

IN THE TORBA ISLAND COURT  
OF THE REPUBLIC OF VANUATU

Land Case No. 3 of 1998

---

(Land Jurisdiction)

BETWEEN: FAMILY ATONSTAN  
BOLLEN  
(Represented by Atonstan  
Bollen of Vanualava,  
Banks)

First Claimant

AND: FAMILY YAUTEPTep  
(Represented by Frank  
Samson of Motalava,  
Banks)

Second Claimant

Coram: Jimmy Garae, Senior Magistrate

Justices: John Wasarak  
David Melsig Teltok  
Manaseh Wowud

## JASMEN

### Parties

MR Atonstan Bollen emi fes klemen mo emi stap live long disputed land. Emi klem long behalf blong family mo tribe blong hem.

Sekon klemen emi Yauteptep family we i represented by Mr Frank Samson mo i liv long aelan blong Motalava.

### Land in Dispute

Land we parties i rao from, for purpose blong Jasmen ia bae hemi "Qesso," be inside ikat sam pis graon we parties i disputim nems blong ol.

Be description blong disputed graon emi olsem:

Disputed land i stat long drae creek Pevemer, narasaed haos blong Atonstan Bollen, i folem solwota igo kasem Mesarig riva or smol wota, hemia tugeta klemen i disputim.

Stat long Mesarig wota iko kasem end blong cattle fence blong Atonstan Bollen, 2<sup>nd</sup> klemen emi no disputim.

Stat long end blong fence igo kasem big water or River Lotes, tugeta parties i disputim. Ples ia Fes Klemen iklem se graon ia nem blong hem "Tolap", be Seken klemen i klem se graon ia nem blong hem "Avalvono".

### First Klemen's Claim

Atonstan Bollen i klem tru traeb Mwen. Emi se Tokowie blong Traep Qong mo emi blong Qesso imaret long Pedirdo blong traep Mwen mo emi blong graon "Tolap". Pikinini blong tufala ikat Reil, Sosina mo Agnes, evriwan woman.

Reil Pikinini blong em Christine, Ken Kavi mo Constine. Christine pikinini blong emi Monik we pikinini blong emi Louis. Louis i maret wetem counsin brata blong em Atonstan Bollen we emi pikinini blong Constine. Mama blong Atonstan hemi blong Ureparapara.

Atonstant Bollen iklem se Tokowie ino kat sista mekem se laen blong em ilus, therefore tugeta graon ikam wan anda long Tribe Mwew.

Emi klem se Qesso emi blong Tokowie mo Tolap emi blong Pedirdo, waef blong Tokowie. Emi se ol pipol we emi representem oli surviving descendants blong tufala ia, therefore oli kat raet long tufala graon ia Qesso mo Tolap.

### Klem blong Seken Klemen

Seken Klemen i klem se graon blong Qesso mo Avalvono emi blong Yauteptep. Hemi klem se long 1890's man Motalava Beslan i pul ikam long East Vanualava mo stilim young Yauteptep long reef mo iko wetem long Motalava. Emi maret long Motalava mo emi kat ol descendents we oli 2<sup>nd</sup> Klemen.

Olsem wanem pati isave se emi ikat graon long East Vanualava – QESSO

Fes taem we Seken Klemen i save se emi kat graon long East Vanualava emi long 1961. Key witness, Jacob Taviemol we ikat 60 yia italem se long that year em wetem brata blong em David iko wok long Vetuboso, West Vanualava. Long plesia tufala i mitim wan man ANETUS we italem long tufala afta emi askem personal backgraon blong tufala se “Yutufala ikat graon long East Vanualava”, emia “Qesso, Avalvono mo Tanmat.”

Witnes italem bakeken se long 1962 em wetem brata blong em tufala iko wok long Qanlap long Vanualava. Emi talem se long ples ia tufala i mitim Kavi, bikfala papa blong Atonstan Bollen we italem long tufala ol graon blong Yauteptep long tufala.

Nara key witness emi Methat Ezekiel. Emi talem long kot se long late 70's mo early 80's emi go stap wetem Henry Sotman long Vanualava. Sotman we i brata blong Kavi mo Constine i soem mak blong graon blong Yauteptep long em. Witnes i talem se emi mitim Sotman bakeken long hospital long Santo. Se taem ia Sotman i admitim se Qesso mo Avalvono i blong Yauteptep be emi bin hidem.

Emi nao claims blong tufala pati.

Standard of Proof

Standard blong proof we prosecution i mas dischargem long wan criminal trial blong winim wan kes emi “proof beyond reasonable doubt”. Hemi wan very high standard of proof.

Be long sivil kes olsem emia blong graon, standard of proof we wan pati i mas dischargem emi long “balance of probability”. Emia se who long tufala pati toktok blong em i more likely se hemi tru blong Court i bilivim bitim toktok blong nara pati.

Which pati i stafisfaem Court

1<sup>st</sup> Claimant, especially through Atonstan Bollen, oli toktok long Court wetem authority. Pati ia emi exhibit very high knowledge

about subject graon. Pati i liv long graon even wetem Sotman. Hemi developem graon bikwan.

