

IN THE PAAMA ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Land Jurisdiction)

Land Case No. 03 of 1993

BETWEEN: OBED HOLUON

Original claimant

AND : TOM EDWARD & FAMILY

Counter claimant 1

Coram : Magistrate Edwin Macreveth
Justice Morris Knos
Justice Roy Morsen
Justice Edna Wilson

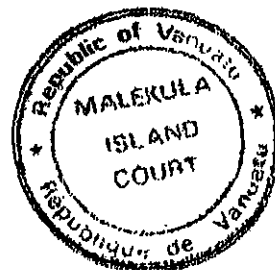
Clerk: Wendy Raptigh

Date of Hearing: 12th - 14th of December, 2007

J U D G M E N T

The land in dispute is situated on the south western part of the island of Paama. This customary land is registered before this court as Kelai. The advertisement caused by the principal disputant invited another party to file a counter claim. The parties in contention over the land are claiming land ownership.

Its boundary is generally described to be bounded by the villages of Tasimate and Vauleli on the south at a creek running westwards ending at an oak tree and marked by a red stone at the shoreline. The disputed land of kelai covers 4 parcels of land namely, Venhinueili which encompasses the claimants dwelling house and the NTM church. The second piece of land so called Venhievolak embodies the third and fourth plots of land which extents to the new creek. For specification purposes regarding its boundaries, refer to the advertised and sketch map filed therein by the original claimant.



Before embarking on the subject matter and for purposes of better understanding the reasoning of this judgment; a brief discussion of the relevant laws and custom processes and usages of the contested area are outlined below.

THE LAW, CUSTOM AND HISTORY

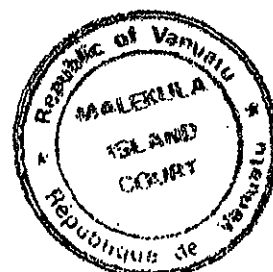
It is our immediate note that the area of concern does not have a Land Policy. Despite of such missing guidelines, there is significant information gathered from the hearing regarding customary principles of land ownership. We have also consulted the Land Policies adopted by the National Council of chiefs, Malvatumaori. Upon thorough reading we noted that such guiding land values share a similar approach to the recognized custom practices of this district as discussed below.

Briefly, the relevant law under Article 73 of the 1980 Constitution stipulates that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. Article 74 provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu. Article 95(3) states that customary law shall continue to have effect as part of the law of this jurisdiction.

Turning to the customary practices, generally the island of Paama is predominantly a patrilineal society. Ownership of customary land is communal or collectively owned based on common descent, residence within a nasara and participation in common activities. A tribe or bloodline is identified with the land through the nasaras. Individuals within the clan are closely tied up with their territory by affinity and consanguinity through blood and marriage. A group of persons belong to a family line and a territory is sometimes identified with a totem, such as a plant or an animal.

It is the common trend that the first person to explore, live and control a land boundary would eventually become the original chief of the territory. This chief on behalf of his tribe or family would normally be referred or regarded by the public as the original custom owner of the land. The members of his tribe or group communally own undivided interests in the land.

The clan which forms the land owning unit is normally based on blood relationship, meaning, they are all related by blood, having descended from a common or original ancestor. In practice, the first person and his family to arrive at the disputed land and built a nasara there, are the custom owners of the land. It makes no difference whether they left again for some other reasons, they would be designated as the custom owners.



Land is traditionally transferred or inherited patrilineally from the chief or original ancestor to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings, relatives and kinship. This is a male predominated system which is twinned with the land tenure system handed down from ages past to the present.

The only exceptional rule to the general principle of land ownership is that in the situation where there are no more surviving male heirs to the land then, ownership will pass on to the matrilineal offspring. This is typically seen where a woman's children having bloodline to the extinct patrilineal line are given land ownership.

Beside the application of law and custom principles, the court in determining the issue of ownership has reminded itself of the relevant provisions stipulated under section 25 of the Island Court Act, Cap 167. That particular section provides direction that in any proceeding before the Island Court, it shall not apply technical rules of evidence but shall admit and consider such information as is available.

