

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

Land Case No. 3 of 1984

IN THE MATTER OF: ISLAND COURTS ACT [CAP. 167] as amended

AND IN THE MATTER OF: LAND DISPUTE

AND IN THE MATTER OF: Section 3 (4) (a) Island Courts Act [CAP. 167], as amended

BETWEEN: CHIEF AMEARA BILLY &
MANAPANGA MANUA
Original Claimants

AND: WILLIAM KERRY AMEARA
First Counter Claimant

AND: NTAIN KANAS
Second Counter Claimant

AND: KARAF FAMILY
Third Counter Claimant

AND: MARIPAU FAMILY
Fourth Counter Claimant

Coram: Kewel Kawi-iu, Magistrate
Makal Kalsong, Justice
Kalkot Mormor, Justice
Ann Carlo, Justice

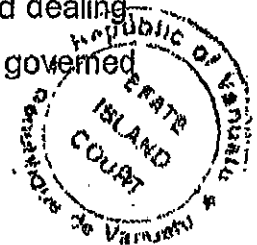
Clerks: Shemi Joel
Blandine Tepi

JUDGMENT



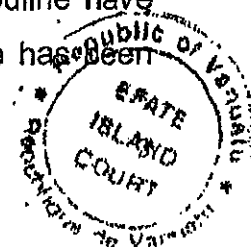
Each of the Claimant before this Court is claiming **ownership** of the land known as Takara. This case was registered in the Efate Island Court in 1984 and finally came before this Court in 2004, some twenty years after registration, for determination as to whom or which party is by custom the rightful owner of the land referred to as Takara and also known by some other names, such as Tapmara and Tapumara. The proceeding spans several weeks and involves several hundred pages of transcripts and exhibits tendered by the parties. Each of the party gave evidence and a total of 25 witnesses were called.

The Court after examining the witnesses' evidence came to the conclusion that it would serve no good purpose to dissect each Claimant's evidence to ascertain the credible from the non-credible, for reason that will shortly be revealed. In order to prove ones case evidence of **facts** and or **law** must be adduced. In the case of land dispute several considerations come to mind. The most and foremost is the need to provide full genealogical history showing both the patrilineal and matrilineal relationships and descent of an individual group or clan. This is a matter of fact and prove is usually by tracing the origin of the particular tribe or clan down to the present day descendants. Conversely, the living members of a clan may trace their origin by ascend. The ability to identify the family history and origin manifest the genuine from the false. Custom land is very much attached to human intervention and all aspect of land dealing ownership settlement, succession, usage, and disposal is governed



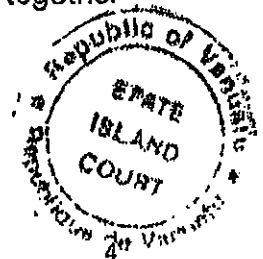
by customary rules or law so called. It is paramount that a Claimant satisfies the Court under what capacity it lays claim to a particular piece of land. Was the land claimed on the basis that the ancestor was the first discoverer and settler on the land when no other person had settled on the land? Was the land claim subject of a *gift*, sale or disposal according to some other customary rules or rites? Often times one turns a blind eye on this finer, however, important issues and contestants proceeded as if they own the land exclusively. In the present case there is evidence of land owning by groups and or individuals of parcels of land within the contested land. These lands were obtained either through sale, rightly or wrongly or as gifts in accordance with custom. This is an observation that may affect the ultimate decision of a Court when such land disposal is ignored. However, having made this remark, it is obvious from the evidence that each Claimant claims ownership of the whole Takara land subject to their individual boundaries.

Claimant's duty after identifying the facts must satisfy the Court that such fact is supported by custom, which entitles the Claimant to own the land. The custom law on how one becomes entitle to own land may take many forms. The question of custom common to the parties must be addressed. What does custom law says how land is owned or posses. Whether land is owned and passed through the *bloodline* alone? Does custom recognised *naflak* or a combination of bloodline and *naflak* as the prerequisite to land owning and rights of usage? It is obvious that instance of *naflak* and *bloodline* have been presence in land owning and or succession. There has been



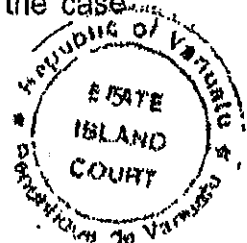
evidence of land succession through either the male bloodline or the matrilineal descent. A Claimant must state and qualify his claim in conformity with the dictates of custom. It is the proving of relevant facts and supported by custom law that enables the court to arrive at a proper conclusion upon which decisions are made.

