

Original Gmg

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

Land Case No. 04 of 1994

BETWEEN : ALICK FRANK HAITONG
Original claimant

AND: TAVULAI COMMUNITY
Counter claimant 1

AND : VAULELI COMMUNITY
Counter claimant 2

AND : FAMILY VARENG VEAT
Counter claimant 3

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

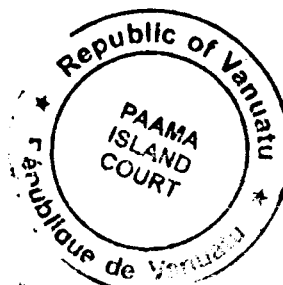
Clerk: Wendy Raptigh

Date of hearing: 25th – 28th of September, 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 *Lehili*. The advertisement caused by the principal disputant invited 3 parties to file a counter claim. The parties in contention over the land are claiming land ownership and dispute over boundary.

Its boundary is generally described to be bounded by the land of Tavulai on the north from Ndasok west of the island. It runs eastwards to a nambakura tree and up the hill to the fence of Tevali village. It follows that fence to the other village of Tevaliaut in line with a banyan tree named as HOLAIVEK. From there it joints up to a small man made drainage creek connecting onto another creek which runs down to a natora tree on the western side . It then extents from there ending at



an oak tree and marked by a red stone at the shoreline. This described territories does not cover the land of Kelai. 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.

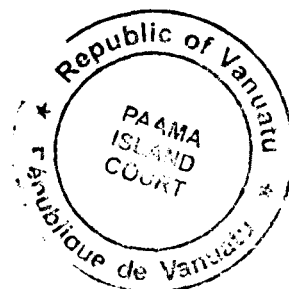
THE LAW, CUSTOM AND HISTORY

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. He would become the paramount chief or sometimes referred to as *big faea* of the land boundary. The members of his tribe or group communally own undivided interests in the land.



The tribe 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.

The paramount chief has control and authority over his land boundary. Any incoming tribes accepted into the area would remain under the control and authority of the principal chief. After exchange of custom processes, such a clan may be allocated a parcel of land specifically for subsistence use only. All subordinate chiefs also referred to as *smol faeas* are accountable to the head chief in respect of every social affairs.

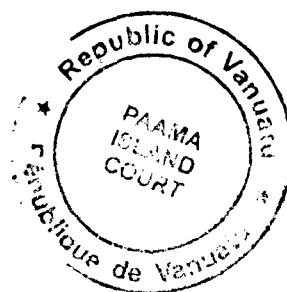
Chiefs are usually nominated on the basis of custom values, wealth, bravery and other common characteristics. The land owning chief and his subordinates would all have nakamals and nasaras. The first ever built nasara of a tribe becomes the original nasara. A nasara is usually identified by man made features such as erected stones, natural plants such as namele palms and other identical phenomena.

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 acquisition.

Conversely and by custom, the matrilineal descendants cannot claim land ownership if, there are surviving male descendants. Any claim following the matrilineal lineage would be culturally limited to a claim of right to utilize the land. Conditions are normally attached to that right of use as well. For example, such a claimant is duty bound to perform a customary rite of recognition to the uncles in exchange, prior to any use of the land.

Boundaries of land in the past and present are normally indicated by natural features, such as trees, rivers, hills, man made features and other geographical phenomena.



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 the Island Court Act, Cap 167. For instance, in deciding the evidence before us, the court must be guided by section 25 of the Island Court Act. 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.

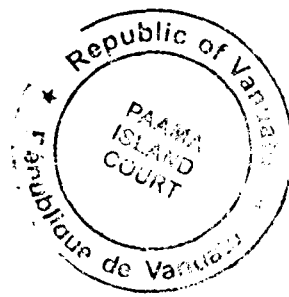
Given the basic understanding of the traditional processes and the law, we now present the relevant information submitted before the tribunal commencing with the primary claimant.

