Mangaliliu to him which is made up of people from all islands.
- (10) that it was because of the verbal will that Chief MATEMATSERA sold the Mangaliliu land, Lot 103 to the Australian New Hebrides Company.
- (11) that the proceeds of the sale went to the people of Lelepa. No individual claimed the proceeds of the sale.
- (12) the deed of sale is Exhibit 2. There were fifteen signatories to the deed. The first signature was that of Chief NATEMATSERA whose name appeared as SAURIBOKO.
- (13) that attempts were made to solve the ownership of Mangaliliu. First in October 1971 when no decision was made. That on 6 August 1983 another attempt was made but MORMOR announced he was moving to Mangaliliu.
- (14) that the Paramount Chief NATEMATEWIA joined his brother MORMOR and moved to Mangaliliu, leaving the Community without a Paramount Chief.
- (15) that the matter then was referred to the Island Court.
- (16) that to further establish his contention, he stated that the Paramount Chief NATEMATEWIA in 1973 signed an agreement on behalf of the Community of Lelepa to a road being made on Mangaliliu, to the main road, for Forestry Development.
- (17) that the contention by the Respondents, that NATPUA of MANGASI* the rights to Mangaliliu to MAKTAU, was false as he did not possess any rights to pass land to MAKTAU.
- (18) that the Respondent always refused to disclose his family tree to the Council of Lelepa. He was asked five times in ten years without success. That if he had disclosed such there would have been a decision of the Cou Lelepa.
- (19) that Chief NATAMATEWIA is still the Paramount Chief of Lelepa. He was installed to look after the people and should do so.

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Then MASAVIA LAKLOTOLO gave evidence (hereafter called W 2)

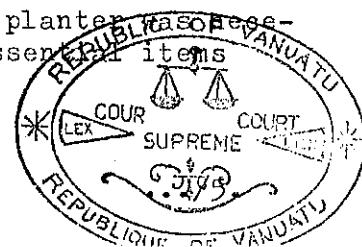
He stated that:-

- (1) he was appointed chairman of the Lelepa Council of Chiefs at the beginning of 1985.
- (2) that Exhibit one (a statement why MORMOR is not the custom owner of Mangaliliu), Exhibit five (a similar statement to Exhibit one), Exhibit six (a history of the Lelepa Community before and after Independence) and Exhibit seven (arguments for and against MORMOR) are true.
- (3) that up to the time of MORMOR'S claim, it was held that the land belonged to the Lelepa Community.
- (4) that the real Chief of Mangaliliu is Chief TARILIU MITAPONG.
- (5) that rights of inheritance are patrilineal
- (6) that KALKOT SAPOUSA is the eldest son of TURPET.
- (7) that MORMOR has no rights.
- (8) that Chief NATAMATEWIA, being the Paramount Chief, must set down the matter for a decision of the Council.
- (9) that the people of Lelepa must come under the Chief and Council of Lelepa.
- (10) that the people of Lelepa follow only one custom which is that the rights of inheritance are through the male line.
- (11) that the Chief holds land on behalf of the people.

Then GEORGE KALTAUA gave evidence (hereafter called W 3)

He stated:-

- (1) that his grandfather on his mother's side was KALKOT SAPOUSA.
- (2) that when small, Mangaliliu was settled by Europeans, not MAKTAU.
- (3) that it was the Community of Lelepa who sold the land.
- (4) that many attempts were made to settle the matter in custom, but MORMOR and his group refused.
- (5) that by the arrival of Christianity a planter necessary who could have a shop to sell essential items to the Community.

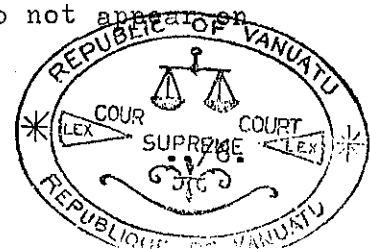


- (6) that no one objected the sale in 1899.
- (7) that the land was sold for the benefit of the Community and the money from the sale went to the Community.
- (8) that MAKTAU tried to sell a parcel of land, outside Mangaliliu to MINTO HILL. The people of Lelepa opposed the sale and the matter came before the Joint Court whose decision was that no one was to touch Mangaliliu.
- (9) MORMOR presented this case to the Island Court through MAKTAU and did not involve KALKOT SAPOUSA.
- (10) that land rights descend through the male line and were held by KALKOT SAPOUSA; when he died the land rights came to him.
- (11) that according to custom LEINAPONGI and MAKTAU should settle on their husbands property.
- (12) that if Mangaliliu was not sold it would have been his, on behalf of the Community.
- (13) that under custom, land rights are completely different to totem rights.
- (14) that totem ownership has nothing to do with the ownership of land.
- (15) that the people who call MORMOR a Chief are his supporters. To be a Chief you must be recognised as such by the people.
- (16) that you must replace a former Chief.

