

**IN THE MALEKULA ISLAND COURT**  
**OF THE REPUBLIC OF VANUATU**  
(Land Jurisdiction)

Land Case No.4 of 1984

**BETWEEN:** ENSON NALEKON

Original claimant

**AND :** ALEXIS NAROR

Counter claimant 1

NICOLAS LESSY

Counter claimant 2

GABRIEL MALESSY

Counter claimant 3

ANGELME LELECTEIR

Counter claimant 4

ROMAIN SOVRINMAL

Counter claimant 5

ANACLET LIATLIATMAL

Counter claimant 6

STEVE MALTUNGTUNG

Counter claimant 7

MALSOKLE JACOBSON

Counter claimant 8

RAYMOND MALERE

Counter claimant 9

DANIEL TAMAT

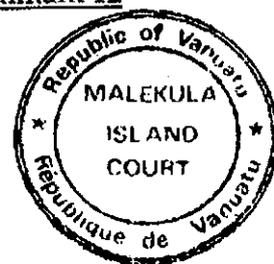
Counter claimant 10

ROY SAMUEL

Counter claimant 11

NALE MASSING

Counter claimant 12



Coram: Magistrate Edwin Macreveth

Assessors: Justice Daley Philip  
Justice Endy Shem  
Justice Kalman Hapsai

Clerk: Wendy Raptigh

Date of Hearing: 16<sup>th</sup> - 26<sup>th</sup> of May, 2006

### J U D G M E N T

The land in dispute is situated at the north eastern part of the island of Malekula registered as *Botvalim*. The land boundary is generally described to commence at Vetan village. Its border is marked by the river of Orap on the west ending at the land of Tanneliu on the north. From there it runs eastwards towards the south excluding to the land of Lawor, Sanalive and Vasa and rubs up at Vetan village. For specification purposes refer to the advertised and sketch maps filed thereon by the original claimant.

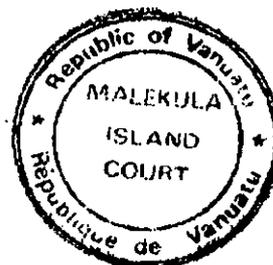
Upon advertisement of the land area, it invited 12 claimants to register a counter claim before the court. The majority of the parties are vying for the ownership of the land in dispute. Whereas, counter claimant 10 is claiming a right of use. Claimant 2, 11 and 12 are disputing that certain boundaries of the advertised land had elapsed into their customary land. While, defendant 1 is only claiming a portion of the land.

There are 3 arising issues for determination.

- a) land ownership
- b) right of use of land
- c) dispute over boundaries

### HISTORY AND CUSTOM

Before embarking on the subject matters and for purposes of better understanding the reasoning of this judgment, a brief discussion of history and custom practices of the concerned area are outlined below.



From genesis, there are only two main clans of this island of Malekula namely, Big Nambas and Smol Nambas tribe. The claimants to this case have origins of the smol nambas tribe. They are therefore expected to be practicing the smol nambas custom usages and processes.

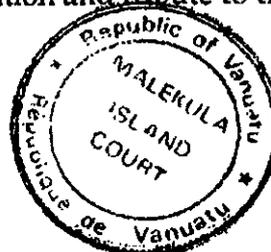
In this region, land is communally owned based on common descent, residence within a nasara and participation in common activities. A tribe or a bloodline is identified with the land through the nasaras. All nasaras within a land boundary are at large associated with the original nasara and its paramount chief. Individuals within a tribe are closely tied up with their territory by affinity and consanguinity through blood and marriage.

Land is customarily transferred or inherited patrilineally from the paramount chief to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land amongst other siblings. This is a male dominated structure which is closely twined with the land tenure system. It is an eternal culture painted with norms and values which cannot be altered nor modified but flows infinitely from generations to generation.

In circumstances, whereby it is proven that there is no more surviving bloodline of a subordinate chief or nasara the land would conventionally reverse back to the high chief. It is the usual duty of the principal chief to summon other lower ranking chiefs having interest thereon to discuss the matter before nominating another chief to work the land. Land under the ruling and control of a paramount chief cannot be given away to another tribe outside the land territory without the high chief's authorization.

The head chief has his own nakamal or nasara and a governed land boundary. He would also have subordinate chiefs with allotted parcel of land. These smol faeas or chiefs also have nasaras and nakamals. The term smol faea is interchangeably used for subordinate chief. For his status of seniority, he takes responsibility over the sharing of land to his people. The head chief governs the whole land boundary including the allocated piece of land allotted to his smol faea. This government could be politically described as a monarchy type of organization.

A chief earns his chiefly name or title by way of performing a namangi. The word namangi refers to a chiefly pig killing rite. There exist recognized hierarchy of ranks for a chief to climb to the highest title. Thus, a chief can be ranked as a high chief as well beside the paramount chief in a same area depending on number of pigs killed in namangi ceremonies. Such high chief is subject to the original paramount chief. Pig killing feasts are traditionally carried out at a nasara whereby stones are erected in celebration and tribute to the event.



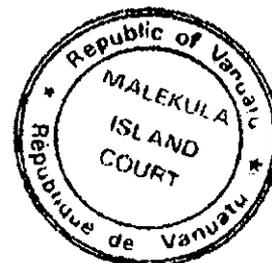
Chiefs from other nasaras or land upon permission or invitation would also appeared with their animals in support and witness of the performing chief. The slaughtering of their omnivores will also be marked with stones at the surrounding of the nasara.

Nasaras do not differ in terms of rank but are displayed for similar purposes. The first ever created nasara of a chief becomes his original or centre nasara. As its name suggests, this is where other chiefs would have performed a namangi as well. It can be described as a company nasara but specifically own by the paramount chief. Chiefs from other clans are at times allowed to perform pig killing ceremonies on others soil or nasaras. But, such an occasion cannot entitle that individual or tribe to claim ownership over the land or nasara of performance. The inviting chief still retain ownership of his nasara and its land territory.

All subordinate chiefs and their subjects are accountable to the paramount chief in respect of every social affairs. Any other tribe that migrates into the control area seeking refuge or simply looking for residence would automatically remain under the authority and control of the big chief.

Principally in terms of inheritance the patrilineal system is predominantly applied over the matrilineal line. The only exception to this general rule is applicable on the ground whereby it is proven that there is no surviving male of the patrilineal bloodline. On the other hand, if the circumstances reveal that there are living descendants of the patrilineal lineage or chiefly line then; the claimer can only claim a right of use rather than ownership. This is seen where a mother's children claiming land following the matrilineal line are given the right to utilize the land. In essence, traditionally that sole right does not extent to include ownership of the land.

Turning to the issue of adoption. An adopted male issue can have the right of ownership provided that such adoption is made within the family bloodline itself. By tradition, any adoption arranged outside the family line will only be seen or classed as sign of acceptance coupled with limited rights. This is explained thereon by the fact that adoption is viewed as secondary or an exception to the general rule as regards to land ownership. In custom, the fact of having being adopted cannot be construed to being biologically absorbed into or become part of the surviving bloodline. The right of an adopted child over land acquisition only extent to a right to use. It must be reminded that the bloodline is a cultural aspect of life that flows eternally unless the contrary is proven otherwise. A bloodline remains the root of one's heritage to the land tenure.



