

IN THE EFATE ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 12 of 2004.

IN THE MATTER OF: The Island Courts Act [CAP. 167] as amended ("the Act")

BETWEEN: KALTOI CHICHIRUA -
Plaintiff

(brother of deceased land owner)

AND: ALOANI GEORGE KANO
Defendant

(son of deceased land owner)

JUDGMENT

On 25 February, 1994, the Efate Island Court made certain declarations in relation to 'Marope Land' behind Bauerfield International Airport. On appeal, the Supreme Court, on 19 December, 2003 confirmed the decision of the Island Court. Naflak Teufi, tribe of Ifira Tenuku, is one of the claimants in the case and was then represented by late **George Kano** who died, 11 February, 2000. The Plaintiff in this matter is the brother of late **George Kano**. Today, he comes to this court seeking a declaration that he be declared a rightful person to take over the responsibility from his late brother to administer the affairs of Marope Land. His grounds, *inter alia*, are as follow:-

1. that he is the only male left in the family after his 2 brothers, **George Kano** and **Chichirua Abel** died.
2. that he has only one sister, **Sea**.
3. that in Ifira custom when a brother dies the second born brother takes over as leader of the clan or tribe.
4. that late **George Kano's** son, **Aloani George Kano**, defendant in this matter, cannot take over the right from his father.



Issue

The issue before this court is not for this court to decide on the ownership of Marope Land. That has already been decided by the Efate Island Court and the Supreme Court. The issue before this court is for the court to decide whether the Plaintiff should take over the management of the Marope Land on behalf of the family.

On 13 June, 2004 when the case was first heard, the Plaintiff nor the defendant raised the issue of the constitution of the court in hearing the application. However, on the 27 July 2004 hearing, by letter dated 26 July, 2004, the Plaintiff made reference to section 3(4)(b) as amended. That section reads as follow:-

“An Island Court shall be properly constituted:-

- (a) where the matter before such court concerns disputes as to ownership of land, where the magistrate nominated under section 2A with three justices nominated by the clerk are sitting; and***
- (b) where the matter before such court is a matter other than a matter referred to in paragraph (a), when the three justices nominated by the clerk are sitting.”***

The content of the Plaintiff's letter was clear. He intended to question the constitution of this court. According to him 3 justices should have sat in this case to hear his application. In my view, this application is not for the court to determine the ownership of land. The issue before this court, as mentioned earlier, is to decide whether the Applicant should take over from his brother late **George Kano**. Therefore, in my view, the above section does not apply.

However, having considered submissions from both sides and the materials placed before me, it was clear that this is a dispute better heard in a customary way. The reason is because at page 38 of the Efate Island Court decision issued 24 February 1994, the court set out 10 customary points they considered in making their decisions. These were confirmed by the Supreme Court in its decision issued 19 December, 2003. Paragraphs 1, 2, 3, 4, 5, 6 and 7 is of great importance to the Plaintiff's application and I set them out below:-



1. **According to Efate custom, particularly the Marope Land area,, land ownership passes to the males. Custom Land ownership follows the Patrilineal system.**
2. **The custom landowner is normally a chief, sometime there are exception when the custom owner is not a chief. The custom chief owns land on behalf of this people, who live and work on the land. The custom chief acquire land on behalf of his people who occupy the land.**

Custom ownership is bases on representation. The custom chief represents the custom boundary of the land he and his people live and work on. The custom land belongs to the custom chief and his people. Custom land ownership is different from individual ownership. The individual landowner may dispose off/sell land on whatever may he wishes.

On the other hand, a custom chief cannot dispose off or sell custom land at his own free will.

3. **Every person under the authority of the custom chief has an interest or custom right, which is a perpetual right of occupying and using land, which is owned by the custom chief.**
4. **According to the system of customary land tenure, the chief is the custom owner of the whole bounda5y, and like his people he owns, small portion of land within the whole boundary.**
5. **This custom chief is a chief of one tribe, and at the same time the chief's tribe may lead a different tribe, hence it would make him the chief of different little tribes.**
6. **Custom land ownership is transferred from father to son (grandfather, to father, and then to son). Customary land ownership is birth right.**
7. **If a custom owner dies, then customary land ownership transfers to the brother after him. If the custom owner doesn't have a brother, then this right gets transferred to the first son of his eldest sister, in that way land gets transferred through the "uncle relationship"**

At page 20 of the Supreme Court decision, Treston J. stated:-

"In my view there can be no criticism of the statements of the principle set out therein but of course the question remains as to whether those matters of principle were applied in an appropriate way."



This is the point where I agree entirely with the judge where he stated that the question remains as to whether those matters of principle were applied in an appropriate way. This became very clear during the parties' submission. The defendant argued that under paragraph 6 above, he should take over from his late father because land rights passes from father to son. Equally at paragraph 7 the Applicant is also entitled to take over the rights from his late brother. This is an issue which, in my view, will be better decided in the Ifira customary manner probably the Lands Tribunal.

There are 3 reasons why I say this. First is that during the submissions it was clear that custom must be taken into account. Secondly, the question as to whether those matters of principle were applied in an appropriate way can only be addressed through customary manner. And thirdly, in order to arrive at points 6 and 7 points 1, 2, 3, 4 and 5 must first be considered.

Court Order

For reasons set out above I order that this case be transferred to the Ifira Lands Tribunal for their decisions. Any decision made will be endorsed by this court.

30 days to appeal.

Dated at Port Vila this 27th day of July, 2004.

BY THE COURT


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Jerry Boe
Magistrate