Then METO PANGAS gave evidence (hereafter called W 4)

He stated that:-

- (1) that MAKTAU was born out of wedlock. That when TURPET was mourning she conceived.
- (2) that the rightful Chief of Mangaliliu was TARILIU MITAPONG.
- (3) that TARILIU MITAPONG gave rights to NATEMATESARU by verbal will.
- (4) that Chief NATEMATESARU recognized the rights of the people and decided to sell land in 1889 to the Australian New Hebrides.
- (5) Natematesaru signed under the name of Sauriboko.
- (6) MORMOR has no rights as his ancestors do not appear on the deed.

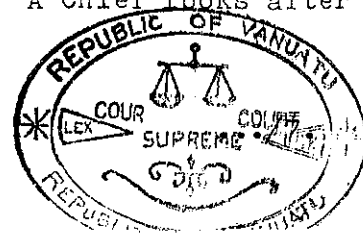


- (7) that fifteen persons signed as member of the Village Council.
- (8) that he agrees with Exhibit One (statement why MORMOR is not the custom owner of Mangaliliu).
- (9) that he never heard of a Chief carrying the name MORMOR on Mangaliliu.
- (10) that Mangaliliu was definitely sold on behalf of the Community of Lelepa.
- (11) that under Lelepa custom the Chief and the Community decides, if anyone makes a claim.
- (12) that MORMOR never agreed to accept the decision made by the Chief and the Community.

Then ZAKARIE MATAVARA gave evidence (hereafter called W 5)

He stated that:-

- (1) that the signed Exhibits are true.
- (2) that MORMOR is Chief but not custom owner.
- (3) that GEORGE KALTAUA is custom owner.
- (4) that the rights of inheritance follow the male line.
- (5) that the owner of the land under dispute belongs to the Lelepa Community.
- (6) that the disputed land was sold with the approval of the Community.
- (7) that MORMOR only claimed the land after Independence and that he did not place his claim before the village Council.
- (8) that the Chief and the Village Council can say who the custom owner is.
- (9) that Chief MORMOR was appointed Chief of Mangaliliu, but not to any land at Mangaliliu (as there was no pig killing or ceremony for him).
- (10) that MAKTAU and his father had a garden at a place next to Mangaliliu.
- (11) that if a person has not killed a pig he is not a custom Chief.
- (12) that Chief NATEMATEWIA did kill a pig. A Chief looks after the land and the people.



- (13) that MAKTAU never claimed she was the custom owner of Mangaliliu. She was my stepmother.

Then ALICK MAKOR gave evidence (hereafter called W 6)

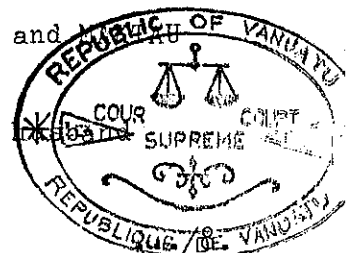
He stated:-

- (1) that his father told him that his grand-father was custom owner of Mangaliliu.
- (2) that his father used to take him to a piece of land in Mangaliliu.
- (3) that his father worked at Mangaliliu and planted corn there.
- (4) that the disputed land belongs to the Lelepa Community.
- (5) that the people of Lelepa do not agree that MORMOR is custom-chief, as he has not killed a pig or has there been a ceremony.
- (6) that GEORGE KALTAUA is custom - owner of Mangaliliu.
- (7) that he got his custom rights from KALKOT SAPOUSA.
- (8) that in 1961 Chief KALSONG NATAMATEWIA was ordained Paramount Chief. Eleven others were appointed Assistants to the Chief including MORMOR.
- (9) that those people are still members of the Council of Lelepa.
- (10) that Chief MATAPONG TARILIU 'gave' the land rights to the Lelepa Community.
- (11) that the land rights follow the male line.

