

CF

(Land matters)

BETWEEN: **FAMILY KAUKARE**
ORIGINAL CLAIMANT
AND: **FAMILY NASSE NOHOT**
COUNTERCLAIMANT 1
AND: **NAMIP NASSE NOHOT**
COUNTERCLAIMANT 2
AND: **IALIKAWA/FORONGO TRIBE**
COUNTERCLAIMANT 3
AND: **MAHANA AND NATONGA TRIBE**
COUNTERCLAIMANT 4
AND: **FAMILY PUKA**
COUNTERCLAIMANT 5

CORAM:

Island Court Justices:

1. Chief **SAMSON IERU**
2. Chief **MOSES NIMAHEN**
3. Chief **JIPALO**

Senior Magistrate

RITA BILL NAVITI

JUDGMENT

BACKGROUND:

This land dispute was registered in or about 25 August 1993. Public notice was sent out in 2001. It read:

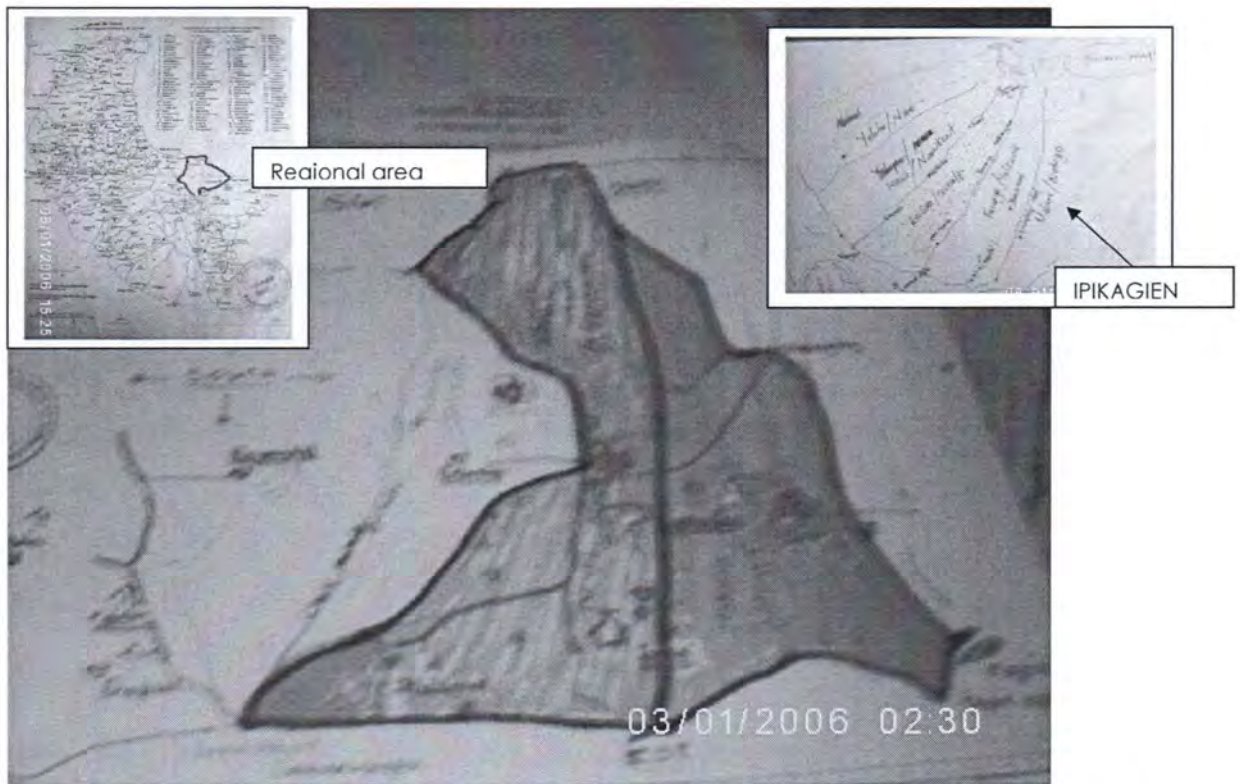
"TAFEA ISLAND COURT ibin receivim wan claim we kastom nem blong land boundary ia oli kolem "IPIGAKIEN" hemia stat long Ikiti mo Red stone blong Siwi ko kasem Ikamgi mo Lamaneknapa. Family Nasse Nohot Steven nao iclaim se olgeta nao oli kastom ona blong land boundary. Notis ia hemi blong talem long public sapos eni man or parti iting se hem tu ikat eni raet or interest insaed long land boundary ia, hem kat 30 days blong kam putum claim blo hem. 30 days period ia istart long namba 25 April ko kasem namba 25 May 2001'." Sign: Island Court Clerk.

