

REPUBLIC OF VANUATU

BETWEEN : SIMON LALE &  
HELEN ABRAHAM SIPORA  
(Appellants)

AND : NICOLSON SILAS  
(Respondent)

Coram : MR JUSTICE F.G. COOKE  
CUSTOM ADVISERS: CHIEF WILLIAM BOE & CHIEF ANDRE PETER

SUPREME COURT IN MALEKULA

JUDGMENT

This is an Appeal by the Appellants against the Judgment of the Island Court Malekula who held that the land at Peterevat and Panpal belonged to the Respondent (Nicolson Silas). The first Appellant (Simon Lale) appeals against the decision in respect of the land at Peterevat and the second Appellant (Helen Abraham Sipora) appeals against the decision in respect of the land at Panpal.

I heard the submissions of the first Appellant (Simon Lale) and a representative of the second Appellant (Sipora), who was unable to appear due to old age.

I allowed the first Appellant (Simon Lale) to call [redacted] in an attempt to substantiate his Appeal, mainly to clarify points overlooked by the Island Court. Simon Lale contended the Justices were against him and would not listen to his history story. He said his grandfather and his great-grandfather stayed on the land. That NATHANIEL, the owner of the land who supported Nicolson Silas had no right to stay on the land because there are no stations between his original station and the land. That there is only one Nasara on Peterevat which belongs to him. He said he got the land from Beturu who was the custom owner, but all his relations were dead. That he gave the land to his ancestors. Like many land cases this was a case of words as Simon Lale said he got the information from his father. That the custom owner Beturu had no children. Again his father told him this. Later he said his father did not actually tell it to him but to his brother who told him, but that his brother was now dead. That he moved there six years before Independence. That he came to Peterevat because he and his followers were driven out of their station and that some of their people were actually killed. The station he was living at was LENA VANU, close to LAVALSAL. He admitted that if there was no shooting he would not have left his station. He admitted that Nicolson Silas' father was on the land since 1944.

Simon Lale was asked questions by Nicolson Silas and attempted to evade the answers by saying something not relevant. He was asked why his father never told him about the custom ownership. He replied because he was not too big, only about 20 years of age. I was not impressed by Simon Lale. He certainly did not know anything about his history except something told to his brother by his father and passed to him. He evaded to answer many questions seemingly because the answers were

not to his advantage, and instead attempted to divert the attention to matters not relevant.

A witness of Simon Lale named Chief Willie of Atchin said certain people paid for ground at Peterevat to Simon Lale. I put to this witness the decision of the District Council of Chiefs and the Native Court for Atchin of the 11th December 1978, which gave the land to Nicolson Silas and fined Simon Lale £ 20,000 for damage to the land. This witness was a member of the District Council. This witness's only reply to a query of mine relating to the decision was: "I do not want one person to have all the land." Chief Willie said he had coconuts and cocoa in Peterevat. That the land was given to his grandfather and that the custom title of the ground passed to his family. He said that when the surveyer did the survey, the said land was included in the land of Peterevat, because both the first Appellant (Simon Lale) and Nicolson Silas told the surveyer to include it in the boundaries. The witness admitted that he did not know who is the true customowner of Peterevat as many people gave different histories of the land but as Simon Lale was an old man he should know about the land rights.

Another witness called KALSIME was called. He was the son of Chief François, who gave evidence in the island Court and stated that he gave evidence against Nicolson Silas because Simon Lale forced him to do so. I refused to allow this witness to give evidence instead of his father as the father's evidence clearly showed that pressure was being brought upon certain witnesses to commit perjury.

The last of the witnesses for Simon Lale was ABEL MELE whose evidence did not impress me and I formed the opinion having heard him that he was not a witness of the truth and did not accept his evidence.

