

IN THE EFATE ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Chiefly Dispute Case No. 04 of 2008

BETWEEN: **PARAMOUNT CHIEF POILAPA III TI VATELAPA, TASILA MALASTAPU & SIMON POILAPA** (Mele Farea Admin.) for Poilapa Family and Group of Mele Village, Efate
Claimant

AND: **KALOKAI MASAAI**
Of Mele Village, Efate
Defendant

Coram: Justice Eddie Karis
Justice Raymond Marongoe
Justice Makal Kalsong

Clerk: Jona Mesao
Date of Hearing: 5th May 2008
Date of Judgment: 16th May 2008.

JUDGMENT

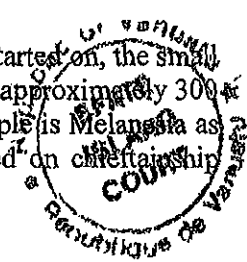
In an Island Court claim filed on 27th February 2008, the Claimant Paramount Chief Poilapa III Tivatelapa, Tasila Malastapu & Simon Poilapa alleges that the method or procedure followed by electing Chief Kalokai Masaai of Mele Village as the Paramount Chief is not in accordance with the customary practices of Mele village, Efate.

The Claimant sought the Court's declaration that, the method of electing Paramount Chief Kalokai Masaai is not the factual customary practices of Mele village, Efate, that the election of Paramount Chief Kalokai Masaai which took place on 4th November 2004 is invalid and of no effect, and that to acquire the said Paramount Chiefly title, it must be pursued to bloodline system.

Therefore the Court should declare that Chief Kalontano Nano Poilapa III is the legal successor of Chief Peter Poilapa II and his ordination on 8th October 2005 is valid according to customary practices of Mele village, Efate.

CLAIMANT CASE

The Claimant stated that Mele village formerly called Imere Tenuku started on the small Island of Hide-away and surrounded relatively with small population approximately 300 as the Island could accommodate. The cultural background of the people is Melanesia as produced as evidence by the traditional system of governance based on chieftainship system where chiefs were chosen on merit.



The history revealed that the Chiefs in those days were living in isolations areas and individual heads of Chiefs possessed their land areas by protected them with their common boundaries. During these times there were many tribal fights between tribes in the surrounding areas. In that period of time, Chief Ngos and Chief Malasikoto ruled Mele village. There were no substantiated records to signify the establishment of their leadership in the community.

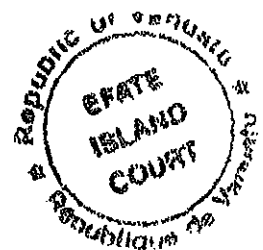
By then, there were descendants of Chief Ngos and Chief Malasikoto, which were there during that period of time; however none of them became Paramount Chief of Mele village. In 1900, with the arrival of Christianity, Church Missionaries, to the Presbyterian Church, impacted a cultural change on the population and even change the custom and culture of the people of Mele village. In 1903, Titongoatapu I who was selected and trained by the Presbyterian Missionary was ordained elder in Imere Presbyterian Church after he attended bible training at Tangoa Training Institute (TTI).

In 1920, Titongoatapu I was ordained the first Paramount Chief of Imere by the Presbyterian Church. Chief Titongoatapu I, kown as Paramount Chief, ruled over the affairs of Mele village with his assistant (Tasila) Kalsautu Poilapa I. Later Chief Titongoatapu I was forcibly stepped down and instantly replaced by Kalsautu Poilapa I, his assistant as, the Paramount Chief. Chief Titongoatapu I died in 1953 and his son Edwin was ordained with the Title Titongoatapu II in late 1950, when he became an elder of the Presbyterian Church. Chief Titongoatapu II (Edwin) was not given the title of Paramount Chief of Mele Village. On 2nd March 2002, this Chiefly title Titongoatapu III was passed on to Meto Nganga, son of Titongoatapu II as Chief Titongoatapu-matua.

