

IN THE PENTECOST ISLAND COURT  
HELD AT VANU (Waterfall)  
SOUTH PENTECOST, PENAMA  
[Larid Court Jurisdiction]

IN THE MATTER OF ISLAND  
COURTS ACT [Cap 167], as  
amended  
AND IN THE MATTER OF LAND  
DISPUTE

BETWEEN: ENOCK TABI & FAMILY  
*as Original Claimants*

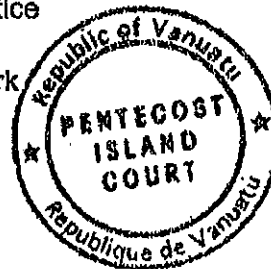
AND: EDWARD TABISARI &  
MARK METEN *as*  
*Counter-Claimants*

Hearing Date: 5, 6, 7 May 2004

Oral Decision: 13 May 2004

Judgment Date: 29 September 2004

**Coram:** Kewei Kawi-lu, Magistrate  
Jonas Bila, Island Court Justice  
Abel Bebe, Island Court Justice  
Lino Bulesam, Island Court Justice  
Blandine Tepi, Island Court Clerk



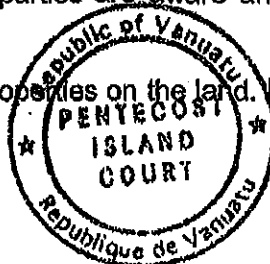
*Appearance:* Enock Leon for Original Claimants

Mark Meten for Counter-Claimants

## JUDGMENT

### Nature of Claim:

This claim concerns ownership of land known as Lonblinlom (Hot Water), situated on the south coast of Pentecost Island, Penama Province. Hot Water is a parallel reference to Lonblinlom. Hot Water is a descriptive feature of the land, as part of Lonblinlom land traverses over hot springs or hot water due to underground thermal activities, hence the name Hot Water. The land is partly developed with cattle grazing and coconut plantations along the shoreline, between Huvwe and Panbo Rivers. The parties are aware and respect each other's rights of usage of their respective properties on the land. Under Common



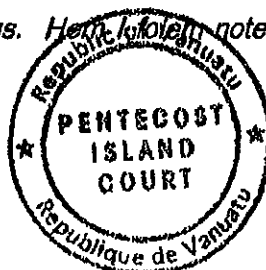
Law and now most legislations concerning land, there is no distinction between land and properties attached to land, such as coconut and full trees, as all are regarded as land. However, in the various Malagasy cultures, of which Vanuatu is a part, we attached different claims to land (earth, ground or soil) and growing crops and trees and therefore claims are adjusted accordingly. With this distinction in mind, since the parties are concerned with the ownership of the present claim is therefore restricted to one of land (earth, ground or soil) ownership, as opposed to ownership or usage of properties on the disputed land.

**Land Boundaries:** The Original Claimant's boundaries are as follows:-

*Long noten pat bandri lstat long sol wota mo l folem krik blong smol wota*

*Huhvwie igo antap long bus. Herik lfolem noten fok blong smol wota ia*

*igo fas long hill Vetmar.*

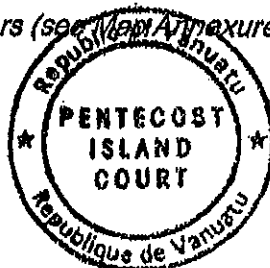


*Long saoten pat bandri I stat long sol wota long wan ston we nem blong hem I Panrao. Bandri I pas igo antap folem smol wota la, bandri I pas long saoten saet*

*blong stesen blong bifo we nem blong hem I Stoh mo igo antap long bus folem bikfala kil blong hill we I stap antap I kam daun mo fas long hill Vetmar (see Map Annexure OC "A").*

Counter-Claimants Boundaries are as follows:-

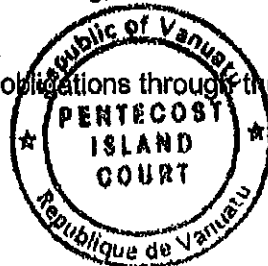
*From Huwe a line running east for 3.5 kilometers to Vetmar and from there a line running in the easterly direction for about 2 kilometers to Paro village and down to Panbo River at Ranro. From Ranro to the west coast following the Panbo river a distance for about 4.5 kilometers. The distance from Huwe to Panbo estuary is about 1.5 kilometers (see Map Annexure CC"A")*



