

**IN THE MALEKULA ISLAND COURT
OF THE REPUBLIC OF VANUATU**

Civil Case # 23 of 2005

(Civil Jurisdiction)

**BETWEEN : ALBERT SELNANGI
Complainant**

**AND : FAMILY DONNA
Defendants**

MATTER : CUSTOM - BLACK MAGIC

**Coram: Justices Mr. Frederick David
Mr. Endy Shem
MR Johnsen Selwyn**

Clerk: Wendy Raptigh

JUDGEMENT

This case is a customary matter. The issue is to determine whether the death of the late Donna Jerry is caused by some custom powers (black magic) or diabetic (Sugar).

The plaintiff in this case is from Mahe. He was accused by the defendants (family Donna) that he is responsible for the late Dona Jerry's death. They claim he uses the custom power from Mahe village.

The defendants (family Donna) are from Mahe. The deceased was their brother. He died on 14th July, 2001 at around 3pm at Norsup hospital.

Given the brief background, we will now look at the parties' evidence.

Evidence:

Albert Selnangi testified in Court that he did not kill the deceased with custom powers or black magic from Mahe. He claims the doctor knows the reasons of the dead. He tendered a death certificate, marked appendix "A" and a medical certificate marked appendix "B". He further stated that he was accused by the family Donna falsely since 1993 when the late Dona Jerry started to get sick until he died in 2001. Before concluding he relate to the "A" and "B" certificates to confirm that the late Dona Jerry died from sick Sugar, diabetic.

On cross examination he stated that sometimes in 1993, he invited the deceased to his house at Mahe. It was a Saturday. His wife prepared laplap and they had it for lunch. His wife was the person who cut the laplap and divides it in two plates, one for the deceased and the other to him. The defendants claim that, the laplap that day has some evil powers

to it and that had affected the deceased. He explained that his father and the deceased's father are brothers. He argued that he never knew that the deceased had suffered from diabetic.

Morris Atuary was called as his only witness. He testified that the deceased died in hospital, not in the bush or some where else, so as to say it is black magic. He mentions the medical certificate which certified that the late Jerry Donna died from diabetic. He further added that it is impossible for black magic to work for eight years and then can finally caused death.

On cross examination surrounding the laplap he stated that he was not at Mahe during that Saturday. He added that he was not aware that the deceased was suffering from diabetic until the doctor certified that. Furthermore when question if he knew how long it takes for black magic to finally kill someone he said he did not know.

Ismael Donna spoke on behalf of the family Donna. He stated that the black magic mention is not Ambrym's black magic where you perform today, today the person dies. This black magic they are referring to is theirs, at Vatarnaur, Mahe bush. Its effects is very slow, it takes years before it finally kills. The symptoms, one will become sick, weak and loses weight gradually until the person dies.

His story led back to the beginning sometimes in 1993. Albert S was angry about Simeon Maltufrank running away with his daughter, Estella. Albert S was searching everywhere with a bush knife threatening to cut her daughter and Simeon M. The deceased at that time was called to come and calm Albert S since Albert was losing his temper and going mad. On arrival the deceased was threaten too, he was nearly cut, therefore he came to the police station at Lakatoro and reported the incident. Albert S was then arrested and taken to cell 6. After his released, he arranged for the reconciliation meal on a Saturday at Mahe. During the reconciliation the laplap was shared and they all ate. On arriving at Tautu, he (the deceased) started to feel ill. He then mention it to Lima Donna (his son) and the others (families) that he felt that laplap had something in it, the black magic (custom) that causes him to feel ill. Words reached Albert S after some time and their relationship broke up. Albert at one time did appear at the hospital unexpected, no words, no food but asked to go wash the deceased's dirty plate. At that particular time the deceased was already recovering. That visit from Albert S affected the deceased unexpectedly that his sickness got worst that night and he had to be sent to Vila.

In Vila, his condition was just getting worst that he was sent back and died at Norsup hospital.

On the funeral after burial, Albert S mention to Edmond Kukane that he knows about that death and if they want to know more, he told them to come up to Serbulbul at Mahe. The family Donna later on went to Serbulbul but Albert S was not there at the time promised.

In addition to his evidence he testified that Albert S knows black magic and that he got his magic powers from Raphael – an old man from Wala.

On cross examination he stated that Raphael, from the past until the present everyone knows that he practices black magic. So when Albert S admits he bought Raphael's powers', he can mean good and bad powers. Moreover, he still stand his ground that the deceased was killed by black magic made by Albert S. He further disputed the medical certificate, claiming the doctor who treated the deceased that time was Dr. Derrick and not Dominique Delegeuy. Moreover, the symptom of the sickness that affects the deceased matches that custom practices of theirs from Mahe.

In support of his statement, two witnesses were called to give evidence. Witness 1 confirmed that defendant's statement on the beginning of the conflict and added that at one particular time at Norsup hospital, Albert S came and rub some burao leaves on the body of the deceased.

On cross examination, he did not know what the function of the burao leaves was but added that after the rubbings, another big sore appeared behind the back of the deceased. That raised a lot of question in the families' mind.

Witness 2, Lima Donna, the son of the deceased. His statement was brief and only confirmed that yes, he was told by his father that the laplap he ate at Albert S's place is the cause of his sickness. Albert had some black powers over that laplap. When cross examination, he stated that the deceased told him about the above incident to make him aware of the plaintiff and to keep away. He added that he knew about the diabetic but did not believe that, because after he operation in Vila on the deceased, still more sores appeared on his body. That was unexpected by the families and even the doctor.

Custom:

The black magic powers in Malekula, varied from village to villages. They are unwritten custom practices and hard to believe but they truly exist in Malekula.

Findings:

From the evidence adduced from the statements, the plaintiff never at one time challenges that magic power practice from Mahe. The plaintiff stood his grounds based on the medical certificate; certifying the death and the cause of death – diabetic. Albert S also mentions in the very beginning that the late Jerry Dona's hospital file was not available when asked by Dominique Delegeuy in order to write the medical certificate.

Despite that, the defendants argued that Dominique Delegeuy as not the doctor in charge that time over the deceased. It was Dr. Derick (who already left for New Zealand). Analyzing that evidence, the question now raised was how did Dominique Delegeuy produce a medical report without a patients hospital file? .

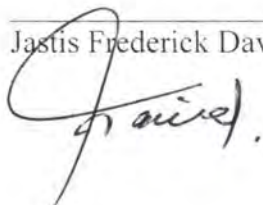
It is evident and accepted by the parties that there was a custom practice of that sort at Mahe village. However, the evidences given in Court have no enough evidences. All the defendants in Court, needed someone of old age to explain further and into detail the ways and practices of the black magic in the olden days and compared that to the late Jerry Dona's death.

Given the evidence, it is our conclusion that the Court will not accept the medical certificate marked appendix "A".

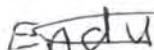
It is hereby adjudged that the claim of the plaintiff is dismissed.

Dated at Lakatoro, this 23rd September, 2005.

Jastis Frederick David



Jastis Endy Shem



Jastis Johnsen Selwyn

