

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

Land Case No. 15 of 2003

BETWEEN : FRANKLYN TARILIU
Original Claimant

And: DICKINSON VUSILAI & OTHERS
Counter claimant 1

And: SELWYN WAI & FAMILY
Counter claimant 2

And: HANSON MATAVUHI & FAMILY
Counter claimant 3

And: NICOLAS TARI & DICKSON MALA
Counter claimant 4

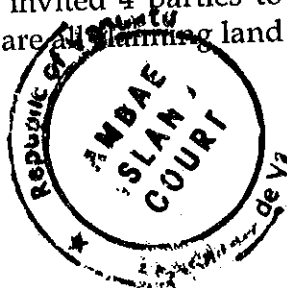
Coram: Senior Magistrate Edwin . A . Macreveth
Island Court Justice Joseph Garae
Island Court Justice Rachella Toa
Island Court Justice Edwin Garae

Clerk: Wilson Andrew

Date of hearing: 17th - 19th of August, 2009

J U D G M E N T

This is the written decision for the Lonemavute/Lontaingeru land claim heard at Saratamata, Ambae island. Oral decision was delivered on the 19th day of August, 2009. The land in dispute is situated at the eastern part of the island of Ambae. It is located between Saratamata and Atavoa village. The advertisement caused by the principal disputant invited 4 parties to file a counter claim. The parties in contention over the land are all claiming land ownership.



Its boundary is generally described to commence from the sea coast of Atavoa village running inland to Lovusinakavika. From there, it runs northwards to Lovusitarivue. It then turns eastwards passing the agriculture station at Saratamata unto the coastline. Its limit from the eastern side is bounded by the sea shore connecting back to Atavoa village.

Before dwelling 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 area in dispute are outlined below.

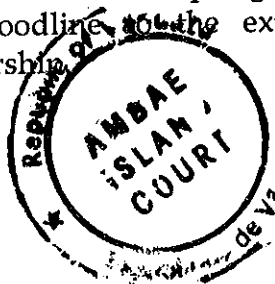
THE LAW, CUSTOM AND HISTORY

It is our immediate note that the area of concern does not have a land policy. Despite of such missing guideline, there is significant information gathered from the hearing regarding customary principles of land ownership.

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 forming the basic rule of land ownership, generally the area of Longana is predominantly a patrilineal society. Meaning, ownership of customary land is communal or collectively own based on common descent, residence within a nasara and participation in common activities. 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. Land ownership 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 to other siblings, relatives and kinships. This is a male predominated system which is twinned with the land tenure system handed down from generations to generation.

The only exceptional condition to the general principle of land ownership is that in a 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, as the extinct patrilineal lineage are automatically given land ownership.



It is also the habitual practice that land may be transferred to others by way of performing a traditional funeral rite upon someone's death known as *Holata* or *Boni*. In return for such ceremony the donor would be given the right to use the deceased's family land.

It is common belief among the local population of the region that the first person to explore, live and control a land boundary would eventually be classed as the original chief or ancestor of the territory. Such ancestor on behalf of his family unit would be recognized by the community as the original custom owner of the land. Every member of his tribe or group communally own undivided interests in the land.

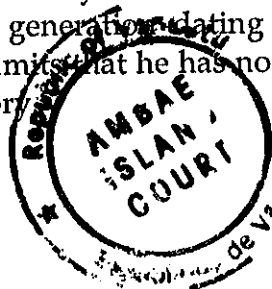
The tribe which forms the land owning unit is normally based on blood relationship, meaning, they are all related by blood, having descended from a common or original ancestor. The first person and his family to arrive and settle at the disputed land and built a nasara there, are the custom owners of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

Beside the position of law and customary principles, the court in determining the issue of land ownership has reminded itself of section 25 of the Island Court Act, Cap 167 not apply technical rules of evidence but admit and consider such information made available. Section 10 of the same Act states that subject to its provisions, the 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

Franklyn is claiming the entire land as advertised as land belonging to his ancestor Biton. He did not file a statement of claim or history. On query, he explains that it is his intention not to file a claim because nobody wants to assist him in his claim. He produces a family tree to illustrate his history. Such genealogy chart traces his earliest generation dating back to Viretaruru and Tubibaon. His witness, Titus Tari admits that he has no familiarity with the land tenure system or the claimant's history.



