

**TONGOA SHEPHERDS AND EPI ISLAND**  
**COURT OF THE REPUBLIC OF VANUATU**

LAND CASE NO. 01/1996

**BETWEEN: MARAKIPULE MATA**  
**of Pele village**  
**Tongoa**

Original Claimant

**AND: VANDANU MATA**  
**of Lupalea village**  
**Tongoa**

Counter Claimant No. 1

**JUDGMENT**

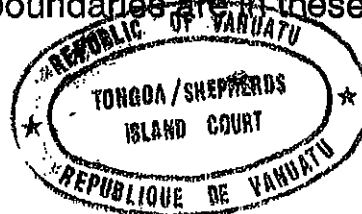
This is a customary land boundary dispute from the island of Tongoa. The boundary of land in dispute lies between the villages of Pele and Lupalea.

The recorded evidence of this Court illustrates that the dispute over such land boundary is dated back to the early 1920's. The British District Agents and Tongoa Council of Chiefs have made decisions favouring each parties at different occasions throughout history with efforts to settle the matter to date.

Having exhausted these avenues, the pending dispute was then launched and registered in this Court in 1996 for further determination. The Claimant's claim was contested by way of counter claim by chief Vandanu Mata represented by George Kerby of Lupalea village.

The main issue in contention before the Court for determination relates to dispute of land boundary between the two villages of Pele and Lupalea.

From the sketch Maps filed herein coupled with the actual visit of the boundary in question, the claimed boundaries are in these words;



The original claimant is claiming land areas from the foot path road leading to Lupalea Village to Kutudaula Primary School ending at the main road leading to Kurumambe Village.

While the counter claimant's boundary commences at some 200 – 300 meters in land Pele's said starting boundary stretching across the tip of the airstrip (some 50 – 60 meters) running straight north to a cattle gate down to the sea coast.

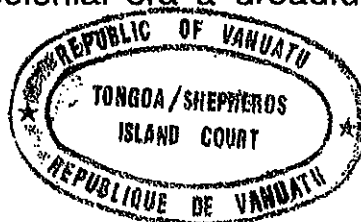
Five witnesses were called for each party to give evidence in support of the claims. Before embarking on the confronting issues we have elected to firstly analyze the evidence presented by the parties...

The evidence presented on behalf of the claimant are in our view, very general. For example, certain claimant's witnesses PW2-PW5 written statements seem to provide similar general statements indicating their stand and confirmation that Marakipule Mata is the rightful owner of the land covered by the disputed boundary.

It is also noticed that most witnesses from both parties have failed to give relevant evidence and particularize or disclose further evidence during the course of examination in chief and cross examination. The occurrence of such incompetence is presumably caused by the fact that it is the first time for most witnesses to give evidence on oath in a modern court. Notably, most of the questions are targeted to irrelevant matters such as names and making assumptions amongst other things. Perhaps it could be seen that some of these classified evidences may be useful in our context provided only that they corroborate or have link with other advanced relevant evidences.

We have also noted few discrepancies from the parties statements to be inconsistent or contradictory evidences. However, although these general weaknesses may affect the credibility of each witnesses, this has not affected the overall evidence of both parties. Their bits of relevant evidences are still valuable to the court.

Given the above remarks, the only witness who has largely assisted the claimant's claim is the first witness, Willie Kalo Timataso. He testified that sometimes during the colonial era a dreadful disease



'*sisit blad*' has largely affected the people of Lupalea village. In consequence, a vast majority of the population was wiped out. To prevent the spreading of this disease, the remaining villagers were advised to move to the nearby village of Ravenga.

Unfortunately, despite the resettlement aimed in minimizing death; this sickness has continued to kill people. Given the seriousness of the disaster, only 6 people of Lupalea village were evacuated without being affected, sought refuge and hospitality at Urata, Pele village. One of these 6 people was Kalo Vandanu the late father of David Richard Vandanu Mata, the counter claimant. In support of this story; trees, names and man made objects were identified as proof.

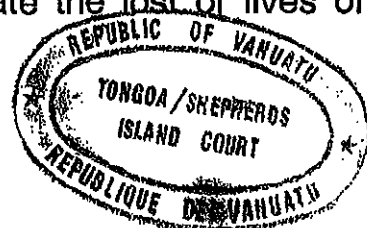
The counter claimant has confirmed this fact and does not dispute it.