Chief Titongoatapu- matua was ordained by the Paramount Chief of his tribe from Naure in Lelepa Island. Chief Titongoatapu III is not given the title of Paramount Chief to rule over the affairs of Mele village. It is evidenced that the decision made by the village council to forcibly replaced Chief Titongoatapu I, is to amend the leadership role in accordance with the parilineal system as adopted by the people of Mele village. Evidence is the Paramount Chief Kalsautu Poilapa I, was not the same tribe of Chief Titongoatapu I and the village council decided to place the Paramount title in its right place according to the customs of Mele village.

Chief Kalsautu Poilapa I was ordained as Paramount Chief of Mele village in 1949 by the village council, witnessed by Pastor Sope Matua, after, Chief Titongoatapu I, was forcibly removed from this position. The village council had based their decision on the following customary laws of Mele village that,

- the Chief must be true indigenous person of Mele village
- the chief must follow the bloodline
- the chief must follow the patrilineal system
- the chief must have a *nasara*
- the chief must have land (including wealth)



Claimant alleged that they were from the Chiefly bloodline of Chief Mariki Langa Ni Vatelapa, who marital to Leiwere Lapa and possess a son named Langa Tivatelapa whom then married to a woman called Leisong Kokori and she then have a son called John Moru who became the Chief. Then Chief John Moru has a son called Kalsautu Poilapa I who married to a woman named Leitautuele who is from Lelepa/Magaliliu region. Leitautuele has a brother named Nganga Titongoatapu and a sister Leikaukaw. Mr Nganga Titongaoatapu I was ordained and became the Chief of Mele village in 1920. Chief Titongoatapu I married to a woman called Touatmanu and their descendants live in Mele village to date. The said Chiefly chieftainship passed on to Edwin who was ordained in late 1950 and then to Meto Nganga who was ordained on 2nd March 2002.

This is an extract from a book written by Reverend H.F. Peak a Missionary to the Presbyterian Church on May 1st describing the process of determination of the Paramount Chief of Mele and I quoted;

"At Mele village, a little ago the old chief Poilapa Kalsautu died suddenly. For a little while the village was like a hive which had lost its queen. Then the elders and the village councilors came together under the direction of session clerk and the old men the told the things which had to be done were put in train. Other chiefs arrived. Ancient customs were recalled. A new chief was chosen. Peter Poilapa, son of Poilapa Kalsautu. For long hours the old men sat with Peter. His council was chosen. In the long after there was not a single hitch or anything untoward"

The Claimant claimed that Paramount Chief Peter Poilapa II, was chosen by the village council which is in accordance to the customary laws of Mele village, Efate. The appointment and ordination of Chief Poilapa III Ti Vatelapa was done by Paramount Chief Peter Poilapa II in which was in accordance to the customary laws of Mele and Efate Island. The Paramount Chief Peter Poilapa II, having the ultimate authority and power to ordain his son Poilapa III Ti Vatelapa to be the next Paramount Chief of Mele village.

The chiefly inheritance history shows that, Chief Titongoatapu I was appointed by the Presbyterian and the village council. His appointment was not in accordance with the custom of Mele village, Efate. That Poilapa I was appointed in 1949 to 1963, Poilapa II was appointed on 1963 to 2003 and Poilapa III was ordained in 2003 to 2008. Claimant say that there appointment was in accordance with the custom of Mele village and also follows the bloodline chieftainship system.

Claimant says that, Defendant Mr Kalokai Masaai was elected to the Chiefly title through a democratic election system, by way of secret ballot. Claimant says that, the Imere Council of Churches (ICC) was at that time an interim commission to look into the issue of determining the Paramount Chief of Mele village, Efate. The said commission consists of Pastors from Presbyterian Church, Assemblies of God, Neil Thomas Ministries, Praise & Worship and interim councils of farea Imere, Women's representative and youth representative.



At its first meeting of 2003, the leaders within the commission have already made their choice in appointing themselves. The Claimant added onto his statement that, Chief Kalokai Masaai cannot become the Paramount Chief of Mele village, because according to his tribes (refer to statement of 20th July 1995) the history enlighten that his tribes were originally from "Elluk Maltari" in the northern part of Efate.