COUNTER CLAIMANT 1

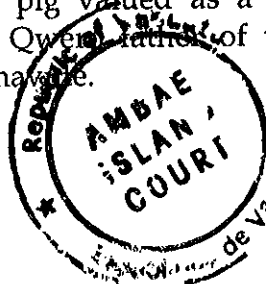
Dickinson Vusilai is claiming the entire land on behalf of 26 more or less families. He tells the court that there was once upon a time natives from the western part of Ambae made war with local occupants of the land in dispute over territorial conquest. Such incident forced people to flee the land leaving behind a sick patient by the name of Biton whose tribe are the indigenous owners of the land of Lonemavute. Biton was taken care of by his forefathers Molinakonako and Viretambe until his death. His ancestor also performed a holata ceremony upon his funeral. Biton prior to his passing away had promised Viretambe's tribe a right to own part of his land of Lonemavute.

He further disputes that the vast portion of the land was long occupied by some 26 families who could not afford to pay a fee to be part of the claim. He explains that the land has once been divided among the 26 family unit whom have worked the land to date carrying out enormous development thereon. He informs the court that there was an agreement made by chiefs of Longana area in 1934 known as the Nasarai/Nangwea Land Boundary Agreement.

He calls 5 witnesses to communicate oral evidence in his group's favour. Witness Solomon Vire says that he is aware of the 1934 agreement which saw the land divided into titles or sectors. For example, Lovatumemea was given to Silas and James. He could not recall the names of other recipient to the land agreement. Marcel Tari confirms that Biton has promised their ancestor a right to own the land in dispute. Augustine Bani argues that the plaintiff's claim is in custom invalid because he has also failed to pay a pig towards his uncle's death Job Qwero, father of Franklyn Tariliu. While, chief Francis Aru explains that it is the common practice of the area to taking charges of someone's death ceremonies. In return land may be allocated to the donor for use only.

COUNTER CLAIMANT 2

Selwyn Wai also claims the whole boundary as advertised. He alleges that the land is traditional land belonging to his ancestor Molilalaon originated from the Karivi (rat) tribe being their traditional totem. This ancestor while settling at Wallievi had espoused a native woman from east Ambae. He asserts that Biton is a descendant of Molilalaon. This chiefly line descends to chief Tarikau and chief Simeon Sende. Stephen Garaeuli had taken responsibility of settling all funeral expenses of Tarikau's death. Upon Simeon's attempt to return such goods sought assistance from Job Qwero who offered a pig valued as a Natu to him as payment. Due to the said transaction, Job Qwero father of the plaintiff was allocated a piece of land to cultivate at Lonemavute.



He asks two witnesses to testify on his behalf. Peter Tari generally says that the whole claim of CC2 is correct. While, David Aru states that his father Edgel Aru is a descendant of Molilalaon.

COUNTER CLAIMANT 3

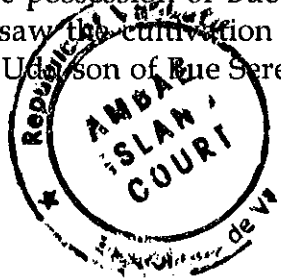
Hanson Matavuhi claims on behalf of her later father Alick Biti. She submits that her late father is a descendant of Biton the original owner of the land of Lonemavute. She went on to provide that the first settlers of the area have long ago migrated from the area of Lohone north of the island of Pentecost. Upon their resettlement they renamed the area after their original place as Lohone mavute. Her family belongs to the Kariviti Biti tribe (small rat or mouse).

She relates the same story as told by CC1 that Molinakonako and his descendant Viretambe had been given right to own certain part the land for having looked after Biton. Those plots of land are currently occupied by CC1 and his relative situated inland from Waluwakana. She stresses that such right cannot extend to the ownership of the entire land. In her defence statement against the original claimant she submits that Franklyn Tariliu has no bloodline connection to Biton's family tree. She clarifies that Franklyn Tariliu was only adopted in to her family following Tarikau's grand children Maha and Velia's deafness condition. She traces her family line from past to the present in illustration of her story.

Her witness, Rich Mala tells us that she supports CC3's claim because the land belongs to Alick Biti a real bloodline of ancestor Biton, the traditional owner of the land of Lonemavute. Clenda Tari provides that her parents have once told her that the land of Lonemavute is owned by Alick Biti. Clement Tari made the same statement. While, John Mark Rovo says that he and her wife Hanson had consulted an elderly man by the name of Joel Boereve over the ownership of the land. Joel Boereve had informed them that the land rightfully belongs to Alick Biti a descendant of Biton.