Counterclaims were filed in, and appropriate fees paid from as earlier as 6 September 1993 and as later as 27 June 2012.

The land:

The land is called IPIKAGIEN situated close to YASUR VOLCAN sharing its boundary with the red stones at SIWI LAKE areas of the volcano itself, and extends to whitesands area.

The Land Boundaries:



- EAST AT LAMANAKNAPA RUNS SOUTH WEST DIRECTION IN THE CREEK to OANAREE APIHIL (POST LETTER)
- SOUTH WEST FROM NOANARERE LOONO TO NAKARIAN APEN AT THE WEST;
- FROM NEKARIENG APEN TO KAPIEL TEPIN EPIN AT THE NORTH EAST;
- RUNS BACK FROM KAPIEL TEPIN EPIN TO LAMANAKNAPAH

THE LAWS:

- **Constitution of the Republic of Vanuatu,**
 - **Article 73-Land belong to custom owners-** "All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants";
 - **Article 74-Basis of ownership and use-**"The rules of custom shall form the basis of ownership and used of land in the Republic of Vanuatu";
 - **Article 75 -Perpetual ownership-**"Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognized system of land tenure shall have perpetual ownership of their land
 - **Article 76-National land law-** "Parliament after consultation with the National Council of Chiefs shall provide for the implementation of Articles 73, 74 and 75 in a national land law and may make different categories of lands.
- **Island Court Cap. 167,**
 - **Section 2A-Magistrate to preside in certain land matters-**"The Chief Justice shall nominate a magistrate who shall subject to the provision of this act have such powers, Functions and duties in respect of all Island Courts, as the Chief Justices may prescribes; (2) The Magistrate nominated under subject to (1) shall preside at every sitting of an Island Court, in all matters concerning disputes as to ownership of land;
 - **Section 10- application of customary law-**"Subject to the provision 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".
- **Tanna custom laws** established in court after a voire dire before the trial, as below:

- Customary land is inherited through **Patrilineal system**, from father to son;
- The exceptions to the above principle rule:
 - **Last surviving bloodline**, (Woman can also inherit land where she is the only survivor);
 - **“KAMEP”**: where bloodline has extinct the *ienees* (chief's spokesman) of the Supreme Nakamal would place someone of their choice to populate the land again
 - **ADOPTION**: adopted child in custom can inherit land; (the adoption must be within family bloodline)
 - **COMPENSATION**: Land can be acquired through any kinds of compensation; this is where someone has fought in wars and awarded for compensation of his bravery.
- **Land tenure in Tanna:**

The Customary boundaries of lands in Tanna began and were supported by the well known custom story of “*SEMUSEMU*”. If one seeks to find out more about this particular custom story, which has regulated the life of Tanna people in relation to land, one might refer oneself to the Judgment of this court in the case 3 of 1995 called *IMASU LAND CASE*. The evidence in the current case has not ventured into the story, but parties present seem to understand and show that they are part of the story. Much is stated about the established structure of the custom government system whereas there must be:

 - One *IERERMANENG* (paramount Chief);
 - **Assisted by an *IENEE*** (a public relation officer & advisor to the paramount chief);
 - **The *IEREMANENG* must possess a *NAIO/KWERIA*** (A crown made of rooster and Eagle's feathers). The preparation of *KWERIA* for *TOKA DANCE* is highly sacred from the initial stage up to its completion. The participation of the members of the surrounding tribes reinforces the existing and creates new custom relationships. It also maintains the cooperation and unity between its participants); and
 - **“*TUPUNIS*”** (Supernatural powers vested in certain custom priests who would pray to their different custom spirits for certain things to happen or for abundance in foods. Such things included: *YAM, BANANA, COCONUTS, ALL KINDS OF EATABLE FRUITS, FISH AND SEA SHELLS ...ETC.*

Lands are controlled by *IENEES* on the advice of the respective *IEREMANENG*. People are attached to lands by their many cultural activities; in such a way wherever sub-tribes are created new customary land boundaries are placed and the powers to control and manage the people within such newly created sub-tribes are delegated to the new *IEREMANENG* and his *IENEE* by the principal *IEREMANENG* and respective *IENEE*.