The Claimant added that, there were conflicts of interests within the members of the commission. The ICC then put more pressure on the former Moderator and Pastor Kaloronga Ova of the Presbyterian Church to ordain Kalokai Masaai on the 26th January 2006, despite the call from the Malvatumauri Council of Chiefs, that such action is not according to the custom of Mele village, Efate and Vanuatu and did not constituted in the Presbyterian Church Constitution. The Claimant made reference to National Council of Chiefs (Malvatumauri) letter dated 12th November 2004 as evidence to the former village council; and quoted:

"that the formalization blong appointment blong Kalokai Malakaua Masaai through long ceremony blong anointing or laying on of hands long Sunday 14th November 2004 or any other day bambae iput on hold until Vaturisu Island Council of Chiefs blong Efate hemi meet urgently blong lukluk blong resolvem issue ia,"

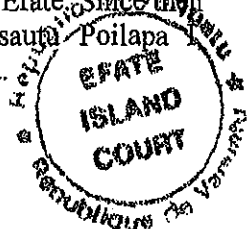
However under duress Pastor Kaloronga Ova performed an act which is contradicted to the customs of Mele village, Efate. Today Pastor Kaloronga Ova became the victim of his action, and as a result he resigned from his position to safeguard the image of his Church. The Claimant also quoted part of Pastor Ova's statement that provides;

"Constitution blong Presbyterian Church of Vanuatu (PCV) Article 4.2 s1.2 provides;

- *"Limitation long services blong Pastor emi responsible blong providem.*
- *Ino providem anywhere long constitution se Pastor ikat raet blong mekem odination or not.*
- *Hemi no kat mo Pastor inokat raet blong mekem odination bifo kastom emi completem work blong em. Semak wetem induction blong any Chief.*
- *Stret mo tru kastom performances emi mas tekem ples fastaem bifo prayer blong blessing hemi kam behaen blong complitim wok".*

The statement continue; *"Mi risivim so much pressure wetem forces blong force long taem blong induction long 26th January. Mo Court imas declarem se election caseb long Malakaua Masaai emi no stret mo ino folem stret kastom blong putumap wan Chief or wan Paramount Chief".*

The Claimant said that through out the history of the appointment and ordination of the Paramount Chiefs of Mele village, the first Paramount Chief Titongoatapu I was nominated by the Missionary of the Presbyterian Church. The purpose of the said action is to rectify the patrilineal system by the village council of Mele village, Efate. Since then the Paramount Chiefly Title remained with Paramount Chief Kalsautu Poilapa, Paramount Chief Poilapa II and Paramount Chief Poilapa III Ti Vatelapa.



After the sudden death of Chief Kalsautu Poilapa I, Reverend H.F. Peak describes the situation in the village of Mele, like a hive which had lost its queen. Today with the leadership in limbo, the entire authority is divided and has caused a lot of problems as to who should be responsible for the affairs of the village. There were decisions made by the so called leaders that were affecting the community, in regards to land, where families are fighting and suing each other.

When the former village council acts contrarily to the fundamental principles of customs, the village again is like the hive that had lost its queen. Finally it may be like when Reverend H.F. Peak referred to when he said; *"When ancient customs were recalled a Chief was chosen"*. Peter Poilapa II, son of Kalsautu Poilapa I.

Therefore, the Claimant concluded as saying, upon the above statements and recommendations made from various customary institutions, and the rectification of leadership from the Paramount Chief Titongoatapu I to Paramount Chief Kalsautu Poilapa I in 1949, was in accordance with the patrilineal system.

SUMISSIONS

The Claimant submitted that the Defendants refer to their submission made to the Supreme Court in Case No. 21 of 2006 indicates no dates to the reign of Chief Ngos and Chief Malasikoto. The family tree of Chieftainship produced by defence before the Court is false and does not include Chief Kalokai Masaai, Defendant.