COUNTER CLAIMANT 4

Dickson Mala in his presentation leads evidence that the traditional owner of Losingoi Vatu Maeto land territory is Baninavire. Late Baninavire had sold the land to late Bue Seresere prior to his departure to Queensland Australia during the years of early traders. While, under the possession of Bue Seresere the land was utilized for church gardening which saw the cultivation of coconut palms now uprooted by the rising sea water. Joel Ude, son of Bue Seresere inherited the



land and re sold it afterwards to Nicolas Logo with the value of 380 Pound Sterling including food items taken on credits from his retail shop.

In the midst of these land transactions, an arranged inter marriage was agreed between Joel Udu and Nicolas Logo. The outcome of this accord saw Joe Mala espoused Alice daughter of Joel Udu. Joe Mala then succeeded the land but, chief Rubert and Charles Mera later reclaimed the land's ownership. Given the dispute, Joe Mala made a second monetary payment of VT 50,000 and a pig valued as (Teveteve) including a mat to the complaining chiefs.

Prior to Joe Mala's death the land was duly transferred to Nicolas Tari and Dickson Mala by way of a signed instrument of transfer. Such document is made available and exhibited as annex 4 dated 24th of March, 2008. The children of Joe Mala had also provided 10 pigs towards the deceased funeral observance. He contends that such holata had also sealed their right of ownership from Joe Mala. He adds that since the original transaction, his family had occupied and caused major developments to the land of Losingoi Vatu Maeto to the present. His family now having 4 generations had possession of the land for over 100 years.

Four witnesses elicit evidence in his support. Alice Mala, widow of Joe Mala states that since the occupation of the land areas by his late husband and relatives, no one had disputed them. She is a witness to the land payment transactions made to Joel Udu and later to chief Rubert with Charles Mera. It is her believe that the land would be considered as property owned by her family.

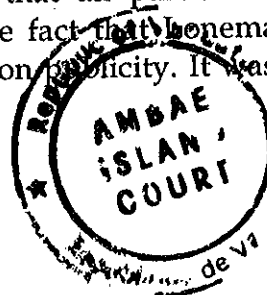
Chief Simeon Tari testifies that following the referred land dealings, he believes the land's ownership would rests under Joe Mala's children. He is a witness to the deed of conveyance signed on the 24th of March, 2008. Nicolas Tari confirms that a boni has been performed over Joe Mala's death and that no one had disputed them over the land while carrying out businesses such as operating a shop and other improvements on the land.

ANALYSIS OF MATERIAL AND FINDINGS

Having heard the entire facts presented before the tribunal, we now determine each party's position.

The Original claimant

First and foremost, it is obvious from the facts that all parties are heavily disputing his claim to be falsified by virtue of the fact that Honemavute and Lotaingeru land areas do not cover the entire area on publicity. It was told that



the whole area comprises of around 26 titles or parcels of land owned or occupied by 26 families represented by CC1 and the claimants to the case on the other hand. We agree with these opposing statements as correct given the land visitation.

Secondly, he could not establish or link his family tree to this common ancestor Biton. All claimants have provided very detailed information arguing that Viretaruru is not Biton's brother as alleged. The plaintiff is not at all related to Biton. For illustration, it was told by CC1, CC2 and CC3 that Franklyn Tariliu's father Job Qwero had paid a pig towards Tarikau's death rituals. In return, for performing such custom process, a piece of land at Lonemavute was allotted to him where he cultivated a coconut plantation and eventually occupied it to date. Another story communicated by CC3 explaining his status is that he was brought into Biton's family by way of an adoption. Those statements were not at all challenged by the original claimant and are taken as admissible facts.

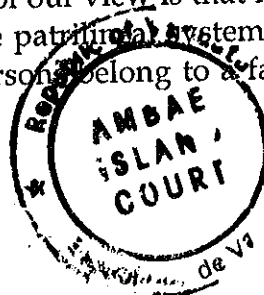
For purposes of conclusion, the finding is that the original claimant was in the past duly given a right to use the land of Lonemavute. He is not a bloodline of Biton. In principle, that right of use cannot be seen in custom to extend or be construed to have been given an absolute right of ownership. He therefore, cannot claim ownership as sought in this claim. However, this court accepts the fact that what has been arranged in the past by way of custom usage must continue to remain and have continuous effect.

