

Champagne
Beach Case

BETWEEN : OBED TOTO
(Appellant)

AND : PHILIP PASVU
(Respondent)

JUDGMENT

This is an appeal by Obed Toto supported by Crero Toto, his father, and Noel John against the decision of the Island Court given on the 10th July 1985. Their decision was that the land, Loreneth, belongs to Philip Pasvu.

The grounds of appeal are as follows:-

1. The decision of the Island Court was wrong because it considered and believed the untrue stories of some witnesses of the Respondent and ignored the true story of the witnesses of the Appellant.
2. That the custom rights of the Appellant given to the Respondent means the Appellant loses his rights to:-
 - (a) his nakamals, fruit trees, coconut trees, etc.,
 - (b) his "tabu place" called NESEGON MORO WELWEL.
 - (c) his passage called Thias or Champagne Beach.
 - (d) the house of the white man who exchanged ground.
3. That the two pieces of land, Loreneth and Thias were mixed up - Loreneth belongs to Novnathken, Kuvurvur and Resar. Thias belongs to Chief Mete. The Island Court erred as to:-
 - (a) the family and
 - (b) the custom boundary of the two pieces of land.
4. Following the custom of East Santo, the full rights passed through our grandfather, Novnathken. That the Respondent's grandfather is Nvatheroo and his land is at Lotnar or Losino.
5. Crero is the father of Novnathken.
6. The decision of the Island Court is not correct and against the custom rights of East Santo. Vatotieloth is not the custom ground of Mete. The nakamal of Chief Mete is not at Vatotieloth and the sea passage of Vatotieloth is not Towoc.
7. The three justices are from the little islands and do not know the custom of Santo mainland.
8. That the three justices erred in not accepting the evidence given by the Appellant's witnesses and were influenced by stories heard outside the Court.
9. That the justices erred in accepting the evidence that the mother

of the Respondent came from an area close to the disputed area i.e. the father of Meriam, Socwel, came from Lowerer between Hog Harbour and Kole village, and the mother of Meriam, Kubur, is from Lotnar or Losino. These places are a considerable distance from Champagne Beach.

10. That the allegation that Andrew gave land to the Respondent is not true as there is no proof of such in East Santo custom. This is substantiated by one of the Respondent's witnesses, Zetract Tavo who went to see the Appellant after the 2nd District Games in September 1984, at the village of Kole, to ask the Appellant if he could use and work a small piece of ground at Loreneth in the name of his son. That the father of the Appellant told him to go and see Obed Toto at Hog Harbour to ask him for it and that Z. Tavor went and asked Obed Toto for a small piece of ground from Andrew's share of the land. That the Justices erred in not considering this evidence.
11. That Andrew had no children. In East Santo custom if the Respondent claimed any rights to Loreneth 553, he has to ask the rights to this custom ground that belonged to the Appellant and Andrew. That under East Santo custom the Appellant cannot refuse the Respondent's claim if the Respondent follows custom.
12. That the Justices erred in believing false evidence given by the Respondent and his witnesses.
13. That Andrew was in some way retarded and did not want to talk about land but was forced to do so.
14. That, if it is true that Thias or Champagne Beach belonged to Andrew and Ri Luke, then Ri Luke would have told his two sons (stepsons) whom he looked after until they married and they in turn looked after him until he died.

These grounds are not the usual grounds of appeal one receives but for the purposes of record I have included them in the Judgment. I cannot consider them all as relevant nor can I possibly deal with all the points raised as some do not affect the issue before me.