Original Claimant

Frank Alick in his presentation, led evidence that the land of Lehili consisted of three nasaras namely, Vakier, Navati Meral and Houlu. The paramount chief is originated from the original nasara of Houlu. Once upon a time, the natives of Houlu captured an alien dwarf, who has been stealing their food. Upon its capture they decided to kill it. They applied all their physical might in trying to cause death to the devil but they soon became powerless. It was at this point in time that the devil itself instructed them that if they want him die they must strike him with a stalk of the wild kava shrub.

Upon his death they must burn his body to ashes. These ashes are to be collected and be mixed with their food for consumption. Without careful thoughts the villagers did as instructed. Consequently, as a result the whole population of Houlu was poisoned and became extinct. Meanwhile, the remaining tribes belonging to the nasaras of Vakier and Navati Meral escaped this spell to the nearby land of Tevali. Other family members from the nasara of Navati Meral later migrated to the island of Efate where they re settled at Teouma, south of Efate.

He added that around this period of turmoil, there was a couple known to be Doka and Lessie. It saw that another man from Tavulai also fell in love with Lessie. This lead to a conflict of interest between the two men over the same lady. Row occurred on regular basis. This inexorable issue forced Maki Malo of



Tavulai to send the couple away from his village. In search for a place to stay Doka and Lessie paddled a canoe to the shores of Kelai area, where they were invited and received by the villagers. Chief Vano Hokor of Kelai upon learning of the unexpected arrival with sympathy invited them to his nasara for safety.

After learning of the hospitality offered by Vano Hokor and his people Chief Maki Malo became furious with anger. He then ordered his followers to conquer the entire land of Lehili and some part of the land of Kelai. He explained that since then, the land in question has been in the hands of Tavulai dwellers and their chief. As a result of this unlawful occupation they then erected false land marks to the land. They even sold the land to earlier traders such as Richard Facio and missionaries like Maurice Frather.

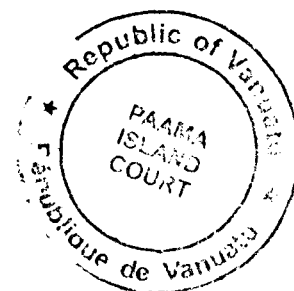
Through negotiations for re possession of their land from Tavulai villagers, chief Maki Malo had asked the chief of Kelai to pay a compensation. An amount of 25 pounds and 5 pigs were paid to Chief Maki and his people. Despite, this payment the land was continuously occupied to date.

In his conclusion, he re iterated that the land is originally owned by the three nasaras of Vakier, Navati Meral and Houlu. Tavulai has his own customary land which had never been disputed by the indigenous natives of Lehili. A family tree is made available to the court tracing his past generations to the present.

Upon cross examination he disagreed with CC1's alleged bet agreement. He maintained and explained that he is claiming the land following chief Maki's purported land marks.

Witness chief Avock Mael of Kelai village provided that after the illegal occupation of the land of Lehili by the Tavulai community, Alick Frank and his relatives have also been residing at Kelai. He urged the court thereon that the land of Lehili should by law return to the original rightful custom owners. He reconfirmed that Lehili has a separate custom land boundary. He described it to commence at the sea shore at Ndasok and follows the hill up to the fence at Tevali and Tevaliaot and back to a natapoa tree by the shoreline. He clarified that the claimed map issued by the primary claimant is only made following CC1's claimed boundaries and land marks which exceeded their usual boundaries.

Tom Peter advanced a similar statement with the same description of Lehili land boundary . Ezra Avock stated that Alick Frank is the rightful owner of the land of Lehili. The Tavulai community have illegally occupied it after the fight. They have contributed 25 pounds towards as compensation in a peace ceremony held between the concerned chiefs and chief Maki Malo of Tavulai. While, Willie Robsen of Liro Nesa orally told the court that chief Vano Hokor of Kelai had



asked his grand father Nano Sivi to donate 10 pounds for the restitution of Lehili land. Api Elija verbally said that the community of Vauleli has returned a piece of land belonging to the Kelai community in the 1970's. He explained that such land was given in their favour after having assisted the Tavulai community in the tribal war in the area.