Having so found, this court refuses the original claimant's claim of ownership and reconfirms that he would have a right to continuous use of the land of Lonemavute. We found no specified period of time for such use of the land when the land area was originally transferred to the plaintiff. Thus, in its absence it is presumed that such right of use may be varied by the declared owners.

Counter claimant 1

The root of this defendant's claim over Lonemavute land is purely centered on a promised right of ownership from Biton. This group of claimants do not belong to Biton's family tree. Dickson Vusilai did confirmed this evidence on cross examination when he clarified that the basis of his claim solely hooks on to the testament or will of Biton prior to his passing away.

In principle, as briefly explained above, such a right would traditionally not extend to a right of ownership. The reasoning of our view is that land in this part of Ambae is communally owned based on the patrilineal system. Land is never owned on an individual basis. A group of persons belong to a family bloodline



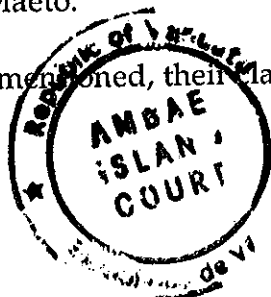
and a territory. Land is traditionally transferred or inherited patrilineally from the father to the eldest son with equal interests of other members of the tribe. It can only be transferred or given to other tribes on condition that there are no surviving issues or other reasons as custom dictates. His own witness Chief Francis Aru has made confirmation to this usual custom practice as the land tenure system recognized in the area. Therefore, ownership of Lonemavute would exclusively remain in the hands of Biton's surviving descendants, CC3 in this case.

Besides such point of understanding, the court has accepted that the land right bestowed by Biton is an important aspect of cultural significance and must continue to be in force as dictated by custom. But in this case, we are told that certain division of Lonemavute land have since then been occupied to date by CC1 and his family pursuant to the conferred right. Those terrains of land are not claimed by CC3 presumably in account or respect of CC1's paid cultural process towards her ancestor's refuge and funeral. That section of land is located inland from Waluwakana. For that cause, CC1 will not be given another parcel of land for a right of use since he is already using the land which at this time, transforming into a complete right of ownership.

Turning to his effort to defend the interests of 26 families, the court found there was a land agreement made by chiefs of the area in 1934 known as the Nasarai/nangwea land boundary agreement. Although questioned by CC2 but, the primary disputant, CC3 and CC4 do not dispute it. There is affirmation of this land sharing accord chaired by Joseph Liu confirmed by witness Solomon Vire. He even named some of the recipient of land such as James and Silas whom had been allocated the area of Lovatumemea in effect of the land agreement.

It is our remark to note that he had only provided family trees tracing his immediate extended family or tribe from ages past to the present generation connecting them to the land areas of Lonemavute, Lotaingeru, Halolo and Lovatumemea. Given his main sphere of concentration, he on the other end failed to provide the 26 families history as we found no corresponding claim herein the file. This is a rather difficult situation for the beneficiaries, however, this group of claimants are fortunate enough to survive the dispute given our final consideration upon the entire evidence after having dismissed CC2's claim below, it left their claimed territory free of dispute. Besides this, it is apparent that CC3 and CC4 are specifically and only disputing their respective land areas of Lonemavute and Losingoi Vatu Maeto.

Therefore given the situations aforementioned, their claimed areas of land would still fall in their hands.



Counter claimant 2

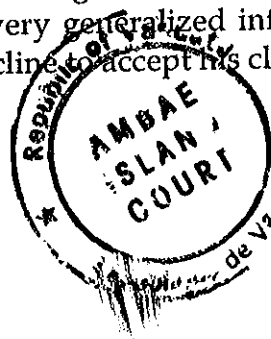
The immediate finding is that there is a general argument from CC1, CC3 and CC4 showing disagreement over his purported claimed heredity to Biton. The court doubted his story by reason that if so, other claimants would have acknowledged it otherwise. The side story provided by CC1 reveals that Molilalaon belongs to CC1's tribe and forms part of a chain of 10 chiefs or ramoli originating from Tagaro's tribe descending down to Tariquakato. Molilalaon is not connected to Biton by blood. Selwyn Aru has entirely failed to advance any evidence in reply to rebut such story. We are in favour of CC1's version as the truth as we found no other reasons proving the contrary.