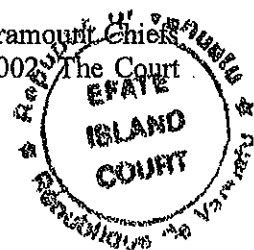
The descendants of Chief Ngos present in person and identified by Defendant's spokesman was not true as Mr Kalwowota Kalovaru is of Masaai tribe. The Claimant refer to a Case of *Adjeibi Kojo 11 v Bonsie (1957) 1 W.L.R. 1223 at pp.1226-1227*, where the Judicial Committee of the Privy Council in England laid down a useful test for the resolution of conflicts between

"traditional evidence, where there is a conflict of traditional, one side or the other must be mistaken, yet both may be honest in their belief".

In such a case, demeanor of witnesses is little guide to the truth. The best way is to test the traditional history by reference to the facts in recent years as established by evidence and by seeing which of two competing histories is more probable.

Claimant would like to emphasis once more that Chief Titongoatapu I was forced to remove, by the Council for the purpose to place the leadership role in its rightful place. According to the spokesperson documents presented to Court and quote; *"He is the son of Joe Kalorib of Lelepa Island who was taken to Imere after a tribal war between Imere and Lelepa"*.

The Claimant said this is a true fact which later manifested, when the Paramount Chief of Lelepa Island ordained Titongoatapu III -Matua on the 2nd March 2002. The Court



must take into consideration that the Council's decision in 1949 to replace Chief Titongoatapu I with Chief Kalsautu Poilapa I was on the following criteria;

- the Chief must be true indigenous person of Mele village,
- the Chief must follow the bloodline,
- the Chief must follow the patrilineal system and the Chief must have land.

The determination of Chief Kalontano Poilapa III Tivatelapa, as the Paramount Chief of Mele village is in accordance with the custom of Mele village, Efate. Claimant stated that witness No.3 for defence, Mr Kaltaavalulunawota Malasikoto said that he had witnessed the ordination of Paramount Chief Kalonatanano Poilapa III Tivatelapa on the 8th October 2005 and also confirmed the action of Paramount Chief Peter Poilapa II that it is in accordance with the custom.

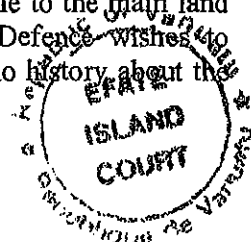
Witness further confirms that Chief Masaai Kalokai is not the Paramount Chief and the election that took place on 4th November 2004 was not the custom method of obtaining a Chief and the custom ceremony that eventuated on 26th February 2006. Witness 4 of the Defendant Mr Kalosin Matautava confirmed that the ordination of Paramount Chief Kalontano Poilapa III was in accordance with custom and further confirmed that the Paramount Chief of the village has the right to ordain the next Chief as well as the small Chiefs.

Therefore, Claimant sustained its argument that Paramount Chief Peter Poilapa II acted in accordance with the custom of Mele village via applying the following principle, patrilineal system, bloodline system, pig killing and lying of hand to bestowed a Chief. And these principles, as part of custom practices become part of the customary laws that apply in Mele village.

DEFENDANT CASE

Defendant Mr Kalokai Masaai, represented by Mr George Sokomanu wishes to address that Claimants claim is biased, misleading and contemptuous in form that the submission was signed on 20th February 2008 and the defendant were in receipt of a copy on 5th May 2008 and urges the Island Court Justices to consider the seriousness of this imposition. Spokesperson for Defendant stated that, on October 1846, Chief Ngos requested Reverend Mckenzie for a Missionary. A Rarotongan by the name of Tairi came to Mele village during that period of time. As throughout Melanesia, the existence of a Chief in a society signifies some form of governance such as the said Vanuatu's Constitution which enshrined Culture and Custom and Christianity principles. These principles possessed the main factors which a society develops in its economic, political and social structures.

When Mele Island was getting too small for habitations, the Chief and its people decided with the assistance of the Government Authorities to move the people to the main land where it exists today. The population then was 300 habitants. Defence wishes to emphasize that, the Claimant is no from Mele village but they have no history about the



existence of the very first Chiefs. If they do, then they lied and denied it in this Court. Their statement is not true especially in leadership roles. Chief Ngos requests for a Missionary to signify a leadership role to change the heathens to Christians, tribal wars to peaceful society, division to unity and a better Mele village.