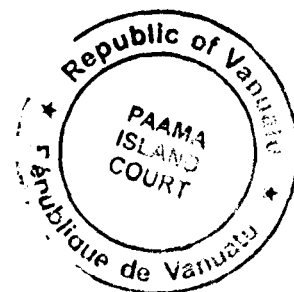
Counter claimant 1

Chief Paul Vurevur appeared for the Tavulai community. In his genesis, provided that a female by the name of Leiho Auh had espoused a Tavulai villager known as Mahit Manuai. As time past another man called Vano from Lehili village by using spirit possessed magic rituals lured Leiho into committing adultery with him. This situation created an endless intimate relationship between Leiho and Vano and at a later meeting decided to elope to Tahal in the south of the island. Upon learning of their absence, chief Mael Taso of Tahal demanded chief Mahit Teviv of Tavulai and his people to search the where about of Leiho. Chief Lunvai head of Paama council of chief also send messages throughout Paama that any person who finds Leiho must report it to him. Chief Sovuai of Tahal village in one morning while paddling his canoe to Lehili accidentally discover the lady swimming in the sea accompanied by his boy friend Vano.

Chief Sovuai then reported the finding to chief Mahit Teviv who then asked chief Avock Mael to re fund all bride price expenses. Agreement was reached and a date was set for collection of the refunded customary items. Chief Mahit and his people upon calling at Lehili instead refused to receive the reimbursed items on reasons that the pigs were smaller in size compared to those paid to them as bride price.

This disagreement caused anger and annoyance to chief Mael. He set forth with frustration to Tevali with his gun. On his way back, he entered Tavulai land areas where he found chief Sale Manuai of Tavulai gardening with his wives. Without hesitation at point blank shot chief Sale to death. Chief Mahit Teviv was alerted of the incident where they went to fetch the corpse and buried it. It appeared on the same day of burial that chief Mael instituted further threats of war to the Tavulai community. He challenged the Tavulai people and their chief to fight him. He betted that if he wins the war he will sell Tavulai's land and sea passage to traders. Equally, if he losses the fight then Tavulai community will sell his land of Lehili.

War eventually broke out between the two chiefs and their people resulting in mass killing and casualties on both rivalries. The whole population of Lehili was



wiped out by the Tavulai warriors. Given the triumph and pursuant to the words of chief Mael they then conquer the land and occupied it.

In support of his claim he stated that the land of Lehili was perpetually occupied for many decades leading to its sale to early traders such as Richard Facio on the 20th of October, 1897. This land known as Magnasome was later transferred to other traders as shown by his document exhibited and marked as *D* in his statement of claim. He further contended that Paama council of chiefs known as Tamaso has in 1979 declared Tavulai community as owner of the land. He also listed a number of documents marked from *A* to *P* in illustration of his claim on behalf of Tavulai district.

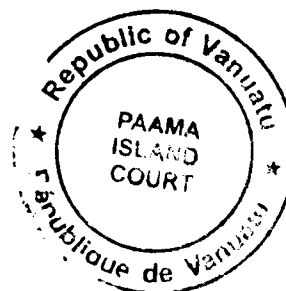
At the course of examination he submitted that the land cannot be returned to the indigenous owners pursuant the bet agreement promised by chief Mael Avock of Lehili. He explained thereon that according to the surveyed maps provided towards the sale of Magnasome, his claims land would exceed the advertised land ending at a tree known as Bilvil at the Vauleli paying field.

In his closing remarks, he concluded that by custom the land of Lehili cannot be returned also given the death toll and blood shed over the land. Tamaso council of chiefs has also pronounced an unchallenged ruling in their favour.