Furthermore, it is clear that Molilalaon's place of origin is Wallievi according to CC2's own statement. This fact is therefore self explanatory, meaning he has no reason or standing to claim ownership. Molilalaon has his own traditional land territory and he would definitively be barred in custom from claiming land belonging to other tribe as in this scenario. The land of Lonemavute as found is traditionally owned by Biton and his descendants of the day.

We noted also that this party has heavily placed reliance on his belief that being member of this tribal line of the Karivi, he has a standing to claim the land as well. That submission could not be sustained. His claim is materially made on a very general basis and is not a conclusive fact. Simply belonging to a group of tribe does not necessarily signify or guarantee someone to claim ownership but necessitates more particulars. What the court demands from him is that he has to clearly establish the source of his claim.

For example, the first question posed is, which tribe of Kaviri he is originated. We are told that there are more than one type of karivi such as Karivi biti, Karivi Laghua and so on. Nature would confirm this very fact. The second question requiring an answer is whether Molilalaon was the first ancestor who had initially occupied the land prior to settlement by other claimants. Those kind of vital information are absolutely missing from his presentation. Again, contrary to his claim, the overriding fact as confirmed by the majority of the claimants and their witnesses is that Molilalaon and his descendants are not the original owners of the land as advertised. For illustration among other speakers, it was told by Marcel Tari that Molilalaon's original place is located some distance from the Longana airstrip.

In light of the foregoing discussed facts, we have doubt remaining with his claim. He lacks evidence in general even his witnesses are of no greater assistance to his case given their short statements formulated with very generalized information without specifics and for such dissatisfaction, we decline to accept his claim.



Counter claimant 3

Our analysis of her presentation firstly shows that none of the parties had disputed her status and relationship being a bloodline of Biton flowing down from the matrilineal line. For instance, that Alick Biti is a bloodline of Biton through her an unnamed sister who bore Tarikau uncle of Mathias Hawa the grand father of the claimant.

Secondly, this man Biton is a common or famous personal mentioned by all claimants as a man infected with leprosy abandoned by the villagers after fleeing the area in the wake of a tribal war. There is no dispute that Biton and his tribe being the original owners, initially lived the land of Lonemavute prior to others coming.

Based on the above grounds, we have no other alternatives but grant the ownership of the land as sought.

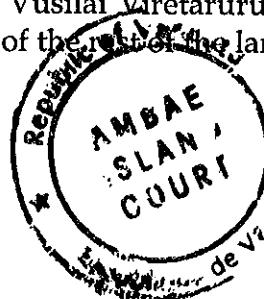
Counter claimant 4

These disputants claim of ownership over the land of Losingoi Vatu Maeto is certainly not disputed at all by the parties to the case. None of the contestants had asked or challenged the duo with questions. In whole, their entire claim remains undiscredited and is hereby admitted as the finding. Their claim of ownership will surely stand.

DECLARATION

Having considered the totality of evidence presented by the claimants and in application of the law and the rules of custom forming the basis of land ownership in the area of dispute, this Tribunal declares as follows;

1. That Counter claimant 3, Hanson Matavuhi and family be the custom owners of the land of Lonemavute while, the original claimant Franklyn Tariliu is given the right to continuous use of the land.
2. That Counter claimant 4, Nicolas Tari and Dickson Mala and family be the custom owners of the land of Losing Vatu Maeto.
3. That Counter claimant 1, Dickinson Vusilai Viretaruru and the 26 less or more families be the custom owners of the rest of the land.



4. That the claim belonging to Counter claimant 2, Selwyn Aru is dismissed.

We note on the land that local dwellers have significantly caused certain developments to the land. It is reminded that this judgment does not also affect other property rights on the land, such as rights of claimants or other local occupants to harvest existing coconuts, garden, graze cattle and other development thereon.

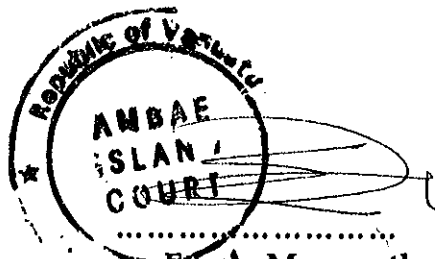
However, it must be born in mind that these rights may be waived or varied by the owners. The exercise of these rights is limited to existing properties prior to this declaration. All persons cultivating the declared lands must undertake to make appropriate arrangements with the declared owners to accommodate their continuous use of the land.

Parties are to pay their own costs necessitated by this proceeding. The claimants are duly informed of their right to appeal within 30 days period at the receipt of this written judgment.

