

(Suv. Admin Shemi)

**IN THE MALEKULA ISLAND COURT**  
**OF THE REPUBLIC OF VANUATU**  
**HELD AT ORAP, MALEKULA**  
(Land Jurisdiction)

Land Case # 10 of 1985

**BETWEEN:** FAMILY KAI MELTENOVEN  
Original claimant

**AND:** FAMILY MELTSAEN &  
LALES LIMLA  
Counter claimant 1

SARAVANU ANDRE  
Counter claimant 2

FAMILY MALOROR  
Counter claimant 3

MELTEVIELSER ULRICK  
Counter claimant 4

REDISON MELTEK  
Counter claimant 5

KLEMENT RORY  
Counter claimant 6

TEPATUN EDOUARD  
Counter claimant 7

FAMILY MALESSI  
Counter claimant 8

FAMILY BALBAL  
Counter claimant 9

FAMILY MALTAUS  
Counter claimant 10



Coram : Magistrate Edwin Macreveth  
Justice Philip Daley  
Justice Maxwell Arambat  
Justice Joely Simeon

Clerk: Wendy Raptigh

Date of hearing: 19<sup>th</sup> - 23<sup>rd</sup> of May, 2008  
8<sup>th</sup> - 17<sup>th</sup> of October, 2008

### JUDGMENT

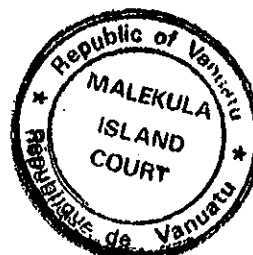
The land in dispute is situated at the northern part of the island of Malekula. It lies inland between the community areas of Vao and Atchin. This customary land is registered before this court as *Nesingwar*. The advertisement caused by the principal disputant invited 10 parties to file a counter claim. The parties in contention over the land are claiming land ownership and dispute over boundary. The issue for determination concerns ownership and boundary dispute.

Its boundary is generally described to commence at a rock known as Rurule and follows a creek up to Botnarum heading straight to a natapoa tree. It then runs another creek coming from the river of Oro crossing up and bounded by a nangai and breadfruit tree of Bagmemes into certain old coconut palms to Lambare. It follows a creek to another natapoa tree situated at Eime's cattle farm. From there it crosses the area marked by two naus tree and a coconut palm down to Louis Siror and extending on to another creek which separates Nesinwar and Navav to Tavo tavao, down to Navatpolpol then, up the hill to Tananeime. It links up English Pinape running parallel to a nangai tree and down to the river of Palanua ending at the same stone known as Rurule on the south.

Before embarking on the subject matter and to guarantee better understanding of the reasoning of this judgment; a brief discussion of the relevant laws and the local 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. In spite of such missing guideline, 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. It shares 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.

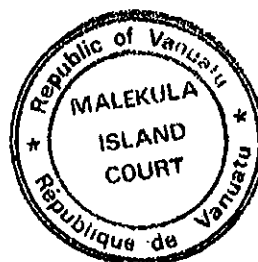
Turning to the customary practices, generally the Island of Malekula is predominantly a patrilineal society. There are two remarkable tribes namely *Big nambas* and *Smol nambas* retaining a complex custom based on ancient culture. The inhabitants of the area of dispute belong to the *smol nambas* society.

Ownership of customary land is communal or collectively own 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.

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 kinships. This is a male predominated system which is twinned with the land tenure system handed down from generation to generation.

It is the common trend that the first person to explore, live and control a land boundary would eventually become the original chief or ancestor 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 in Bislama 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. This family unit would be regarded as the *big faea* having a single bloodline. 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 always be designated as the custom owners.



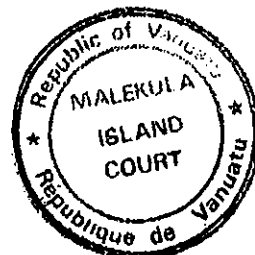
The paramount chief has control and authority over the entire land boundary. It is a political monarchy type of organization whereby the supreme chief normally exercises authority over his subordinate chiefs residing within his land territory. Any incoming tribes accepted into the area would remain under the control and authority of the principal chief and his subordinates. After exchange of custom processes, such a clan may be allocated a parcel of land specifically for subsistence use only. Any member of such tribe would be allowed to take part in namangi ceremonies and other custom processes in the land. But, such event cannot entitle such individual chief to claim ownership over the land.

Equally, the paramount chief would appoint a member from his tribe to be his subordinate or referred to is Bislama as *smol faea* having a seconded authority. Such an assistant chief would be allocated a specific boundary of land. Such land tenure would be vested into the *smol faeas* right of ownership. Meaning the paramount chief cannot claim it given exchange of customary processes. Incoming tribes would be placed under the authority of the *smol faea* chief. Subordinate chiefs are accountable to the head chief in respect of every social affairs.

Chiefs are in the past 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*. *Namangi (magi)* a grade taking system is followed. A man earns his chiefly title or name by way of performing a *namangi* or pig killing ceremony. The common chiefly name is *Mal, Mel* or *Mulon* a ranking word that would procedurally be received by a man at an ordination during a *magi* feast. There are different stages of status in hierarchy for a chief to acquire. A man from the *smol faea* or others than the paramount chief's lineage may earn the position of a high chief in terms of rank and not necessarily being the original ancestor or *big faea* by bloodline.

It is a tabu for a chief or a member of the *smol faea* to share food with the high chief. A customary payment has to be performed to the high chief for his acceptance in sharing his food. It is termed in bislama as '*pem faea blong kakae long faea blong big jif*'.

Pig killing ceremonies would normally occur at a *nasara*. Chiefs from other nearby land territory would normally contribute pigs towards the performing for a *magi* ceremony. It is traditional that such performing chief is normally expected to give something in return as a token of appreciation. For instance, a chief may give land away to a supporting chief as a matter of reciprocity. 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.



The only exceptional condition 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.

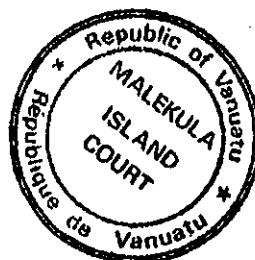
Conversely and by custom, the matrilineal descendants cannot claim land ownership if, there are surviving male descendants. Any claim following the matrilineal lineage would be culturally limited to a claim of right to utilize the land. Conditions are normally attached to that right of use as well. A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

The traditional position with regard to adoption is that an adopted male child would have the right to acquire land ownership on condition that his adoption is arranged within the family bloodline itself. Also, a claim of ownership of an adopted child would prevail, in the circumstance where there are no other surviving bloodline of the land owning unit. An adopted claimant having no connection to the original ancestor or bloodline cannot inherit land of the father upon death but would be granted limited right to use the land. In principle, the land formerly belongs to the original owners 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. Boundaries dividing each chief's kingdom is normally surveyed by the concerned high chiefs and their people. Territorial borders are usually demarcated far from a nasara for security purposes due to tribal wars over territorial conquest and other social problems.

Beside the position 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 its provisions, 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 in general we now present the relevant information submitted before the tribunal in the usual order of presentation.

### Original Claimant

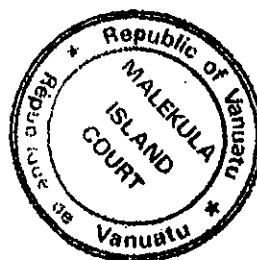
Meltenoven Zacharie assisted by Pierre Kai Meltenoven in his presentation, led evidence that his family believes to have descended from Nahul and Vengelo indigenous natives of the land of Nesingwar. These two ancestors originated from the nasara of Togov Boravmaras. They have long ago migrated to Vao Island due to tribal war in the area. They sought refuge and settled at the land of Lebou under the guardianship of Balihor.

After some years went by there was another tribal war between the land of Lebou and Tolamb. This confrontation forced them to leave with their extended families and resettled across to the Island of Vao. It is there that they were invited and allowed to create the nasara of Sigon.

He claims that there are 7 nasaras altogether within Nesingwar, namely Lebsor, Jarmatsu, Tonas, Larang, Tongov (Boravmaras) Vesarsar na Villahatpale. He does not know the name of the last nasara. He believes that there are no other existing bloodlines of Nahul and Vengelo classed as smol faeas and founders of Tongov. Lebsor and Jarmatsu are the big faea belonging to the high chief of land Meltevaratine. Vengelo had died without marriage and was buried at Vao Island. While, Nahul espoused Leatkamel and begat children whom he is a descendant as illustrated by his family chart.

In support of his case, he referred the court to certain documented meetings claiming them to have always regarded his tribe as the rightful ancestor of the area in dispute. In 1975, a village meeting declared his family as custom owner of Nesingwar. Later in 1981, the Area Court again pronounced his family as the land owner. On the 2<sup>nd</sup> day of November, 1979 three elderly persons have authored the genesis of their origin and genealogy. He was further involved in a Supreme Court case dated 11<sup>th</sup> of December, 1979 over allegations of damage to properties. It follows thereafter that on the 14<sup>th</sup> of January, 1980 it was handed down by chiefs that the land of Nesingwar belonged to Zacharie Meltenoven.

He agrees that a relative Meltenoven Kai Casimir residing in New Caledonia did purchased a plot of land from Melterovo Edouard in the amount of VT 50,000. He disputed to having purchased any land from Celine Malesi.



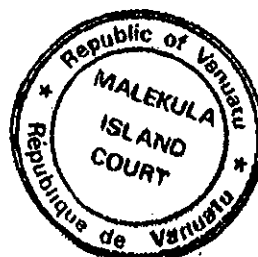
He went on to hold that his tribe has in the past practiced cannibalism known as *Totomalas*. Any human killed for consumption by Meltevaratine paramount chief of Nesingwar and Jerenmal is conventionally shared to Nahul and Vengelo and others as natives of same land. His duo ancestors being categorized as smol faeas have purchased their fire right from the high chief of Lebou with a live child as payment. This rite is a compulsory obligation process with which tribes of lower rank must carry out to enable them the right to eat or share in the same fire of the high chief. The child was killed and consumed.