He called three witnesses to testify in his support of his statement of claim. Witness, chief David Andrew confirmed that Maki Malo, Hugai Sive and Tomme had sold the land of Magursome to Richard Facio. Occupants of Vauleli Nesa and Netan have also been allocated some parcels of land by the chief of Tavulai following their past friendly relationships. Chief Mael must compensate those who died in the battle. Since then, peace has not been reached. On interrogation by the court over his claimed areas, he replied that the claim of ownership is rooted on the bet promise confirmed by the victory.

Tom Manaseh in his statement said that Tavulai land area ends at Vauleli. There are 4 nasaras in Tavulai namely, Teavu, Tavulai Hat, Namaru and Amali. Inhabitants of Vauleli have been allowed to use the land following arrangements made with early traders and missionaries to the area of Magursome. While, James Maki Malo, Nikolas Maki and Michel David produced very similar statements to that of their colleague.

Upon questioned over the basis of the claim they all explained that the claim is absolutely stemmed on the bet promise. James Maki further argued that Vauleli, Lehili and other nearby land territories have recognized custom land boundaries. However, these grounds have merged into their full occupation by virtue of the bet promise. We noted on the other hand, that Nicolas has agreed that there are



surviving descendants of Lehili land. The rest of the disputants have largely objected to the defendant's claim as illegal and inconsistent with the custom practices of the island of Paama.

Counter claimant 2

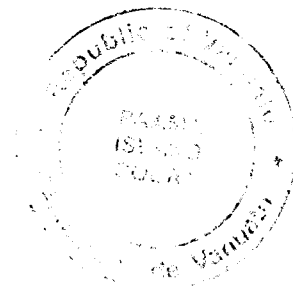
Thompsen Andrew representative of Vauleli community in his opening statement provided that the land advertised by Alick Frank has lapsed into the land originally owned by Vauleli villagers.

He stated that there was a tribal war between Lehili and Tavulai villagers. It was due to this conflict that one Meras of Lehili shot Okalu of Amalhatili. This loss enraged chief Arei Weivo of Amalhatili to team up with Tavulai community to fight against Lehili tribesmen. Kelai also joint in this clash. War escalated and lasted for a day and a night causing severe loss of deaths and casualties. As dwellers of Lehili and Kelai realized that they are about to loose the battle many of their relatives fled to other nearby land and villages for safety. The villages of Lehili were left in ruin with animals. Amongst others as listed, Bod of Lehili is one of them who escaped to Tahal Netan.

Following the victory, chief Teviv of Tavulai instructed chief Weivo of Amalhatili not to allow any descendants of Kelai to re posses any parcel of land at Kelai. So, Kelai land remained in the hands of Amalhatili community until the arrival of the gospel in the 1900's. It is around this period of time that one Cook asked the then chief Hokau Sele of Amalhatili to call back Mael Auv a refugee of Kelai. Permission was granted which saw Mael who was residing at Tahal Netan to then re settle at an area called Navatu at Amalhatili. As the population increased in number and in need of land, Mael was thereafter allowed to regain possession of his own original land. Mael was later ordained as a chief of Kelai.

At the stage of examination, he explained that the claim of the original claimant has exceeded its custom boundary limit. He pointed out that the original boundary mark separating Kelai and Vauleli stands at a creek as told by the original claimant and some of his witnesses.

Witness, Joel Mahit briefly and generally told the court that the map produced by Thompsen sketching the boundary land mark of Amalhatili is correct and accurate. He referred to the same creek being the end frontier of Kelai land. Isen Robsen testified that the history of Amalhatili as told is correct. While Paul Andrew stated that chief Hokau Sele has a nasara built between Amalhatili and Kelai village. Few questions were asked to these witnesses.



Counter claimant 3

Marry Momo Kululuk made submissions on behalf of family Vareng Veat. Her described boundary begins at Ndasok and Nahosali embodying Lehili primary school running up the hill to Tevali and Tevaliaot.

She led evidence, that in the years of 1900 Lehili has existed as a village. Lehili land territory has three nasaras namely, Vakier, Navati Meral and Houlu. The land of Lehili was at once been sold to many traders one of whom is George Mitchel. She went on provide that due to this sale of land, both villagers of Tavulai and Lehili became unfriendly. These bad terms consequently led to the death of 5 men from Tavulai and another 5 from Lehili area. This tension quickly developed into a full scale war following the domestic affair of Lessie and Doka. Some villagers of Lehili have escaped the land in fear of revenge from chief Maki Malo and his people.