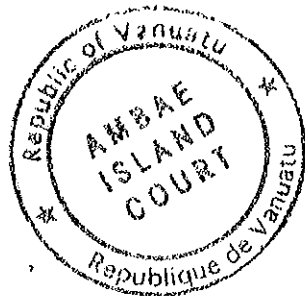
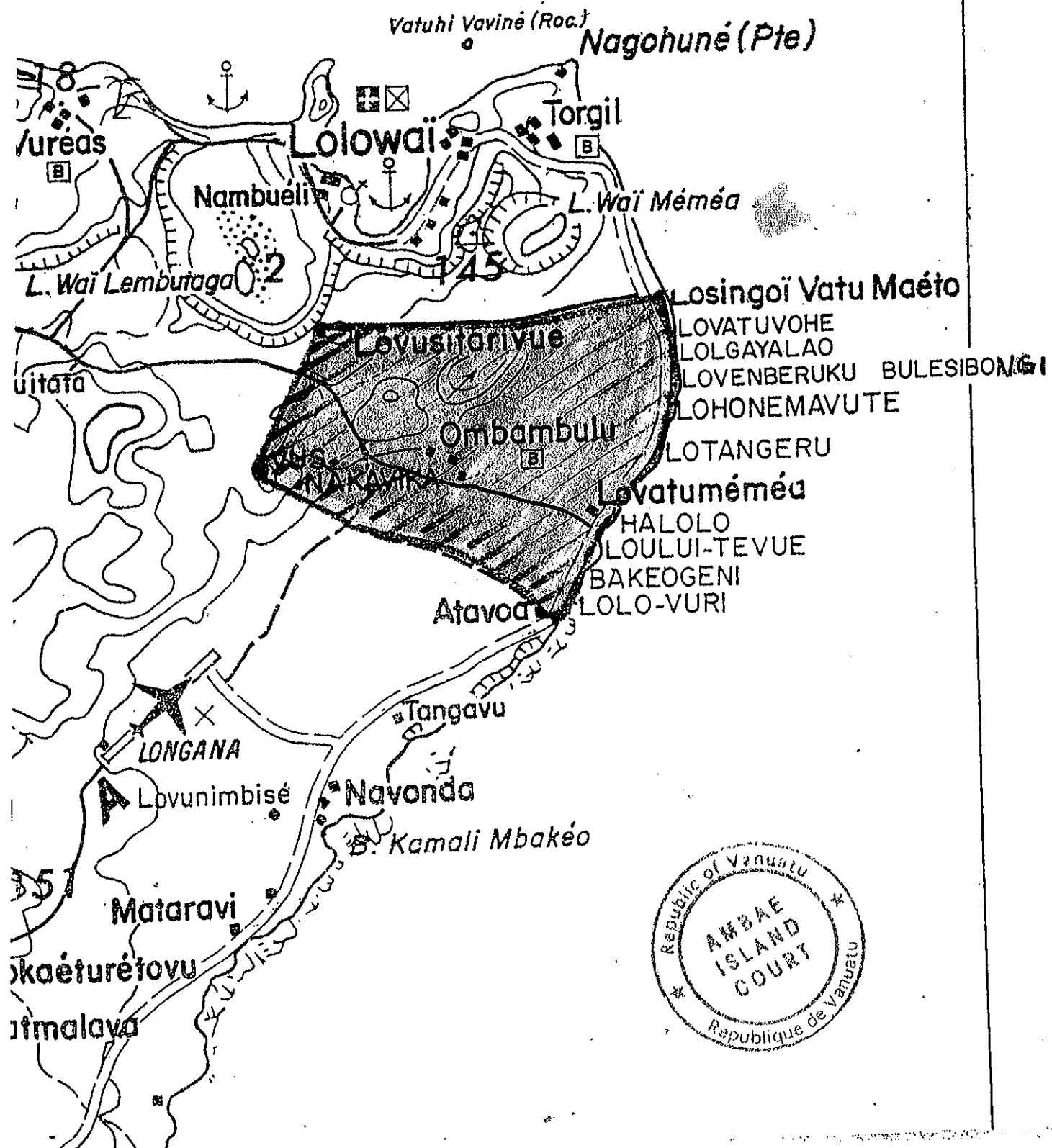
Attached to this decision is a copy of the map outlining the boundaries of the advertised land produced by the original claimant. Another map is also provided separately showing the declared lands to the respective disputants.