The court also consulted the land policies adopted by the Malvatumaori Council of Chiefs and the Malturan Nafet Council of Chiefs of central Malekula in relation to ownership of land. These commissions do share the same principles of land ownership and adoption as explained above. Section 3 states that an adopted son may claim land ownership if that adoption is made within the family or bloodline itself. While, the later Council at section 2.1 of its land policy guidelines stipulates " *Tru land ona hemi fes man we history blong hem I kamaot stret long nasara ia, hem nao I save tekem raet mo taetol blong kraon ia mo hemi kam hae chief blong boundary blong kraon ia*".

Beside the above, there are traditional boundaries in existence observed from ages to the present. These landmarks are usually indicated by creeks, rivers, dense forests, rocks and other geographical phenomena.

With this brief summary of the custom practices and usages, the court now present the case commencing with the primary disputant. The relevant information are summarized in the following words.

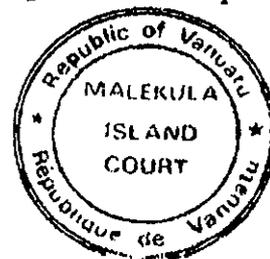
#### ORIGINAL CLAIMANT

Enson Nalekon claims that he is the only surviving descendant of Mulontamat original native of Botvalim. Mulontamat is the first ever paramount chief to set up the nasara of Melembaur. This nasara is historically known to be the capital or centre nasara of all other nasaras and their chiefs at Botvalim.

The advertised land is part of a whole custom land boundary embodying Botvalim, Lawor and Sanalive. He explained that the whole land is divided into three nakamals described to resemble a yam root which has a head (Botvalim), middle (Lawor) and the end (Sanalive). Each sector has its own land limit. His paramount chief is originated from Botvalim. He is claiming control over a total of 8 nasaras of the land as outlined in the filed documents herein.

His ancestors have perpetually lived the land up to the fourth generations down his family tree. Chief Rukartorlae had married a woman named Lempurakin of Wala Island. This couple begat a son called Nalekon Botvalim. At 12 years of age Nalekon and his parents migrated to Wala island in fear of tribal war and the use of magical curse namely nemlo employed by nearby enemies from the land of Topa and Patarnar. Only nine refugees made it to safety at Wala Island. Maiwat Malsusluv is one of them.

After some years of residence at Wala island, chief Rukarutorlae died and was buried at Wala. Following past customary relationships, one Maltipe from



Atchin Island performed a custom ceremony to Maiwat. He then invited Lempurakin and Nalekon over with him to Atchin and to live under his care. Nalekon and her mother were looked after at the nakamal of Leprenglep. The last namangi ceremony was held on behalf of Nalekon at Atchin. His father could not perform such ritual at that time since he has already been converted into Christianity.

To further illustrate his claim, he provided that he has been a long time claimant to the land since 1964. On a meeting on the 12<sup>th</sup> of July, 1964, he was publicly declared as the rightful bloodline of Botvalim. It follows on by other subsequent court events in 1970 chaired by the then British District Agent, Mr Wilkin, on the 19<sup>th</sup> of September, 1974 and 1984. All decisions were unanimously reached in his favour.

He has maintained his statements on examination despite uncertainties over the claimed boundary. For instance, his advertised map appears to cover other land boundaries such as Nalhyndrandre and Mek Lemerek. This was a source of confusion which subsequently invited other respective parties from the nearby boundaries to submit claims. He is not well versed with the custom practiced in the area.

His witnesses, Sorge Noronmal, Aron Malsiko, Matio Malterong and Johnny kalwajin provided no fresh evidence but only re confirmed the claimant's history as told. Most questions put to these witnesses have been answered by the claimant.

Amongst other evidence he has agreed on visit to the nasara of Surnau that it belongs to Alexi Naror. At the village of Vetan he was not able to give the court a clear explanation of his maps. Nevertheless, he did explain that the claimed land of Botvalim does not cover Mek Lemerek and Nalhyndrandre as disputed by counter claimant 11 and 12. He commented that chief Jingonmal as claimed by Family Maltuntung and Malessy is only a speaker of the big chief of Melembaur.

#### COUNTER CLAIMANT 1

This contestant is claiming a portion of the land which embodies the nasaras of Surnau and Lovovo. Its territories begin at Jubonereg to fok river and follows down to Meskentorlae. He claims that his ancestors have originated from the nasara of Lovovo and Surnau. They are the smol faea to the big chief of Melembaur. Wele is the first chief whose wife is Lewele. Their son Maltalimarehe performed his first pig killing service at the nasara of Lovovo.



Maltalimarehe espoused Lelecbenut from the land of Benut and had a son, Malsoklai. Malsoklai married one Letang.

On an occasion, paramount chief Stsungonmal (confirmed as Jingonmal) of Melembaur invited his subordinate chief Malsoklai to attend his namangi festival. In appreciation of the invitation, Malsoklai obtained a wooden carved turtle from his men which he presented as a gift to chief Jingonmal at the party.

Balbalate performed his namangi at the nasara of Surnau earning a chiefly name known as Narorsurnau. During his reign, he intentionally murdered his wife Leatmeltekek and dumped her corpse under a banyan tree. Soon after this incident, and in fear of revenge he then permanently migrated to Wala Island. He went ashore via the coastal passage of Potone and was received by one Malrong of the nasara of Melnator. At later a time, Narorsurnau traveled to Surnau and removed a rock which he then planted in the nasara of Lowo, Wala.

Narorsurnau married Leatskani daughter of the chief of Lovo and had a child Malrel. Malrel had adopted this name Worwor from a man from Ambrym. A pig was paid to Worwor in exchange for the use of name. A family tree is also produced to the tribunal in illustration of his past relations.

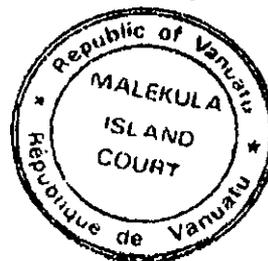
He answered questions with competency. He clarified that his family had stopped using this name Worwor due to allegations put against them to have come from the island of Ambrym. He maintained that his ancestors are natives of Surnau, Botvalim.

Witness Jack Najemal confirmed that his ancestor Malrong has received Narorsurnau at Potone including other things that had happened at the nasara of Lovo at Wala Island as told by the claimant. He also touched the issue regarding Malrel's status of origin by re iterating that the claimant is a native of Surnau at Botvalim. Jameson Agapito gave a similar statement. By the end of his statement he argued that Enson Nalekon has no stone at the nasara of Leprenglep. The third witness, Wani Agapito was disqualified from giving evidence on the ground that he is not the author of the written statement.

The panel of judges did a visit to his claimed nasaras at Botvalim and the erected stone at the nasara of Lowo at Wala Island.

#### COUNTER CLAIM 112

Nicolas Lessy in his presentation told the court that the original claimant has advertised a map which exceeded its customary limit. His disputed land



commences at the area of Nator to Meskeutop. This area contains gardens, coconut palms a stone at Venjerjer and other fruit trees planted by his ancestors from the land of Tarmeliw Ulware.

He went on to recite a story that there was once a woman from Benut who had married one Maltali of Tenmeliw. She later deserted her husband and then lived in a defacto relationship with a man from Surnau. This domestic affair caused sensitiveness because in custom, the bride price must be returned to the deserted husband. Nonetheless, that process was not met so, it trigged a fight between the two boundaries which resulted in a lot of damages to crops and even caused a death. Since then, the area was continuously used by the people of Tarmeliw Ulware to the present.

