

**IN THE MALEKULA ISLAND COURT
HELD AT LAKATORO/ MALEKULA
(Civil Jurisdiction)**

C/F
Cc. # 80/08
Judg. #

**BETWEEN : MOSTIK MALACHI
Complainant**

**AND: ROBSEN LESNAWON
Defendant**

MATTER: DISPUTE OVA LONG COCONAS PLANTATION

**Coram: Jastis Douglas Fatdal
Jastis Robert Niptick
Jastis Maxwell Arhampath**

Clerk: Wendy W. Raptigh

JUDGMENT

Brief background:

Complainant long case hemi Mostik Malachi mo hemi stap live long Rano Island. Defendant long case hemi Robsen Lesnawon mo hemi tu ilive long Rano Island. Case ia ibin go long trial long namba 24th November, 2008. Court ibin tekem ples blong 2 deis, fes dei trial mo second dei ol jastises oli go wokbaot long site. Coconas plantation ia istap long Rano Island long area blong Amelprev Welele.

Issue:

Court ia iblong finemaot se whu ia nao property ia (coconas planation) iblong hem stret anda long custom mo long law.

Brief fact blong case:

Complainant ibon long yia 1918 kasem tedei hemi ninety yias old. Long yia 1947 hem wetem Brother blong hem late Shem Malachi tufala i plannem ol coconas blong tufala long Amelprev Welele. During long ol taem ia Robsen Lesnawon hemi no bon yet. Stat long year 2001 Robsen Lesnawon istat blong kam insaed long ol coconas plantation ia. Complainant ibin talem long hem plante taem blong no kam insaed be hemi still kam insaed. Long 16th March, 2008 Defendant ibin go mo blong planem ol young coconas. Complainant hemi no gat pikinini boy, be hemi gat tri gel. Samtaem long 11th June, 2004 Complainant ibin signem wan agreement blong givim raet long trifala daughters blong hem – Hannafi, Ella mo Joyce blong usum property blong hem afta we bae ided but bae ino mas family Lesnawon. Agreement ifurther on blong talem se ol trifala girls ia



mention antap oli then givim raet long Family Nbeckrow mo family Johnox blong tufala iluk afta long plantation ia long behaf blong olgeta from oli maret out long village evri wan.

Defendant hemi bin statemlong Court se hem nao ijif blong nasara ia Amelwelele. Hemi stap claim se family Nbeckrow Taur oli man Tautu. Since coconas plantation ia, nasara istap insaed hemia nao mekem se hemi kam in blong wok long coconas long tingting se blong protectem nasara blong olgeta from famili Nbeckrow hemi man diferen ples. Hemi claim tu blong talem se famili Nbeckrow taem oli kam in blong usum coconas ia oli spolem mo bonem ol stone blong nasara. Defendant iclaim se hemi kam in blong maintenem ol identity mo property blong ol blong mas stap gud oltaem.

Findings blong Court:

Long tудay 15/01/2009 Court i wantem talem long Complainant mo Defendant se Court ia emi no interest blong harem ol toktok blong Nasara or whether whu i Chief blong Amelprev Welele. Court ino interest tu blong harem se ground i blong whu ia long tufala Claimant. Court i wantem talem long Complainant mo Defendant se i no kat wan Family tree long tugeta claimant long Court ia blong Court i save lukluk long em mo clear long em weta Complainant emi sem blood wetem Defendant or no? Mo tu weta family Nbekrow i stret family blong Mostik Malachi or em i no family wetem em? Court i wantem talem long both saed se court i kam blong lukluk nomo long statement blong property olsem coconut we i stap long statement blong Complainant wetem ol toktok ya court i kam blong mekem ol findings ia:

- 1) Court I faenemaut long toktok blong Complainant se I true emi honest long court blong talem se em nao I planem ol coconut wetem brata blong em Shem.
- 2) Court I faenemaut tu long tufala witness blong Complainant Kileteir mo Jean Pierre Lesiness se tufala I eye witness se Mostik nao I planem ol coconas ya.
- 3) Court I faenemaut se long toktok blong Complainant mo tufala witness se I true I kat wan property agreement we tufala owner blong property Mostik mo Shem I bin agree wetem ol Chief we nem blong olgeta I stap long agreement ya Dated 26th July 2004 blong givim raet blong property I ko long trifala gel blong tufala I kat Hannafi ,Ella mo Joyce.
- 4) Court I faenemaut se defendent emi beisem toktok blong em long Nasara, mo olsem big Chief blong nakamal mo from ground.
- 5) Court I faenemaut long taem blong wokabaot long graon se itru defendent I bin mekem sam replant blong coconas mo sam nara crops insaed long plantation coconas blong Mostik mo Shem.