Dated at Lakatoro this 28th day of August, 2009

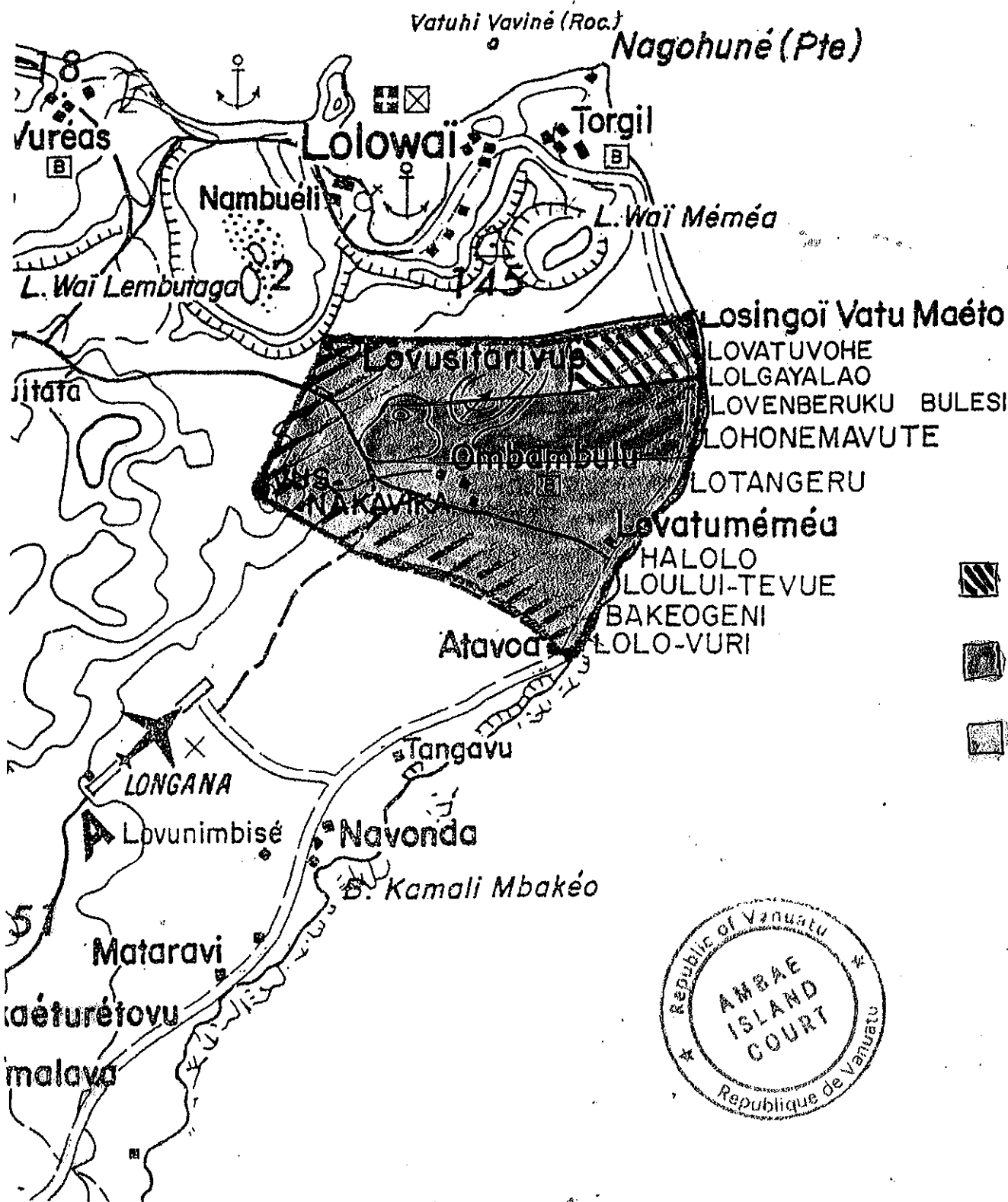
BY THE COURT


Edwin Macreveth
Presiding Senior Magistrate




ORIGINAL MAP OF LONEMAVUTE
LOTAINGERU LAND AS ADVERTISED



DECLARED LAND AREAS TO RESPECTIVE PARTIES



KEY

-  Declared to CC4 & Family
-  Declared to CC3 & Family
-  Declared to CC1 and 26 more or less families