On reading through the Judgment of the Island Court I regret I am unable to agree with their reasoning particularly their rejection of the sale of the land in question which took place some eighty years ago. They stated in their Judgment:-

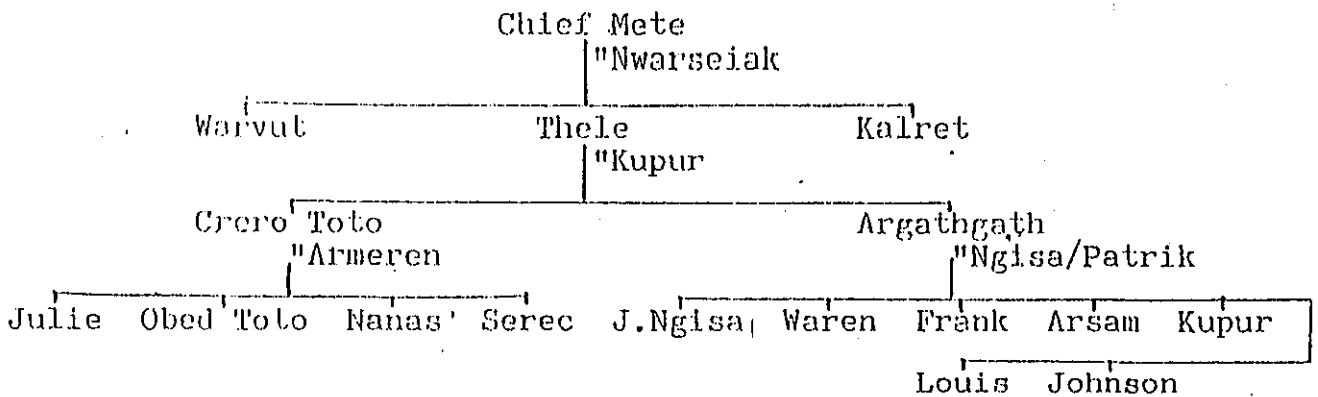
"The Court has studied all the papers by both sides during the Court sitting concerning sales of land and records of meetings held some time ago. The Court decides that it will not take note of all these papers because they were from times before Independence and also as it did not take into account what happened during the time of political change. The Court decides that it won't take too much notice of the record of land sales because the people who sold the land were not the true owners and some of the papers are false".

I fail to appreciate their reasoning that because sales took place before Independence they are not acceptable. How possibly could they seriously consider the problem before them unless they consider who sold the land and who occupied it for the past eighty years. I, therefore, consider they failed in their duty and accordingly I quash their decision.

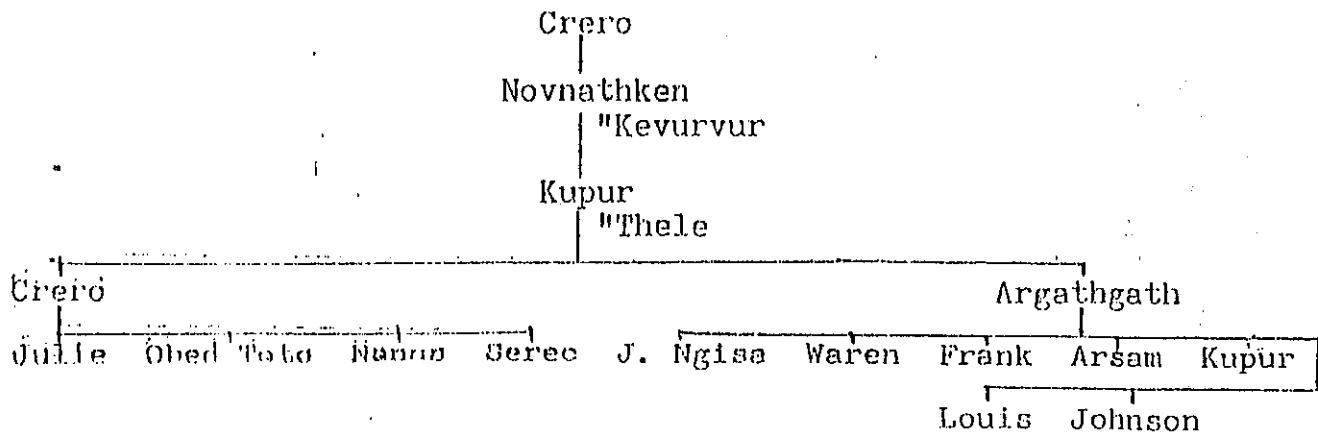
The land in question is Thias land or land in the vicinity of and including Champagne Beach, part of title 632 and Loreneth of Commonwealth land adjoining title 632 and numbered title 553, both registered in the Land Records office, Port-Vila. Attached to this Judgment is a record of the early dealings with title 553 and part title 632. It will be seen that numerous transfers took place from the year 1903 onwards. The Appellant has based his appeal on these transfers and contends that his ancestor owned the land in title 553 and part title 632 and has submitted to the Court an exchange document, Exhibit 1 (a) which shows that his ancestor, Chief Mete, exchanged a piece of land in block 2 on the Survey plan for that piece of land, part of title 632 on the plan attached and edged in black. The other land in title 553, he traced as having been originally sold to Burns Philp & Co. His total land claim from title records is edged in black on the attached plan. He submitted this portion of land was known as Loreneth and belonged to his ancestor, Crero and Andrew and that when Andrew died, the land belonged to his ancestor as in custom, when land belongs to two people and when one dies, it belongs to the other. The custom adviser's support this contention. This is similar to joint ownership under the present England Law System. He did concede that if the Respondent established a relationship with Andrew, he would, if asked, give a piece of land to the Respondent.