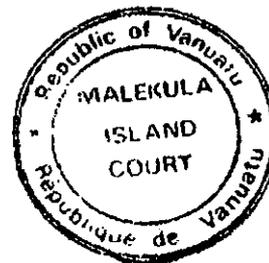
A family tree is made available to the court for perusal. His witnesses Michel Rosere and Jean Roger also gave confirmation of the same account. Few questions were asked to this disputant and his supporters. On the field trip this claimant could not identify his claimed nasara or stone at Venjerjer and the claimed coconut palms. His closest nasara is located at some miles away from the sighted area.

### COUNTER CLAIMANT 3

Gabriel Malessy claims the whole boundary of the advertised land. He provided that Mulontaly was the first paramount chief of the nasara of Melembaur at Botvalim. One of Mulontaly's descendants is Jingonmal whose son is Nmaltsungwer (also known as Maiwat) .Jingonmal had his initial pig killing at the nasara of Pokamel. Nmaltsungwer had 2 sisters by the name of Lelekmaltouraut and Lelekwomare. Lelekmaltouraut's son is Gabriel Malessy.

Around 1937, his uncle Nmaltsungwer had allotted his family a piece of land for cultivation. Gabriel has afterwards allowed other relatives and friends to work some parts of this given land. The area of interest contains gardens and other agricultural crops. He submitted that following this matrilineal bloodline relationship he now claims the land of Botvalim.

He agreed in the course of examination, that if it is proven that there are surviving male issues of Botvalim then he would not have the right in custom to inherit such land. He has defended that Jingonmal is not only a mouth speaker of the big chief of Melembaur. Jingonmal has also been ordained as a chief. Jingonmal is interpreted to mean ' *mouth or speaker of the chief* '.His witnesses, Steve Maltungtung and Urbain Muluane gave similar accounts to that of the claimant. Few questions were asked to these witnesses.



**COUNTER CLAIMANT 4**

This defendant is also disputing the entire land covering a total of 9 nasaras. He stated in his claim that once upon a time lived 3 brothers, Burial, Bouritsgon and Malbouritsgon. These persons divided the land into three areas namely Botvalim, Lawor and Sanalive. The first original nasara is Melembaur which was set up by paramount chief Malbouritsgon. Chief Bourial and Buritsgon were in charge of the nakamals at Lawor. He produced a family chart showing his past generations to the present.

The above men settled the land until a certain time whereby there was a fight over crops caused by swines to nearby boundaries. His ancestors were the first person to live Botvalim for Wala Island with the tabu faea. Other nasaras have come to Ama to purchase tabu faea from them. He was received by one Mataru of Wala Island. He acknowledges that the last person to depart from the land of Botvalim is Maiwat. Maiwat was received and accommodated at the nasara of Ama. He died and was buried there.

His custom relationship included aid with contribution of pigs towards namangi feasts carried out in the nasaras of Botwaguer and Amos at Botvalim. He concluded that he believes that he is the only surviving child of the land of Botvalim.

On examination, he clarified that Jingonmal is not only a speaker to the chief but also a chief himself. He even agreed that Surnau is traditionally owned by Alexi's family. His three witnesses have reconfirmed the defendant's history. They have also explained that Maiwat is the last person to have entered Ama. Whereas, Francis Navovmal stated that he knows this woman, Lempurakin of Wala who is claimed by Enson Nalekon. Less question was demanded to these witnesses. The nasara of Ama has been visited.

**COUNTER CLAIMANT 5**

He held from his statement that his original ancestor Ulrvanu is believed to have come from Botvalim. He left Melembaur for Wala Island crossing the sea to the passage of Nawori. He took along with him his customary artifacts or tools. These cultural items included, magical stones used for calling rain and cyclone. He possesses a measles like skin disease called Navune.

Ulrvanu created his first nasara and named it as Morou. His son Nemtenmal performed his namangi at the nakamal of Mare. In preparation of the namangi ceremony, chief Nmalsisi ordered his men to log a tamtam from the forest of



Botvalim. It lasted them 3 days and nights to tow this log to Wala. Chief Nmalsisi later founded the nasara of Ama. He has also brought a stone from Botvalim which was erected at Ama. Since then, he has continued to work the land to date. His tribe took care of Maiwat when he narrowly escaped an assassination plot.

For the above grounds, he concluded that there are no other surviving bloodline of Melembaur. On questioning he made emphasis that Ulrvanu was the first ever man to set foot and settled Wala Island. He has also said that Maiwat was the main person who had showed his ancestor the land boundaries of Botvalim. He made remarks that Jingonmal is a chief not a spokesman alone.

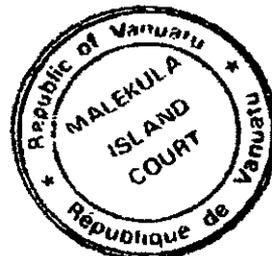
Three of his witnesses were disqualified for using written statements made by some other families. To give him a fair chance the court had asked him to call a witness, Jean Paul who only gave a confirmation statement of the claim.

#### COUNTER CLAIMANT 6

This disputant in his address to the jury, narrated that God had chosen Nitagoeuv from the land of Wala Atan and Nieve descendant of Niamur from the land of Wala Mare. Nitagoeuv became a wise leader that he required no assistance and advice from anyone. This proudness in himself created confusion and led him astrayed from the good teachings of a leader.

To establish a reform kingdom at Wala Atan, God this time choose Niamer and his wife Letang to takeover such leadership. Wala Atan encompasses Botvalim, Lawor, Sanaliv, Tanmeliw, Wala and Rano. In ensuring favourable contact with God almighty the couple moved to Peterets at Botonbar. From there they moved to Sanalive. Due to polygamy practices at Sanalive, the couple separated but set forth in different directions and finally met at Lugerere (Lulrerei) at Wala. While carrying out their mission they registered the identities and emblem of Wala Mare on the island. Stones were erected in celebrity marking the foundation of the mission at Wala Atan.

In appreciation of their own achievements, they decided to build a nakamal to teach people the goodness of mankind. The couple had a son named as Tiari. Tiari had a son Moulon Nmetmarur. Tiari has in the past removed stones at the nasara of Petero at the mainland and taken to the small island at Luo. Niamer and Letang are both buried at Stinvo. There are places of worship and sacrifice at his claimed nasaras. Tiari's descendants have continued to carry out their customary obligations until the arrival of the missionaries at Wala Atan. He has listed his past chosen relations to the present generation.



Upon examination, this claimant could not link his patriarchal system to other nasaras. He strongly stressed that even if other contestants had nasaras they are still not the chosen leader to lead the people of Wala Atan and Wala Mare. They will not be entitled to own the land. When asked whether he has any witness, he replied that God will be his witness. Few parties had elected to question him. This low turnout is presumably blamed on the fact that this claimant's statements mostly contain Biblical terminologies.

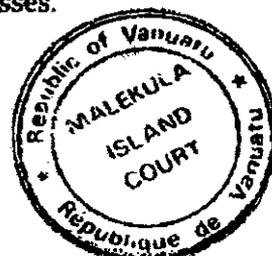
#### COUNTER CLAIMANT 7

Steve Maltuntung is disputing the land of Botvalim. He led evidence that his first traced ancestor is Mulontaly a high chief of Melembaur. This leader had 120 wives and concubines. He explained that such polygamy practice is normally practiced in the smol nambas society. He had a son Mulontamat who has attained several high ranking steps in pig killing. He had 60 wives and concubines out of which one of them is from the island of Wala, by the name of Lenaemrel. This marriage relationship initiated the beginning of a customary relationship between the bush people of Botvalim and Laon at Atchin Island.