The same goes for Chief Malasikoto whom tales of his leadership role saw strict adherence to Missionary influence involvement in education and economic developments such as coconut and cocoa plantations in Mele village. Defence said that, if the Claimant did some reach into the past through Government or Missionary bibliography, such dates as 1846, 1872 to 1920 would signify governance in existence in Mele village with key players such as Chief Ngos and Chief Malasikoto. Defence would like to say that in 1900 the turn in Christianity evolution saw changes only in transforming people; however, tradition and culture remain the main obstacles. The impact on cultural change to even change, custom of Mele people needs evidence to substantiate claim.

Paramount Chief Titongoatapu I has been reined from 1920 to 1946. The term Paramount was never used in the old days except Chief and Chief Titongoatapu I was never referred to as Paramount Chief. The Claimant claimed that Chief Titongoatapu I was forcibly removed from office. This is not true Chief Titongoatapu I was sick and through illness, the council asked that he steps down from his duty. Pastor Kalmatalua Sope was appointed by the Council to be interim Chief till such time when the Council decides to hand over to his assistant Chief Kalsautu Poilapa I. The only time Kalsautu can become Chief is when Chief Titongoatapu I actually dies. This is Mele tradition as form of respect, honor, dignity and integrity. Chief Titongoatapu's son, Edwin was not given the Title of Paramount Chief, because he was not entitled.

His son Meto Nganga Titongoatapu was ordained by his tribe to be Chief of the "Vataamu Tribe" and not Chief of Mele village. But that does not stop him from becoming Chief of Mele if the people of Mele so decides and it go to any other tribal Chiefs. The Claimant wishes to emphasis that Chief Titongoatapu I and Chief Kalsautu Poilapa I are not of the same tribe. It gives significant evidence that, Mele system of chieftainship does not follow bloodline. Chief Kalsautu Poilapa I was ordained by Pastor Sope. It was the decision of the Council. There was no traditional ordination of Chief Kalsautu Poilapa but traditional gifts have been offered during that time. Significant to note what Reverend Peak said about the "*Bee hive and the Queen Bee*" on the death of Chief Kalsautu Poilapa I.

The tradition and its mechanism is what Reverend Peak does not know because these are things beyond the realms of the Church and for a white man. Chief Peter Poilapa II was chosen by the people of Mele village and not the Council. His successor Chief Kalontano Poilapa III Tivatelapa was ordained by his father, Poilapa II.

It is hard to believe that Chief Peter Poilapa II refused to witness his nephew, Chief Meto Nganga Titongoatapu's ordination when asked to attend the ceremony. There is evidence that Chief Peter Poilapa II witnessed another family tribe's ordination of a nasara Chief Lakeleotawa. The traditional empowerment of a Chief remains with him until he dies of



duty. The ultimate authority and power of Chief Peter Poilapa II ended publicly when he retired due to illness by the Council of Mele village. The said power and authority rests on the hand of the Council and the people of Mele village in the nakamal.

It is because Chief Peter Poilapa II was sick, retired and being as the Chief from the Langa tribe, he has that authority to bestow and ordain his eldest son to replace him in his tribal nakamal and not the supreme nakamal of Mele village because only the Council and the village people have the last say. Chief Kalontano Poilapa III Tivatelapa, under true Mele village Chiefly custom, he is a Chief of a nasara within his tribe.

The Claimant has brought in Malvatumauri and Faturisu into the problem to help in solving the matter but defence would like to state that it recognizes both institutions but it is not necessary for them to attend. The defence respect and honors the dignity and integrity of both but their presence in the form of quotes shows the limitation of one true understanding and adherence to Mele village tradition.