The Appellant's case is mainly advanced by the Appellant, Crero Toto, Noel John and Thomas Reuben Seru.

Obed^{Toto} submitted that his family tree, on the male line, was as follows:-



His family tree, on the female line, was as follows:-



He states that his custom boundaries are:-

EAST: Banyan tree on the beach to Navele tree planted by Chief Mete between Thias and Loreneth.
WEST: Natora tree near the sea to Nevac, up to a Nokar tree.
NORTH: By the sea, and
SOUTH: Singmas hill to Banyan tree.

He stated that Chief Mete married Nwarseiak and their children were Warvut, Thele and Kalret. That Thele married Kupyr and their children were Crero Toto and Argathgoth and that he is the son of Crero Toto. That he claimed the land before independence. That Mr Baker, the British District Agent, held an inquiry and found that he was the owner of Loreneth. A further inquiry was held by the East Santo Land Council and it was decided that the land should be divided. That the Minister of Lands in 1982 declared that the land in title 553 belonged to Toto and Pasvu and that the Minister made another declaration that part of the land in title 632 belonged to Toto (Exhibits 4 & 5). He contended that Ri Luke had stepsons called Noel Ro Warele and Sarouth Warele and that in custom, Ri Luke's rights would pass to them. The custom advisers agree to this.

He also produced Exhibit 1 (f), title 553, which he claims. This is included in the plan attached edged in black.

There was also produced Exhibit 3 which is the licence given by the Land Trust Board to Ri Luke to occupy the land for the purpose of growing crops pending the disposition of the land by lease or otherwise. This licence does not confer any customary ownership on Ri Luke.

He also produced Exhibit 7 which shows the dealing in title 632 or part thereof from Hallel and Iarook to Frederick Herbert Harrison. Later Exhibit 1 (a) shows there was an exchange of part of the land.

He also produced a plan, Exhibit 8, showing the total land he claimed.

The Appellant accepted that Loreneth was owned by Crero Toto and Andrew and that when Andrew died the land automatically went to Crero Toto, with a provision that if a relative of Andrew asked for a piece of land, he had to be given land. This position again was confirmed by my custom advisers. An example of this was given by the Appellant when he gave evidence, which I believed, that before Andrew died he sent Shadrack Tavor to see Crero Toto at Kole Village, telling him (Crero Toto) that the land will remain Crero Toto's and that he, Crero Toto, was to give a piece of it to Sande, Shadrack Tavor's son.