Mulontamat and Lenaemrel begat a son Jingonmal whom had 30 wives during his leadership. Jingonmal espoused Lemasing and had a son Maltungtung. Jingonmal gained his chiefly title at the nasara of Pokamel. He died while Maltungtung was in his early childhood. Her widowed mother re married a close relative known as Serelug. With the company of the mother and step father they departed for the island of Atchin. They settled at Laon in a plot of land called Sakoka. This family continued to live in the island until Maltungtung had differences with relatives of one family Rodao. He then joined the company of some relatives from the village of Senar and they boarded a trader ship for Queensland in Australia.

Upon his return, he decided to stay back at Rano Island in avoidance of humiliation. However, he was soon recalled by the parents to Melparave and a custom reconciliation was reached. Maltuntung had taken part in pig killing ceremonies held at the nasara of Meluap and Wortamat. His descendants have continued to live in Atchin Island to date.

On interrogation, he acknowledged that the nasara of Surnau and Lovovo belong to the family of Alexi Naror and maintained that Jingonmal is a chief. He argued that the advertised map has exceeded its traditional boundaries. The lands of Mek Lemerek and Nalhyndrandre are not part of Botvalim. John Brown testified that the claimant is from Botvalim and has four generations. While, Ebelly Malkunsun re confirmed Maltungtung's namangi processes.



**COUNTER CLAIMANT 8**

This disputant is seeking judgment for the entire boundary of Botvalim. He started off in his statement by reciting early settlements and migratory routes dating back to around 6000 years ago. His claim is deeply formulated upon an extract authored by Archaeologist Dr Goran Burenhult from the Department of Archaeology, Stockholm, in Sweden. His area of interest rests on the megalithic culture practiced by stone men of the island of Malekula.

He provided that this group of people whom sailed from South East Asia to the New Hebrides came ashore to the island of Rano at Sanalive. As the population grew wider, some families then moved inland to Lawor where they founded an organization and an headquarter. This organization comprises of five class of people beginning with the priest, leader, general, soldier and the servant.

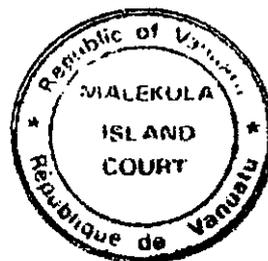
Due to looming religious confusion at Botvalim, the priest ordered his five sons to live in exile at the islands of Vao, Atchin, Wala, Rano and Uripiv. These islands served as refuge grounds for the people of Botvalim. He had a family tree tracing his past ancestors to the present generation.

This claimant received tough questioning from the other parties. He was noted to have encountered difficulties in his responses. He failed to link his family tree to the claimed nasaras. None of his ancestral chief has performed any pig killing ceremony. He went on to argue that the land in question form part of the middle nambas. The five named islands use a single language. His only witness Tevanu Anderson refused to give evidence.

**COUNTER CLAIMANT 9**

Raymond Malere in his presentation declared that he is the only surviving bloodline of Botvalim. Tanmolmol his first ancestor originated from Botvalim. He thereafter settled at Lawor and to Sanalive. He alleges that there are no surviving bloodline of Botvalim and as a smol faea he is entitled by custom to inherit it. He is also claiming the paramount chiefly title of Botvalim.

His history provides that chief Tanmolmol I has initiated to set up the nasara of Peteros at Lawor. When this family grew larger Tanmolmol left with some family members for the island of Wala and Rano, at Sanalive. At the island, he placed his first nakamal called Nasom Meleni at the original created nasara of Amel Melvava.



As years went by, Turatur was ordained as chief at the nasara of Ameluwe. A third nasara was later founded called Amelnator. These nasaras were all governed under the leadership of Tanmolmol I. Malerenvanu a descendant, has obtained certain chiefly titles such as, Werekon, Meletecksisinvalim and others as listed at page 6 of his statement.

Tanmolmol II is buried at Pongsin. In 1964, the descendants of Tanmolmol I & II decided to move back to the mainland at Sanalive. Amongst other things he related that it is historical that fight over territories can be very disastrous to the people. He referred the court to an incident involving chief Bourial of Lawor and his relatives.

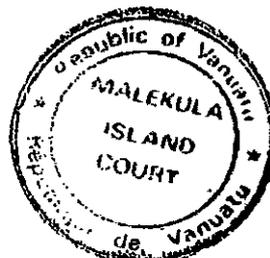
On questioning over the position of the original claimant, he replied that Maiwat is related to family Malessy. He has maintained his composure and answered questions with competence. Three of his witnesses were not accepted to give evidence since they are using documented words from certain families with the exception of Jean Noel Mtain chief representative of the nasara of Melnator.

He added that Alexi's family name is Worwor. His maternal grand mother who is the eldest sister of Beang Massing is originally from the island of Ambrym. On cross examination by the concerned claimant he further elucidated that a man from Ambrym by the name of Worwor who was involved in trade missions with one Master Frank had impregnated Malrel's wife. A child was born and named as Beang Massing a name which is very common to the island of Ambrym.

#### COUNTER CLAIMANT 10

John Kiten representative of family Daniel Tamat is claiming a right of use over certain parts of the land of Botvalim. The boundaries start at Fork river to Botoulouxbe, Nemreyut river. It follows on Pokamel's hill and ends at a 7 metres rock and runs down back to Botdravorax Sibror.

He submitted that the local chiefs of Botvalim and Batarnard have for ages maintained good working relationship with each other in every social affairs. Both Territories have in the past spoke the same language. Three men by the name of Tamath, Betbetax and Tadenmal of Botvalim have contributed 50 pigs towards one of chief Jingonmal's namangi at Pokamel. In return, chief Jingonmal had allowed his ancestors to occupy part of the land for their subsistence farming. However, due to a row between Botvalim and Topa his ancestors were forced to live for Batarnard. After this fight the leaders of these two boundaries held a peace ceremony at the nasara of Pokamel with the people of Wala.



During interrogation, this claimant also confirmed that Surnau and Lovovo are traditionally owned by Alexi's ancestor. Whereas, Jingonmal is Maltuntung's bloodline. His three Witnesses also gave a confirmation of the claim concerning the 50 pigs.

#### COUNTER CLAIMANT 11

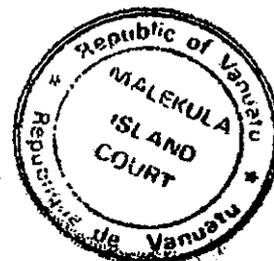
This party is claiming that the land territories advertised by the primary claimant has exceeded into his customary land Mek Lemerek. His total claimed boundaries begin at Nwenmetav to the sea passage at Blacksand. This land is a separate customary land from that of Botvalim. He stated God once created two brothers at the land of Batarnard. One named Draxe and the other called Sabsaba. Draxe later moved to Mek while Sabsaba migrated to Navamb.

History is told that by coincidence a green pigeon hatched an egg which magically transformed into a human child. This infant was named as Vemle whom later became chief of Naxnel Nial Mek. Vemle's descendant have lived on the land until fight erupted with the native of Rabgan. Malsisae then advised Testes to seek refuge at his brother Sebesur at Batarnard. They afterward ended up working as labourers at one Master Presis while Testes went to work in Vila. After six months, Testes returned and settled at Nalhyndrandre. It was the chief of Nalhyndrandre who sent words to Sebesur that Testes had returned from Vila. Sebesur upon learning the news, he set forth to meet Testes and both returned to Batarnard. He took part in three namangi ceremonies whereby he was ordained with three chiefly titles such as Sognomal, Xadlili and Testes.