He related another story of a couple Jinmal and Leboulule. The husband died and was buried at Sigon. Her widowed wife was later impregnated by Meltevielser a relative of CC4. Following complaints from residents over rumours of sexual activities, she was then asked to return to Jarmatsu nasara at Nesingwar to re marry chief Jerenmal. Celine was born at Nesingwar. Jerenmal was later shot by a man from Vao by the name of Liren Etienne. His tribe had contributed food items towards Jerenma's funeral. It was after this incident that Leboulule and Celine sought refuge at the island of Atchin at the nasara of Amelmarur. Celine later married Gabriel Malessi of Rano.

Two witnesses were invited to testify on his behalf. Pierre Kai Meltenoven provided that there are no other surviving descendants of the land of Nesingwar except Houlili brother Jerenmal of the nasara of Larang who later moved to Atchin Island with Celine. He stressed that in custom Celine has no right to sell land to other claimants and his relative. He alleges that there was an unfair agreement made without proper consultation amongst all natives of Nesingwar. In that agreement it was held that Redison Meltek have custody of the land of Backloas while, Celine takes charge of the land of Nesingwar. It was through this arrangement that Celine was always regarded as the owner of the land.

He submitted in his concluding words that by custom women do not have the authority to own or sell land without proper consultation with her own chiefs and descendants. Women are traditionally referred to in his local vernacular as "*Nebal Natawo*". Meaning females are usually taken or given away to other tribe.

On cross examination, he confirmed that Meltevaratine is the paramount chief of Nesingwar having two nasaras, Lebsor and Jarmatsu. Jerenmal had founded the nasara of Tonas being a smol faea and is a bloodline of Meltevaratine. Houlili's nasara is Larang. He went on to clarify that his intention to advertise the whole area is to attract other claimants for purposes of resolving continuous issues over ownership on the land. This party maintained that he is a descendant of Nahul and Vengelo founders of Tongov nasara a smol faea. In fact, he is only claiming the areas of land surrounding the nasara of Tongov.



He objected to the statements made by parties such as CC2,CC3,CC4 and CC10 asserting that Tonas is a separate land or big faea. He does not agree with the areas of boundaries disputed by CC7 and CC5. He believes that Celine is Jerenmal's foster daughter in reality, she is Meltevielser's natural daughter. However, he disagrees with CC4's account that Jerenmal had first espoused Leboulule rather than this man called Sin.

Witness Chief Edwin Rongrongmal appearing as paramount chief of Lebou land generally stated that his forefathers have received Nahul and Vengelo to the nasara of Noroure. It is known amongst dwellers of Sigon and Noroure at Vao that Nahul and Vengelo have escaped war at the land of Nesingwar. He refused to answer questions touching the claim of the original claimant.

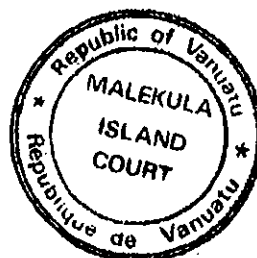
The court visited the nasara of Tongov and its nakamal also heavily disputed by CC7. He does not know or have a boundary mark description to the said nasara.

#### Counter claimant 1

Chief Benbi Magoror spoke on behalf of family Martin Lales and Meltesaen Pierrot Nale. In his genesis provided that his family line is identified with a crawling liane known in his dialect as *womel*. This plant is a totem to his tribe originally growing at the land of Navav. It later bore two fruits transforming into a male and a female. The duo later became a couple and had 10 children of which 5 are females and 5 sons named as Matanal, Binbin, Tabun, Matan and Bel.

Binbin and Tabun were at their mature age directed to go up the hill of Limla and settle there. Some later years a namangi was organized at which Tabun became the big faea or high chief while, Binbin became his second faea. Tabun later moved with his family to the other side of the hill and settled at Tanmleliv. Matanal became the paramount chief of Navav. Miten the grandson of Binbin became the second faea or assistant chief of Navav. It is there that he founded the station of Nesingwar with the nakamal of Lockrevrev. Miten performed his first pig killing ceremony at Nesingwar with the founding of the nasara of Jarmatsu.

Jerenmal and Meltesaen performed at a namangi rite held at the nasara of Lembsor. Jerenmal is a descendant of Miten and the last surviving male native of Nesingwar. Meltesaen is the ending survivor of Luwus. He had adopted Marcel son of Jerenmal while Jerenmal adopted his son, Maltortor. Maltortor died without marriage. As a result, Pierrot Nale was adopted by Meltesaen. Jerenmal was later murdered by Etienne of Vao survived by his wife Leboulule and 2 children namely Marcel and Lenimal. Lenimal also known as Celine espoused Gabriel Malessi of Rano while, Marcel died without marriage.





He contended that the area in question forms part of a whole boundary of land customarily known as Swety. Meaning belonging to one bunch of land which has later being dismantled. The area has been ruled by one single tribe spread throughout the landscape with defined boundaries. There was no other human occupying the land prior to their conquering and occupation. His claim covers an extensive area of land exceeding the publicized land stretching to the sea coast of Atchin.

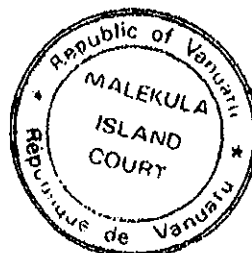
In his concluding statement, he emphasizes that there are no other surviving bloodline of the land of Nesingwar except the surviving descendants of Miten of Nesingwar and Luwus a tribe of Limla. Celine's father Jerenmal is a descendant of Miten.

To reinforce his claim he listed the following events as proof to his case.

1. That Meltesaen, Lales and Chire of Tanmleliv had fetched 100 yam roots at Solpirang, Nesingwar towards Jerenmal's funeral.
2. That Meltesaen has placed kava roots cast with a spell calling for war with the people of Vao to show revenge for the deceased. Vasen of Peteros shot a man from Tonmer as pay back. The crisis ended with peace by the slaughtering of 25 pigs. Vasen upon refusing a pig valued as a *merer* for his part in the fight was given land today instead occupied by Malsale.
3. Various people like Edwin Guirock and Terter had asked permission from Meltesaen to log their Tamtam from the land of Nesingwar.

Redison Chire made confirmation that his father Chire was involved in the collection of 100 yams towards Jerenmal's funeral service. His father has also witnessed a knife tucked into a tamtam's forehead at Vao during high tension over Jerenmal's death. He was traveling by canoe with one Jeflily and Latt from Malo Island to Vao. They could not land ashore due to possible reprisal from residents of Toghvanu. As a result, they have to sail at night as far as Espigles bay to go ashore.

The second witness Marson Nivat said that he learned from his mother that Meltesaen had adopted Pierrot son of Nale of Atchin. Meltesaen had performed certain customary processes to mark Pierrot's 5<sup>th</sup> and 10<sup>th</sup> day of birth. During his circumcision, two pigs were provided. The first described as a *narur* was given to the child's parents and a *pekes* handed over to the uncles.



Joseph Basilio witnessed the peace ceremony held at Tesbis village, Navav between the community of Toghvanu represented by chief Raymond Maltaus, Endy and others on one side and Malmare with others of Petersul on the other part. Melteripot was the peace maker in that ceremony representing Limla and Nesingwar. Martin Lales was also present at that event. He has also purchased a piece of land from Martin Lales besides other tenants such as Raymond Maltaus.

At the course of examination, it became clearer that both Martin Lales and Pierrot's claim is based on this custom practice not recognizing woman to own land. They also maintained that since Jerenmal has no surviving male heir they would inherit the land given their close relation and origin.

Both disputants failed to show up at the visit due to their own misunderstanding.

#### Counter claimant 2

Andre Saravanu led evidence that Molili who later earned a chiefly name Maltevanu at Atchin is a native of the nasara of Tonas. He had moved from there to a new settlement naming it as Matonas where he planted two breed of breadfruit trees known as *pecpec* and *lepet*. He then emigrated to Lavalsal. A man from Emelep invited him to the island where he was allotted a piece of land and settled at Amelmarur, home of his burial site. It is noted that his claimed territory covers the entire advertised land extending to other areas thereon.

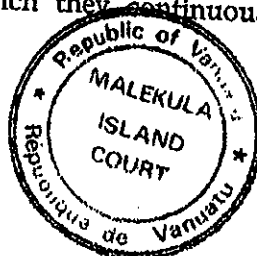
His only witness, Densly Saravanu generally informed the court that Maltevanu is a bloodline of Tonas nasara.

This claimant when interrogated could not answer questions raised in regard to the differences in family tree and boundary since others are specifically claiming the same nasara. He has very limited knowledge over his claim and has no description of his disputed land.

#### Counter claimant 3

Harold Maloror is also claiming the land surrounding the nasara of Tonas. He led evidence that he is originated from family Ulnaim from the nasara of Botor at Leouru. They have long ago moved ashore to the island of Atchin and settled at the nasara of Amelmarur with Maltevanu and his descendants.

His early relations had at later years attempted to return to their original place Leouru due to internal differences but, the situation was resolved by chief Tetejer of Amelmarur. This chief gave them land which they continuously settled



thereon to date. It was then that a man from Tonas by the name of Maloror arrived at Amelmarur. Maloror espoused Lenases and had two children a son Salekaun and a daughter Georgette. Salekaun died without marriage while Georgette was married to chief Raymond Maltaus of Vao. Maloror then decided to adopt Melteror son of Ulnaim with a payment of three pigs valued as, a *niewar, naru*, and a *pekes* in recognition of the adoption. He believes that having satisfied the custom processes he has every right to inherit the land of Tonas.