Occupants of the nasara Vakier sought refuge at Tevali village while her ancestor escaped to Tahal Nesa. They later migrated to Teouma south of Efate island. After some years went by, leaders of the community decided to pay a compensation of 25 pounds with 5 pigs to chief Maki Malo and his people. She stressed that the land should reverse to the rightful owners of the land given the peace ceremony.

She maintained in defence that she has the right to claim the land on behalf of family Vareng Veat. She referred the tribunal to a survey map of Lehili school as her proper land of claim.

Witness, Cindy Ephraim said that she believes that the land belongs to grandfather Marius of Lehili. She believes that upon independence in 1980 all land must return to the custom land owners. Alick Frank in witness related that one Harry Collen a Police officer has held that Marius is the owner of Lehili land. A fight subsequently followed given the decision. Few questions were asked to these witnesses.

ANALYSIS OF EVIDENCE & FINDINGS

Having perused and verified the totality of the evidence, The tribunal has decided not to cause any visit to the land itself. It was not necessary by virtue of the following grounds. Firstly, only the original claimant and CC3 have nasaras on the disputed area. None of the parties had disputed their existence. Secondly, CC2 does not dispute the claimed boundary of CC3 and Alick Frank after

clarification of his claimed map. While CC1's basis of claim is solely rooted on the bet promise and nothing else.

Our attentive observation shows that the majority of the parties have acknowledged and accepted that the first person to arrive at the disputed land and built a nasara there, is the custom owner of the land. The land belongs to the founder, or original tribe and the descendants. This court is of the same belief that the said land doctrine form the basic foundation for land ownership in this region of Paama.

Having made such clarification, in consideration of the presented facts and in application of the customary usages of the district and the law; the findings are discussed below following the usual order of presentation.

The primary claimant

Having perused and verified all gathered evidence against his case the findings are as follows.

This party's basis of claim is by way of the patrilineal lineage of the original ancestor, Haitong of Vakier nasara. The first evidence at hand in support of his claim is that no party has challenged his family relations and place of origin. For instance, his claimed nasara of Vakier remain free of dispute.

Secondly, it is obvious that the disputed maps as advertised was made in light of the claimed man made landmarks erected by the Tavulai community after conquering the land. This information is confirmed by Alick Frank and 2 of his witnesses. CC3 and CC2 have positively supported this very fact. The only party who has objected to the original claimant's claim with advance arguments is Paul Vurevur representing Tavulai community. Below are some of CC1's relevant issues that requires the court's consideration.

His first argument asserts that there are no living descendants of Lehili. That allegation could not be sustained given the following evidence. CC2, CC3, the primary claimant and their witnesses have adduced evidence showing that many residents of Lehili and Kelai have escaped the tribal war. These facts were not rebutted or disproved by CC1. Even, his witness Nicolas Maki has agreed that there are surviving descendants of Lehili land at date.

More remarkably as over mentioned it is obvious main basis of the argument is completely founded on the bet or promise made by chief Mael to the Tavulai community arguing it to be binding on the parties. 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. This article implies that all land including those alienated lands even those acquired by other means of payment or reasons must return to the custom owners. In our case, it was admitted that the land traditionally belonged to Lehili. The land was occupied after the fight and later sold to foreigners.

In consideration of Article 74 which provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu, it could not either be argued that by custom practice any land conquered through a fight will continue to remain in the victors hand. This is a selfish idea and cannot find favour in this modern world with laws upholding principles of natural justice, fairness and equality.

Furthermore, the said bet cannot stand by reason that it was not made in goodwill manner. From the story, this bet agreement sourced out from the domestic problems of Lessie and her boy friend. Such familial dispute is a separate issue which must not be attached with land ownership.