When Sebesur reached his old ages, he accompanied Testes and showed him the land boundaries of Mek and its nasaras. Testes had no son so, Sebesur allowed him to adopt his son Samuel. His Father Malsisae shifted from Nxes to Nwenmetmav where he placed a nasara and unto Lobal afterwards.

To prove the foundation of his claim he listed a number of geographical items as his customary identities such as a tabu or forbidden water, a namele palm and 5 others as found in his filed statement. A family diagram is produced to the panel in illustration of his relations.

Other parts of his statement of claim touched areas falling outside the subject matter of this court. Two witnesses, John Lite and Rouklili Pita also re affirmed the claim in their statements. On the walk to the land, it was discovered that his claimed boundaries are not disputed by the rest of the claimant except with Nale Massing.



## COUNTER CLAIMANT 12

Nale Massing is claiming the land of Nalhyndrandre disputing that some part of it are included in the advertised map of the original claimant. It would seem that other part of his claimed land also extent to the land of Vasa. He is claiming the matrilineal bloodline of the land of Nalindrandre.

It is foretold that Tolili Nalhyndre father of Nalhyndrandre is the original native of the land of Nalhyndrandre. This land possesses has a custom totem or tabu which is represented by an eel fish or namarae in Bislama. Tolili chief of the land had no male issue except two daughters. He had instructed them prior to their marriage that any man who wishes to marry them will not pay the bride price. This will in custom entitle their sons to claim the land of Nalhyndrandre.

These instructions were accordingly followed and so one of these two women whom married one Massingman gave birth to a son Rongo Nale, claimant in this case. The claimant was adopted by Nalhyndrandre. This is the basic foundation of this claim.

To re enforce his claim, he provided that there are stones at the land and described historical phenomenas such a hills, tabu waters, stones of nasaras. Among other presented information he has also provided local using names of the area with their customary definition. Witness, Pauline Jimmy gave confirmation of the existence and related activities of this supernatural eel fish while Barugh Massing explained certain observed custom usages.

## ANALYSIS AND FINDINGS

In consideration of the presented facts and in application of the custom practices the findings are as follows:

## ORIGINAL CLAIMANT

In consideration of his presentation, Enson Nalekon is certainly not well conversed with the boundaries of his claimed land but, had a clear sketch map. This skeleton map clearly excludes the land of Mek Lemerek and Nalhyndrandre. Additionally, he does not have the capacity to explain certain custom processes. These weaknesses had fallen on this claimant due to the fact that he has spent most of his life in the island of Santo.

On the other hand, he seems to agree with Angelme Lelecteir (CC4) Steve Maltuntung (CC7) and John Kiten representative of family Daniel Tamat (CC10) that the nasara of Surnau and Lovovo belong to Alexi Naror (CC1).

Despite the above difficulties though, as mentioned his claim is founded on the patrilineal lineage. The basis of his claim is acceptable in custom since, he is claiming as a surviving bloodline of paramount chief Moluntamat of the nasara of Melembaur, Botvalim. His given task before the court is to provide the relevant custom practices by way of sufficient evidence in support of his claim. The following facts have been gathered on his part.

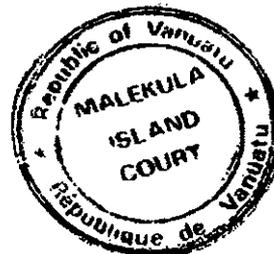
Firstly, there is available information presented by him and other claimants as well re confirming the credibility of his family tree. By comparison of his family tree with other disputants, it transpires that there appears some commonness on names such as Maljungwer or Maiwat, Lelekwomare, Moluntamat and others. These persons have also been claimed by claimant 3 and 7 respectively.

Adding on, Romain Sovrinmal and Angelme Lelecteir including some of their witnesses have confirmed that Maiwat was the last person to leave Botvalim. While Lempurakin is known to have come from the island of Wala Island. These mentioned figures are part of Enson's family relations. In fact, his past relations are traceable to the present.

Another proof concerns his claimed centre nasara of Melembaur. Its initial chief is Moluntamat also claimed by CC3 and CC7. Melembaur is in reality a centre or capital nasara where many chiefs have also performed namangis. This system is confirmed and witnessed at the other staged nasaras at the island of Atchin and Wala. Other claimants have agreed to this fact. He was able to trace his ancestral movement from Melembaur to the island of Atchin.

Most importantly, it is obvious that he has been for a long time involved in several past courts over the land as found in his statements dating back from 1964 to the present. He has been declared the rightful bloodline of the land of Botvalim. This is another driving reason that could be seen as a mitigating feature of his claim. Although this court did not have the opportunity of perusing the original documentation of past land court decisions however, there is no doubt that the issues discussed thereon are of similar nature to our area of determination respectively.

In whole, there is sufficient evidence establishing his claim on the grounds of probabilities.



**COUNTER CLAIMANT 1**

The boiling argument advanced against this party is that pertaining to his parental status of origin. It was argued by the majority of claimants that his ancestors have come from the island of Ambrym. It was told that Worwor of Ambrym had impregnated Malrel's wife lelekmalsets. A child was born and named as Beang Massing.

This story was strongly opposed with words that such name was paid. Our immediate point of consideration on the subject is that such alleged version cannot be accepted by reason that it is common practice that names could only be paid provided that the donor has a chiefly status. In our case, the donor has no chiefly rank.

Secondly, the letter issued by the former president of Malvatumauri Willie Bonmatur dated 10<sup>th</sup> of July, 1989 and Enson Nalekon's statement see 2B at Page 7 concerning Worwor Barrier's origin have not been challenged.

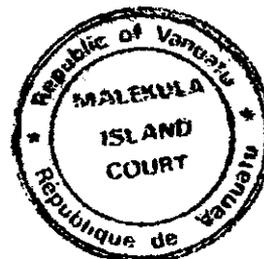
Despite such confronting evidence, the court also paid attention to other advanced information and the custom usages.

Legally and by custom, Beang Massing would always seek or inherit land from the father's land regardless of any issue of illegitimacy. Bearing in mind that the patrilineal system is practiced in this area. Malrel has paid the custom bride price of her wife and Beang Massing was born from this wedlock. He was nurtured in Malrel's house or nakamal. Irrespective of his standing, his person continues to retain elements of ownership and bloodline of Malrel's family tree. He cannot be deprived off from the customary rights and interests of his father Malrel and the forefathers who are original natives of Botvalim. They are the smol faea of the big chief of Melembaur.

The above is confirmed by the mutual understanding formulated by Enson Nalekon, Angelme Lelecteir, Steve Maltuntung and John Kiten representative of family Daniel Tamat. They have all acknowledged on trial that the nasara of Surnau belongs to the family of Alexi Naror.

He has shown the court his claimed nasaras and traced his earlier migration from Botvalim to the island of Wala at the nasara of Lovo where he has laid a stone.

In whole he has provided persuasion to the court to find his claim as sought.



**COUNTER CLAIMANT 2**

It was noted on the visit that Tanneliw Uluware and its nasaras are quite far from Surnau. Here he is claiming land areas located in the proximities of the nasaras of Lovovo and Surnau.