The *IEREMANENG* and *IENEE* of the Sub-tribes' functions and responsibilities would include managing and controlling of the new Nakamal's land boundaries and daily life of its people. Minor decisions could be taken over social activities. However important issues are usually brought to the Superior Nakamal for consideration and approval.

The Sub-tribes should loyally serve and give allegiance to the principle tribe, whose duty is to allocate pieces of lands to them for farming, hunting or fishing and provide protection to the tribe's members. In custom this sub-tribe is called “*TUPUNIS*” or “*KITCHEN*”.

The innovative history over lands is told through “*SIP*” translated in English as a period of time. The different “sips” were:

1. ***NEPROW*** = A PERIOD OF IGNORANCE WHERE PEACE REIGNED FOR MORE THAN 100 YEARS.

2. **KAPOKOR** = KNOWLEDGE INCREASE, PEOPLE NOW MOVE AROUND
3. **NEMRUKWEN & KOWEMETA** = A PERIOD OF TROUBLE, AND TRIBAL WAR;
(They are two groups of enemies in battle during tribal war).

As knowledge increase people started to set their own boundaries over their own land and protected it by all means. A dare trespasser would be instantly kill and ate. Alliance with either the NUMRUKWEN or KOWEMETA is important when dealing with disputes over customary land matters, because it could guide the court to understand the origin of the particular dispute between the parties.

In Tanna, natives would primarily identify themselves as being a member of one or the other of these two main groupings. This identification might assist the court in showing whether in the ancient custom practices a particular group of people could have taken part in the TOKA DANCE or associated with or occupied the disputed land.

4. **CHRISTIANITY** = GOSPEL ARRIVED; and
5. **INDEPENDENCE** = From 1980 onward

When Gospel arrived, the members of *Numrukwen* and *Kowiemeta* socialized with each other and progressively moved to each other's camps and land; formed inter-marriages and lived peacefully together on a same motherland.

INTRODUCTION:

None of the parties raise any objections against the three JUSTICES

The issues in this dispute are:

1. **Whether the Original claimant FAMILY KAUKARE is the custom owner of IPIKAGIEN?**
2. **Which of the 2 adoption of JACK RIDERS or WILSON is the right IERMANANG NASSE NOHOT?**
3. **DOES THE PEOPLE OF IENEMAHA HAVE RIGHT TO THE LANDS called IATELEKAI and its surrounding areas?**

Section 10 calls this court to 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.

ORIGINAL CLAIMANT- KAUKARE

This claimant is represented by LAWAWA CONALI a pastor;
Family KAUKARE is claiming 8 pieces of land within the land IPIKAGIEN under his ancestors KAUKARE NASUAMREI.

He is claiming the 8 plots of land within IPIKAGIEN on the basis that it belongs to his family as compensation for many good deeds to the people of IPIKAGIEN. He does not claim the custom boundaries of IPIKAGIEN. His sketch map of **IPIKAGIEN** does not raise major dispute. He

said that the land and the properties belongs in custom to his direct ancestor KAUKARE NASUAMREI. Those rights flow from KAUKARE NASUAMRE down to his current generation. He claims that his ancestors are of IALISMINE. They move from EMANUVEU Nakamal at ETAPU, SOUTH WEST TANNA in 1700s during Negau KAPKOR when peace reigned over Tanna. He cross 12 Nakamals to Lounetalah and settled at IPIKAGIEN.

He first settled with the Lords of the LAND at LOUNETALAH, where he stayed with KONALI, NASSE IATI, NALPINI NGAIRAM, LAWAWA and KALIP of the NAKINEPAS tribe. The LOUNETALAH narasa had at one time 3 tupunis: NERIK, YAM and BANANA but with the arrival of the Gospel, only the tupunis of Banana exists. The said Lords with whom he stayed were barren or childless so his ancestor KAUKARE became their heirs.