2<sup>nd</sup> Claimant, apat from se man olsem olsem i soem graon or talem se emi gat graon long East Vanualava, oli no kat good knowledge about land, tribe mo relevant kastom blong Vanualava. Ol witness i no ansa gud nating ol kwesten long cross-examination.

Court i observem olgeta witness blong Seken Claimant i toktok be demeanor mo appearance blong ol i difren long ol witness blong 1<sup>st</sup> Claimant. Ol witness blong 2<sup>nd</sup> Claimant, especially ol key witness oli very doubtful, oli apia se oli fraet or oli haedem samting, mo plante ansa long ol kwesten long cross examination emi "mi no save". Thus, I probable wanem oli talem ino true.

Long 1890's Besland I pul ikam long Vanualava i faenem Yauteptep i stap fishing long reef mo stilim hem igo long Motalava. Ol Jastis oli advaes se folem kastom blong Vanualava, Yauteptep i nomo man Vanualava be hemi man Motalava. Sapos Besland itekem gud em situation i difren. Se sapos descendants blong hem i wandem kasem raet ova long graon long Vanualava oli mas mekem kastom ikam long Vanualava, hemia oli no mekem. Kwestem se sapos oli mekem hemi kwestem of fact se oli mekem long who mo from wanem graon long Vanualava.

Taem Yauteptep i tet oli no mekem kastom ikam long line blong Yauteptep long Vanualava from graon folem kastom blong Vanualava. Bakeken hemia hemi wan issue we oli mas pruvum se oli mekem kastom long who mo from wanem graon.

Seken Klemen i mekem kastom be oli mekem long ol man Motalava, emia maybe from graon long Motalava be ino from graon long Vanualava. Mining blong ol kastom ia sapos ibin tek ples, ol witness ino mekem i klia. Oli mas pruvum as fact.

Seken Klemen ino save papa blong Yauteptep, mo emi no save nem blong traep blong em. Mama blong Yauteptep tu oli no save nem blong tribe blong hem. Everi witness we oli toktok oli no save tribe blong olgeta.

Long 1961 olfala Anetus blong Vetiboso i talem long 2<sup>nd</sup> Klemen se emi kat graon long East Vanualava. Be man ia emi no blong

Qesso we istap long East Vanualava, hemi blong West Vanualava we i long tumas.

Jastis we i constitute Court ia we oli blong Vanualava, wan hemi blong Vetiboso mo wan blong Vatrata we i klosap long Vetiboso mo oli kat gud save abaot who ia late Anetus. Oli advice se olfala ia emi no wan man blong wolkabaot from ol leg blong hem oli nogud mo hemi wok baot olsem duck i walk baot. Tufala i advice se man ia hemi no man blong wok abaot, mo Qesso i long tumas long Vetiboso mo wetem geographical terrain long East igo long West we i nogud olgeta ino possibol se man ia hemi go long Qesso. Bakeken hemi issue of fact we Seken Klemen i mas pruvum olsem wanem Anetus ikasem save blong hem abaot ownership blong graon long Qesso.

Nara man Numleas we italem long 2<sup>nd</sup> Klemen se Yauteptep emi blong "Venem Tavulow" tribe, ol kastom jif jastis oli advice se long Vanualava ino kat tribe ia. Bakeken Vatrata ilong way tumas long Qesso blong Numleas i save abaot land ownership long East Vanualava.

Yauteptep iklem graon be ino mekem kastom blong kasem kastom raet. Yauteptep line i purport blong klem from land folem man, be long Vanualava woman nao iholem taet tribe we ownership blong graon i pas tru long hem unless hemi mekem kastom. Yauteptep iko long Motalava ino tekem tribe wetem em. Nao folem kastom, from Yauteptep i man emi no kat raet long Vanualava, be sapos emi save kat raet sapos hemi mekem kastom.

Seken Klemen ino tekem step nating blong establishim raet blong hem long Qesso taem ol man blong graon ia oli life iet olsem Kavi mo Henry Sotman. Pati i sud tok from raet blong hem taem tufala ia i life. Sapos pati ia i ting se graon ia i blong hem hemi sud ko occupaem graon mo developem. Be emi wait kasem afta tufala i tet hemi stap traem assertem raet blong hem. Atonstan Bollen hemi go stap long graon wetem papa or uncle blong hem taem i life iet mo i mekem bikfala wok long graon.

Nara pati hemi kat colour wetem graon Qesso, hemi muv igo ko long graon taem Henry Sotman life iet mo i undertake extensive agricultural development. Pati ia i liv long graon.

## DECLARATION

Wetem ol toktok ia, Court imekem Declaration se Atonstan Bollen wetem family blong em oli kastom ona blong graon Qesso mo Tolap. Blong avoidem any doubt graon stat long Smol Wota igo kasem end blong fanis hemi pat blong Qesso iet mo Atonstan Bollen wetem famle blong hem oli kastom owner blong graon ia.

Dated at Sola this 18<sup>th</sup> day of September, 2003.

  
JIMMY GARAE  
Presiding Magistrate