Historically, a nasara or land boundary cannot have its limits very close to another nasara. This claimant could not identify his claimed nasara or stone at Venjerjer and claimed coconut palms.

Given the verification of the site, it is concluded that this contestant is claiming land which does not form part of his land boundary. The river of Orap is in our view, the traditional border landmark of Botvalim and Tanneliw Uluware. The rest of the parties have also expressed the same in this respect.

Moreover, Enson Nalekon, Angelme Lelecteir, Steve Maltuntung and Daniel Tamat have all confirmed that the nasara of Surnau and Lovovo belong to Alexi Naror and his family. This court has accepted this evidence and ruled on its basis.

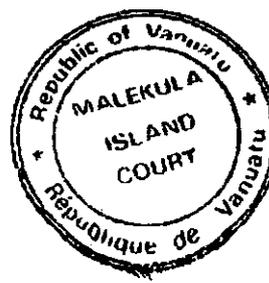
In light of the foregoing discussion, the court could not find favour for his claim.

**COUNTER CLAIMANT 3**

This party is claiming the ownership of Botvalim by way of the matrilineal lineage of Lelekmaltouraut daughter of chief Jingonmal. The root of his claim could only be accepted on the basis that there are no male surviving bloodline of Botvalim. In our case the court has ruled that there are living bloodlines.

His claim for ownership is inconsistent with the custom practice. He would only have the right to claim a right of use. Given the facts of his case, only the patrilineal surviving male issues have the right to claim ownership. We noted that he has honestly agreed with that principle. Needless to mention however, he could have joined Steve Maltungtung CC7 claiming the patrilineal line since, they both share the same family tree.

Beside the above, the court also found disconnection and absurdity upon his family tree when compared with Steve Maltungtung's family line. In his claim, Jingonmal had three (3) children namely, Nmaltungwer (Maiwat) and 2 sisters Lelekwomare and Lelekmaltouraut. Whereas Steve who also claims the same history and family tree is saying that Jingonmal only had a child, Maltungtung.



Neither he has any idea that Jingonmal had 30 wives. There is no advanced explanation to close this gap and it remains a paradox on his case.

Turning to Jingonmal's questioned status. Our analysis on this point is that Jingonmal is not only a mouth speaker of the big chief but also an ordained chief. The rationale is that every human is born with a name that may have a literal meaning in some sense. Such a given name cannot be inferred to represent his personality alone. It is logical that a person would at later stages of his life time gain other positions. This is supported by the evidence from defendants CC1, CC4, CC5, CC7 and CC10 vowing that Jingonmal is also a high chief of Botvalim. Yet, in application of the rule of custom he is subject to the authority of the original paramount chief.

The conclusion is that this claimant has failed to provide clear and sufficient information to substantiate his claim for ownership. The court could only find his claim stranded with uncertainties. In application of the rule of custom, he is absolutely not entitle to have perpetual ownership of the land of Botvalim.

#### COUNTER CLAIMANT 4

This contestant is claiming the whole land of Botvalim. The foundation of his claim is placed on the patrilineal system. He has identified the court, his stone implanted in the nasara of Ama. However, his claim history could not stand on, given distortion of his own statements and other unchallenged information presented by other parties against his claim.

Firstly, he has genuinely acknowledged that Alexi Naror is the customary owner of the nasaras of Surnau and Lovovo. It follows thereon during examination that this claimant and his witnesses have also spelled out that Jingonmal is not only a speaker to the chief but also a chief and an ancestor of family Malessy.

Secondly, one of his witness Francis Navovmal has also confirmed the existence of Maiwat and Lempurakin. If Maiwat was the last person to come down to Wala at the nasara of Ama the question posed here is why was remaining behind. The answer to this test is that Maiwat had probably stayed behind under the ruling of a chief. By comparison, it would historically prove very rare for a chief to leave his nakamal abandoning his followers. Thus, in terms of evidence, the above statements are seen as a direct and honest admission to the court that there are indeed surviving bloodlines of high chief Moluntamat of Melembaur, Botvalim

Alternatively, if Bouritsgon's ancestors were chiefs and had escaped a fight there is room to imply that this claimant's chiefly ancestors have departed from a smol nasara or faea. In other words, they would have origins of a smol faea rather than as alleged to have come from Melembaur. This implication is confirmed by the fact that his ancestors left Botvalim and lawor before Maiwat.

Those supplied information on the part of this party barely provide any credit to his own case but rather supported other parties claim.

In addition, it would also sound invalid to state that he was the first person to bring tabu faea to Wala because as he stated the nasara of Ama had existed before his arrival. Traditionally speaking, any chief of existing nasaras are normally expected to be practicing and observing this highly respected tabu faea rite. This tabu faea sacrament is a significant cultural aspect of the life of a chief. It cannot be isolated from the rest of the process.

It is also apparent that this defendant is also claiming the same Jingonmal (stgonmal) beside Gabriel Malessy and Steve Maltungtung. Yet, there remains greater doubt over his family tree since there is no sign of similarities on names. Moreover, the evidence adduced by the original claimant, disputants 1, 3, 5, 7 and 10 concerning Jingonmal's existing relations has far outweighed his evidence proving that there are living bloodlines of high chief Moluntamat of Botvalim.

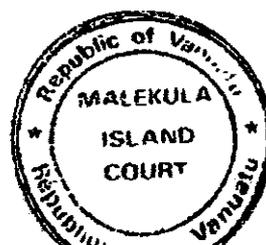
There remains unfolded information and uncertainty over his case. The conclusion of his claim is that he has not proven himself to being a bloodline of Melembaur, Botvalim.

#### COUNTER CLAIMANT 5

This disputant's claim is constructed upon the patrilineal line of one Ulrvanu of Melembaur. The following findings have been gathered on his part.

Firstly, he has identified the court his claimed nasaras and supernatural stones allegedly used for calling rain and cyclone during the site visit. However, he has encountered war of words from third parties and some of the claimants during this walk strongly attacking his status of origin. As observed earlier in court, he was repeatedly criticized and referred to as immigrant from Unua, central Malekula and that he has no nasara.

Such confrontation led the court to plunge into deeper consideration. Fortunately, the result of this reaction came to light when it was carefully noticed that he has contrarily refused to touch a stone believed to be his own tabu at the



vicinity of the nasara of Ama and Amel Nator. It was earlier recorded during hearing that he has wholly denied having any tabu to the shark when he proceeded to touch a shark's jaw with teeth tendered to him. This demeanor and irregular steps as witnessed have far doubted the court over his claim.

Moving on, he has acknowledged that Maiwat is the last person from Botvalim to come down to Wala. Then as explained above, it is believed that Maiwat had stayed back under the ruling chief of Melembaur, at Botvalim. Another question to answer is why would Maiwat surveyed him the land limits. These testimonies could be seen as direct confessions signifying that Sovrinmal is not from Botvalim.

Furthermore, none of his ancestral chief had performed a namangi at any nasara at Botvalim. Coupled with the other evidence presented by the plaintiff, defendants 1, 3, 4, 7 and 10 concerning Jingonmal's status and origin, his overall claim cannot stand at all.

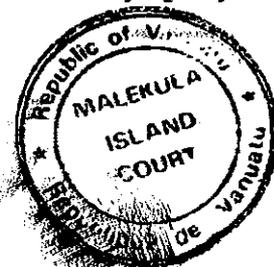
Therefore, in consideration of the facts of the case and in application of the custom practices, the court is not persuaded with the presented information. There remains at large obscurity and irregularities over his claim. Given the circumstances, there are no other alternative but to pronounce that he is not a bloodline of high chief Moluntamat of the nasara of Melembaur, Botvalim.