KAUKARE was a peace keeper and facilitated the Gospel preaching when the Missionary G Paton arrived at Port Resolution in 1858. He was also defending the land boundaries of IPIKAGIEN with NATONGA of Kaserumene with the warriors of KAUTIAMA and FARONGA. He continues to state that KAUKARE has performed TOKA dance at IENKWANEMI SOUTH EAST TANNA and LOUNOU NAKAMAL. His crown or NAIIO is called "NAIO APAMAH". LOUMANUGMITA, KUNAHU and LOUNONAVIL have prepared and crafted it. KAUKARE's men named NARUA and USUA fished the turtle or fish for the Lords of IPIKAGIEN. They fished such turtles and fishes at IEKAMJI, NAHUPINI, RINGINAPIK and LAPATAKIEVI down by the coast.

He believes that there are 6 nasaras in this big nakamal IPIKAGIEN. Each of the 6 nasaras have their own Lords or IARUMANENG who also assist in the preparation of the same Kwearia or Naio. IELIKAVA/FARONGA, IAUKALIP/RINGAU would also be called to help with his NAIIO if necessary.

KAUKARE was the first native to own a shipping business called ALBERTROSE in 1917. KAUKARE was converted a Christian in his very old age and used his faith to establish a big NIEL in 1925 when he called for peace and harmony around Tanna. 200 pigs were killed during that ceremony and many tribes reconciled. That customary reconciliation took place at IPIKAGIEN nakamal and it involved the chiefs or Lords such as NATONGA/MAHANA, FARONGA/IALIKAWA, RINGAU/IAUKALIP and KAWI/NAUKAUT.

In 1936 he transferred the 8 pieces of land to the tribe NIKIMLUANE in the person of IAKA and NESEK as "KAKEL" (in custom it is refer to as a plate for his food). In 1950 the tribe of NIKIMLUANE moves back to ENEPIR at ISANGEL WEST TANNA. So the lands were surrender back to KAUKARE who, then placed the sub-tribes of NEPEKRAHE, KIEPE, NAKINEPAS, PUKAS and NEMLATMINE and he comes now to defend their rights over the 8 plots.

During the period of MANUWAWA and SIPI, KAUKARE was one of the peace maker in few tribal wars:

1. First was the war that shook this area between the tribe NALAIMINE and NIPIKINAMUMNE in 1846-1858.
2. Another tribal war called IPIKAGIEN KATURIN TEPASI IKEN; it broke out between the tribe of NALAIMINE and KASERUMINE, and NAKUS-KASERUMINE. Its intention was to destroy the natives of PIKAGIEN, yet again KAUKARE defended the sovereignty and the indigenous right of the people of IPIKANIEN and negotiated the peace.
3. The third tribal war broke out between KAWI/NOUKOUT and RINGAU/IAUKALAPI. Again KAUKARE set peace;
4. At another time KAUKARE rescued NIKIMLUMINE TRIBE from the hands of NUVITOU APEN. At time NUVITOU APEN tribe intended to wipe out the TRIBE of NIKIMLUMINE from this land. After he rescued them, KAUKARE allowed them to use the 8 pieces of land which were now returned when these people returned to their original lands;

The descendants of KAUKARE are freedom fighters from the old days down to the independence in 1980.

IPIKAGIEN means house of refuge in other words place of Happiness. But in the current situation there are so many disturbances caused by NASSE STEPHEN. This court will come back to this issue later in this Judgment.

The claimant acknowledges that he is not originally from this area. He merely defended his ancestors' rewards in terms of 8 plots of land for their contributions to the people of IPIKAGIEN.

COUNTERCLAIMANT ONE: FAMILY NASSE NOHOT

This counterclaimant is represented by STEPHEN NASSE NOHOT;

FAMILY NASSE NOHOT is claiming IPIKAGIEN LAND under the exception to the custom law of inheritance through ADOPTION OF THE NAME NASSE NOHO through IAKOLI.