He called two witnesses to give evidence in justification of his claim. George Brown generally told the court that his father Melteror has been adopted by Maloror in conformity with the cultural practice. While, Denisson Tane related that his father once told him that Maloror came from Tonas.

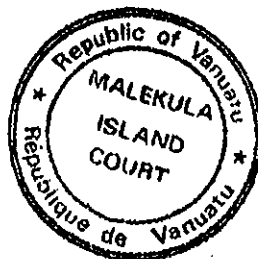
His claimed land as sketched lies within the advertised land. He has not provided a description to it. In the course of the field trip, he misdirected the court to the nasara of Larang alleging it to be second Tonas.

#### Counter claimant 4

Ulrick Meltevielser in his statement provided that Nambagh was the last person to leave the nasara of Tonas as a result of tribal war. While, other occupants of other nasaras of Nesingwar such a Meltevaratine, Vengelo, Nahul, Patunmal, Jerenmal remained on the land.

He claims that Tonas nasara is classed as a big faea. In other words a nasara once ruled by a high chief and his clan. He sought refuge at Lebou under the hospitality of Taitamas Malantungun a big faea as well. He settled at the nasara of Norohure, Vao Island. Some years later a fight occurred between Meltegru a native of Nesingwar and a man from Natamb. In avoidance of further hostility in the future, families from Nesingwar were asked to re settle leading to the creation of the nasara of Sigon. There are two tribes namely Tartar being a big faea which he belongs and Nebuel a smol faea of family Meltenoven.

Nambagh espoused Leklektua of Melbarav. This couple had a son, Relrel who later remarried Tutusinemal's widowed wife. This widow was already conceived with a child of the deceased husband prior to her marriage with Relrel. Following custom, Relrel made payments for transfer of paternity of the child to his own tribe. A new born son was born and named Belebel. Belebel espoused Leatpuni and begat Meltevielser. This family line is traced down to his present generation.



He further related that Jerenmal had espoused Leboulule. Upon his death a man by the name of Sin wedded her widowed wife. It was around this period that Meltevielser has been unlawfully having sexual affairs with her. This relationship resulted in pregnancy leading to the birth of Celine. Celine's natural father is Meltevielser. Celine married Gabriel Malessi of Rano. Sin is a native of Betelep.

In his closing remarks re iterated that it is his belief that he has right over the land surrounding the nasara of Tonas. He stresses that Celine should remain under his authority for having being fathered by Meltevielser. He has no reason why other claimants are also claiming Tonas besides him.

Witness, Jean Malatungun chief of Noroure in his sworn evidence stated that it is correct that his early forefathers have received Nambagh said to have come from Tonas. His tribe has allocated them a piece of land for use to the present. On examination, he re confirmed the same story concerning Celine's questioned fatherhood. He maintains that Tonas is a big faea that is why Nambagh was allowed to share food prepared from his tabu fire as a big faea of Lebou land.

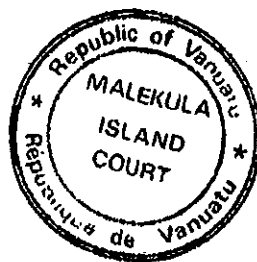
The court visited the same nasara of Tonas including graves of his claimed ancestor.

#### Counter claimant 5

Redison Meltèk is disputing certain areas of land claiming them as part of his customary land known as Backloas. It is his argument that Backloas is a separate land boundary from Nasingwar having its own paramount chief.

In his story he held that Rocroc is the common ancestor of Backloas. Toharis a descendant from the third generation had escaped tribal war with his wife and two daughters, Levani and Lemetan to Vao. He had good relationship with his brother in law Meltehilgahe Molunturala from Vao. His wife was already conceived with a child. He had promised Meltehilgahe that if the unborn child be a son then, he would inherit his land of Backloas. Toharis left for Backloas prior to the birth of his son, Taon.

At the course of interrogation, he clarified that Backloas land has three places by the name of Jere being the last faea, Lelevanu second faea and Melnaru as first faea. Offsprings of the bloodline and the land have always consider themselves as natives of Backloas given the promise made by their ancestor Toharis.



Richard Maltaus provided that his father chief Raymond Maltaus was part of a group of chiefs who visited the boundary limits of the land of Backloas after a meeting in 1988. Chief Mark Belbong, Willie Malnaim and Raymond Etienne whom had presided over the case were also present at time including Zacharie Meltenoven. Upon questioning, he could not point out as to where exactly the land boundary was set.

This defendant at the visit had identified his claimed territorial land limit some 200 metres away from the nasara Larang, at Lelevanu. This is an area farmed by CC6 and other purchasers from Celine.

#### Counter claimant 6

Eugene Rory representing Family Rory is claiming a right of ownership of a parcel of land situated at Lelevanu. His family purchased the land with money and a pig as customary payment to Henry Labamou and Celine Malessi being custom owner of the land. A copy of the original deed of conveyance dated 20<sup>th</sup> of October, 1970 is provided to illustrate his claim.

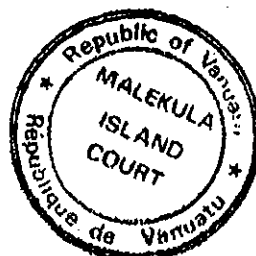
He says that Celine's parents are Jerenmal and Leboulule. Jerenmal is a chief having authority over the nasara of Tonas and other surrounding areas. While, Meltevaratine governed other nasaras of Nesingwar such as Lebsor and Jarmatsu. For this originality, Celine has always been regarded as the custom owner of the land of Nesingwar. It is for such long time recognition that his family and several other claimants to the case have also purchased plots of land from CC8.

Upon interrogation, he maintained that Meltevaratine is the paramount chief of Nesingwar. He does not agree with the story produced by the original claimant and CC4 concerning Celine's paternity. He re iterated that Celine is the natural daughter of Jerenmal. His parents would have informed him of such story.

Witness, Jean Calibert Saraul made confirmation that Gaston Desire Rory did purchased the claimed area from Henry Lambamou and Celine Malessi. This family has been then cultivating the area to the present. Pierre Rory gave a similar statement.

#### Counter claimant 7

Family Tebatun Edouard is represented by Wilfred Maltok. He is disputing a specific boundary of the land claiming it as part of the land of Tondor a pending land case before this court registered as Land Case no. 4 of 1985. The subject area



covers the nasara of Lesar Tongov situated at a plantation owned by Touenvanu Wilfred.

Edouard Tebatun Raken is a native of the land of Tondor covering an area which comprises of 8 nasaras altogether. One of these nasaras is Tongov belonging to one Rurulei uncle of Tebatun Edouard. Rurulei had performed at a magi ceremony and placed a stone at the nasara. He died and was buried in the vicinity of the nasara visited by the court some 200 - 300 metres away.

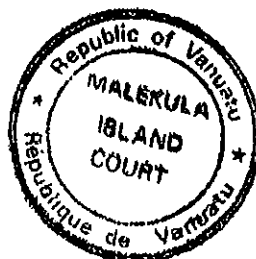
He added in support that the land mark has been decided in 1971. The area was again surveyed by the British District Agent Mr Wilkins in 1976. Claimants such as Celine, Nicolas, Bani and chiefs like chief Tobi witnessing the land mark were present. It was confirmed and agreed that the land limit would commence at a stone at the river, linking Larar bonbon at Oro creek. This land mark has not been shifted since pre independence to date by any informal meeting or a court of law.

His witness Cammille Kota re confirmed the said land mark. He was present during the meeting in 1971 over the disputed land mark of Tondor and Nesingwar. He is an eye witness to the actual marking of the land dividing the land of Tondor from Nesingwar in 1976.

#### Counter claimant 8

Philibert Malessi appeared on behalf of family Celine Malessi. This family is claiming the whole advertised land of Nesingwar. He told the court that there once lived two brothers Meltevaratine and Malrel. Meltevaratine was the paramount chief of Nesingwar while his brother Malrel was the head chief of the smol faea. The former was in charge of the following nasaras such as Jarmatsu, Bonsoak and Labare while the later took care of Lelevanu, Tonas and Matnaab. There are identical trees such as coconut palms and breadfruit trees once planted by Malrel's son Jerenmal situated at Isaac Rory's farm.

Malrel espoused Lelekatonual and begat two children namely, Jerenmal and Houlili. Houlili died at Atchin Island at the nasara of Amelmarur without marriage. Jerenmal later married Leatbacor also known as Leboulule and had a daughter Lenimal whose modern name is Celine and a son Marcel. Marcel died in his youth survived by her only sister Celine who has surviving generations today. Her late mother Celine is married to Gabriel Malessi of Rano. Celine's bride price was paid to Houlili.



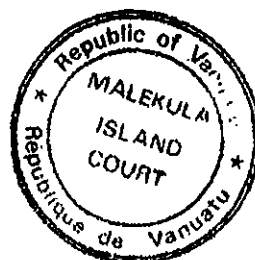
High chief Meltevaratine on the other hand wedded Leateteru and had a son Lele who also died at his early age. The situation allowed Meltevaratine to adopt Henry Labamou as his son. Such adoption is sealed by a payment of a tusked pig to the parents. Henry Labamou participated at the last pig killing event of his adopted father.

He related the same story as told by other parties concerning Jerenmal's death. Jerenmal was murdered by a group of men from Vao whilst feeding his pigs. Celine was 17 years of age at the death of his father. Sometimes after the funeral ceremony Celine and her mother with Houlili left for the Island of Atchin. They were received by family Tetejer at the nasara of Amelmarur. A peace and reconciliation ceremony was performed between Celine and the concerned people of Vao over his father's death in 1961 to mend past sentiments.