PW1's evidence also illustrates that these refugees or migrants were given land by Marakipule Mata for their subsistence farming. These plots of land includes Lakenarewo and Mareka which are mapped to be embodied within the disputed boundary. It is alleged that Vandanu is one of these people who was given land by the claimant. As such, Vandanu is a head chief or servant of the plaintiff. After some years of residing at Pele, their descendants were forcefully removed from Pele due to some familial disputes.

He further submitted that despite their removal and return to Lupalea they have continued to cultivate the lands allocated to them until date. This continuous possession and cultivation of land was the main source of this pending dispute. The claimant claimed that since no customary lease was paid to chief Marakipule Mata by virtue of custom widely practiced in Tongoa, such lands must be returned to the claimant.

The defendant has objected to this evidence and provided its own version which we shall discuss in due course.

A subsequent point of argument raised purported to support the claim was of compensation or reparation. It was submitted that there are additional land (small boundary) '*Sumani Mara pulai*' inland Lupalea's land are owned by the claimant. These parcels of land known as '*Vanua nada*' were rewarded to compensate the lost of lives of 83



people of Pele who died during a tribal war for defending Lupalea people.

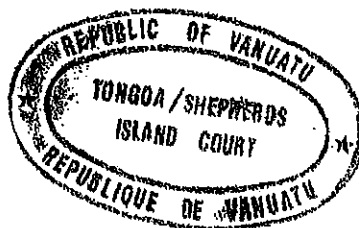
This evidence on compensation is rejected to being admissible by reason that such boundary or plots of land were not mapped in the original boundary being advertised. Secondly, there was no application made to this court at the preliminary stages to accommodate any amendments to the original map.

Having been given the source of the claim the immediate question for determination is *whether there is a right arising in custom over such land and its boundary limit*. To answer this question, it is fundamentally important to firstly understand the chiefly system or structure and its linkage to land and its usage.

According to the Tongoa and shepherd's chiefly system which extend to north of Efate Island a chief once ordained by his paramount chief is always allotted a land to work. In return, such head chief must perform custom leases to the paramount chief or other subordinate chiefs who had allocated them Land. There are two types of custom leases namely 'Fanga Sokora'(first harvest of vegetables ) and 'Nasau Tonga' (harvest of animal) paid to the chief. This is a customary obligation that is practiced from generations to generation throughout the Sheperd Islands.

For purpose of clarification, a village basically has its own paramount chief whom is ranked as the highest chief in terms of its hierarchy. He has head chiefs referred to as 'Matapau '.There is a third level of chiefs subordinate to the Matapu .

Another important question to answer is whether there is a right given to use land. The counter claimant on one side contested that the claimant was given land by Vandanu of Lupalea and Masoe Sarangoro of Woraviu and not the claimant. Chief Vandanu Mata was ordained by Chief Tivai Tini of Emae. It is historical that Vandanu is a 'Nakai Nanga' meaning a head Chief of Tivai Tini. In addition, there are only 3 paramount chiefs who have the right to perform custom ordination of Vandanu. The other two Chiefs are Napaunimanu and Titongoaroto.



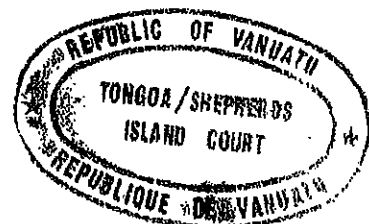
Quite clearly, there is a customary link between Tivai Tini and Vandanu Mata. This chiefly system is attached or twined with the land tenure system. Needless to mention however, for ease of judicial notice we have been duly informed that this chiefly title was passed on to late David Kalotapu Vandanu to look after which is currently a pending dispute.

Agreed or undisputed evidence from the parties provides that Marakipule Mata could only ordain Vandanu provided that there is delegation of power and or right given from Chief Tivai Tini of Emae. It is apparent that the plaintiff has merely relied on this issue on delegation of power asserting that Vandanu is a head chief of the claimant.

It is our view that such warrant for ordination cannot be construed to mean that Vandanu be categorized as a head chief of the claimant. Firstly, the counter claimant is a recognized paramount chief of his own right. Secondly, there is confirmation that the Tongoa Council of Chiefs has declared the counter claimant as one of the 14 paramount chiefs of Tongoa Island.