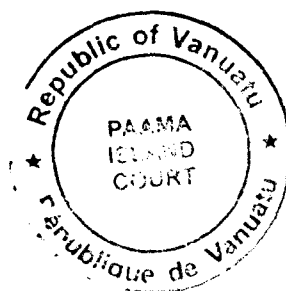
Bearing in mind as well that the land of lehili is not solely owned by chief Mael Avock but collectively owned with his people. They cannot be deprived off their interests, right to live in their place of origin. They have full entitlement to peaceful living and enjoyment of the benefits of their own land. The effects of chief Mael's words must be seen as provocative words made during a row over the said marital affair. This betting words are of no legal effect as they are made in the invitation of war a criminal activity in itself.

More over, there was no material evidence to show that Tamaso council of chiefs have in 1979 declared ownership of the land to the Tavulai community. The rest of the parties have no knowledge of such a meeting. They have never attended a meeting chaired by Tamaso. We decline to accept his submission on this issue.

Counter claimant 1.

You will note that the same determined issues and explanations as discussed above will apply to his proper claim. For purposes of discussion, it is worthwhile to re iterate the findings here. His listed documents marked A to P form part of this consideration.

Firstly, his perception that that there are no surviving children of Lehili land is unfounded as reflected by the following proof. CC2, CC3, the primary claimant and their witnesses have adduced evidence evidence showing that many



residents of Lehili and Kelai have escaped the tribal war. He has entirely failed to discredit these facts. To the contrary, his own witness Nicolas has agreed that there are surviving descendants of Lehili land at date.

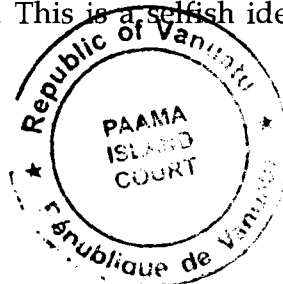
Also he has fallen short of defending the evidence advanced in relations to the peace ceremony which saw 25 pounds and 5 pigs given in exchange to chief Maki. He could only advance a mere denial of the payment without any compelling response. Alternatively, if he is not satisfied and has extra issues of compensation of those who died in the battle then, there are relevant avenues and procedures to seek.

As mentioned above, this party's basis of claim is founded upon the bet or promise announced by chief Mael to the Tavulai dwellers. Chief Mael had vowed that they are going to war challenging them with words that if he wins the war he will sell Tavulai's land and sea passage to traders. Equally, if he losses the fight then Tavulai community will sell his land of Lehili. The first question we pose is whether such words constituted a legitimate agreement. In our analysis we first considered the circumstances involved in that particular period of event. It is clear enough that it was not made in goodwill manner but rather sourced from a familial affair.

Such domestic dispute is a separate issue which must not be attached with land ownership. Bearing in mind as well that the land of Lehili is not solely owned by chief Mael Avock but collectively owned with his people. They cannot be deprived off their interests, right to live in their place of origin. They have full entitlement to peaceful living and enjoyment of the benefits of their own land. The effects of chief Mael's words are provocative in nature and they do not amount to a binding agreement. The general principle of contract law correspondingly provide that any agreement to commit a crime will not be enforceable by either party. Therefore, such betting words are of no legal effect as they are made in the invitation of war a criminal activity.

Having so said we must also be guided by the Supreme law of this country. The relevant provision is Article 73 of the 1980 Constitution which stipulates that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. This article implies that all land including those alienated lands even those acquired by other means of payment or reasons must return to the custom owners.

We undoubtedly have taken heed of Article 74 which provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu. Yet, it could not either be accepted that by custom practice any land conquered through a fight will continue to remain in the victors hand. This is a selfish idea and it



cannot find favour in this modern world with laws upholding principles of natural justice, fairness and equality.

Article 5. (1) of the Constitution recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health-

(a) life;

(b) liberty;

(d) protection of the law;

More over, there was no availability of material evidence to suggest that Tamaso council of chiefs have in 1979 declared ownership of the land to the Tavulai community. The rest of the parties have no knowledge of such a meeting. Finally but not the least, his listed documents marked A to P upon analysis place no difference in weight to his claim.