Some years later Houlili sent words for Henry Labamou to meet him at Atchin. Upon their meeting Houlili made a testamentary will giving Henry Labamou the right to own the land of Nesingwar. He further pointed out that her mother Celine prior to her death has also pronounced words of ownership to the sons of Henry Labamou such as Barthelemy, Marcel and Ernest documented by a letter dated 11<sup>th</sup> of November, 1993 marked as annexure 10.

To further reinforce his claim he submitted that there are past decisions presided over by chiefs recognizing his family history to have come from the land of Nesingwar. He listed them in this order.

1. Celine has always been highly recognized by the local inhabitants of the area as the only surviving bloodline of Nesingwar. She has been deeply involved in four separate meetings dating back from 1954 to 1968.
2. A fifth consecutive meeting dated 24<sup>th</sup> of May, 1964 at Sowol had declared Celine as the true owner of the land.
3. Another decision dated at Vao on the 22<sup>nd</sup> of July, 1993 also pronounced Henry Labamou as the adopted son of Chief Meltevaratine. Houlili has given the right of ownership of Nesingwar to Henry Labamou.
4. A followed meeting dated at Vao on the 24<sup>th</sup> of October, 1994 made resolutions following disputes over boundaries by local dwellers who have been allocated plots of land thereon to remain calm and listen Celine the custom owner.



5. On the 9<sup>th</sup> of October, 1978 it saw a deed of conveyance signed between Celine being the vendor and custom owner and Zacharie and family the original claimant as the purchaser on the other part. A terrain of land was purchased from Celine worth of \$500.00.
6. Another sale of 52 hectares of land to Gaston and family Rory of Vao. Such instrument of sale is dated 30<sup>th</sup> of December, 1963 marked as annexure 7.
7. There are 10 other attached deed of conveyance signed between Celine Malessi owner of Nesingwar and other purchasers all dated 27<sup>th</sup> of October, 1970.

In his conclusion, he reminded the court that there is enormous material for proof that Celine is the truthful owner of the land of Nesingwar.

Urban Muluan testified that Celine Malessi is the last surviving and true bloodline of the land. She is the daughter of chief Jerenmal. Dwellers from the communities of Vao and Atchin have since the 1950's purchased land from her by reason that everybody knew her mother to be the only customary owner and only surviving line of the common ancestor of Nesingwar. Samuel Neurov confirmed that Rory Desire purchased a piece of land from Celine Malessi.

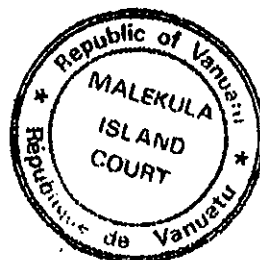
Chief Malvaru Jean testified that it is correct that Meltevaratine had adopted Henry Labamou as his son. Henry Labamou took part at the last namangi ritual ceremony. Rory Moise generally stated that he knows that Celine and her family do have memories and properties belonging to their fore parents at the land.

This party incessantly maintained that he is the only surviving bloodline of Jerenmal from the mother's line. The court witnessed some of the nasaras and properties such as bread fruit trees of Houllili at Larang during the trip.

#### Counter claimant 9

This claimant is disputing a precise area of land known as Mabu situated within the land of Nesingwar. He started off by telling us that there lived four brothers on the area of Navav. These men traded between each others in terms of pig killing ceremonies and other social relationships.

It follows that Tetersingo of Botnanghal participated at a pig killing event at Nesingwar staged by chief Meltevaratine. Tetersingo was ordained with a chiefly name known as Meltesingsing. A piece of land was then allocated to





Meltesingsing covering the area of Labare as reward in return for his great contribution towards Meltevaratine's magi festival.

Following tribal war in the area Meltevaratine, Meltesingsing, Melterum and Leghoal sought refuge at Saralivo and Toghvanu at the quarter of Holovon - La tom etine, Vao Island. Melterum is buried at La Tamb at Toghvanu while Leghoal was buried at Saralivo. Meltesingsing lived the rest of his at the nasara of Betehei. He adopted Atpatun a given name which is defined as "to sit at the father's stone of throne at Botnanghal".

Besides the above, he is also disputing certain areas of land claiming them as part of his customary land of Tournarong. There is no related information to substantiate this claim.

Atpatun participated in the last magi ceremony staged at Nelsingwar where he earned a chiefly name of *Wututlei*. Following this customary right to the land Xavier Atpatun has recently sold certain piece of land to various locals of the area such as Melterongrong Charley.

His only witness Julien Melterongrong testified that it is correct that his father Charley Melterongrong purchased land from Xavier Atpatun.

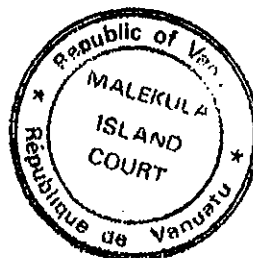
Disputants such as CC8 and CC7 have expressly commented that no person should question the powers of high chief Meltevaratine in giving away land to CC9. Such land is to be considered as a custom gift which cannot be return.

This party was not present during the visit. The court could only be notified of their presence while leaving the site. No representative had been present during visitation to inform us of their waiting.

#### Counter claimant 10

Richard Maltaus acting on behalf of family Maltaus is disputing the ownership of Tonas as well.

This defendant claims that the original ancestor of Tonas is Multonas. This bigman became the principle chief of Tonas as big faea. He had a son Namir who later migrated to Atchin Island at the nasara of Amelmarur. He settled there through friendship with one Tetejer of Amelmarur. There he was allotted a plot of land called Waru where he lived and wedded a lady from Emeleb. He was allocated another piece of land and founded a nasara named Tawolrior with a sea passage named Tansup.



With his marriage he had a son, Naror who also had a son Meltelili. Meltelili's son is Maloror. Maloror performed at the last namangi ritual at Amelmarur. A later descendant of their family line by the name of Lelekaun or Georgette married chief Raymond Etienne Maltaus of Vao. This family believes that they do have a right of ownership over the area of Tonas through the matrilineal line. He called no witness to his claim.

At the stage of examination, this claimant had genuinely admitted that he had collected the gathered history from his uncles family Ulnaim amidst internal difference. He could not answer question forwarded in query over the different family trees and boundaries claim beside other claimants.

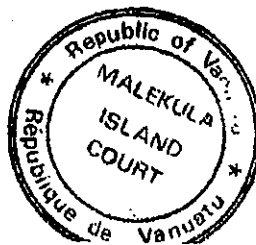
#### ANALYSIS OF MATERIAL & FINDINGS

Our assessment of the entire proceeding shows that the majority of the parties have acknowledged and accepted that Meltevaratine is the high chief of the land of Nesiingwar. Celine is the daughter of assistant chief Jerenmal of Nesiingwar. Jerenmal was murdered by a group of people from Vao. Celine and Houlili had migrated to Atchin where she later married Gabriel Malesi of Rano.

Turning to the claims, from the proceeding it indisputably stands out that the majority of the parties are claiming nakamals or nasaras including the respective areas of cultivation and occupation. We do not believe that there are no surviving descendants of the land of Nesiingwar. However all must bear in mind that, it one's duty to prove his case by way of evidence that he or she has ascended from the original indigenous of the land in contest.

The visit to the land reveals that there are identical phenomena in place believed to be the frontiers dividing the land territories. Tonas in our view is not a separate land boundary but a nakamal or nasara of Nesiingwar. We are satisfied that Backloas is a separate land boundary from Nesiingwar. But, the disputed areas by CC5 is considered to be part of Nesiingwar. On the land, that there is evidence of occupants including parties to the case tilling the land alongside each other. Most of the tenants and claimants have purchased their working piece of land from Celine while others from CC7 at the area of Tongov nasara.

It is noticed that the alleged land marks debated by the plaintiff and CC7 are found at the vicinities of Tongov nasara. This piece of evidence has doubted our mind because history shows that borders are rarely or not at all put near a nasara on reasons of precautionary measures. It is our remark that accepting Family Meltenoven CC8 or even others claimed boundary at the natapoa would see a splitting of the nasara of Tongov leaving other important parts to it like graves to



the land of Tondor while other parts to Nesingwar. However, we have no other option to take but decide on the basis of their claim in light of the available material.

Claimants such as CC1 and CC9 were not present at the visit due to misunderstanding on their part not asking a member of their family to inform the court of their location. Yet, their situation would not cause them disadvantage given the fact that the existence of their claimed nasaras are not disputed. Visited sites included Lelevanu, Larang, Tonas and Tongov nasara.

Having made these observations, we have appreciation for a number of parties and their witnesses whom have made honest comments and statements. For example, amongst other things some have honestly told the court they cannot assert information pertaining to the setting of nakamals or give explanation to the patterning of nasaras and their ruins. It is accepted that not all parties will have the ability to produce exact records or recollection of past customary practices, names and other relative information.

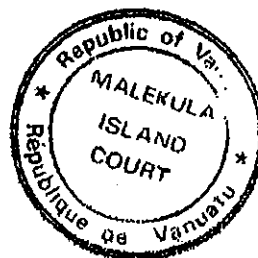
Given the nature of the visit and in consideration of the presented the findings are discussed below commencing with the original claimant.

#### The primary claimant

The court noted at first hand that this party's intention to cause publicity of the whole area is to attract other claimants for purposes of resolving continuous issues over ownership of the land. In reality, he is only claiming the areas of land surrounding the nasara of Tongov. The root of his claim is by way of the patrilineal lineage of Nahul and Vengelo alleged to have been originated from the nasara of Tongov Boravmaras. The only opposing party to him is CC7.