#### COUNTER CLAIMANT 6

This party's claim is based on the patrilineal lineage and founded on a patriarchal mission termed as the chosen leader. Its assigned mission is to restore God's Kingdom in the land of Wala Atan. He is claiming the whole land and extending to other areas such as Lawor and Sanalive.

He was frequently noted to be very vocal over the directions of stones at the visited nasaras. He repeatedly stressed that all stones are regularly patterned or structured in a specific direction facing the original nasara. However, that arguing aspect does not show sign at his claimed stones at the nasara of Lovo. The court found that there is no commonness in pattern or uniform over the staging of stones. Neither there is any copy conform and there are no place of worship to the God Almighty in these nasaras. The worshiping of God had only occurred after the arrival of early missionaries in the island.

Secondly, it was argued that all custom chiefs do not have any customary right over the land because they are not the chosen leaders by God. This is a misconception and is unacceptable on the ground that any party who



successfully prove his case will accordingly be entitled to his cultural identities. This case cannot be judged according to any professed teaching that those who do goodness to mankind shall reign and at the same time acquire any property of the unchosen of the land. It is certain that the Bible does not teach this transition.

Another contenting argument is that labeling Melembaur as a grave site. Such assertion is in our view not correct. Realistically all nasaras usually contain graves and other customary remains. The rest of the claimants also share our view on this issue.

Further, none of his ancestral chief has in the past performed a namangi at Botvalim except at Sanalive. He has no nasara at Botvamim. He could not link his patriarchal organisation to other claimed nasaras of Botvalim.

On the other hand, Enson Nalekon, Angelme Lelecteir, Steve Maltungtung and John Kiten have produced confirmation statements that the nasara of Surnau and Lovovo belong to Alexi's family line. In addition, there is information approving the existence of Maiwat and Jingonmal of Botvalim as disclosed by Enson Nalekon, disputants 1,3,4,5,7 and 10. Those confirmed and unchallenged information have caused greater impact against his claim.

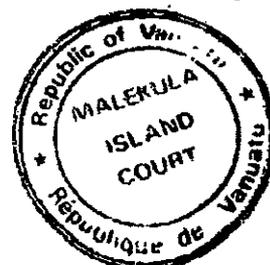
Given consideration to the totality of the produced evidence, the court has no conviction for his case but to pronounce that he is not the bloodline of Melembaur. There are existing surviving relations of the Supreme chief Moluntamat of Botvalim.

#### COUNTER CLAIMANT 7

Steve Maltungtung is claiming as the only surviving bloodline of Botvalim. Although, the basis of his history is acceptable the court found that there are areas of uncertainties in his claim.

It is noticed that this party is confirmed to be claiming the same family tree of Gabriel Malessy. But, upon comparison there is sign of disconnection upon his family tree. For example, his family diagram shows that Jingonmal only had a child alone, Maltungtung. But in Malessy's claim Jingonmal had three (3) children namely, Nmaltsungwer (Maiwat) and 2 sisters Lelekwomare and Lelekmaltouraut. This party provided no clear explanation surrounding this gap.

Such unfolded information has additionally far developed in disarray since, the claimed polygamy practice is also questionable. If his ancestors had polygamous marriages and that Jingonmal had 30 wives as pleaded then, it would rarely be in



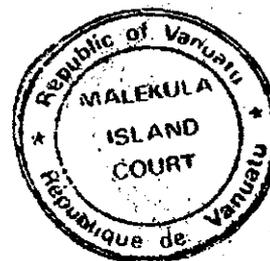
the likelihood that he only had a child, Maltungtung. He would have born other offspring with living relations at present. His co claimant Malessy and even the original claimant who knows Jingonmal have no confirmation to this questioned fact. The rest of the claimants are also in doubt of the said story. These shaggy evidence would seem to over shadow his overall claim.

The arising test remains with the credibility of his story. Our determination of that question is that there is implication that he has gathered the presented information from the public to eventually formulate his claim. This is noticeable by the fact that he is one of the latest claimant to be joined as a party and interestingly, is own printed preface at page 2, paragraph 3 of his history booklet reads "... *Book ia emi wan outcome blong join effort blong Steve Maltungtung, Dickson, Eslina, Stowel, Epa and Lynffer Maltungtung. Mo tu ikat sam nara pipol inside long family we oli directly mo indirectly helpem blong collectem ol information mo tu oli deservem mo tingting heavy blong sapotem effort ia*". The quoted words are self explanatory.

On the other hand, this claimant is believed to have forged and fabricated such history. There is dispute over the right of using the registered claim. This came to light during the visit to his claimed nasaras at Atchin Island. One Belden Maltungtung ferociously attacked Steve by saying that he had not asked him permission to use his history. The claimant was noted to have responded positively to the situation by timidly replying that he if he wins they will both share the land.

Needless to mention however, for ease of clarity, there is available information about Jingonmal. As over mentioned CC1, CC3, CC4, CC5, CC7 and CC 10 have confirmed that Jingonmal is a high chief of Botvalim. Enson Nalekon has also acknowledged the existence of Jingonmal. The analysis of the court is that Jingonmal is a spokesperson as well a high chief beside the paramount chief of Botvalim. In reality it is normal that within a land boundary a chief can be ranked to the position of high chief having same rank as the supreme chief. In practice, such a chief will still be subject to the authority of the original paramount chief. Such a chief cannot own the whole boundary.

In consideration of the circumstances surrounding his claim, the court could only find his case full of doubts. He is not a descendant of Melembaur and the paramount chief, Botvalim. As such, the court has no alternative but to entirely refuse his claim.



## COUNTER CLAIMANT 8

It is evident from his claim that he is claiming the land on behalf of this regime of people known as stone men of Malekula. However, it must be reminded that these stone men are in fact parties to the case claiming their respective history.

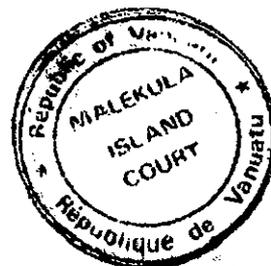
On the other hand, his claim is apparently seen to be politically motivated per se. The main man behind this claim is Tevanu Anderson claiming as president of Vanuatu's Conservative Party. This party is purportedly known to represent the chiefs in this case. He has without courtesy and due respect attempted to manipulate the proceeding of this court. For instance, failing to respond to the court's direction to present his case. He was in Santo while the proceeding was in progress for the first week. For matters of fairness the court has kindly allowed him to appear some 3 days later.

When called to give evidence as a witness to his claimant, he refused to do so. Instead, submitted that he be allowed extra time to make amendments to the whole claim. That application was not honoured as such is a clear abuse of the court process. Ample time was given to all claimants if he cannot timely manage such time, then the blame is on himself. He was also noted to be acting in a disrespectful manner and labeling the court as inferior and not important to him but prefer the Supreme Court to deal with the claim.

Turning to the claim, the court is satisfied that there is proof of profound custom existing in the area. We accept this well known history that we have drifted from some other continents. Needless to say though but, as a matter of court procedures one who asserts a claimed culture must prove its basis in custom by way of evidence. This is the common task envisaged by other disputants to this land case. In Malsokle's claim, there is nothing more than a propaganda. This remark is confirmed by the following weaknesses and uncertainties arising from his presentation.