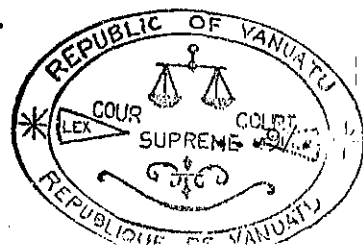
The Respondents evidence was totally opposed to that given by the Appellants. The Respondent stated that the descendants of TURPET i.e. MAKTAU, LEINAPONGI and KALKOT SAPOUSA are the true custom owners of Mangaliliu and because MAKTAU was first born and MORMOR was her son he together with the descendant of LEINAPONGI and KALKOT SAPOUSA are the true custom owners of Mangaliliu. Also that Chief NATPUA of Mangesi gave the land to MAKTAU; which latter contention seems to conflict with the first claim of customary ownership.

MORMOR stated:- (hereafter called 'D')

- (1) All the descendants of LEINAPONGI, SAPOUSA and ~~MAKTAU~~ are claiming the land.
- (2) they are TURPET descendants. TURPET had a SARAMONO.



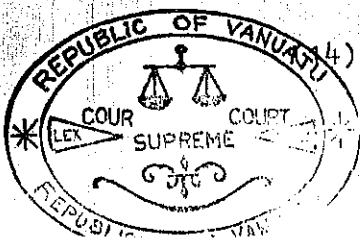
- (3) TURPETS mother was LEISURA whose husband was MORMOR.
- (4) that MORMOR was **Paramount** Chief of Mangaliliu.
- (5) that an ancestor called NATPUA from Magesi had some land he was using at Mangaliliu, and that he told MAKTAU that the land belonged to her. This was in 1875.
- (6) that MAKTAU told him she was born in 1861.
- (7) that MAKTAU told him Chief MORMOR was Chief of Mangaliliu.
- (8) that he did not think Chief MITAPONG Tariliu had any right to give land to the Lelepa Community as MAKTAU had not mentioned it.
- (9) that GEORGE KALTAUA cannot be the sole custom owner of Mangaliliu because he is of the stone totem.
- (10) that land rights and totem rights are the same thing.
- (11) that his father came from MAGESI then went to Makeri and then back to Magesi.
- (12) that the land should not go back to Community of Lelepa because MAKTAU inherited her rights from NATPUA.
- (13) that he left Lelepa because the people were against him.
- (14) that he thought he was an expert on Mangaliliu because of what MAKTAU told him.
- (15) that he could not agree that MAKTAU made any mistakes in what she told him.
- (16) that he does not agree that because W3, GEORGE KALTAU's father married MAKTAU he should know the truth. According to custom he should be told.
- (17) that he did not think W5, ZAKARIE would know much as to who was the eldest MAKTAU or KALKOT SAPOUSA because he would learn about it from another source.
- (18) that only what he says is true.
- (19) that MAKTAU was born in 1861 - because she told him that he was born in 1927 - therefore MAKTAU was 66 years when he was born.
- (20) that NATPUA was using the land and gave it to MAKTAU - all his information came from MAKTAU.
- (21) that MAKTAU was full custom owner. NATPUA told her so but she must allow LEINAPONGI and SAPOUSA to use the land.
- (22) that MAKTAU was living on Lelepa in 1877.



- (23) that he does not recognise the Chief and Village Council deciding the dispute, as the land is his.
- (24) that he does not recognise the customary procedure in the case of Mangaliliu. He wants it to be examined by an Independent body.
- (25) that he did not go to the Council because he knew the majority of the Council would say he was not the customary owner.
- (26) that he was ordained as Chief and the other Chiefs put their hands on his head in 1961.
- (27) that he agrees what he says is what MAKTAU told him.

WILLIAM KALSONG NATAMATAEWIA in evidence stated:- (D2)

- (1) he is Paramount Chief of Lelepa Island and still is, he was appointed in 1961.
- (2) that Lelepa Community did not recognise him as Chief.
- (3) that CHARLIE TAURATUAL was appointed acting Chief.
- (4) that he has not tried to exercise his power as Paramount Chief since 1981.
- (5) that he left Lelepa because his ancestors came from Mangaliliu and therefore he belonged there and had a right to go back there.
- (6) that he left Lelepa because he was useless at Lelepa.
- (7) that he was living outside the boundary of Mangaliliu Plantation. He is living at PAULAU.
- (8) that in 1968 the Lelepa Community asked us to move out of Lelepa to either Mangaliliu or Creek K.
- (9) that we choose to move to Mangaliliu because there was space to work and build a house.
- (10) that there was a disadvantage at Mangaliliu because of mosquitoes and flies.
- (11) that he was on Lelepa for 69 years.
- (12) that the first name on the deed of sale Exhibit 3 was TAURIBAKO a member of his family. He lived at Magesi.
- (13) that there was no representative of MORMOR in the sale of the land as there was no one of Mangaliliu old enough to sign.
- that MAKTAU told him everything. She was ready for marriage at the time the land was sold.