Having verified the entire evidence coupled with the walk on the site we are in doubt of Meltenoven's story in light of the following piece of evidence.

The customary land limit cannot be at the natapoa tree. Even with the fact that he seems to be supported by other claimants. In comparison, he has very limited knowledge over the nasara of Tongov and its nakamal and other related events having connection to the nasara. For example, the grave yard spotted some 200 metres or so away. While, his alleged land marks is actually located between the grave yard and the main nasara of Tongov. This piece of evidence has doubted our mind because history shows that borders are rarely or not at all drawn at a nasara on purposes of security measures.



Therefore, accepting Family Meltenoven purported frontier set at the natapoa tree would inevitably see a splitting of the nasara of Tongov leaving other important parts to it like graves to the land of Tondor. We cannot divide this cultural site between Tondor and Nesingwar. Such a decision would be an odd thing to do. This court has been very cautious not destabilize this customary structure being in place for centuries but to take the most appropriate approach by keeping it in whole without disturbance.

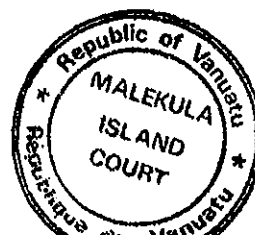
Secondly, he has no knowledge at all of its boundaries description. He has entirely failed to provide a prescribed land boundary of Tongov compared to his opposing colleague CC7. Additionally, if his ancestors Vengelo and Nahul are real natives of Tongov then, there should be a prescribed boundary of such nasara known to them. In practice any claimant claiming to be a smol faea of the paramount chief would normally be allocated a specified territory of land vested in his own right of ownership. This vital piece of information is missing.

We have considered and accepted one of his argument that traditionally, a chief like Rurulei having performed a magi and having placed a stone should by practice be buried at his own nakamal and not some 300 metres away from the nasara as witnessed during the visit. The visited nakamal also stands at some 150 metres away which he doubted it as incorrect.

Still, our assessment of their stories would suggest that CC7 has supplied the court with a linking story of Rurulei as the last surviving person of Tongov nasara. He had erected a stone as identified in commemoration of his involvement in a magi ritual. He was buried some distance away. The original claimant had very limited knowledge in this domain.

Another finding is that it was generally told by every claimant that Jerenmal was killed at his piggery fence while feeding his pigs. Nevertheless, it could not be justified by this claimant and others that Jerenmal left his house at Beter then crossed the creek to Matnaab to feed his livestock. The visit proves that story wrong. In reality, Matnaab is quite far in distance and would render it impractical for Jerenmal to walk many kilometres and fence his pigs there. Pigs are normally raised close by the usual place of residence. This rationality again proves accuracy and affirmation read from paragraph 2 at page 3 of CC8's statement saying that gun shots were heard from home to their alert of the incident. Thus, we are convinced that Jerenmal was murdered at Beter while feeding his pigs and not at Matnaab. Matnaab would in our determination be a foreign land.

It stands that the frontier line pronounced in the 1971 meeting and again followed by the survey headed by the British District Agent Mr Wilkins in 1976



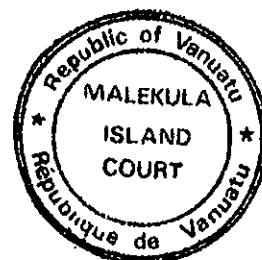
remains unchallenged or moved by some other land proceedings unto the present. Celine and her husband were present together with Bani Molunturala and others were duly present when sorting out the traditional land boundaries of Tondor and Nesingwar. Cammile Kota is an eye witness to the occasions.

On the other hand, and if, such area had been demarcated as part of Nesingwar then, Celine would have sold the terrain currently worked and occupied by the original claimant and others. In our case, Edouard Tebatun was the primary vendor of disputed land who has sold a parcel to Stephano Kai confirmed by letter dated 5<sup>th</sup> of May, 2008 annexed as F in his statement filed therein. The prime reason for purchasers approaching CC7 to obtain land was that they had considered CC7 and CC 8 as the rightful owners of the respective areas. There are no other implied reasons to this fact finding.

We do not believe his story concerning his alleged customary process of fire payment. It was well defined among other chiefs who are witnesses to this case like Jean Malvaru that it is very rare to see someone using human as payment of fire to the high chief. We are also of the same view because in practice, a human would only be offered to another tribe in the event of a peace ceremony ending a conflict. In that type of situation, the swapped person may be consumed or kept. Also the statements given by the two chiefs, Jean Malatungung and Edwin Rongrongmal cannot be relied on given their dispute over the paramount chief of the land of Lebou. It is noted also that Chief Edwin has denied having consumed any child in his nakamal of Noroure.

Needless to discuss, however for ease of clarity in case this party wishes to pursue other angles of argument concerning the whole boundary, his standing will not change course.

Our determination of his claimed decisions is that such documents are unreliable. Annexure A and B are simply not village court proceedings but gatherings made on consultation basis enquiring over the land's owner. Also as shown by annexure B, the ownership of Nesingwar was given to Zacharie and one Tokone of Atchin just because Celine is a woman and by custom she cannot own land. This is a discriminatory resolution which is also seen in another resolution date 14<sup>th</sup> January 1980 annexed H. Whereas, annexure C contains a story narrated by one Matabong. This story could only gain weight and be admissible if the maker of the statement himself or some other individual re confirms it in court in person as a witness. The same point of understanding applies to attached documents marked as F. By contrast, we are in favour of the side story of CC8 village court decisions which we shall later discuss.



More fundamentally, it is apparent that this claimant and others have advanced submissions which are culturally oriented upon the patrilineal structure patronizing men over women. Unfortunately, guided by section 10 of the Island Court Act, Cap 167 such standard norm cannot bypass the written laws of this country.

All disputants are reminded that 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 all forms of discrimination against females. Article 2(e) among other articles provides that *the state is to take all appropriate measures to eliminate discrimination against women by any person....* Legally, this Convention is binding on the state and enforceable by the Courts.

The 1980 constitution under Part I provides individual's fundamental rights and freedoms. 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-*

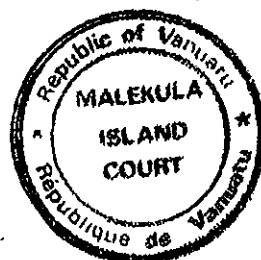
*(d) protection of the law;*

*(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..."*

It follows as well that 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).

Part II stipulates the fundamental duties. Article 7 states every person has the following fundamental duties to himself and his descendants and to others- (a) *to respect and act in the spirit of the Constitution.*

Given the position of the law and having given consideration of all point of views regarding responsibilities, rights and duties recognized by the local community, justice must at all time prevail regardless of any disparity. All concepts of rights whether recognized by the rules of custom or by legislation should not discriminate against women. Therefore, any custom practice which is inconsistent and may infringe the fundamental rights and duties of a person protected by the mentioned provisions must completely be discouraged.



In whole, having considered the entire evidence we find overwhelming evidence prevailing against his claim as disclosed above. His claim of ownership of Nesingwar and Tongov nasara is accordingly refused.

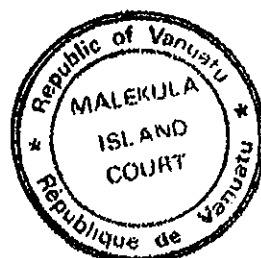
#### Counter claimant 1

This party consists of two individuals Martin Lales and Pierrot Meltesaen Nale together claiming ownership of the land. Martin Lales is claiming that since there are no more surviving male descendants of Nesingwar. So, because Luwus and Miten had originated from a single ancestor Grenavung, his family being descendants of Limla would automatically inherit ownership of Nesingwar. It is also argued that Celine Jerenmal represented as CC8 cannot claim land ownership by virtue of the custom practice. She has been paid the customary bride price and such payment would prevent her from her claim. Her children would only claim land at the father's tribal land.

While, Pierrot's claim is on the basis of adoption. It is accepted that he was adopted by Meltesaen brother of Martin Lales of Limla. His argument is that since Marcel brother of Celine had died without having any issue by custom he would also inherit the land of Nesingwar. Celine being a woman or her surviving issues cannot inherit the land's ownership following the patrilineal system observed in Malekula.

We find this party to have better knowledge of the origins of CC8. Miten founded the station of Nesingwar with the nakamal of Lockrevrev. Miten performed his first pig killing ceremony at Nesingwar with the setting up of the nasara of Jarmatsu. Jerenmal is the assistant chief having charge over the smol faeas such as the nasara of Tonas. Celine is one of their relative having descended from chief Jerenmal of Nesingwar. There is a reason to believe their story given the fact that Celine also speaks their local dialect other than the rest of the claimants. It is not disputed that Meltesaen and other relatives have been intensely involved in Jerenma's funeral rite and avenging war to the natives of Toghvanu.

Nonetheless, this court could not accept their point of arguments but doubted their whole ideology. Practically, both disputants cannot claim land belonging to other brother having existing generations at date. There is ample information proving that there are surviving generations of Jerenmal at date. This disputant yet has genuinely acknowledged that Celine is one of their close relative having descended from Jerenmal of Nesingwar. This very fact is a barrier to their claim.



CC3, CC4 and CC10 are also claiming the same identified nasara of Tonas. Each of these disputants has advanced separate claims and family trees contradicting each other. Logically if everyone is claiming a single nasara then, they should all have a single paramount chief but not as alluded.

Moreover, we noted that his claimed map of Tonas land covers a huge area of land territory extending to other unadvertised areas not similar to other claimants. Again, he has completely failed to provide a description to the land. Our opinion over his difficulties is that he simply does not know the boundaries of the land in question.