Original Claimants' Claim: Enock Leon representative of the

Original Claimants claims for and on behalf of himself, Enock Tabl, and Enock Wilson, descendants of Mambonmaring and Dupuy Michel, Nangard Yann and Nangard Miki descendants of Noa. Noa and Mambonmaring are brother and sister. History and tradition suggest and it is not disputed that at one stage the ancestors of the present day villagers living between Baravet and Lonblinlom, lived on the eastern side of the Island. Following the intrusion of Western influence and the spread of Christainity, trans-island migration began. Thus Noa is believed to be the first or one of the first inhabitants who migrated southward and settled within the boundaries of the disputed land at Sioh

Mr. Enock Tabl traces his genealogy and assumes rights and claims through the matrilineal ascendant to Mambonmaring, and those descendents of Jack Noa (son of Noa), assume rights and obligations through the patrilineal chain. Original



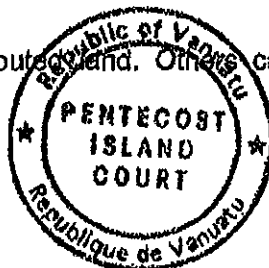
Claimants claim is premised on a fiction, akin to one of exclusive ownership, of the land by reason of first settlement. That is, it is claimed that before any person and in particular Counter-Claimants' ancestors came to live in Lonblinlom and its environ Noa was there prior to their arrival.

**Original Claimants Evidence:** ~~Original claimants have five witnesses~~

The principal or the main witness is Mr. Enock Leon and his evidence will be examined first, although he was the last witness called in the proceeding. Then the four other witnesses' evidences will be examined in the order as they were called during the proceeding.

**Mr. Enock Leon (5<sup>th</sup> Witness) says:**

During the first trans-island migration, Chief Noa and family came to live at Sloh within the boundaries of the disputed land. Other came to settle within the

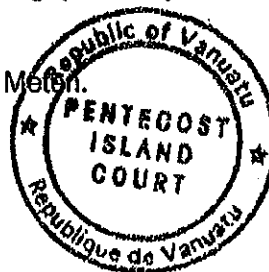


disputed land. Due to the spread of Christianity and westernization, others came to settle within the boundaries of the disputed land. One such example of this influence on settlement is traced to a Solomon Islander named Samson Malaita. He lived at Rabsumuel, which is not far from the disputed land (see map marked OC "B"). Samson Malaita set up schools and taught Christianity to the people. Two of his first students were Gramuel and Tom Saot. Gramuel traveled east and set up schools at East Pentecost. The influence of Christianity and education brought peace, which led to more trans-Island migration. Racial village was settled through this process of pacification. As population of migrants increased, more settlements became evident such as Vatsing. Settlers live and move between settlements; hunt; gather food and make gardens within the area of the disputed land. During the course of these hunting and gardening, coconuts, fruit and nut trees were planted by the settlers.



After the death of Original-Claimants' grandfather Bulekonan, Gramuel adopted Bulekonan's daughter (Original-Claimants' mother) since she was just a child. Another reason for the adoption was that Gramuel is a cousin of Original-Claimants' mother. Since the death of Bulekonan, it was feared that Lonblinlom land might never be developed, so Gramuel planted a small coconut plantation on the land. Gramuel married a woman named Sirbo and adopted her son Isaiah Tabisari.

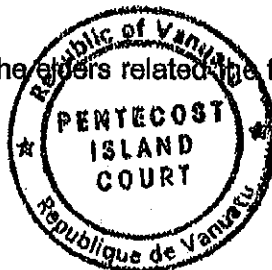
After the death of Gramuel, Isalah Tabisari continued to work on the land of Lonblinlom. Within a very short time, Isalah Tabisari started to divide the land. He gave small pieces each to Bulekuli, Tomas, and Enock Leon's parents. The piece given to Enock Leon's parents is Ravang (see Map exhibited OC. "A"), presently occupied by Counter-Claimant Mark Meten.