He claims that his rights and authorities were approved by the successful performance of TOKA during IAKOLI's time. He traces the arrival of "TOKA" as follow: "The "TOKA" is a kind a spirit that got into man in order to manifest itself. Its purposes were to make people happy and over joy in its climax, a man will be vested with the spiritual power of Toka and become the IERMANENG. This is similar to the bible's New Testament where people were assembled in the upper room praying for power then were baptized with the Holy Ghost in the up-room. Toka left IENKAHI and moved down to IENIMAULU. It stayed in hiding for a while then moved to LOUTABIS were it attempted to manifest itself but the dance was unsuccessful so it moved out again to IENIKUII nakamal, walked along the beach to LAPATAKIUI up to KASAUNATIN, it met IAKOLI; then the spirit of TOKA took hold of IAKOLI who successfully performed Toka dance and was made big chief of IPIKAGIEN. IPIKAGIEN means people were happy or glad because the Toka dance was successful. He traced his family line from:

- **Chief IAKOLI** who married TAMANU and fathered
 - **NASSE NOHOT** and his sister NAMTANI. NASSE means dragging Toka, NOHOT refers to the left over colorful straps of toka. NASSE NOHOT married IARIS and fathered 3 girls: SALOKI TESEI, KENGA and NAVALAK;
 - **SALOKI** married SEMU MANGAU, on the agreement that SEMU MANGAU should look after NASSE NOHOT's land after his death because he had no son. But the marriage failed. SEMU MANGAU left SALOKI for KAUI BATAIUIUI. SALOKI then lived in marital relationship with JACK RIDERS an English trader who established himself at New Castle and mothered a son named after his father JACK RIDERS.
 - **JACK RIDERS** was adopted by SEMU MANGAU purposely to place him on NASSE NOHOT's land in performance of the agreement SEMU had with old NASSE NOHOT. This adoption was made according to the rules of custom in adoption. During that adoption SEMU MANGAU changed the name JACK RIDERS TO NASSE NOHOT.
 - **SALOKI** left JACK RIDERS for KASPA from ENIMAHA and in their cohabitation she mothered her first born daughter MARI IAUIAI , JOHNA NALAU (son), MALIWAN NASASUIEN (son).
 - **MARY IAUIAI** married NAMBAS in a custom swapping were NAMBAS' sister one SERAH married NASSE NOHOT or JACK RIDERS of IPIKAGIEN. MARY IAUIAI and NAMBAS' first born was a boy they called him GIDEON NAMBAS and when they had their second boy, they made a family feast inviting NASSE NOHOT (JACK RIDERS) and SERAH on the occasion of the naming of their son; also present was KALIP and his wife and the parents of SEMU IATI. The parents of the baby boy revealed that the name of the boy was WILSON but NASSE NOHOT changed the name from

WILSON to NASSE NOHOT. KALIP was very angry over the handling of the title. But NASSE NOHOT affirmed that the name belongs to him and he has the right to give it to anyone he wished. He did what he did, to secure the land and IPIKAGIEN, and that in future that boy will rule over the land at IPIKAGIEN. That person is today **WILSON (NASSE NOHOT) down to the current generation.**

Furthermore to this, and to better understand the behavior of STEPHEN NASSE NOHOT. The court has read the documents filed. The information within the file revealed that the original claimant holds himself as the heirs of the Lords of IARMANENG of IPIKAGIEN without any foundation. In doing so he attempted to take over the land of family NASSE NOHOT. Stephen Nasse Nohot became wild when an injunction was taken against family Nasse Nohot restraining them from working and/or developing land in the name of this dispute. That injunction has re-enforced the doubt that polluted the air in the region. People around the area were made to believe that NASSE NOHOT in the person of JACK RIDERS not being of full blood is a foreigner and cannot inherit the land of his mother.

Many have criticized JACK RIDERS because of his skin color. A witness GIDEON NAMBAS, an aged and notable person in the community testifies that the first NASSE NOHOT in the person of JACK RIDERS has faced unbearable challenges and he was so pressurized that he decided best to strip himself off of the title NASSE NOHOT, and that was what he did.

This evidence is supported by an attachment to a sworn statement made by KAUKARE in support of an application for restraining order in 1996 where NASSE NOHOT in the person of JACK RIDERS was said to have been conceived through a rape. To emphasis his claim, he said this, and I quote: "...He (Jack Riders) took Saloki locked her up had sexual intercourse with...Salorki gave birth to "HALF CAST NASSE NOHOT. Never lived together as husband and wife. "In this Production of Bastard"?...NEVER EVER WILL SUCH PERSON BEING THE SON OF A FOREIGNER INHERIT LAND RIGHTS IF HE IS NOT BEING ADOPTED TO A CUSTOM NATIVE OF A PARTICULAR AREA. THIS IS TANNA CUSTOM".