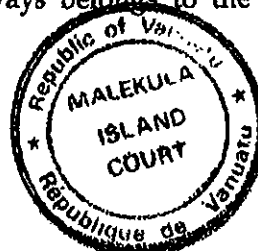
Having made the findings, we conclude that Tonas cannot be a separate land boundary to Nesingwar given consideration of the overall evidence. The rest of the parties are on our side saying that Tonas nasara forms part of the land of Nesingwar. The court could only find his case stack with uncertainties. His case could have gained weight had he invited more witnesses to call for supporting evidence. He had a very short statement consisting of less than a page which we find it worded in a very generalized manner. Given the state of his claim, we entirely refuse to award this party the right of ownership.

### Counter claimant 3

This court doubted that Maloror came from Tonas. But, we agree that Melteror has been adopted by Maloror in light of previous unchallenged village court decision such as that dated 9<sup>th</sup> of May 1995. However, he could not prove that Maloror is the original ancestor of Tonas. His claim for ownership could only prevail if he had satisfied the court with a clear status and origin of Maloror. The same point of explanation emphasized above in respect to Saravanu's position would apply here in his case.

It is our understanding that applying the rules of custom over his adoption he would still not be entitled to claim ownership of the land of Tonas. The traditional position is that an adopted male child would have the right to acquire land ownership on condition that his adoption is arranged within the family bloodline itself. His case is clear enough that he is a tribe from Botor, Leuorou, adopted into another tribe from Tonas. He would definitely have no customary foundation in this claim.

Additionally, it is common practice that an adopted claimant having no connection to the original ancestor or bloodline cannot inherit land of the father upon death but would be granted limited right to use the land. He may have absolute right over his step father's property but not land. In principle the rules of custom would provide that land must and always belongs to the original





owners or tribe of the land. The land does not belong to an individual person but communally own by a tribe and its descendants. Its ownership cannot be transfer or given away to other tribes or individual.

On the other hand, it transpired from the hearing that apart from other s who are also claiming the nasara of Tonas CC10 is a relative of his own. This disputant has instead filed a separate claim contradicting each other. It is reasonable that as a family claiming a single nasara then they should have a single land boundary and history. That essential piece of information could not be seen in this case.

It is apparent that his claimed area as sketched appears to differ from other counter claimants. He truly does not know the boundaries of his claimed territory neither the locality the nasara of Tonas. His is own embarrassment during the field trip, he mistakenly directed the court to the nasara of Larang alleging it to be number 2 Tonas. Whereas, every other parties are identifying it as Larang, a nasara belonging to Houlili brother of Jerenmal. We believed the rest of the parties because there is evidence of Houlili's residence visited a few metres away with old coconut palms and a bread fruit tree as identities. In fact, there is only one nasara of Tonas.

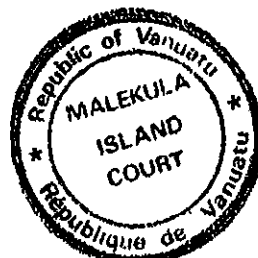
In consideration of the above facts, the court is not satisfied with his claim. He lacks relevant evidence to establish his case. His claim for ownership of Tonas must fall. Tonas is not a separate land territory as overruled but a nasara belonging to the land of Nesingwar and its existing descendants.

#### Counter claimant 4

This disputant has two central points of argument. He is firstly claiming the patrilineal line of this man Nambagh claiming to be the last indigenous person to leave the nasara of Tonas as a result of tribal war. He says that Tonas nasara is classed as a big faea or a nasara belonging to a high chief having a separate land territory. He sought refuge at Lebou under the hospitality of Taitamas Malantungun a big faea as well. His second debate is in regard to an allegation that Celine's natural father is Meltevielser.

We take the first issue. The foremost task for this party to dwell on and show is that he must prove that Nambagh is originated from the common ancestor or land owning tribe of Tonas. His related stories remained heavily disputed at large by the majority of the parties.

Firstly, every party to the case have criticized his claim and labeled it as fabricated. They are arguing that his patriarchal claim is relatively a fresh history. Their grand parents have never heard of his family being originated



from the land of Nesiŋwar. If, so they would have been informed of such account. This party has also not taken part in any meeting held in the past at the village court levels except a few long time claimants like CC8,CC7 and others.

We recall also in his statement where he had provided that beside the escape of Nambagh there other occupants of other nasaras of Nesiŋwar such a Meltevaratin, Vengelo, Nahul, Patunmal, Jerenmal who remained on the land. The totality of the elicited evidence outstandingly shows that Jerenmal is the respective chief whose nasara is Tonas. None of the disputants had any single knowledge of Nambagh as the high chief of Tonas. Nambagh would in our mind be simply an ordinary resident of Tonas.

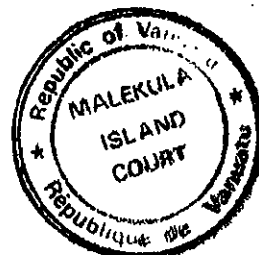
The next posed question is whether Tonas is a separate land boundary or a nasara with its own boundary. The answer to this question is to be drawn from the gathered evidence. Our record writes that CC10 is saying that Maltonas was the high chief, CC2 provided Maltevanu whereas CC3 is silent on the issue. All these defendants have identified the same nasara as Tonas during the visitation to the site. The rest of the contestants have refuted his assertion by submitting that Tonas is not a separate boundary but a nasara belonging to the land of Nesiŋwar.

On the other hand, the same question is to be asked as to why the concerned parties are claiming a number of different individual chiefs as the common ancestor of Tonas. Logically, there should only be one common ancestor, one boundary and one history over Tonas.

Subsequently, if it is a separate boundary then; does it have any other nasaras and or smol faeas? There is no availability of material evidence in answer to establish those facts. Our assessment of the entire evidence in this issue indicates that Tonas is not a separate land boundary but a nasara remaining under the authority of Jerenmal. That fact is also confirmed by the plaintiff, CC5 CC6,CC7,CC8 and CC9.

We now consider the second issue of whether Celine is fathered by Meltevielser. The answer to this allegation is in the negative given the following grounds.

1. Firstly we have attentively noted on cross examination that Pierre Kai seems to disagree with his story when he himself did provided a similar account in his statement of claim. His story cannot be right because Leboulule soon after her husband's funeral left for Atchin in fear of tribal war.



2. Secondly, there is lack corroborated evidence linking or confirming his story as truthful from the majority of other parties who completely denied having any knowledge of the version.
3. Further, issues of sexual affairs are of very sensitive nature in every community. So, if the account is to be believed by this court then there ought to be some kind of meetings over the said affairs. Especially when a chief's wife is involved in such undesirable relationship. We find no constructive data in this context.

Pulling together this defendants case, we are not persuaded with the presented evidence. We are dismissing the accusation and hold that Celine is Jerenmal's natural daughter. Uncertainties do remain unanswered in his claim. His claim for ownership of Tonas will not triumph.

#### Counter claimant 5

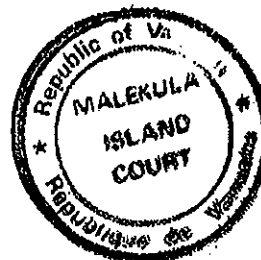
Redison Meltek is disputing certain areas as mapped to being part of his tribe's customary land known as Backloas. The tribunal having verified his evidence and viewed the site, discover these findings.

The immediate information which remained free of dispute is that every disputant to the land have acknowledged that Backloas is a separate boundary to the land of Nesingwar.

However, they could not agree that the advertised area of land claimed is part of Backloas. Every disputant has advanced evidence overweighing his claim proving that there is only one single land boundary known from ages past to date.

Secondly, his alleged border line at Lelevanu is proven false. Traditionally land mark boundaries are not placed near a nasara. For example in our case the claimed land limit is identified some 100-200 metres away from the nasara of Larang belonging to Houlili brother of Jerenmal. Frontier line would normally be set at a far distance on reasons of security purposes as earlier explained.

Thirdly, Lelevanu cannot be a smol faea of Backloas because there is no existence of nasara within the contested region. The identified stones resembling a nasara or station at Lelevanu is in our analysis a branch of Larang nasara given consideration to the fact that his original nasara of Backloas is stationed some kilometres away from the disputed terrains.



Fourthly, he cannot rely on the dated decision of 22<sup>nd</sup> April, 1988. Such village court meeting did not declare Lelevanu as land originally belonging to Backloas. Also his witness Richard Maltaus could only provided that his father chief Raymond Etienne had presided over but lacks knowledge as to where exactly the claimed boundary line was set.

In light of the foregoing facts we are of the view that the claimed land area still form part of the land of Nesingwar.

#### **Counter claimant 6**

This defendant is claiming a piece of land purchased from Celine Malessi documented by a deed of conveyance dated 20<sup>th</sup> of October 1970. He is by law the legal proprietor of the concerned terrain of properties situated at Lelevanu.

He fully supports that Celine is the only surviving bloodline of Jerenmal the common ancestor of the land of Nesingwar. This family could have engaged himself in this case as a witness rather than as a party given the issue of customary ownership of the land.

#### **Counter claimant 7**

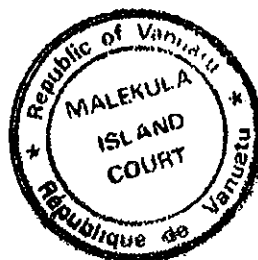
This counter claimant is disputing the ownership of certain areas of land as part of the land of Tondor.

We firstly noted a weakness on his part. It is that traditionally, a chief like Rurulei having performed a magi and having placed a stone should by practice be buried at his own nakamal and not some 200-300 metres away from the nasara as witnessed during the visit. The other fact that wondered us is his claimed nakamal which stands some 150 metres more or less from the centre of Tongov nasara.

However, the above flaw on his part could not undermine the entire basis of his case. Here are some constructive evidence produced to the tribunal.