- (15) that no one was living at Mangaliliu when the piece of land was sold.
- (16) that all his evidence is what MAKTAU told him. I was 25 years of age when she told me.
- (17) that there was never a custom ceremony showing the land at Mangaliliu was given to the Community of Lelepa.
- (18) that it was true that family history and custom came from MAKTAU.
- (19) that GEORGE KALTAUA according to blood system has same rights as descendants of LEINAPONGI and MAKTAU.

KALSAU NAPAU in evidence stated:- (D3)

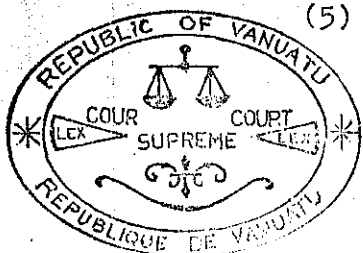
- (1) he has been living in Mangaliliu for three years.
- (2) he supports MORMOR to say the land at Mangaliliu should come back to the descendants of the three families.
- (3) that there was never a decision of the Paramount Chief and the Council as to the ownership of Lelepa.
- (4) that he went to Mangaliliu in 1983 to improve MORMOR's claim to the land.

LYDIA TYWAN YARO in evidence stated:- (D4)

- (1) that she is GEORGE KALTAUA's sister.
- (2) that she thought Mangaliliu should go back to the family.
- (3) that she supports MORMOR because she would like the land to stay within the family.
- (4) that she lives in Vila. She married a Lelepa man.

ASNAT in evidence stated:- (D5)

- (1) that she is wife of Chief NAFLAU. She stays at Mangaliliu.
- (2) that she is a relation of MORMOR.
- (3) that she has a right to Mangaliliu through LEINAPONGI.
- (4) that her mother lives on Lelepa.
- (5) that MORMOR but not GEORGE KALTAUA recognises her rights.



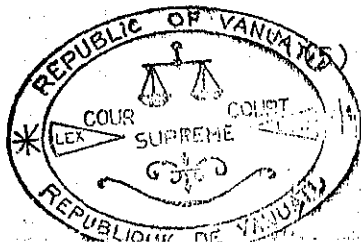
CHIEF TONGURUMAM in evidence stated:- (D6)

- (1) he has lived at Mangaliliu for three years before that, at Lelepa.
- (2) he is Paramount Chief of Losa since 1961.
- (3) the Community of Lelepa recognise me as Paramount Chief of Losa.
- (4) he is also assistant Chief to Paramount Chief of Lelepa.
- (5) that there were twelve appointed as assistant Chiefs in 1961.
- (6) that all appointed came from various areas of Lelepa and our appointments were accepted by the Community of Lelepa.
- (7) that up to the present day there has been no peace ceremony and no killing of pigs.
- (8) that he now lives at Mangaliliu although Paramount Chief of Losa.
- (9) that he recognises MORMOR as Chief of Mangaliliu area not the disputed land.
- (10) that if the big high Chief MORMOR gave land away to the Community he would accept it.
- (11) that he also places reliance on what his mother told him.
- (12) that he has discussed the case with MORMOR and NATAMATAEWIA.
- (13) that he has no right to disputed area. He has rights at Losa.
- (14) that he does not agree that it is the Paramount Chief and Village Council that decide land disputes, even though Exhibit 15 shown to him, that it is Chief and Village Council in 1973 made a decision on land.

CHIEF JOHN MANTAE in evidence stated:- (D7)

- (1) that he is Chief of SAVIRI which is south of Mangaliliu but he lives on Lelepa.
- (2) he was appointed assistant Chief to NATAMATAEWIA in 1961.
- (3) he is Paramount Chief of his own area.
- (4) that he never heard that Mangaliliu land was given to the Community of Lelepa.

that MORMOR acquired official name in 1961 - all the Chiefs were appointed assistant to the Paramount Chief to rule the Community.