For the above reason JACK RIDERS thought it best for WILSON being of full native blood of Tanna and grandson of Saloki to be crowned with the title NASSE NOHOT in order to defend NASSE NOHOT.'s rights.

The transfer of the name NASSE NOHOT was made merely against the challenges faced JACK RIDERS in those days because of his "skin color".

COUNTERCLAIMANT TWO: NAMIP NASSE NOHOT

NAMIP NASSE NOHOT is represented by MR. RAYMOND NASSE retired teacher

NAMIP NASSE NOHOT is claiming IPIKAGIEN under the custom ceremony where SEMU MAGAU purportedly adopted SALOKI's son in the person of JACK RIDERS and bestow the title of NASSE NOHOT on him.

As mention above, I quote: *JACK RIDERS was adopted by SEMU MANGAU purposely to place him on NASSE NOHOT's land in performance of the agreement SEMU had with old NASSE NOHOT. This adoption was made according to the rules of custom in adoption. During that adoption SEMU MANGAU changed the name JACK RIDERS TO NASSE NOHOT.*

He claims that during the period of NUMRUKWEN and KOWIEMERA the IPIKAGIEN's people were wipe out so the worriers of NUMRUKWEN place NASSE NOHOT at IPIKAGIEN and settled themselves at NITAVIWI or New LAND.

Accordingly NASSE NOHOT was and is NUMRUKWEN. He has contributed to the settlements of people in Whitesands area and has established his kingdom as the IARMANENG of

IPIKAGIEN. The adjacent willage and land of YENEMAHA his chief assistant of Nasse Nohot. NAMTANI (NASSE NOHOT's sister) was married to that village. NASSE NOHOT's bloodline line was defended by MAHANA and NATONGA and assisted by IALIKAWA and FARONGA in the fight during "SIPI-MANWAWA".

He traced his boundaries on IPIKAGIEN LAND as follow:

- LAMANAKNAPA to OANAREE APIHIL (POST LETTER)
- NOANARERE LOONO TO NAKARIAN APEN;
- NEKARIENG APEN TO KAPIEL TEPIN EPIN;
- KAPIEL TEPIN EPIN TO LAMANAKNAPAH

Within this boundaries lies the land IPIKAGIEN and its the sub boundaries managed and controlled by FARONGA and IALIKAWA. KAUKARE has no land.

He traced his generation from:

- **NASSE NOHOT** of IPIKAGIEN nakamal to SALOKI
 - **SALOKI** mothered JACK RIDERS who became NASSE NOHOT;
 - **NASSE NOHOT** fathered DANIEL LEWAWA;
 - **DANIEL LEWAWA** fathered SEMU DANIEL;
 - **SEMU DANIEL** fathered JOHN SEMU;
 - **JOHN SEMU** fathered GRIFFIN

On the other hand SALOKI left JACK RIDERS FOR GASPA MALIWAN of YENIMAHA NAMAKAL .

- SALOKI mothered JOHNA NALAU;
 - JOHNA NALAU fathered NATONGA;
 - NATONGA fathered JOHN KENNETH;
 - JOHN KENNETH fathered KAWISEL;

The Saloki descendants populated YENAKWILI NAKAMAL through Mary daughter of SALOKI and GASPA.

- SAKOLI mothered MARY who married NAMBAS YAKAWAI of YENAKWILI NAKAMAL;
 - MARY mothered STEPHEN NASSE;
 - STEPHEN NASSE fathered KEIPA SAMUEL;
 - KEIPA SAMUEL fathered YAKOLI.

COUNTERCLAIMANT 3 – IALIKAWA/FARONGO TRIBE

This tribe is represented by MR. CHARLESON WILLIAM a teacher and headmaster of Betros School.

This claim is registered merely to defend the main boundaries. The boundary that separates IENEMAHA and IPIKAGIEN.

It is alleged that IALIKAWA and FARONGA tribe was established through the NEGAU of NEMRUKWEN and KOWIEMETA. They are two chiefs or ienees of YENIMAHA's nakamal for the KASARUMENE; and the IARMANIENG is KAHI NALPINI. They served IPIGAKIEN NAKAMAL as its kitchen through the following TUPUNIS: tupunis of NANTOU practiced by ANDREW and YAM is practiced by NAMU.