Section 10 of the same Act states that subject to the provisions of the act, the Island Court shall administer the customary law prevailing within the territorial jurisdiction of the court so far as the same is not in conflict with any written law and is not contrary to written justice, morality and good order.

Given the basic understanding of the traditional processes and the law, we now present the relevant information submitted before the tribunal commencing with the primary claimant.

Original Claimant

Obed Holuon in his presentation led evidence that many years ago there lived a man called Hotel. He was the chief of Kelai village. The chief got very ill after walking over a human bone cursed with a cast of death spell. It follows therefrom that every customary treatment applied to his person persistently failed altogether. In the wake of the circumstance, it was decided that chief Hotel seek further treatment at Tahal Netan accompanied by his security personal, Vano Hokor.

History suggests that in fear of outside attacks, all followers and indigenous natives of Kelai left the land of Kelai with their chief to Tahal Nesa. So, the land was completely abandoned. Some of the families settled at Tahal Nesa while the rest remained with their chief at Tahal Netan.



During their exile from the land chief Okasale took custody of their land. After many years went by, chief Okasale then invited the inhabitants of Kelai to return and re-posses their mother land. Upon their return, they divided themselves into their four respective nasaras of Navulita, Venmaila, Navul and Atiho.

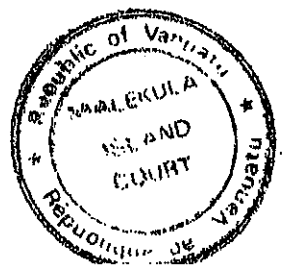
He explained that he has origins from the nasaras of Navul and Atiho while, the defendant is originated from the nasara of Navulita and Venmaila. They continued to live and socialize in these social groupings until the arrival of Presbyterian missionaries in the area. It is around this period of time that conflicts between different village communities was beginning to die out.

At a later time, an agreement was reached to recompense chief Okasale for his generous service in looking after their land. The community of Kelai then decided to give 7 pigs to chief Okasale of Vauleli village for looking after their land during their absence. The defendant's forefathers from the nasara of Navulita and Venmaila were to provide 7 pigs to chief Okasale and his people. However, the assigned parties could not afford to supply the said animals. With the situation, the nasara of Navul and Atiho assisted to make such payment. It was agreed that the four plots of land be given in return of the payment. One terrain was given to Atiho nasara, while 3 plots were allocated to Navul. Two of those plots by the name of Venhinueili and Venwaikalivaimet were allocated to the primary disputant being developed to the present which are the subject of this dispute.

Witnesses John Albert, Mackline Tomat, Alick Okao and Less Taun provided similar statements saying that the four pieces of land were given to the claimant's ancestor in return of seven pigs. These pigs were supposed to be provided by the defendant's forefathers from the nasara of Navulita and Venmaila. This payment was intended as compensation to chief Okasale of Vauleli for keeping custody of their land of Kelai during their long absence on the land. The ancestors of the defendant could not afford to supply the said animals. Following such situation, the nasara of Navul and Atiho assisted to make such payment. It was agreed that the four plots of land be given in return of the payment.

Counter claimant 1

The defendant did not submit any statement of claim to the land. He was allowed to adduce oral evidence. In his defence statement, he denied and rejected the allegation concerning the 7 pigs labeling it as false. He explained and clarified in reply that the 7 pigs were given to chief Okosale of Vauleli by 7 nasaras of Kelai and that his ancestors did contributed to that peace ceremony. Three of the seven nasaras have gone extinct while four still contain surviving descendants . He argues that there was no agreement for exchange of land.



He further made it clear that the two piece of land belonged to his nasaras and ancestors. The first plot Venhinueili was given as a custom gift to one Mautu a female whom had married to the nasaras of Navul. This lady was the great grand mother of the original claimant. The second terrain of Venwakalivaimet was allocated to one old man from the nasara of Atiho. These parcels of land were supposed to be returned upon their death by way of custom practice. However, they were not given back possessions of the parcels of land to date and thereby sourcing the differences.