On the other hand, we found no significant evidence advanced to this Court as to where and when Marakipule Mata has ordained Vandanu. This is supported by the evidence of DW1 a 72 years old man born in Pele testifying that he was not aware of any ordination of Vandanu by the claimant. Additionally, pursuant to Sheperd's custom it is generally accepted that a paramount chief of another villages may be given the right to ordain any other chief from other villages by way of substitute. However, it is the customary duty or obligation of his own village paramount chief to allocate him land after ordination and not the particular chief who performed the crowning ceremony.

Further more, the defendant's evidence provided that the boundary in dispute are customary boundary laid by Paramount Chief Masoe Saragoro of Woraviu and Vandanu mata of Lupalea. History speaks that every time the boundary is visited both chiefs are usually present. Masoe Saragoro is regarded as a 'Kokoi' or surveyor of certain villages in Tongoa including pele. The boundary in dispute has been surveyed twice by two previous late Masoe Saragoro.



This boundary can only be varied by Vandanu and Masoe saragoro whom was not present at the hearing .

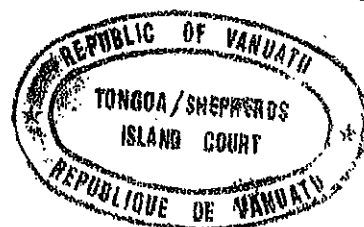
From genesis, Marakipule Mata is a new comer to the two paramount chiefs aforesaid. It is evidenced that prior to his arrival and settlement the boundary was in existence. History reveals that the claimant firstly settled at Lumbukuti Village after returning from exile in Efate due to the Volcanic eruption in Tongoa. He migrated to *Farea Nagoro* then to *Fagasole* where he was accommodated by *Maripopongi's* nakamal at Pele.

Sometimes after his arrival, Chief Tapanga Toroa, by way of gift allowed one of his daughter '*Masoe*' to Vandanu who was then given to Marakipule Mata and his poeple. Following this ceremony some plots of land were also given as gifts to Masoe and Marakipule Mata for gardening purposes. One of these parcels of land is Mareka which is originally owned by Vandanu of Lupalea.

It is clear from the arguments that Marakipule is now claiming these allotments of land to be contained therewith his land boundary and part of Pele's land. His claim cannot prevail because, he does not have any absolute right arising in custom conferred to him. The land given to him and Masoe cannot be inferred to mean that he has any absolute control, and ownership over the said land. He was only given the right to use the land for life and that in our opinion include possession of land. However, ownership of the land continues to rest with the original owner of the land.

Given these reasons, we are persuaded in our judgment to say that the claimant cannot classify Vandanu to be one of his head chiefs. By comparison, it is obvious that the claimant's story does not conform with the custom practiced in this Island. Similarly, it is most likely than probable that the claimant has not allotted any land to Vandanu.

In light of the totality of evidence gathered before the Court, it transpired that the claimant has failed to produce sufficient and constructive evidence justifying his claim. The claimant's evidence did not disclose any customary right or link over the boundary to justify the claimed boundary. Some of the evidences adduced, have apparently contradicted the customary usage or norms generally



practiced in Tongoa. For the reasons aforementioned, it is hereby concluded that the claimant's claim must entirely fail.

Having so ruled, it is this day adjudged that the land boundary counter claimed by Vandanu Mata and his people of Lupalea village is the rightful boundary. This boundary commences from the *Nabanga Ki Maseretau* to the cattle gate down the original undisputed boundary of Lupalea and kurumambe to the sea coast.

The original claimant and his people must vacate all cultivated land inland Lupalea's land within a period of 12 months as of today unless, proper arrangements are made with Vandanu and his people.

Costs necessitated by the proceeding is certified at VT 30,000 to be borne by Marakipule Mata. Any appeal must be undertaken within 60 days from today.

Dated at Port Vila this 26<sup>th</sup> day of September, 2003.

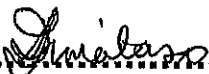
BY THE COURT



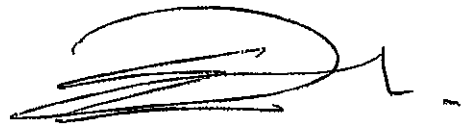
Justice Pakoa Jenery.



Justice Roy Harry



Justice David Timataso



Magistrate Edwin Macreveth.