I was impressed with two statements of Crero Toto, father of the Appellant; which I repeat in toto:-

"I am Crero Toto. I claim the land Loreneth Title No. 553 because my grandfather Novnathken and mother Kuvurvur were both from Loreneth. The land Kaska and Nevret sold to Mr Witts later known as Commonwealth Land. When people of Loreneth knew that Kaska and Nevret sold the land they chased them away because they were from Varangan.

My name Crero was given to me by my father, the name belonged to a big chief of Loreneth, the other name Toto was given to me by Mr Thomas 1 and Mr Thomas 2.

A long time ago I was told that all the people of Loreneth were all dead except my grandfather Novnathken, grandmother Kuvurvur and

Reser. The chiefs, elders and people of Hog Harbour knew that I am the chief Custom Owner of Loreneth Land Title No. 553.

There were several meetings, land court cases about Loreneth and found that the land belongs to Luke, Andrew and I, but not Philip PASVU. He is very far to claim Loreneth. As you look at the family tree, Philip Pasvu cannot claim Loreneth to be his land because his great grandfather Nvatneroc and his great grandmother are not from Loreneth, they are from Lotenar.

On 29th April 1977, first Loreneth land court case took place at Hog Harbour Nakamal between Obed Toto and Philip Pasvu. The court case was listened and judged by Mr BAKER, B.D.A. Northern District.

These were Philip Pasvu and Obed Toto's witnesses:-

P. Pasvu Witnesses

Jimmy Stephens (Leader of Santo Rebellion 1980)

- James Garae - Ambae
- Sau - Shark Bay
- Lus - Sara
- Tavor - Lorevulko

Obed Toto Witnesses

Thomas Reuben (VP campaigning candidate)

- Mark (Chief of Hog Harbour)
- Noel Ro
- Maneseh Vocor

After B.D.A. Mr Baker hearing Obed Toto and Philip Pasvu family history about Loreneth, Mr Baker told everybody in the Nakamal that Obed Toto is the chief custom owner of Loreneth. If Philip P. claims a piece of land at Loreneth on behalf of Andrew, he must get permission from Obed Toto. This means if Philip P. wants a piece of land at Loreneth he must ask permission from Obed Toto.

After Loreneth land court case on 29th April 1977 at Hog Harbour village, the land was declared by Mr Baker that Obed Toto is the chief custom owner of Loreneth land title No. 553.

In April 1977 Obed Toto wanted to pull a fence for cattle at Loreneth but a French man named Rolland Bois who looked after Mr Peaco land, told Obed Toto that he must get a written letter or a note from Mr Baker before he can pull the cattle fence at Loreneth. Following Mr Rolland Bois order, Obed Toto went to Mr Baker. Mr Baker gave him a letter addressed to Mr Rolland Bois authorising Obed Toto to pull a cattle fence at Loreneth, so Obed Toto pulled the fence and put twel bullocks inside.

On 1st May 1977 Philip Pasvu took some Nagriamel supporters and cut Obed Toto's cattle fence and the bullocks all ran away. No punishment was given to Philip Pasvu because that time Nagriamel supporters almost governed the island Santo so they can do what they like and not get punished.

From my point of view Philip Pasvu was very wrong to take that action disobeying Mr Baker B.D.A. Northern District.

First inquiry of custom owner of Loreneth land Title No. 553 made by sixteen people of Hog Harbour representing North, East, South and West of Hog Harbour. The inquiry took place at Mission house, Hog Harbour. The Chairman was Noel Warily.

Names of Inquiring Committee as follows:

- | | |
|-----------------|----------------|
| North - Noel | East - John T. |
| - Namser | - Sac |
| - Harrison | - Kalwas |
| - Korjack | - Obed |
| South - Maneseh | West - Kovu |
| - Nail | - George |
| - Behov | - Pore |
| - Nelan | - Irit |

After their inquiry, they found that Obed Toto is the chief Custom Owner of Loreneth land Title No. 553.

The second time inquiry made by the same sixteen members plus

Chief Sul and Sengon of Kole Village, Musu of Shark bay and Chief Mark of Hog Harbour village. On the 29th April 1981, the inquiry took place in cooperative house at Hog Harbour village. After the inquiry members met they found that Obed Toto is the chief custom owner of Loreneth Land Title No. 553.