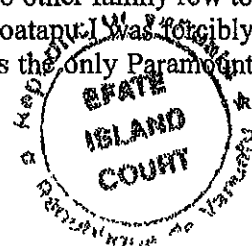
Mele village has its own Chiefly tradition and culture, and only Mele village people know how and when to apply its requirements with great respect. The defence wishes to state here that the issue in question is something that can be resolved amicably by Mele village people. To have brought the matter to the Supreme Court and now handed down to the Island Court, shows lack of understanding, trust and cooperation by the Claimant. They lack traditional knowledge and did not show any respect to Mele village people, its culture and tradition including Christian principles. The problem has taken more than four years (4), but the village has not experience any hitches. This is due to the way the principles of good governance function in Mele village by its people under the leadership roles of the Defendant supported by the majority of the community. Defence wish to submit that Claimants facts were unfounded rhetoric's and submit that the Court should consider them as baseless.

SUMISSIONS

Defence submits that prior to dark era there is already a Chiefly system in place where people live in good order within their tribes. Defence also proved that Chief Ngos and Chief Malasikoto reign during that period. They supported their argument via submitting exhibits 1-3 (family tree) of the Chiefs.

The Court witnesses in person the descendants of Chief Ngos, Chief Malasikoto and Chief Titongoatapu I presented by spokesperson in Court during the trial. The fact is that, the reason why one of the descendants of Malasikoto did not inherit the Paramount title is because the people of Mele village wish to prove to this Court that, the bloodline inheritance is not custom.

During cross examination Claimants witnesses acknowledge that Paramount Chiefly status came through Chief Ngos and Chief Malasikoto and there is no other family row to possess the said title. The only reason why Paramount Chief Titongoatapu I was forcibly to step down is because he is sick no fit to perform his duties. He is the only Paramount



Chief being ordained in accordance with traditional custom. Why Chief Titongoatapu II and Titongoatapu III did not possess the title is because they are not capable to clutch the said position. Defence has already stated early that, inheritance of Chiefly title did not follow the bloodline system.

Claimant stated that Chief Poilapa I have been ordained in accordance with the custom procedures but they did not proved to this Court. Only records that seen in this Court is that Chief Poilapa I has been ordained by Pastor Sope to take over the custom rights of the Paramount Chief Titongoatapu I. Defence wish to emphasis more that during that period of time, people of Mele village made their option and through the village Council the Chief has been elected. Chief Poilapa I, accordingly been elected to become the Chief merely because Chief Titongoatapu I is sick.

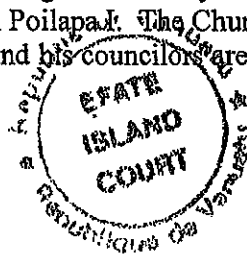
Defence would like to address that, the custom appointment criteria's mention by Claimant to inherit a Chiefly title is erroneous. Those criteria's were not part of the custom practices of Mele. Claimant establishes as evidence a copy of "Bye Law" to Court to establish their claim.

Defence made argument that the so called Bye Law did not circulate within Mele village. Defence would like to establish that, Chief Poilapa III received the blessing of his father Chief Poilapa II only to preside within this nasara but not to rule as Paramount Chief of Mele village.

Defence submits that people of Mele village did not attend the ceremony of ordination made by Chief Poilapa II to hand over title to his son Chief Poilapa II as per photos submitted by Claimant. Defence claim that the photos shows that Chief Poilapa II is sick not healthy to perform the activity and there is no ordination stone for the custom ceremony. Chief Poilapa II wore a Pentecost red mat during the custom ceremony that signifies no traditional custom dress.

Witness for Claimant Chief Poilapa III confirm in his evidence that, Langa is a Chiefly title within a tribe but not Paramount. Defence would like to establish that Claimant did not verify to this Court any references or history in relation to Paramount status before of Poilapa I. The said title, Tivatelapa, Ni Vatelapa defence believes that there were from the northern part of Eftate.

Claimant inform the Court during his case, submitted that Chief Titongoatapu I is not appointed in accordance with custom but instead Chief Kalsautu Poilapa I and to Chief Poilapa III. Defence says that his statement is absurd. Chief Titongoatapu I receives his customary rights from Chief Malasikoto and Chief Ngos. Those customary rights did not pass to Chief Poilapa I and so forth to Chief Poilapa III. Those rights remain within the family and tribe. Defence also submits that election systems of voting have already been established before 1980 during the appointment of Chief Kalsautu Poilapa I. The Church service in which was held on 26th January 2006 is for the Chief and his councilors are to get blessed before they begin their duties.