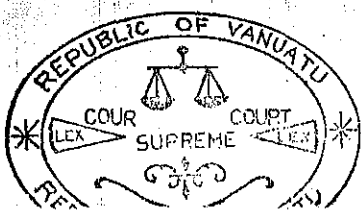
- (6) that ZAKARIE may know the history of LEINAPONGI. ZAKARIE has stated that LEINAPONGI was born before MAKTAU.
- (7) that KALURE was given the name MORMOR in 1961 - that for six generations no one was called MORMOR.
- (8) he has a family at Lelepa but he lives next to Mangaliliu.

CHIEF KALARU NAPLAU in evidence stated:- (D8)

- (1) he is a Chief of Lelepa, appointed in 1973.
- (2) that his area is CRIKI but he lives at Mangaliliu.
- (3) that when LEINAPONGI died MAKTAU was an old woman.

Having briefly set out the evidence given by both parties, I will now deal with the question of custom ownership of the land in dispute as to Lots 104 and 3078. The question of Lot 103 does arise to a certain extent as it was formerly public land but under a Land Reform Declaration N° 7 of 1985 dated the 27th February 1985 it ceased to be public land, so the custom ownership of that has also to be considered. The Judgment of the Island Court in my opinion did not give due consideration to the matter before it and dealt with matters completely outside its Jurisdiction. Accordingly, I completely quash the said Judgment.

The Appellants case simply is that due to force of circumstances beyond the control of all persons living in the area of Lelepa Island and indeed from places outside Efate (both Mormor and Taurakoto came from island outside Efate) the Community in order to protect themselves against clan war and disease had to move to the island of Lelepa at least some two hundred years ago. They lived as a Community and appointed from time to time, Paramount Chiefs and Chiefs who, as they do today, had power over the Community even to the extent of holding land on their behalf. This is the evidence which was given by witnesses for the Appellants. I listened carefully to each one of them as they gave evidence and was impressed by the manner they answered questions put to them by both their own Counsel Mr Vasaris and Mr Boulekone for the Respondant. Their evidence is that one of their Paramount Chiefs TARILIU METAPONG, and it makes little difference in my opinion, whether he came for Tukatuk or not, he was the elected Paramount Chief of the Community of Lelepa made up of peoples from many places. He made a verbal will giving full rights over Lot 104 and 3078, Mangaliliu Plantation, The disputed land and Lot 103 to the Chiefs and the Community of Lelepa, prior to his death and that later Chief Manarewo also made a verbal will giving the same rights. They were both buried on Lelepa Island.



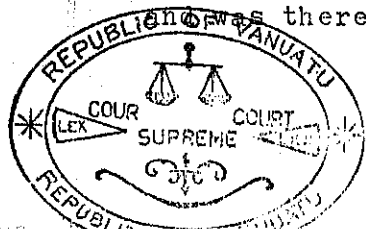
This was the position until 1975 when the Respondant who claims to have been appointed Chief of the disputed land in 1961 and to be the Customary Owner thereof.

The Appellants supported their claim to be true custom owners of Lots 104 and 3078 by introducing for example a deed dated 1899 made between the Chiefs of Lelepa and the Australian New Hebrides Company showing that Lot 103 was sold by them for the benefit of the Community of Lelepa Island and that the money obtained therefrom was divided among the Community. The signatories to the deed shows that a broad representation of the Community signed it. Again on the 31 May 1904 persons who describe themselves as natives of Lelepa sold to Messers Meeham, McKel & Co. Land Lot 104 which later was divided into Lots 104 and 3078. The natives were MARIKI ATELOG, PETER, TURI and SALI. It was witnessed by the Rev. MacDonald TIFATE, Chief of Samoa and KALTAG, which again seems to be a transaction by the permission of the Community of Lelepa. Chief TIFATE being one of the Chiefs of the Community.

The Appellant contend, if that is not ample proof that they are the real custom owners, that one of the members of the Community GEORGE KALTAUA is a direct descendant of KALKOT SAPOUSA and following patrilineal succession he is the true custom owner of both Lots 103, 104, and 3078. That if the totem system is to be considered at all, it merely gives rights but not inheritance to land. I am advised by my two custom advisers that such is the case in Efate and only rights follow the totem.