The second time, Loreneth land court case took place in young Peoples house at Hog Harbour village. It was East Santo Area Land Committee who listened and judged to find out who is the custom owner of Loreneth Land Title No. 553. After listening to Obed Toto and Philip Pasvu family history, they found that Obed Toto is the chief custom owner of Loreneth. The Committee said if Philip Pasvu claims the land on behalf of Andrew then both Obed Toto and Philip Pasvu may split the title No. 553 in half from the sea to the top of the hill where Loreneth land ends. Otherwise Philip Pasvu cannot claim the land Loreneth because his great grandfather and mother were not from Loreneth.

Once again Philip Pasvu never agreed with the East Santo Area Land Committee so he went to Santo Rural Land and made his appeal on two pieces of land Title No. 553 and 632."

He further stated:-

"I am Crero Toto. I claim Theiyas (Nesegnonmoror) Champagne Beach land title No. 632 to be mine. The land my grandfather Chief Mede and Warvut sold to Mr Thomas Bros. Witts on 7th Sept, 1907. Mr Thomas Bros Witts wanted this land because he had some land further ahead. He did not want to see Chief Mede, Warvut and family living and working on the land Title No. 632. They were in his way, so Mr Thomas Bros. Witts bought a land Nvatwateluth and persuaded them to exchange with the land Title No. 632. If you look at the sketch map on the land Title No. 632 you can see some navel trees, coconut trees, nut trees and some bread-fruit trees where chief Mede used to live and make his gardens.

My name Toto was given to me by Mr Thomas Bros. Witts who exchange my grandfather's land Title No. 632 with Nvatwateluth. During that time there were two Thomas, that's why they call me TOTO but my custom name is CRERO.

As you look at the family tree, my grandfather Chief Mede had two wives but Mede's other wives children and grand children have all died as stated on the family tree.

Everybody in Hog Harbour village knows that Champagne Beach belongs to me Toto. Whenever anybody wants to spend a day at Champagne Beach they ask permission from my son Obed Toto."