Nicolson Silas admitted that land within Peterevat was sold by him to Paul, Italy, William, Erick Moses and Sameno and that he accepted such sales. He did not agree that Ephraim Maltok purchased land from him within Peterevat. He said he may have bought some land from Simon Lale. Ephraim said he had 27,300 trees and 30 houses on Peterevat, but from later evidence it transpired that most of such trees belonged to Paul, Italy, Moses and William. The evidence was that he had less than a hundred trees, planted about six years ago. I did not accept his evidence as he was not telling the truth. It transpired from a question by one of my custom advisers, Chief Willie Boe, to Ephraim that the first person made a customary ceremony on the ground at Peterevat was Tetegong. Nicolson Silas then gave the history of the owners:-

- (1) there was CHONGROEL
- (2) then CHONGMEAL who was the father of TETEGONG
- (3) then TETEGONG
- (4) then MATCHENGTARTER
- (5) then MELDERUS MELE
- (6) then SILAS (the Respondent's father)
- (7) then NICOLSON SILAS

Nicolson Silas stated that Ephraim came with Simon Lale to the land, six years ago. He admitted that he gave land at Tanmiliu to Ephraim, which was close to the mainroad at Lavasal. I reject Ephraim's claim to Peterevat. I thought that Nicolson Silas was very fair in all the replies given to anyone who asked him a question. He impressed me as a witness who spoke the truth and I accepted him as a witness of the truth. I am of the opinion that he is the correct owner of the land at Peterevat. His ancestors having obtained it from the true customowner and that he will honour the sales of land within Peterevat made only to Paul, Moses, William, Italy and Semino. ~~I therefore confirm the decision of the Island Court that Nicolson Silas is the owner of Peterevat and dismiss the Appeal of Simon Lale and hereby ORDER that Simon Lale shall leave the land of Peterevat by the end of June 1986. Any day thereafter he shall remain on the land will be considered~~

to be contempt of this order and make Simon Lale liable to be punished by the Court for such contempt.

As regards the Appeal of the second Appellant (Helen Abraham Sipora) in respect of the land at Panpal, Nicolson Silas agreed that half of such land was to be given to Sipora. This was accepted by Abel Mele representing Sipora. I therefore ORDER that half the land of Panpal belongs to Sipora and that the land be surveyed and a definite boundary line drawn between the land of Sipora and the land of Nicolson Silas. I allow her appeal in respect of half the land at Panpal.

I considered the submission of Chief Willie on behalf of his son Will who was adopted by Chief Benbi, to the land in the North East corner of Peterevat. He stated on oath that the land was in the family for generations and that his father sold it to Chief Benbi and many people paid for the purchase of the said piece of land. He said that his son who was adopted by Chief Bembu should get the land. Then the son of Chief Bembu gave evidence and said that he told the adopted brother to look after the land. He said that when the money was paid the whole village had a feast and all put money in a basket and gave it to the old Chief Willie for the purchase of the land. That all the Chiefs from the North-west and North-east were present.

This witness impressed me and I formed the opinion that he was speaking the truth. Chief Willie in reply to my question as to why he did not appeal against the decision of the Island Court, replied that he thought as the land was obtained many many years ago in custom this land was not included in the decision of the Island Court. Having listened carefully to this witness I formed the opinion that it was a genuine mistake on his part not to appeal and I accept his submissions.

Having heard his evidence and that of Bembu's Son I was satisfied that this piece of land was in fact acquired by his ancestors and sold later to Chief Bembu and later given to his adopted son. I therefore consider that this portion of the land of Peterevat belongs to the adopted son of Chief Bembu (Willieson) and ORDER this to be excluded from the land of Peterevat which I have held belongs to Nicolson Silas. The survey plan accordingly will be amended to exclude this piece of land.

I visited the land at Peterevat on Tuesday 17 June 1986 with my custom advisers and the parties, but did not see or hear anything which changed my already expressed opinion.

I ORDER that Nicolson Silas pay 17,000 VT towards the survey fees and that the adopted son of Chief Bembu (Willieson) pay 6940 VT of survey fees and that any further survey fees be divided between the two parties and Sipora.

*Frederick G. Cooke*

FREDERICK G. COOKE

CHIEF JUSTICE 18/6/86

SIGNED : CHIEF WILLIE BOE  
ANDRE PETER  
( CUSTOM ADVISERS )

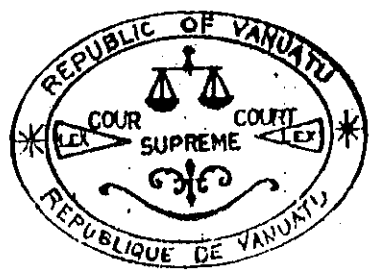


Exhibit I