Given the circumstances of his case, and in application of the custom practices and the law, he has no standing in this claim for land ownership. The land must return to the original owners.

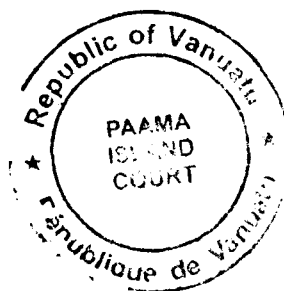
Counter claimant 2

Vauleli's claim boundary is not disputed by CC3, and the original claimant. These parties share a common understanding over their respective areas of land. Their claimed frontier is only disputed by the Tavulai community.

Given the assessment of CC1's standing in this claim and to avoid repetition there is no need to re iterate the finding facts. We are satisfied that this party has elicited sufficient evidence establishing his claim. His claimed boundary mark is therefore accepted as the actual boundary limit dividing the land of Kelai and Amalhatili.

Counter claimant 3

Mary Kulukul is claiming the land of Lehili on behalf of his family Vareng Veat. Her basis of claim is by way of the patrilineal lineage of ancestor, Vareng Veat



Kulukul of Navati Meral nasara. No party has challenged his family tree and place of origin. Secondly, her described boundary is not disputed by Alick and the representatives of Vauleli community.

The opposing arguments as advanced by CC1 criticizing the status of her claim connected to the matrilineal system is baseless. There are favourable findings as discussed above which has caused us persuasion to hold that there are surviving generations of Lehili land. Mary has brothers who are heirs to the land. It is acceptable for a woman to claim land on behalf of the whole family but not on an individual basis.

Needless to mention but for ease of clarity to the parties, one must bear in mind that such type of submission cannot bypass the laws of this country. Vanuatu has ratified the Convention on the Elimination on Discrimination Against Women by the Ratification Act of Parliament no. 3 of 1995. This international law requires that every signatories to it must take all necessary steps to condemn and wipe away of forms of discrimination against females. This court cannot allow custom to discriminate against women.

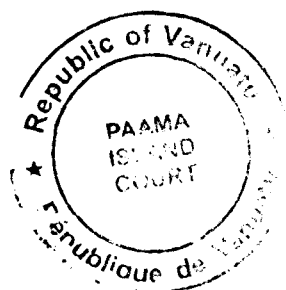
The 1980 Constitution under Article 5(1) stipulates "*The Republic of Vanuatu recognizes, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health-*

(d) protection of the law;

(k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed area..."

The Appellate Court has upheld this philosophy of equality as seen in the classical case of John Noel v Obed Toto (Case No 18 of 1994). Equally, the provisions of the Island Court Act, Cap 167 is also reminding ourselves under Section 10 that while administering the customary law prevailing within this territorial jurisdiction it ought to apply the right or appropriate measures in so far as the same is not in conflict with any written law and is not contrary to written justice, morality and good order.

Based on the forwarded reasons and in application of the relevant laws and customary usages, her claim is granted as sought.



DECLARATION

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

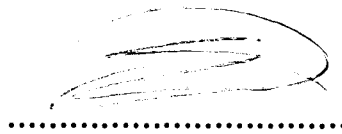
1. That Mary Momo Kulukul and family be the custom owner of the land of Lehili commencing from Ndasok to Nahosali housing Lehili school as claimed.
2. That the ownership of remaining land area excluding Kelai land is declared in favour of the original claimant Alick Frank.
3. That the claimed boundary limit by Vauleli community is accepted as sought accordingly. The boundary mark separating Vauleli and Kelai rests at the creek.
4. That the claim of Tavulai community is hereby refused.

All costs necessitated by this proceeding will fall as found.

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

Dated at Port Vila this 22nd day of October, 2007

BY THE COURT



.....
Edwin Macreveth
Presiding Magistrate