Defence submit also that, family tree that of which presented by Claimant was very clear that, the Paramount title was not pursue according to Paramount Chiefly system of Chief Ngos and Chief Malasikoto. Therefore, defence submit that Chief Kalokai Masaai was duly appointed according to the procedures establish before during the dark ages.

LAWS

"Existing Law"

Article 95 (3) provides that customary law shall continue to have effect as part of the law of the Republic of Vanuatu.

"Village and Island Courts"

Article 8 (5) of the Constitution of the Republic of Vanuatu provides that; Parliament shall provide for the establishment of Village or Island Courts with jurisdiction over customary and other matters and shall provide for the role of Chiefs in such Courts"

"Application of Customary Law"

Section 10 of the Island Courts Act, CAP 167, of 1983 provides that; subject to the provisions of this Act an Island Court shall administer the customary law prevailing within the territorial jurisdiction of the Court so far as the same in not in conflict with any written law and is not contrary to justice, morality and good order".

ISSUES BEFORE THE COURT

Having heard and considered the materials submitted by the Claimant, Paramount Chief Poilapa III Tivatelapa, Tasila Malastapu and Simon Poilapa, And having also heard and considered the materials submitted by the Defendant Mr Kalokai Masaai, This Court identifies two main issues or questions to be answered:

1. Is the democratic system of electing the Chief of Mele village, an acceptable and recognized customary practice?
2. Is the procedure followed by Mr Kalokai Masaai to acquire the Chiefly title of Mele village, in accordance with the customary practices and procedures?



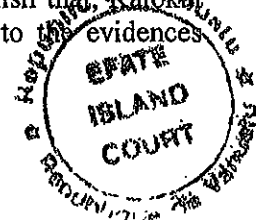
COURT FINDINGS

While the Court is mindful of what the constitution says in Article 95 (3) and Article 8 (5) and section 10 of the Island Courts Act CAP 167 of 1983, the Court is now equipped to apply the relevant custom rules into this matter.

Where a complaint is made and denials are given in response it is our view that more must be done than the Defendant. It is our view that rules of customary laws dictate that where allegations or complaints are made and denied both parties must be given the opportunity to prove or disprove the allegations and to produce or give evidence. For a body such as Imere Council of Chiefs (ICC) to be appointed as an interim commission to gaze onto the issue of determining, the Paramount Chief in our view was irrelevant. The Imere Council of Churches (ICC) has no authority to take part of any affairs that is within and known as the customary practices established by the ancestors. The Christian principles are very clear. It outlines the rules and procedures known and practicable within its jurisdiction only. There is uncertainty within the procedures followed by the said Imere Council of Churches (ICC) to allow the process of the ordination. The Court assumes that the people of Mele village did not distinguish what are the exact customary practices to pursue to an ordination.

We believe that the people of Mele village did not remember what are the procedures and the custom practices in relation to a custom ordination. The procedures adopted and used by the people of Mele village is at the period time where Chief Titongoatapu I and Chief Kalsautu Poilapa I were appointed in 1900 during the influence of Missionaries. In our view the democratic election has not been a method to be second-hand to elect a Chief. To acquire a Chiefly title, it must be pursued through the bloodline system and not through a democratic system of election. Defendant in his evidence submits that to inherit a Chiefly title it is on the hand of the people in the village to decide whether or not a person is qualified for the position. It is the people's intention in which merely based on the behavior of a person to succeed. We cannot accept that statement. A Chiefly title is inherited only through the bloodline system from generation to generation until today. It is obvious that, Defendant has no connection to the Chiefly lineage of the Paramount Chief Titongoatapu I. We believe that, according to custom, a Chiefly title or a Paramount title is a custom property that inherited by a tribe. That custom property cannot pass on to another person that relates to another tribe. If so, then we must say that, that custom property is misused.