On the Respondents side, I again listened with great care to the witnesses as I was fully conscious that the result of the case was important for both parties. Chief MORMOR's case may be described as a case of words. Any time he was asked a question that he seemingly could not answer, he said - MAKTAU (i.e. his mother) told him. His evidence contained these word at least fifty times and indeed to be fair to him, he openly admitted at the end that his knowledge and history of their ancestry is based on what MAKTAU told him. He based his case on the fact that some six generations ago there was a MORMOR. I expect during that period of time there were many persons called MORMOR. However in his case a forefather MORMOR married one LEISUAK and from that issue there was a person named TURPET and that she had three children, KALKOT SAPOUSA, LEINAPONGI and MAKTAU. He has stated that MAKTAU was the first born but the appellants contest this and say KALKOT SAPOUSA was the first born. They also allege that with the rights under the totem system applying in Efate, the true custom owner of the disputed land are the descendant of MAKTAU, LEINAPONGI and GEORGE KALKOT SAPOUSA.

The Respondent's evidence did not totally impress me. He was evasive on may occasions and first did not answer many question asked. He was devious, so much, that it made me reluctant to accept his evidence on major issues. The conversations which he had with MAKTAU took place many years ago. I believe some conversations did take place but the replies given by Respondent seemed to indicate that she, MAKTAU, foresaw the introduction of a Constitution into Vanuatu and that there would be an Article 71 which stated - "All land in the Republic belongs to the indigenous custom owners and their descendents", therefore preparing MORMOR for the arrival of such. Yes,



conversations must have taken place but the details necessary for the matter before me could not, in my opinion be visualised by this dear old lady. Again Respondent gave evidence that MAKTAU was sixty six years of age when she gave birth to him. This I suppose is a possibility but in my opinion, not true. Respondent may have mixed up his dates and for that he could be forgiven but no, he was adamant that such was the case and from his demeanour when giving such evidence, I totally rejected such to be the truth. Respondent was unable to produce any cases that were settled under the totem system and I agreed with my custom advisers that such is not relevant to the custom ownership of the disputed land. Respondent admitted that he was found guilty by the Council of Lelepa of having committed adultery and being fined. He also admitted that attempts were made by the Chief and Council of Lelepa to solve this problem but he would not agree because he thought they were all against him.

Respondents case was supported by the Paramount Chief NATAMATEWIA, his brother, whose evidence was similar to that of Respondent and who also admitted that all his facts were given to him by MAKTAU. The other witnesses called by the Respondent were followers who joined him at Mangaliliu and merely stated without any proof that he was the custom owner of Mangaliliu.

All the evidence for the Respondent was to me, tainted. I got the impression that the evidence was well rehearsed and concocted before hand and that the witnesses merely appeared to give backing to the Respondent.

I have discussed the Custom relating to the matter before me with my two custom advisers. They have advised me that patrilineal succession is followed in Lelepa Custom and that under the totem system only rights are given.

I therefore hold that the true custom owner of the disputed land Lots 104 and 3078 and Lot 103, are the Community of Lelepa by virtue of the fact that the land was held by the Chiefs of Lelepa and left by them to the Community. Secondly following patrilineal succession that GEORGE KALTAUA, a direct descendant of KALKOT SUPOUSA is the custom owner of the disputed property and Lot 103 but by virtue of the fact that he has joined forces with the Community of Lelepa then he and the Community of Lelepa are the true custom owners of the disputed land and Lot 103.

However :-

1. I further hold that Chief NATAMATEWIA is still the Paramount Chief of Lelepa.
2. That all the other Chiefs including Chief MORMOR are members of the Council of Lelepa and;
3. As I hold that the Paramount Chief and Community of Lelepa are the custom owners of the disputed land including lot 103, it follows in my opinion that the said body are also the custom owners of the whole of Mangaliliu estate, as it was the only land within the Community of Lelepa that had not been allocated prior to Independence.

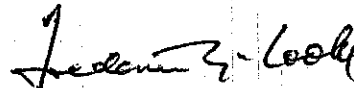
All persons residing in Mangaliliu must remember that the land belong to the Paramount Chief and Community of Lelepa and the sooner the Paramount Chief and Council of Lelepa representing the Community of Lelepa decide who should have the land at Mangaliliu the better it will be for all the Community.

Further until the Paramount Chief and Council of Lelepa make a decision it is **HEREBY ORDERED** that no use shall be made of the land within the boundaries of Mangaliliu.

AND FURTHER if the Paramount Chief fails within six months of this Judgment to convene a meeting and decide who should have the land.

THEN IT IS FURTHER ORDERED that the matter be referred back to this court for directions.

I allow costs to the Appellants.



Frederick G. Cooke
Chief Justice.

21st May 1986

