

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

Civil Case No. 34 of 2005

(Civil Jurisdiction)

**BETWEEN : JAMES ABEL
Plaintiff**

**AND : KALRAN TIMOTHY
1st Defendant**

**AND : BERSI TIMOTHY
2nd Defendant**

MATTER: CLAIM FOR PROPERTY – COCONUT PLANTATION

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

Clerk : Wendy Raptigh

JUDGMENT

This case was originally registered in the Magistrate Court but was not deal with. It was ordered that the matter be dealt with by the Island Court where chiefs knowledgeable in custom would sit and decide the matter.

The issue before this Court is to determine the custom ownership of a coconut plantation. It is situated at Litzlitz, Central Malekula, in an area known as Nokonake’.

The plaintiff, James Abel is from Tongoa and her mother, Esther is from Litzlitz. His claim is through the matrilineal system meaning claiming blood ties through the mother. The 2 defendants, Kalran and Bersi Timothy are from Litzlitz and are brothers. They claim that there was no surviving blood line therefore the next to own the property is the big fire tribe. They were big fire and Nokonake’ is their small fire.

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

Evidence:

James Abel (the plaintiff) in his claim provided that the basis for his claim is through the matrilineal system. He provided in this court two separate family trees. One traces back to Malser and the other Malemb. He is claiming that Malderong (in Malemb’s family tree) planted the coconut. A man from Epi too who came and worked for Malterong, planted some coconut. His grandparents had used the Plantation before him and his

mother Esther. Esther and James had worked on the coconut plantation up until Esther died some times in 2003. After Esther's death Kalran and Bersi Timothy moved into the property. Upon their (family Timothy) instructions a man from Ambae moved in and worked the plantation.

On cross examination, he re-emphasized that Melterong planted the coconut. He owns the property through Malterong. Malterong to Leysale and Leysale to Esther. Esther is his mother. He further stated that when Obed and Leisale died, Timothy cared and worked the property because at that time Esther was just a child. When Esther was old enough Timothy gave back the plantation to her. Timothy told her the property belonged to her through her grandparents and parents who had died before her. Furthermore, a custom ceremony was performed between Esther and Timothy. Esther gave a pig to Timothy to say thank you for looking after the plantation when her parents had died and during the time when she was just a child. In addition, he stated he is the only surviving blood line and that Timothy planted no coconut.

In support of his story, one witness was called. Boyd Boe's statement reported that he heard from his father that the property in question belonged to Esther and Mark's grandparents. A long time ago it was Esther's great grand parents who planted and worked the plantation. When her grandparents died Timothy got hold of the plantation and worked there. At one time Esther went and asked to take back the property and it was given back to her on the grounds that the property belong to her grandparents. On year 2003 Esther died, Kalran and Timothy got hold of the plantation again, moved in and worked there till present. Furthermore, some of Melterong's property too were given to him.

On cross examination he maintained his statement that the property belonged to Melterong. Melterong and Timothy are two different people. Timothy, when supposed to go out for further education his father died and Melterong came in to help. Melterong paid for Timothy's fees. He further clarified that according to custom when there is no more male surviving blood the female blood line can be followed. He testified that Timothy planted no coconut.

The 1st defendant, Bersi Timothy stated Timothy (his father) is Esther's uncle. Esther and her husband, a police officer at that time had at one time approached Timothy and asked if they could use a plantation. During that time they needed some extra money for school fees. He was in school that time around 1978. Kalran was there at that time. After that time they started using the plantation on one condition that after her (Esther's) husband finishes work they will return back to her husband's place.

On cross examination, he stated that a man from Epi living with Noah planted the coconut and Timothy planted some. Malser and Noah are not related but Malser is Noah's small fire in other words Sileng is Houlkot's small fire. He further stated that Esther was accepted to work the plantation because at that time Mark (her brother) refused to allow her to work on their plantation.

Kalran Timothy, the second defendant stated that on 1978 he was the one working on the plantations, since Bersi had to go to school. During that time James's parents, Fred and Esther came and asked Timothy if they could use the plantation because Mark did not allow them to use theirs. That time Timothy called him and told him not to use the coconut plantation, it will be used by Fred and Esther until the time when they will go back to Tongoa (Fred's Island). That was why when Esther died, they (Kalran and Bersi) moved in to the plantation.

On cross examination he stated that he worked that plantation at Nokonake. He added that the man from Epi planted some coconut but Timothy planted most of it.

Their witness, Susan Kilman testified that Malser planted the coconut. Malser came and live at Houlkot with Bersi's grandfather, Noah. After sometimes Malser died. Sahuli, who was Malser's nephew was the only nephew that time so he made the burial. Noah at that time after the burial told Sahuli to come and use the plantation since there was no one at that time to refund him for what he had done during Malser's burial. When Timothy returned from school, Sahuli returned to him the coconut plantation.

On cross examination, she still stood her grounds that Malser planted the coconut on Timothy's land and Sahuli was the one who worked in the plantation after Malser's dead. When Timothy return from school the coconut plantation was handed back to him.

Custom:

The custom provides that the matrilineal system would only triumph on ground that it is proven before a court that there is no surviving male issue of the blood line.

Findings:

On analyzing the evidence, Susan Kilman's statement contradicted that of Kalran and Bersi's. She stated that Malser planted the coconut and not Timothy. Despite the fact that Malser planted the coconut tree, according to Malser's family tree provided by James Able; Esther and Mark with their children are the only surviving blood line after Malser.

It is noted that both Kalran and Bersi stated that Malterong had no more surviving male blood line but admitted that there is female surviving blood line, for example when asked if there is any blood line of Melterong still exists he (Bersi) answered that "Yes, long woman be ino long man." According to custom, it provides that matrilineal system can be followed in the case where no surviving male issue exists. This system will only apply to the plaintiff in this case.

From our observation whether Malterong planted the coconut plantation or Malser, in both family trees (see family trees attached) the only surviving blood is Esther and Mark, and their children.

Conclusion: *adjudged*

It is hereby ~~adjusted~~ that the custom ownership of the coconut plantation at Nokonake goes to James Abel, the plaintiff in this case.

The defendants, Kalran and Timothy Bersi are ordered to return immediately to the plaintiff the said coconut plantation.

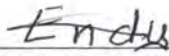
The defendant is ordered to pay the plaintiff's cost upon presentation of receipts.

Payment should be done on or before 31st October, 2005.

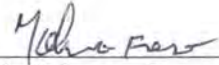
Dated at Lakatoro, this 23rd September, 2005



Jastis Frederick David



Jastis Endy Shem



Jastis Johnsen Fraser