Wilfred Maltock was able to show the court Rurulei's namangi stone at the nasara, a nakamal and the grave yard of this ancestor. None of the parties had disputed his related story having connection to the nasara. Family Meltenoven for instance had no explanation to the visited identities at the surrounding area.

Another accredited point is that it was told and approved by every claimant that Jerenmal was killed at his piggery fence while feeding his pigs. But, it could not be justified by the plaintiff, CC8 or even others that Jerenmal left his house at



Beter then crossed the creek to Matnaab to feed his pigs while he was murdered. The visit proves that actuality dubious.

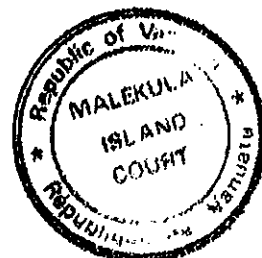
It is witnessed on land that Matnaab is actually far in distance and would render it impractical for Jerenmal to walk many kilometres and fence his pigs there. Pigs are normally raised close by the usual place of residence. This fact is proven to be accurate given the same story told by CC8 in paragraph 2 at page 3 that gun shots were heard to their alert of the incident. We hold and accept that Jerenmal was murdered at Beter while feeding his livestock. Matnaab would be part of Tondor.

Inspite of the overall objection to his claimed area labeled as false such argument cannot be upheld. The usual boundary mark dividing the land of Nesingwar and Tondor cannot be at the identified natapoa tree with other described boundaries. Their statements are plainly made without proof of any remain of memorial grave of Jerenmal at the specified spot. We as well find it hard to believe that Jerenmal was immediately buried at the scene. The raison d'être is that Jerenmal is a figure of high status being a chief and therefore, his burial ceremony would be special.

Added to the above, there is a customary land mark decided in a meeting in 1971. It was later revisited by a land survey lead by the British District Agent Mr Wilkins in 1976. Such borderline has since not been challenged or moved by some other land proceedings unto the present. Cammille Kota is a an eye witness to those meetings in 1971 and again in 1976 where Celine and her husband were also present together with Bani Molunturala and others resolving the traditional land border of Tondor and Nesingwar.

On the other hand, and if, such area of Tongov had been originally demarcated as part of Nesingwar then, Celine would have inevitably sold it to local dwellers. In our case, it was Edouard Tebatun who was selling land therein. A good example, is that he had sold a piece to a Stephano Kai a relative of the plaintiff. There is conformation of this land sale transaction by way of a letter dated 5<sup>th</sup> of May, 2008 contained in the plaintiff's statement. The main reason for purchasers have interest on the land is that they had prior knowledge that Edouard Tebatun is the rightful owner of the land. There are no other implied reasons to this truth.

Moreover, CC7 had a clear description of the area in question corresponding to the visited mark. Whereas, the original claimant claiming the nasara of Tongov has no knowledge of its boundaries. It is very common that any family originating from a smol faea of the paramount chief would normally be allocated a specified territory of land vested in his own right of ownership. There is absence of this important piece of information.



Finally but not the least, the nasara of Tongov cannot be divided by this tribunal giving some important parts of it such as grave yards and other visited stones to Nesingwar while the rest to Tondor. Such a decision would contradict and destabilize the cultural site preserved from ancient time. For that reason we are in favour of CC7's claimed land mark rather than the plaintiff's which would see a division of Tongov nasara.

In whole, the court is satisfied and most convinced with CC7's evidence and would hereby grant his claim as sought.

#### Counter claimant 8

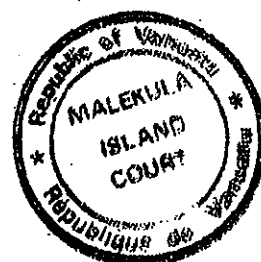
Philibert Malessi is claiming the land of Nesingwar by way of her mother's matrilineal line. We accept that Celine is a surviving descendant of the common ancestor, paramount chief Meltevaratine and brother Malrel of Nesingwar. High chief Meltevaratine died without having any surviving bloodline. It is on that basis that he is claiming on behalf of her late mother Celine as the last and only remaining issue of the patrilineal line. Jerenmal son of Malrel is the seconded or assistant chief to Meltevaratine. Jerenmal exercises authority over the smol faea nasara of Tonas.

It transpired from the proceeding that there is a question of identification as to whether Bakmemes is the same person of Meltevaratine. Such enquiry remains unresolved given lack of supporting evidence. Materials such as family tree and place of origin ought to be provided by the concerned defendants dwelling in the issue. He who asserts a fact must prove it by way of evidence. Providing mere and very general information that Meltevaratine comes from Rarav is insufficient for matters of persuasion to the court.

Besides the above question, having examined the gathered evidence it clearly stands out that all disputants with the exception of CC1 and CC10 have acknowledged that Jerenmal father of late Celine is a descendant of the supreme chief Meltevaratine of Nesingwar.

Other issues regarding Celine's customary standing and her paternity have been ruled out earlier in this judgment and we wish to reiterate them here to cast out any doubt.

1. There is dissimilarity in their stories contradicting each other. For example Family Meltenoven provided that Jinmal firstly espoused Leboulule. Upon the husband's death Meltevielser impregnated her prior to his remarriage to Jerenmal. While CC4's account suggests the contrary that upon Jerenmal's death, Sin espoused Leboulule. It was around this period that Meltevielser



made her pregnant leading to the birth of Celine. On examination, each party seemed to dispute each other creating an atmosphere of confusion as to who is telling the truth.

2. Experience would prove that issues of sexual affairs are of very sensitive nature in the community. From experience, it is normal that there ought to be some kind of meetings held over the allegation. Especially when a chief's wife is involved in an unwanted relationship.

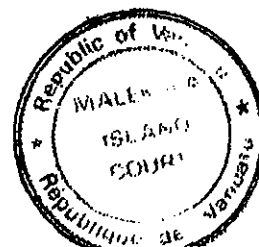
Generally the above issue could not be established due to absence of corroborated evidence and uncertainty. Added to that, the majority of parties have wholly denied having any knowledge of the account. All have made acknowledgment that Celine is the natural daughter of Jerenmal. We have no other thought but hold the same accordingly.

In the alternative, even if the court is to believe the original claimant and CC4, nevertheless; it would significantly cause no difference to her standing. The rules of law and tradition would still guarantee a child born out of wedlock having the same equal rights as an legitimate issue without discrimination on gender. Culturally, custom would permit women or the matrilineal lineage the right to ownership on condition that there are no other surviving descendant of the common ancestor of a land. This is custom practice conforms with the principle of natural justice.

Further, there is common understanding between all parties that some of them have purchased land from Celine such as CC6, CC10 and others as evidenced by the listed deed of conveyance enclosed in her statement. The prime reason for purchasing land from Celine was that they have always regarded and recognized her as the only surviving descendant of the land during the 1950's to date. This court could not find other inferences.

The alleged agreement made between CC5 and CC8 as claimed by the plaintiff cannot not be sustained. It is unlikely that such a deed would be made. The reason is clear because both parties would inevitably not cooperate with each other given their disputed interests over boundaries.

More remarkably, it is obviously evident that there is overwhelming evidence advanced by this claimant showing that Celine Malessi has been for a long time been recognized as the rightful custom owner and only surviving bloodline of the land Nesingwar. There are 4 undocumented village court meetings determining the land's ownership made in favour of this claimant dating back to the early 1950's. Additional to those there are other 3 written village court decisions from 1954 to the latest in 1994. This court having had the opportunity



to peruse and verify them finds that those decisions are well set out explaining the reasoning of their ruling. These judgments are not disputed by the majority of the parties.

With comparison to Meltenoven's claim we note that annexure A and B are simply not village court proceedings but gatherings made on consultation basis enquiring over the land's owner. Also as shown by annexure B, the ownership of Nesiingwar was given to Zacharie and Tokone of Atchin purely because Celine is a woman and not on the basis that she is a not surviving bloodline of Nesiingwar. This is a discriminatory resolution which is also seen in another resolution date 14<sup>th</sup> January 1980 annexed H. Whereas, annexure C contains a story which would be admissible if re confirm by anyone in court in person as a witness. Those findings are some of the reasons giving us doubt over the credibility of the said decisions.

The boiling debate criticizing the basis of CC8's claim could not be sustained either. 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 party state to it must take all necessary measures to condemn and wipe away of forms of discrimination against females.

Our Supreme Law, 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..."*

It follows as well that 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). In the like manner this court must also enforce the law as it stands to eliminate inferior attitudes over women.





Turning to other disputed areas of Backloas and Tongov. Our determination have already been explained above. The disputed areas of land by CC5 is still considered by this court as land belonging to the original boundaries of Nesingwar. While, we decline to accept his claim boundary covering the nasara Tongov.

In consideration of his case, we are satisfied that there is relevant and sufficient information made available to this court by this claimant and other supporting claimants establishing her case. We find no other surviving bloodline of the common ancestor of high chief Meltevaratine and his assistant chief Jerenmal of Nesingwar land but Celine alone and her surviving children.

#### **Counter claimant 9**

This party's basis of claim is founded on the patrilineal lineage of his ancestor Tetersingo whose chiefly name Meltesingsing indigenous native of the nakamal of Botnanghal. It is not disputed that Meltevaratine paramount chief of Nesingwar had allocated land to Meltesingsing in return for his contribution to the staging of a magi festival. The land of Mabu is a customary payment made in exchange for his generosity. We acknowledge that this is a typical practice seen where paramount chiefs trading with their other counterpart for purposes of namangi processes.