One issue that was evident in Claimants' evidence is the claim to rights of **Chief Title**. It was raised elsewhere in the proceeding that the presence of Chiefs means right to land. Thus a chief is assumed in this reasoning that he is the owner of the land in which he presides or has influence over. There is a contrary view which most Claimants support is that the best indicator to land ownership is obtained not by the presence of Chiefs, rather the presence of blood relationship. The second proposition would appear the better indicator to land ownership. Thus it would be true to say that not all Chiefs are of a bloodline who owns land, unless Chief himself is from the bloodline that owns or entitle to the land. In this circumstance issue of Chief Title is secondary to issue of land ownership, notwithstanding that both issues may overlap such as in the present case. The issue of Chief Title may be considered independently of land claim, and may be determined either before or after issues of land is settled. In the present case it appears at least three Claimants seeks declaration for a particular chief title. As expressed above, chief title claim is an issue that can be determined any time and not necessarily together with land claim.



One issue that has escape attention till now is the claim of Claimant's respective boundaries. This matter was not considered one of the pressing issue, as Claimant's omission to indicate that boundaries are also being contested. Thus, the proceeding proceeded on the assumption the only dispute concerns ownership of land. However, during the course of proceeding and actual "boundary walk" revealed the extent of the conflict. The dispute of the boundaries has become the hallmark of this dispute. It is a dispute within itself and may only be solved when the true owner of Takara land is declared. Claimants' claim of their respective boundaries dissects, crisscrossed, overlap and encompasses the boundaries of the others. This is the extent of the difficulty in determining who owns the land. Some boundaries extend beyond the Takara land which may pose other claims over such extension from other interested parties.

Now going back to the reason why this Court has not considered fully the evidence of individual Claimant lies to the fact that on reflection on the whole case the Claimants have not disclosed the relevant evidence in particular evidence of ones family tree. It appears the family tree was so focused in that parties may have included only the most appealing genealogy and omitted others that may appear detrimental to their case. Thus it is observed the family tree either attempts to trace the lineage trough the female bloodline or the make bloodline depending on how the land is claimed. In a case controversial such as this case before us, the only way out for the Court to fully determine the merits of the case is for the Claimants to exercise restraint and lay before the Court the full facts of the case



even if it is against them. A case is not assisted by parties withholding relevant facts for the determination of a case. One striking phenomenon of this case is the level of cross-examination, in which Claimants endeavour to discredit the other parties, at best at the expense of ones case. This is not discouraged and the court has given or allowed the Claimants to fully explore this option. Cross-examination is necessary only when ones case is threatened. The basic instinct is for a party to get his case in good order first, meaning build your case to a solid foundation and then asks questions only when necessary. This trend was evident during the entire proceeding and finally repeated in the Claimants Final Submissions.

The Court has endeavoured to bring this case to a lasting and at least a satisfying conclusion. We have been mindful of the struggle, the hardship, difficulties and the pains this case has dragged on for the last twenty years since the case came to the attention of Island Court, and we perceived the struggle precede that date. We also took cognizance of the economic potential over the disputed land and the need for a lasting solution so parties may go about their business for economic development. We proceeded with this aim in mind and hope during the proceedings that a solution with in the end be achieved. We spent much time pondering over the case and reviewing the evidence. In the ultimate the Court was unable to come to the conclusion it sets to established, that is to find the rightful owner of the Takara land, as the Claimants have not assisted the Court in laying full and relevant facts as alluded to above to assist the Court in reaching a proper conclusion.

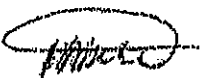


Having reached this conclusion however, does not mean to say the Claimants have lost their rights to the land. What this means is that on the evidence the court is not in a position to make a declaration of ownership. The parties however, have other rights that is available and that is the service of Land Tribunal. There is doubt whether this Court will revisit its own case or there could be a second chance this case will come before the Island Court, as all land jurisdictions of the Island Court has been vacated since the coming into force of the Land Tribunal Act. There is however, a possibility of a party invoking the appeal provision of the Island Courts Act, should they feel aggrieved by the decision.

Having come to this conclusion, our final verdict is that all claims of the respective Claimants are hereby dismissed, for want of evidence.

DATED at PORT VILA this 12th DAY of NOVEMBER, 2004

BY THE COURT


.....
Kalkot Mormor, Justice


.....
Kewei Kawi-ia, Magistrate


.....
Makal Kalsong, Justice


.....
Ann Carlo, Justice