Isalah Tabisari also gave land to Johnson Maliv and Mark Meten. However, Mark Meten and his wife were not content with the land given them and came to Ravang forcing Enock Leon's parents to leave and went to Pantor (see Map exhibited OC "B"). Their occupation at Pantor was short lived as pigs belonging to Mark Meten continued to trespass and destroying their gardens. For this reason, they left and had not returned to Lonblilom to this day. However, there are properties such as coconuts planted by their bubus on the land, which is evident of settlement.

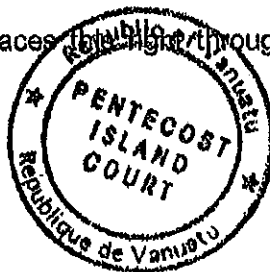
Previous attempts were made to ascertain which of the party has the right to inherit the land. Enock Leon says that in 1983 there was a meeting at Baravet where all the parties to this proceeding were present. The purpose of this meeting was to ascertain the genealogy of each of the parties with assistance of the Chiefs and village elders. At this meeting Edward Tabisari and Enock Leon recorded their respective genealogies. The elders related the family histories. It



was understood that one man settled in the station of Mtanlang and today his generation existed. This is the family of Seq or Jack, whilst two other generations have no living descendants (see Dr. Edward Tebisari's Paper 7).

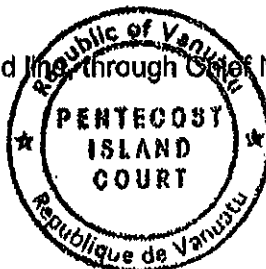
Mtanlang station is located within the boundary of Lonblilom. Our old men did not tell us if there are any other generations who lived within the boundary of Lonblilom. The last generation who lived to the present day is the descendants of Jack Noa. Josephine (now in court) is one of the living descendants. One other station, Yoghle, is also outside the boundary of Lonblilom. Yoghle is the land where Mark Meten has rights. Enock Leon says that they claim land through the female bloodline of Mabonmaring and outline how this right is achieved.

The right to use or even own land may be acquired through some recognized customary norms. Mr. Leon traces this right through acts of satisfying these



customary obligations. Chief Noa and his sister Mambonmaring had to part due to the marriage of Mambonmaring to Mangleh. After the marriage and In order to maintain the ties to the land Mangaleh had to "kilem pig" Ikam bek long stampa station long Lonblinlom" which is Sioh. This custom then gives the right of the descendant of Mabonmaring (matrilineal) to use the land of Lonbillom. And on the death of Mangleh and Mambonmaring, Matahleng even though still an infant was reared on the land, during the time of Gramuel and Isalah Tabisiri.

~~On the matrilineal side~~ Chief Noa, when he died his son Jack "mekem ded" ceremony, thus becoming the successor of the Lonblinlom land. This process was repeated until it reaches the time of Isalah Tabisari. When he died Mr. Leon,s father and mother killed a buluk and also paid for some debts that Isalah Tabisari left behind. Thus, the right to use the land passes to us through this process. It now appears Original-Claimants are representatives or descendants of both the male and female blood lines through Chief Noah and Mabonmaring.

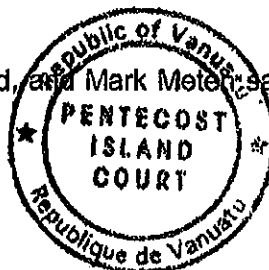


## First Witness – Chief Vidan Bulesanibo

This witness was called to tell the court his previous dealing with the dispute. He says that, he was a Chairman in one of the Custom Court in 1987 over a dispute between Mark Meten and Dominic Mbabo in respect to land known as Sandleing. The Custom Court heard that Mark Meten (Counter-Claimant) admitted that his "bubu" comes from Luf which is further inland.

## Second Witness – Chief Albert

This witness like the first witness held a Custom Court in 1995 in a "nakamal" at Baravet between Mark Metan and Enock (copy of case dated 3/10/95). Their respective family histories were heard, and Mark Meten says that he came from Lal.



