

IN THE MAGISTRATE'S COURT
OF THE REPUBLIC OF VANUATU
HELD AT PORT VILA

Civil Case No. 67 of 2000

(Civil Jurisdiction)

BETWEEN: TIMTEO KALMET on and on behalf
of the **NMAK FAMIL GROUP.**

Plaintiff

AND: CHIEF WIA TENENE AND JOHN
KALOMTAK

First Defendants

AND: JEAN JACQUES SABLAN

Second Defendant

AND: CHIEF NUNU NAPERIKI MALA

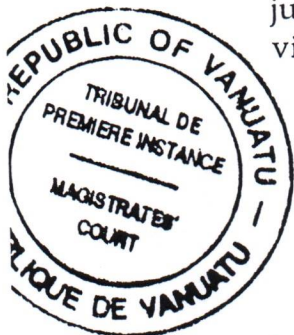
Third Defendant

Coram : Steve BANI, Magistrate
Plaintiff's counsel, Mr Nigel Grant Morrison
Defence's counsel, Mr Julian Ala

Decision on Defence application

Before the Court proceeds any further into the substantive issues of this matter, it is bound to decide on an application made orally by the defence counsel Mr. Julian Ala pursuant to Order 27 Rule 1 of the Magistrates Court (Civil Procedure) Rules 1976. The application sought are

- (1) That the writ of summons filed herein be dismissed
- (2) That the matter be referred back to the Erakor Village Community.
- (3) That the order of 29 January 1999 and 23 March 2000 be set aside. The grounds of the application Mr. Ala submitted that this court has no jurisdiction to entertain the matter. Secondly that there are differences of views on the decision made of the Efate Island Kastom Kot.



In reply to the application Mr. Nigel G. Morrison sought a 48 hours adjournment to allow him to file affidavits in response to the defence. He was granted the adjournment.

I have perused and considered the application on record. Upon the application on behalf of the defendants and having considered the affidavits filed for the plaintiff and defendants I make the following orders.

1. The order made on 29 January 1999 is set aside.
2. The ex parte order made on 23rd March 2000 in this matter is set aside.
3. The writ of summons filed herein is dismissed.
4. The plaintiff, should he wish to pursue the matter appeals against this decision or file fresh application before the Supreme Court to confirm the succession of the Chief of Erakor Village.

Reasons for Decision

Jurisdiction.

The Magistrates court is established by an Act of Parliament. The Courts Act CAP 122 establishes Magistrates Courts through Vanuatu and deals with matter prescribed by the Act. That the Civil Jurisdiction of the Magistrates' court does not extend to the issues of the present case. Therefore this court has no jurisdiction to deal with matter.

Her worship Magistrate Nesbeth on 29th January 1999 in her order directed that should no settlement be reached in the dispute, the matter is to be instituted in the Supreme Court who has unlimited jurisdiction to deal with the matter. It followed that the plaintiffs failed to do that. The orders sought in defence are granted.

DATED AT PORT VILA this 29th March 2000.