Witness Avock Ati was of the same account. He clarified thereon that the claimants to the case are related in blood and marriage. They belong to one land and one family. On interrogation both presenters maintained that their ancestors did contributed some pigs to the peace ceremony.

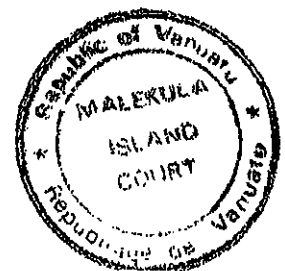
Analysis of evidence and findings

Having considered the evidence and in application of the law and custom we conclude in the following words. Firstly, we are satisfied that there was no real need to investigate and make findings as to who is really telling the truth in this claim since there is sufficient and clear evidence advanced to this court to draw conclusion.

The immediate finding is that both contestants do not dispute each other as indigenous natives of Kelai land. The remaining issue is that the two parties are only disputing two areas of land namely, Venhinueili and Venwaikalivaimet. We note especially the original contestant claiming that the defendant has no right after having failed to contribute certain pigs towards a peace ceremony. That argument cannot be sustained given our conclusion above on the credibility of their sworn histories.

Secondly, the original claimant does not dispute the ownership of the above terrains. He agreed in court that Venhinueili and Venwaikalivaimet are originally owned by the defendant, his ancestors and existing relations at present. In light of this admission by custom, the two plots should reverse back to the rightful owners, the defendant and his family in our case. The constitution under Articles 73-75 together with Article 95(3) would confirm such traditional process.

However, it is quite obvious from the facts of the case that, the defendant and his family took no goodtime in advance to evict the original claimant and his families on the land. This situation lead to the continuous use of the land for decades unto the present. A lot of development have been caused to the land.



Such admitted facts had inevitably made it very difficult for the original claimant to vacate the questioned parcels of land.

Having so made those findings, on the other hand, there is light to find that the claimants to this case are actually related in blood. The original claimant has bloodline relationship to the defendant by way of the matrilineal lineage of this woman Matau, having originated from the defendant's nasara. Again the provisions of the Constitution pertaining the right to land would guarantee some form of land use rights to the primary claimant.

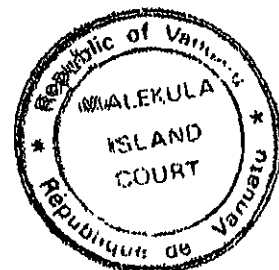
This court is being cautious not to cause bad feelings in the midst of the parties but to cultivate and bond the unionship, fairness and justice for all at the end of the day. To gather for that, this court will undertake and create measures so that those aspects of life would flow and roll on among the parties.

DECLARATION

In light of the foregoing deliberations, it is hereby this day adjudged in the following words:

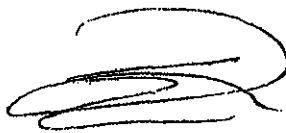
1. That Obed Holuon and Tom Edward and their families be the custom owners of the land of Kelai has claimed accordingly.
2. That the two plots of land namely Venhinueili and Venwaikalivaimet remain under the ownership of Tom Edward and his family.
3. That Obed Holuon is given the right to use the above terrains. For the right granted he is to present a traditional ceremony in a form of payment of a pig valued in the amount of VT 15,000 into the hands of Tom Edward and his family.
4. The primary disputant has 2 months to provide such payment as ordered in (3).
5. All costs and expenses necessitated by this proceeding shall fall as found.

Any aggrieved party wishing to appeal this decision must do so within a period of 30 days from date.

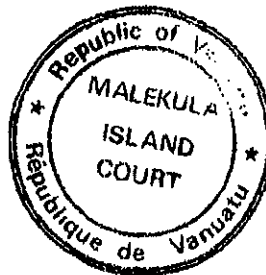


DATED at Liro Paama, this ...^{12th}..... day of December, 2007

BY THE COURT



.....
EDWIN MACREVETH
Presiding Magistrate



.....
Justice MORRIS KNOS



.....
Justice ROY MORRISON



.....
Justice EDNA WILSON