### **Third Witness – Morris Bebe**

In about the year 1960 Morris Bebe was cutting copra from a small coconut grove. He did not know who owns the coconuts. Malling Rachel the wife of Isalah Tabisari told him that the coconuts belong to Mambon Enock. Malling Rachel repeated this information to him in the evening when they were having dinner. Isalah Tabisari confirmed the statement that the copra plantation belongs to Mambon. He further says that in 1960 there was no plantation owned by Dr Tabisari on the land. There was also no plantation owned by Mark Meten, it was only later, that he planted coconuts on the land after returning from Vila in 1960.



### **Fourth Witness – Toma Awar**

This witness says that about the year 1957 he was told by his auntie Regina that the land on the other side belongs to Mambon. He has never had any knowledge that the land belongs to Mark Meten or Dr Edward Tabisari. He further says Dr Tabisari lives with Lonseng villagers . Then Bulewa, father of Temalambes, was chased out of the village following the desecration of the "natamata" of Lonseng. He then escaped to the sea and swam to Pabsing and lived there.

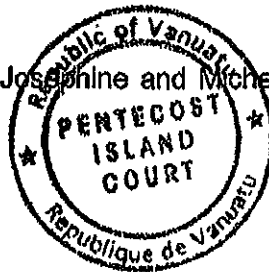
### Counter-Claimants' Evidence

The representative for Co-Claimants' is Mr. George Meten. He called three witnesses, Virevanglat, Roy Tabisuob and Mark Meten. The length of a witness statement does not necessarily determine the relevance of the evidence. It is on the relevant facts that the case is won or lost. The following is a summary of the relevant facts of each of the witnesses.



## First Witness – Virevanglat Paul Bule

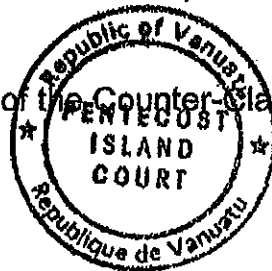
This witness relates his genealogy to Mambonmaring. He says that inside Lonbillom land there were twelve villages and twelve chiefs who are part of one "natamata" with one High Chief. He further says Sek (Jack) when he was baptized received the name Noa. He confirmed that most of the generations who lived in the twelve villages are dead, except the family of Noa. The witness denied knowing any descendants of Noa and says he does not know their history. There is no relation between Mark Meten and Chief Noa. Noa lived in another village and so as Mwanwial. When further asked whether Jack and Noa is the same person, he says his father told him the story. This witness was present in 1983 at Baravet when his father was telling the genealogy of the present parties. He heard his father saying that Jack married Vahileg and bore Lusa. And Lusa married Dupols whose children are Luke, Josephine and Michel. He admitted



that this story told by his father was true. This witness says that there is no family relationship between Dr Tabisari and Mark Meten, and remarked "*history istap mbe mino save tok baut.*" This witness was observed on the witness stand and appears evasive. Furthermore, his evidence appears contradictory.

### **Second Witness – Mark Meten**

This witness evidence was short and his opening statement suggests that he was accompanying Gramuel on church work at Vatmel. He gave evidence of one man and five women. He gave evidence of one Samson Malaita building church house and preaching about Christianity and building churches. He did not give any evidence with respect to the issue before the court. Furthermore, he did not relate any family history. This witness is one of the Counter-Claimant of the

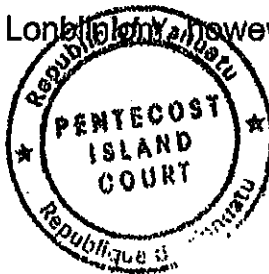




disputed land, however, he did not give any evidence in support of his claim. He says that his bubu comes from Lal.

### **Third Witness – Roy Tambuzuob**

This witness gave evidence of his adoption by Isaiah Tabisari, together with three other sisters. He says Isaiah Tabisari comes from Bono. He further says Noa lived at Sioh. He could not retell the family history of Noa. When asked, where does Gramuel come from, he says Gramuel lives in Lonbilo, however his original village is Pwaro.



### **Summary of Evidence**

1. In 1908, there was a person by the name of Chief Noa who lived at Lonblinlom (Hotwota). He is the original occupier and owner of the land. There is no other evidence of settlement of this land by other person about this time. Original Claimants claim the land of Lonblinlom through Chief Noa.