Firstly, this defendant's family tree has no customary relationship to any of the disputed nararas. There is no information to indicate that any of his ancestral chief had performed a namangi at Botvalim. Such missing data have also raised doubt to the jury as to whether his so called chiefs have ever been ordained as chiefs.

Secondly, he could not trace the father of the five sons and their parental relations and other particulars. He has contended that people from the island of Vao, Atchin, Wala, Rano and Uripiv speak a single language. That information is totally false. In fact, the islanders of Vao do speak a different dialect from that used by the other 4 islets.



Another shortfall came to light where he held that the area in contest has a separate tribe or clan known as middle nambas. If so as alleged, then it must be proved with evidence that there is a separate custom practice from that observed in the smol nambas society. He has not forwarded any evidence to that effect.

Moreover, this disputant has not either challenged the evidence pertaining to Maiwat and Jingonmal's background as presented above. He has no witness to his claim. Most of the claimants have labeled his claim as fake and vexatious.

In consideration of the above reasoning, his entire claim must fall.

#### COUNTER CLAIMANT 9

Raymond Malere is claiming to be the only surviving bloodline of Botvalim. He alleges that there are no surviving bloodline of the land and as a smol faea he is entitled by custom to inherit the land. He is also disputing the paramount chiefly title of Botvalim. The understanding is that if he is a smol faea then, he cannot claim the paramount chief's title of Melembaur. For he will continue to remain as a smol faea or subordinate chief to the big chief of the land. He has no other supporting evidence to this effect.

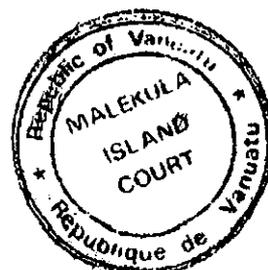
Secondly, his ancestral chiefs have not performed any namangi ceremony at any of the disputed nasaras inside Botvalim. Neither has he any nasara at Botvalim.

Given attention to all available information, the court has found that there are surviving bloodline of Botvalim. Again, that is evidenced by the statements made by disputant 1, 3, 4, 5, 7 and 10 regarding the existing relations of chief Jingonmal and Maiwat. These deceased persons have surviving relatives who are parties to this dispute. He has not advanced any evidence on the contrary.

#### COUNTER CLAIMANT 10

Passing by, it is noted that his entire statements were not widely challenged by other claimants.

Another finding rests upon the common agreement acknowledged by Gabriel Malessy, Steve Maltungtung and Alexi Naror recognizing his claimed history as worthy and truthful. The court has accepted this evidence, but that the pigs were given to Jingonmal by reason of his position being the spokesman of the paramount chief of the area. In the past trading relations are respectably valued by every chief. And for matters of reciprocity and perhaps appreciation in the



other sense other clans from other land are allowed to work the land for subsistence purposes as seen in this case. Good working relationship have proven to boost traditional trading affairs and social security at large.

In consideration of the payment of 50 pigs to chief Jingonmal, a right of use is a guarantee for Daniel Tamat and his concerned relatives.

#### COUNTER CLAIMANT 11 & 12

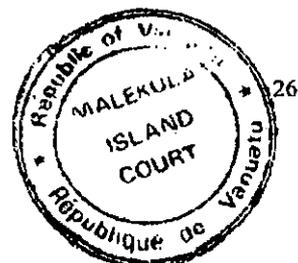
Turning to Roy Samuel and Nale Massing, this court has without reservation decided that their claims be deferred to the Land tribunal for determination. This decision is considered appropriate by virtue of the following reasons.

The immediate point of explanation is that Mek Lemerek and Nalhyndrandre are totally separate land boundaries to the land of Botvalim. The land pending before the Island Court concerns the land of Botvalim alone. The advertisement communicated to interested parties is purposely for the land of Botvalim as registered in 1984. Despite the uncertainties surrounding the advertised map, the description of boundaries as described by the primary claimant does not cover the above land territories. This is cleared by the sketch map and his statement together with identification of boundaries related at the field trip to Vetan village. Enson Nalekon and claimants 1-10 are not disputing the above territories. The court has also informed the parties at the hearing of their applications on the 12 of May, 2006 that the court will only deal with the land of Botvalim.

From observation, the court hearing saw the rest of the parties, from the primary claimant to contestant 10 to have no interest upon concerned land. The only arguing parties were counter claimant 11 and 12. Some of the parties have conveyed valuable remarks that the said land are not part of Botvalim.

I take into great consideration on the other hand, the fact that there are parties who have interests of customary nature over such ground. However, time and the court processes could not allow them the opportunity to be heard in this case. Roy and his colleague have been joined as parties just 2 days before trial.

Mindful to note as well is the remaining uncertainties twinned with the decision of Land case # 5/88 of Vasa dated 19<sup>th</sup> September, 1995. The area of critical concern lies predominantly with the declared boundaries. This court has been very cautious and cannot take the risk to pronounce a decision that would cause conflict or distort the declared boundaries of Vasa. The court in that decision has failed to clearly or specifically describe the exact boundary limits of Tfil and Tongre extending to areas of Nalhyndrandre. In fact, there are areas claimed by



Nale Massing which would seem to extend into the land of Vasa and Botvalim. Yet, the court could not make any clear distinction of boundary in this area as emphasized above. These doubts will remain with his case.

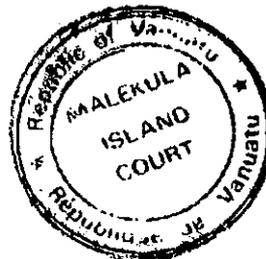
Equally, as a matter of procedures and in terms of jurisdiction, this tribunal cannot deal with one part of the claimed land while the remaining part be dealt with by another court. It is foreseeable that any decisions from such transition would be in the likelihood to show difference in end results. Any of such a decision would inevitably create confusion and undesirable effects to all interested parties.

More fundamentally to bear in mind, is the Land Tribunal Act of 2000 which limits this court's jurisdiction not to deal with new customary land cases. Legally, all land cases excluding those pending before the Island Court must only be dealt with in the Land Tribunal. Therefore, in our situation, Mek Lemerek and Nalhyndrandre can only be determined by the Land Tribunal. They are not land pending cases of the Island Court but totally new land cases.

#### DECLARATION

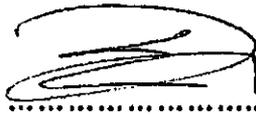
Given the position of each claimants as discussed above, it is hereby ordered in the following words.

1. That Enson Nalekon is formally declared as custom owner and bloodline of the land of Botvalim. This decision is by no mean be construed as a declaration of the paramount chief's title. Such subject matter is outstanding and rests with the relevant tribunal for its determination.
2. That Alexi Naror is declared as a smol faea of Melembaur and owner of the land containing the nasaras of Lovovo and Surnau.
3. That Daniel Tamat is given the right of use of the land of Botvalim.
4. That the parcel of lands claimed by Roy Samuel and Nale Massing are hereby referred back to the relevant land tribunal.
5. Claims from the remaining parties are dismissed.
6. All costs necessitated by this proceeding will fall as found.
7. Any party wishing to appeal this decision must do so within a period of 30 days from today.



Dated at Lakatoro this 10<sup>th</sup> of August, 2006

BY THE COURT



Edwin Macreveth  
Supervising Magistrate