6) Court I note mo take into consideration agreement we blong diklerem family Nbeckrow blong luk after long coconas planation. Be I no kat wan family tree I soem se Mostik mo Nbeckrow oli related olsem wanem?

7) Long end blong ol toktok court I visitem site I fainemaut mo harem se defendant Robsen Lesnawon mo witniss Kenson Lesnawon tufala I admitim long court se I true coconut Mostik mo Shem tufala iplanem.

Law we Court I applaem:

CAP 167 (s.10) – Application of customary law

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 is not in conflict with any written law and is not contrary to justice, morality and good order.

Translate:

CAP 167 (s.10) – Kot hemi mas applaem kastom

Subject long seksen blong Act ia, aelan kot hemi mas aplaem kastom we istap insaed long eria blong paoa blong hem, spos oli no gat conflict wetem eni loa we oli stap raetem, mo no gat konflik tu wetem jastis, morality mo gudfala orda.

Apply Law igo long fact:

Section blong Law we Court ia istap applyem tudei hemia antap – CAP 167 (s.10).

Hemi common sense nomo se whua iplanem coconas, hem nao property ia iblong hem.

Hemi stret long Law mo custom.

Court ia ino lukluk long issue blong dispute blong graon we istap but hemi stap lukluk nomo long issue blong disputed property ia. Issue blong Land bae Land Tribunal ideterminem yet.

Last toktok:

Dispute ia hemi causem plante division between olgeta Clemens, Court iwantem se bae peace imas stap ol taem. Eni wan insaed long family we bae itraem blong brekem order ia hemi save pass long Court from contempt blong Court Order mo fine or go long kalabus or tugeta.

KOT DECISION

Wetem ol findings ya antap kot I kam blong mekem decision mo Order se.

1) From tudei 15/01/09 yu Mostik mo Shem wetem trifala gel blong yutufala Hannifa, Ella mo Joyce yufala I save ko bak long plantation coconut blong yufala long Amelprev Welele.

2) Kot I mekem order se raet mo agreement we Mostik mo Shem wetem ol chief blong givim raet long trifala gel ino kat any one I save tekemaot raet mo agreement ya.



3) Yu Robsen Lesnawon yu save wokbaot long area ya from yufala evriwan I claim ol nasara we oli stap insaed long area ya be kot I mekem order se from tudei yu Robsen Lesnawon wetem ol family yufala I stop mo no gat raet blong usum coconas mo tekem any kaekae insaed long area we olfala Mostik mo late Shem oli planem coconas long em.

4) Kot I mekem order se from tудay ol replant blong coconas we yu Robsen I planem long plantation blong Mostik mo Shem yu no kat raet long em ol replant I ko long hand blong Mostik mo Shem mo trifala gel blong tufala.

5) Long kot I no kat wan family tree I soemaot se Mostik I family wetem Nbeckrow. Kot I wantem talem se kot I respectem wan decleration we I stap betwin Hannifa, Ella mo Joyce wetem ol chief wetem family Nbeckrow. Kot I mekem order se from tудay yu family Nbeckrow yu stop blong usum coconut blong Mostik mo Shem kasem wan kot I sidaon blong lukluk long ground mo family tree blong yu wetem Mostik.

6) Eni claimant wei ino glad long decision igat 30 deis blong mekem appeal igo long Magistrate Court.

Dated long Lakatoro long namba 6th dei blong February, 2009.

Before:



Jastis Douglas Fatdal



Jastis Robert Niptik



Jastis Maxwell Arhampath



NB Decision herein delivered long Court long 23rd March, 2009.
Rights of Appeal - less 30 deis istat tedei 23rd/03/09.



Court Clerk