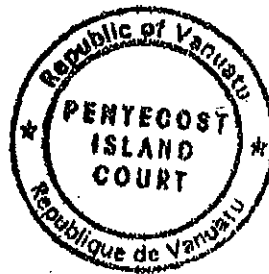
2. He has a son named Jack who has living descendants, Dupuy Michel, Nagard Yann, Nagard Miki and Josephine who are Claimants to the present disputed owners of the land.



3. All Claimants originate from the East of the Island, and settled enroute to the south, during the period of trans-island migration due to westernation and spread of Christianity.

4. Gramuel may have lived in Lonblinlom, but his station is Pwaro. Isaiah Tabisari may have lived in Lonblinlom, but his station is Bono. There is no evidence of them becoming landowner.

5. Mark Meten ancestral land is Lal. He does not claim Lonblinlom land.



6. Counter-Claimants family history does not clearly show their connection to the disputed land or a right to claim rights by way of family ties.

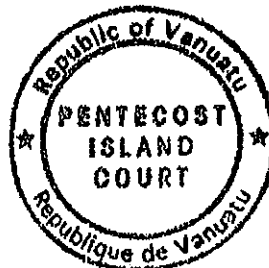
7. Original-Claimants' evidence are consistent with occupation and settlement of Lonblinlom land through Chief Noa.

8. Original-Claimants' was the only party that have a family tree that clearly traces their family history to Chief Noa who first lived and occupy the land of Lonblinlom.



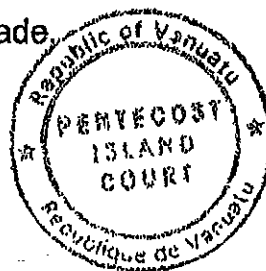
9. We also acknowledge that the disputed land has properties belonging to Original-Claimants as well as Counter-Claimants, for example, Counter-Claimant has coconut plantation and cattle on the disputed land. However, no separate claim was raised on these issues. The parties are mindful of this fact and will endeavour to resolve any claim in respect of these issues the custom way, failing which appropriate proceeding will be sought.

## Conclusion



This case was really a one sided affair. The Original-Claimants evidence is impressive and logically presented. The family tree or

history of Original-Claimants clearly identifies them to the land of Lonblinlom. Original-Claimants are representatives of the male and female bloodline of Chief Noa and his sister Mambonmaring. At this hearing, it is not clear who of the Original-Claimants is bringing the action, male or female representative. This is important as land passes to person through the male or female bloodline depending on what custom dictate. In the absence of this, a general declaration in favour of the Original-Claimants will be made.

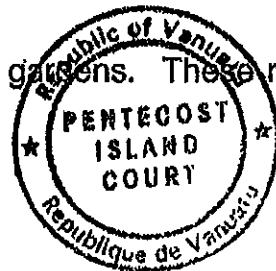


## **Declaration**

Having come to this conclusion, based on the evidence and a summary of our findings, we make the following declaration.

1. It is hereby declared that the land known as Lonblilom or Hotwota as described above belong to the descendants of Noa and his sister Mambonmaring, of which the present Original-Claimants, in the absence of an agreement as to who shall hold the land in trust for the benefit of the descendants, shall hold in common for the benefit of the generations of Noa and Mambonmaring.

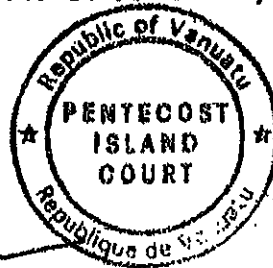
2. For the avoidance of doubt this declaration does not affect other property rights on the land, such as the right of Counter-Claimants to harvest coconuts, graze cattle on Lonblinlom land or the making of gardens. These rights



however, may be waived or varied by the Original-  
Claimants as owners of the said land. The exercise of this  
right is limited to existing properties of the Counter-  
Claimants on the land prior to this declaration.

3. There shall be no order for costs
4. 30 days to appeal, effective from date of receipt of this  
order/declaration.

DATED AT PORT VILA, THIS 29<sup>th</sup> DAY OF AUGUST, 2004




By the Court

  
.....

Jonas Bila

  
Justice

Abel Bebe

  
.....

Kewei Kawi-lu

  
Justice

Lino Bulesam