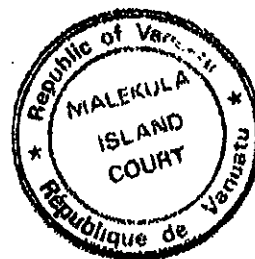
Certain counter claimants are noted to agree and commented at trial that such transaction do occur as a matter of reciprocity. No person could question a chief's prerogative power in giving land to a chief belonging to another tribe. The claimed ownership of the area of Mabu must rest in the hands of Meltesingsing and his descendants.

Turning to the other parts of the land claimed as areas belonging to Tournarong could not be sustained given lack of information in support. Every other parties disagree with his purported land mark.

Therefore, given the custom processes undertaken, this court has no reservation but re confirm and invest that the land area known as Mabu only into the hands of this claimant.

#### **Counter claimant 10**

Richard Maltaus acting on behalf of Family Maltaus also disputes the ownership of Tonas nasara and its boundaries. His claim is founded on the patrilineal lineage of Multona .



Reliability in his case looks deem. He wholly has no certainty of his own claim and history. Below are some of his weaknesses.

In his statement he claims that Multonas is the high chief of Tonas being a big faea and has a separate boundary. It became obvious at the questioning stage that he attempted to change his whole story this time stating that Tonas is a smol faea to the land of Backloas. Having done so he then contradicted his own proper statement. Redison Meltek, CC5 has dismissed his story as false when cautioned over the issue. Every other claimants do not believe his history and continue to hold that Tonas is just another nasara belonging to the land of Nesingwar beside others like Larang, Lebsor and Jartnatsu.

The same question is posed here again as to whether Tonas is a separate land boundary or a nasara with its own boundary. The answer to this question is in the negative in light of the gathered evidence. Our record reads that CC10 is claiming that Maltonas was the high chief while, CC2,CC3 and CC4 have different personals. These defendants have also identified the same nasara as Tonas during the field trip to the site.

The circumstance leads us to the next point of enquiry as to why he and others are claiming a number of different individual chiefs as the common ancestor of Tonas. It is normal that there should only be one common ancestor, one boundary and one history. Further, if it is a separate boundary then; does it have any other nasaras and or smol faeas? The answer to this question remains unanswered.

In addition, there is prevailing evidence from the original claimant, and the rest of the parties pointing out that there is only one single land boundary known from ancient times to the present. Our evaluation of the entire evidence arrives with the conclusion that Tonas is not a separate land territory from Nesingwar but a nasara belonging to Nesingwar.

On the other hand, this counter claimant is clearly noted to be one of the most outspoken party who has aligned himself with CC8 supporting that Celine Malessi is the rightful owner of the land. Such confessions are reflected in his own statement of claim. We do not understand his real intention in launching this claim.

In whole, this claimant has totally failed to substantiate clear and sufficient information to ascertain his claim for ownership. The court could only find his claim stranded with uncertainties. This disputant does not have a profound history given his changing statements. He has also genuinely told the court that he had collected his data and launched this claim at the request of his uncles,



family Ulnaim after having developed internal differences among themselves. In application of those facts, his claim for ownership of the land of Tonas is accordingly refused.

## DECLARATION

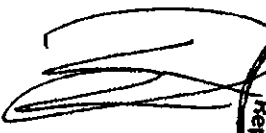
In light of the foregoing deliberations, it is hereby this day pronounced in the following words:

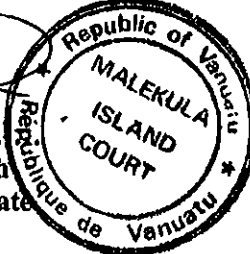
1. That CC8, Celine Malessy daughter of Jerenmal and family is declared custom owners of the land of Nasingwar as advertised therein,
2. That CC7, Edouard Tabatun and family is declared custom owners of the land of Tongov nasara as claimed and
3. That CC9, Family Balbal is also declared owner of the area claimed as Mabu at Nasingwar.
4. All other claim of ownership are dismissed.

For ease of clarity, any claimed boundary sitting outside the publicized land will not form part of this judgment. Parties are to pay their own costs. Any aggrieved party wishing to appeal this decision must do so within a period of 30 days at the receipt of the written judgment.

Dated at Lakatoro this 7<sup>th</sup> day of November, 2008

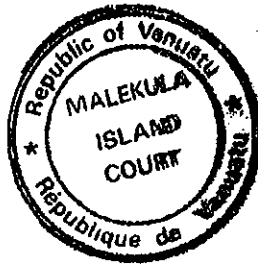
BY THE COURT

  
.....  
Edwin Macreveth  
Presiding Magistrate

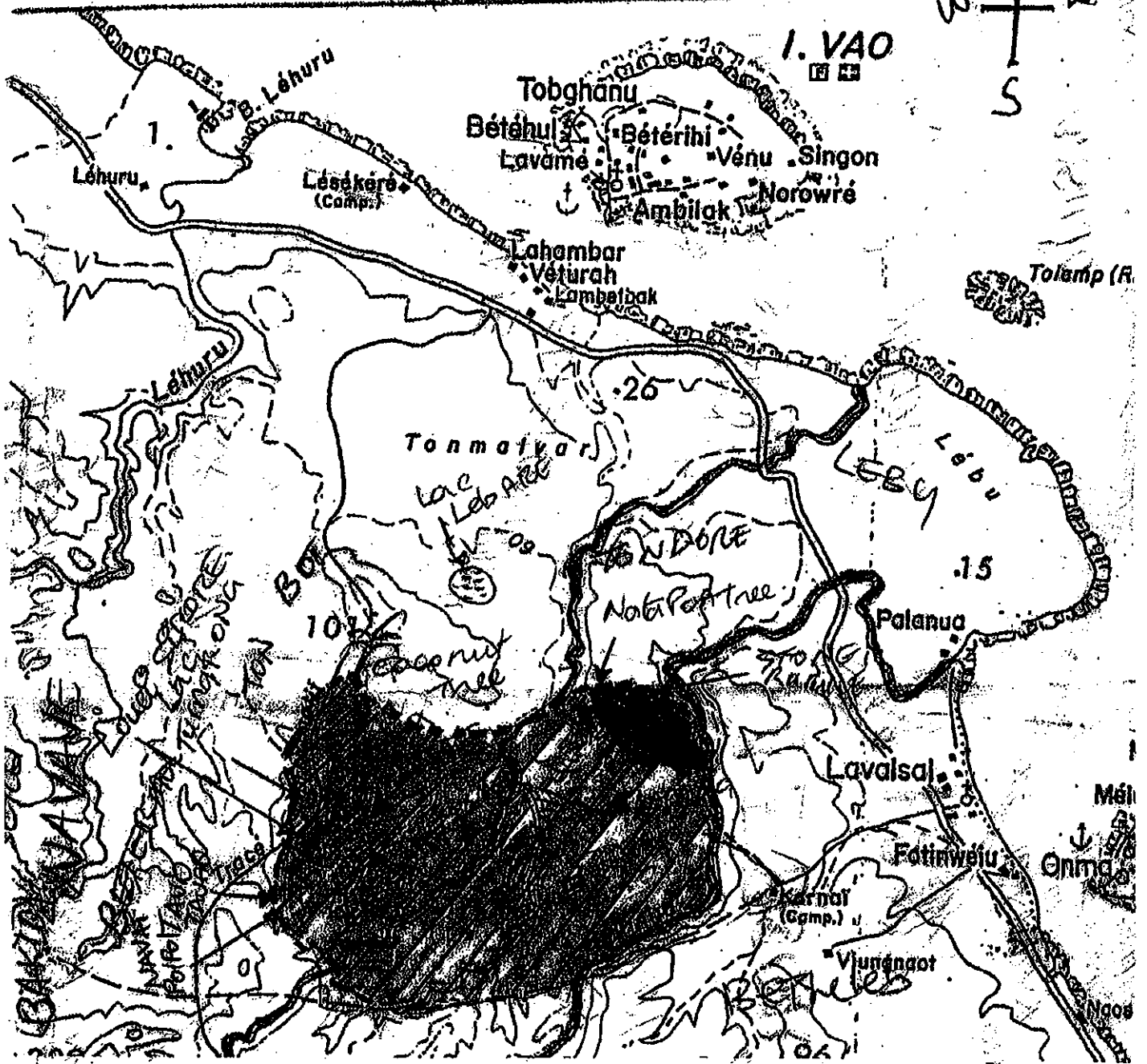
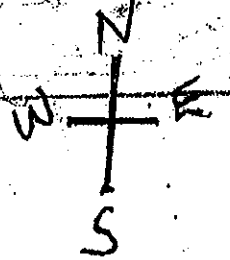


### Description blong graon – Nesingwar




Stat long river long stone rurule, follem igo long creek kam kamaot long Botnavum, follem Botnarum ikam stret long Natapoa tree, afta ifollem creek bakeken ikam kamaot long bigfala creek long riva Oro, icrosssem igo antap long stampa blong Nanga tree igo tru long breadfruit tree blong Bagmemes, follem ol olfala coconas tri blong bifo kam kamaot long Lembare ifollem bakeken creek kam kamaot long natapoa tree we istap insaed fanis buluk blong Eime. Afta icrosssem igo long fes stampa blong Naus tree, iout igo long second stampa naus tree ikam go tru long coconut tree afta igo daon long Louei Siror. Afta follem creek wei separetem Nesingwar mo Navav ikam kamaot long Tavo Tavao finis ifollem sem creek igo daon long Navat polpol iclimb hill igo antap long Tananeime, cuttem igo cross long English pinappe afta igo kamoat stret long Nangi tree then ifollem rod igo daon long riva balanua ifollem ikam long stone rurule mo igo antap long Botnarum mo kamaot long natapoa tree bakegen.



DECLARED LAND  
ON ORIGINAL MAP



KEY

-  Approximated land area declared to CC 8.
-  Approximated land area declared to CC 7.
-  Approximated land area declared to CC 9.