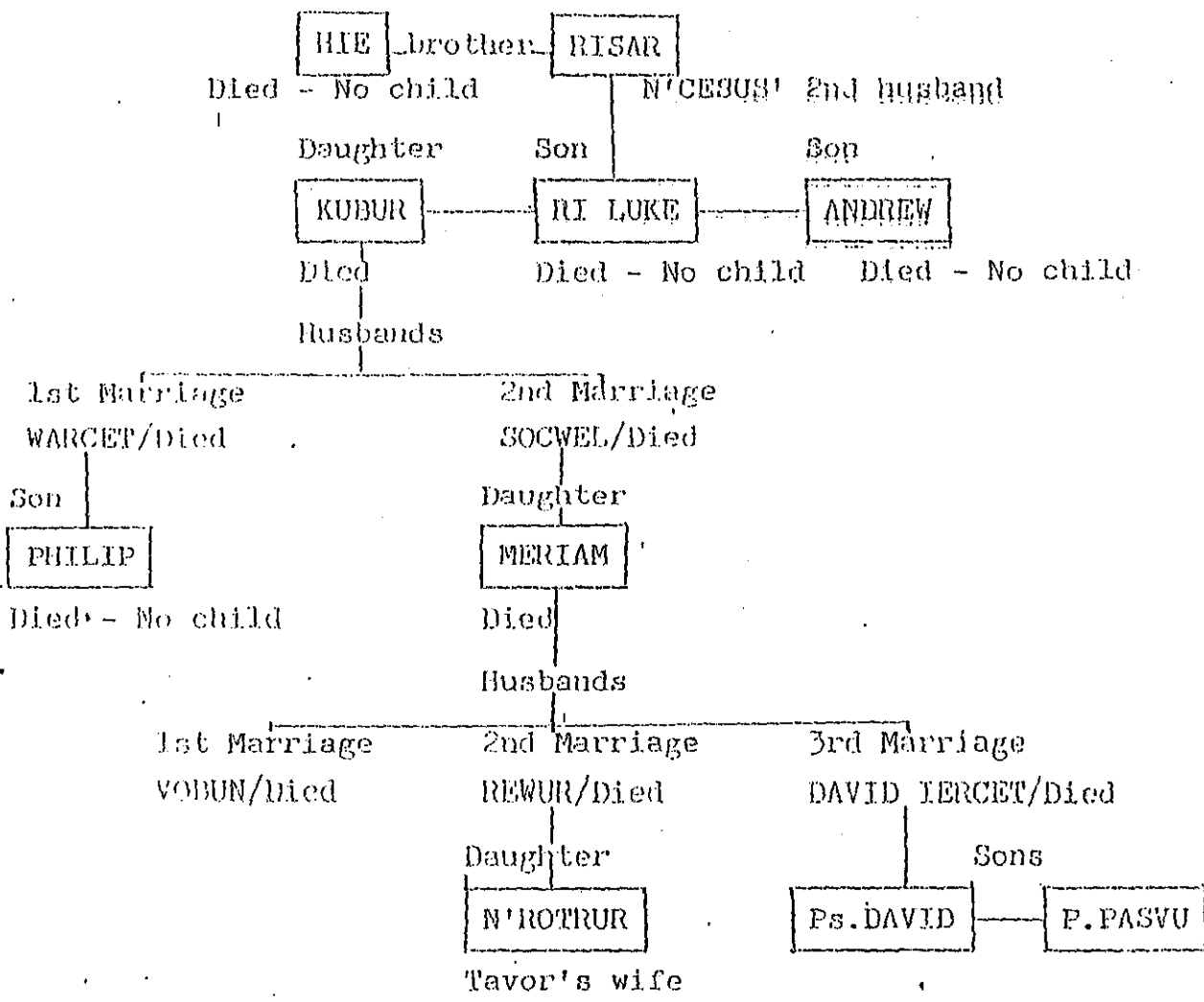
The Appellant's submission was further supported by Noel John, and Thomas Reuben Seru who agreed with the contentions of the Appellant and Crero Toto.

The Appellant's case is founded on the title documents No. 553 and part of No. 632 which in toto are edged in black on the plan marked 'A' and that part of 632 is edged in red on the plan marked 'B'. Further both that portion of land G to H edged in black and the land edged in black with blue stripes, in custom, belongs to the Appellant.

It has been proved to my satisfaction that the Appellant has claim in title and in custom to the said land. That was his claim and my decision is based on that claim.

The Respondent's Case

I was also impressed in the manner the Respondent presented his case. As stated his family tree was as follows:-



His case is that Resar was his ancestor and he owned Loreneth. That he had a wife named N'Warcesus and that she had two children prior to the marriage named Ri Luke and Kubur and through those two children he had a claim to Loreneth. However there was a full son of Resar called Andrew and again the Respondent claims through him.

The Respondent actually claims that Ri Luke gave him his property but the only evidence of any property was a licence to grow vegetables and take fruit from title 553. Even if Ri Luke gave him this document, which is denied by the Appellant, it means nothing as there is no right attached to the licence to pass it to others. I reject this claim. Again, one has to consider that Ri Luke married a woman who had two sons and I am advised by my custom advisers that they would have first claim to Ri Luke's property and I accept such and reject any claim which the Respondent contends he has to land through Ri Luke.

Secondly, the Respondent states he claims through his mother, MERIAM, who was the daughter of Kubur, the sister of Ri Luke and step-sister of Andrew. The Respondent has difficulties to overcome as Meriam married three times and the Respondent is the son of the third marriage. He would certainly have a claim to his own father but before he could have any claim to his grandmother, Kubur, the children of the first and second marriages would have prior claim to his claim. This claim to his grandmother is too remote and has not been established

to my satisfaction, so accordingly I reject this claim.