The Court in its finding, note that, the Paramount title inherited by Chief Kalsautu Poilapa I is not taken according to custom. The origin of the said Paramount title was from the tribe where Chief Titongoatapu I belongs to. In the evidences made by Claimant, it is evident that Defendant is originally from the northern part of Efate and related to the family line of Kalpapres. This statement is not disputed by defence. The Court did hear that Kalokai Masaai is a Chief. We note from the evidence that, defence did not prove beyond reasonable doubt that, Kalokai Masaai is related to Paramount Chief Titongoatapu I. The Court asks this question, how does defence establish that, Kalokai Masaai may be able to bestow the Paramount Chiefly title? According to the evidences



adduced before this Court only, the relatives of Chief Titongoatapu I may be allowed to inherit the said title. The Court also noted from the Claimants witness, evidences produce by Chief Kalontano Poilapa III confirming that, Chieftainship title of Langa family is only for the tribe, not Paramount. Claimant did not dispute this evidences. While the Court has the same opinion, that Chief Kalontano Poilapa III was ordained according to custom practices however it does not mean that he is qualified to be the Paramount Chief of Mele village.

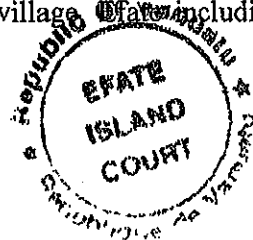
The Paramount title must be determined by the small Chiefs represented by each tribe in Mele village. We note from the history of Chiefly inheritance between Chief Titongoatapu I and Chief Kalsautu Poilapa I, that according to evidences adduced before this Court, the original birth of the Paramount title was from the tribe were Chief Titongoatapu I is related.

How did Chief Kalsautu Poilapa I, accessed to the said title, merely, when Chief Titongoatapu I was sick. We note that, Chief Titongoatapu I is originally from Lelepa/Magalilu region, this statement was not challenged by defence. The Chiefly status of Langa belongs to the small nakamal in Mele village. And this statement was reconfirmed by witness 5 of the Claimant. Therefore we say that Chief Kalontano Poilapa III is from the Langa tribe.

DECLARATION

Based upon those findings, this Court declares that:

1. The proper customary practice to acquire a Chiefly status is by inheritance through the bloodline system from generation to another.
2. The method of electing a Chief by way of secret ballot is not the customary practice of Mele village and Efate.
3. The election procedures followed and made on the 4th November 2006 in relation to the ordination of Chief Kalokai Masaai as the Paramount Chief of Mele village, is null and void and have no effect in law and custom.
4. The ordination process followed and made on 8th October 2005 in relation to the ordination of Chief Kalontano Poilapa III is in accordance with the customary practices of Mele village and Efate, but only considered as a lesser Chief in his nakamal.
5. That Chief Kalontano Poilapa III is the Chief in Langa's tribe and has no authority to rule as the Paramount Chief of Mele village, Efate to the effect.
6. The ordination of the Paramount Chiefly Title rest on the hands of the small Chiefs of each nakamal represented today in Mele village, Efate including Chief Kalontano Poilapa III.



ORDERS

Accordingly this Court hereby makes the following Orders:

1. That only the lesser Chiefs represented by each nakamal that exist in Mele village today has the ultimate authority and power according to the principles of custom rules to appoint and ordain the Paramount Chief of Mele village.
2. That the village council members existed prior to the disputes are directed to call a meeting and to set procedures according to custom for the appointment and ordination of the Paramount Chief of Mele village.
3. That the village council members existed prior to the dispute are hereby directed to make necessary arrangements for an appointment and ordination of the Paramount Chief within four (4) months as from the date of this Judgment.
4. That both parties are hereby directed to keep peace, harmony and good order in the community at all times.
5. Cost shall lie where they fall.
6. The parties are given thirty (30) days to appeal.

Dated at Port Vila this, 16th day of May 2008.

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Justice Eddie Karis

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Justice Raymond Marongoe

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Justice Makal Kalsong