Thirdly, the Respondent attempts to establish a claim through Andrew, the only real son of Resar. However, Andrew, who from the evidence before me, seemingly was slightly retarded. He did not marry nor did he have children by any woman.

I am perfectly satisfied that the Respondent is a distant relative of Andrew. He is but a remote relative but even so, a relative which entitles him to some claim of the property in dispute.

The Respondent claims that his customary boundary is:-

- Eastern side: Starting from a large coral rock on the beach called Peris and running in a south westerly direction to the foot of the mountain, thence continuing to the top of the mountain to a Nabanga or Banyan tree.
- Western side: Starting from a mango tree near the sea at Slingon Moror or Moror Point, then running in a south easterly direction to a red Navele tree, thence running south to a Natora tree, thence to a Nabankura tree, thence running south to a Nagai tree and west of bean trees.
- Southern side: Starting from Nagai tree, thence west of bean tree, thence running in a north easterly direction to a Nabanga or Banyan tree and
- Northern side: The sea.

I consider that the Respondent is entitled to be given land through his distant relationship with Andrew and I consider it more appropriate that I set out the piece of land he should have otherwise the dispute between the parties may never be settled. I will do so at the end of my Judgment.

I read carefully the evidence given by the Appellant's witnesses and the submissions they made to me and was considerably impressed in the manner they gave their evidence. They satisfied me they were telling the truth and I believed them.

The Respondent, on the other hand, was handicapped as he had no documentary proof and relied entirely on hearsay evidence. The submissions made by his witnesses were written by him as most of them were unable to write. All the submissions followed the same pattern mainly to suggest that Crero Toto came from Hog Harbour and was not a true custom owner of Loreneth. I regret I am unable to accept their evidence as the truth; they were evasive in reply to questions by me and gave me the impression they were coached in their evidence.

Findings

It must be remembered that all the people of that area were living in the hills about 1900 above Champagne Beach because of clan fighting and that they only started to come down closer to the sea with the arrival of the missionaries. I reject the Respondent's submission that the Appellant had no rights to title 553 and part of 632.

I therefore declare that the Appellants are the true custom owners of title 553 and 632 as edged in black on the attached survey plan marked A and that portion of title 632 to which the Appellant is entitled as custom owner is edged in red on the plan marked B together with that portion of land G to H and the land edged in black with blue stripes.

I further consider that the Respondent has some rights in the sea

through his grandfather Andrew and declare that he is the true owner of the area edged in green on the same survey plan marked A. That portion of Champagne Beach west of the Nabanga tree belongs to the Respondent. The remainder to the east as marked in black to the Appellants. The portion edged in green and striped in blue is not to scale. This will be completed by the Survey Department.

Schedule A is the description of Obed Toto land and Schedule B is the description of Philip Pasva land.

It is ordered that the present road to the beach shall be a common road to the two parties. This is marked in blue on the survey plan marked A. All revenue derived from the visits of the M.V. Fairstar to be divided 2/3 to the Appellants and 1/3 to the Respondent. This will only be effective when the claims of the alienator have been satisfied. In the meantime, all revenue must be paid into the Supreme Court pending a further order as to its disposal by the Court.

It is further ordered that some piece of land be given by the Appellants to Tavor's son, Saude.

Liberty is granted to the parties to refer the matter back to the Court should any clarification of the Judgment be required.

From the revenue of the visits of the Fairstar there shall be deducted 100,000VT Court costs and a further sum of to cover survey fees.

Dated at Lugenville this 6th day of July, 1987.

Frederick G. Cooke

Frederick G. Cooke

CHIEF JUSTICE

The following documents are attached:-

1. Plan marked 'A'.
2. Plan marked 'B'.
3. Exhibit 1 (a).
4. Land Office papers, title 553, marked Exhibit 1 (f).
5. Exhibits 4 & 5.
6. Schedule A.
7. Schedule B.