The disputing boundaries begins at LAMANAKAP coastline on the right side creek on a pathway to West direction toward LOKMARI, up to NEW CASTLE running up to BOX LETTER, on the other side it run from KARAMRUMEN coast up to the main road to the junction road of KASOUNATEN to BOX LETTER and right through SIWI ash plain.

There are 3 main villages. IENIMAHA PAH, PESI and IENIMAHA ILIS with a population of approximately 180 people living within comprising of 50% children, 30% women and 20% man. The birth rate is very high causing scarce pace for sustainable farming.

The 4 plots of lands claimed by the original claimant (LOUNAIKAPEN, IATELEKAI, KUNAUKA AND LAPATAKIWI) are situated in his disputed boundaries.

There is no substantial dispute or argument over this claim. The majority of the parties have consented to the fact that this is the joint boundary of the IPIKGIEN and YENEMAHA people.

This claimant further rejects the claim of the original claimant and allied with NAMIP NASSE NOHO and MAHANA and NATONGA. He criticized the behavior of the original claimant in the person of KAUKARE for condemning certain cultural activities such as consumption of kava, polygamy in custom marriages system, the exercise of Tupunis. That has led to the a kind of wr called 'SIPI & MANUWAWA".

Further as the "kitchen" of IPIKAGIEN the lenee of YENEMAHA disapproved of the title of NASSE NOHOT been held by Counterclaimant 1.

This claimant's claim did not raise major issues. All have agreed to the disputed plots been joint boundaries.

COUNTERCLAIM 4 – MAHANA AND NATONGA.

JARSON NAMAKA appears for this claimant.

He is claiming as a IENEE of the IPIKAGIEN NAKAMAL, appointed by NEGAU NAMRUKWEN/KOUWIEAMERA, he has with him the IARMANIENG, MANANMENA and the TUPUNIS but MAHANA and NATONGA are the highest amongs them all.

He ruled over NOHOT, KAUKARE, LAWAWA, SEMU SIALE and SEMU MANGAU. As big lenee he strongly disapproved Kaukare the original claimant and would not entertain his dispute. Those who support his stand are the following lenee:

- RINGAU & IAUKALIPI (lenee of YENUMAKEL)
- lalikwaw & FARONGA (lenee of YENIMAHA)
- KAWI & NAOUKAOT (lenee of ENAKWILIE) AND
- MAHANA & NATONGA (lenee of IPAKAGIEN)

He condemns the way that the original claimant lodged this claim without consultation with all the lenees in IPAKAGIEN, therefore he disputes the map that was registered and as lenee threatened to repossess all the 8 pieces of land that were initially given as "KAKLE" to KAUKARE the original claimant. In support to other lenee he resent the involvement of KAUKARE in the TANNA LAW. A law introduced by the Missionaries on Tanna infringing the rights and freedom of ancients people of Tanna with the intention to stop the consumption of Kava, polygamous marriages and many other custom rituals that sustained the lived of the Tanna people over past centuries.

This Tanna LAW has disturbed the peace placed by Negau NUMRUKWEN/KOWIEMETA and awaken "SIPI MANUWAWA" where people fought each other because of chief KAUKARE's intervention into the private life of people. He disputes the powers of the people who, initially would have transferred the 8 pieces of land to KAUKARE. Furthermore even if they were vested with powers to transfer, it would have been transferred as "KAKLE" which is a temporary possession. They would revert back to the rightfully owners when needed for re-allocation if necessary. This re-allocation should be done after consultation with the chiefs of KASARUMENE tribe in a general meeting.

It is alleged that recently the original claimant KAUKARE has initiated negotiation for his return to his own original land. He alleged that he has sent a turtle over to "EHALICEMIENE" and a pig up to IARIS KAIPEPMEN without proper custom procedures. This behavior in itself throws his family out of this land.

This claimant recommends that KAUKARE should go back to his place of origin. He continues to make some remarks over the first counterclaimant's behavior and disqualifies him in claiming IPIKAGIEN because he should be claiming his father's land. His claim in IPIKAGIEN could not stand in custom because under customary law of inheritance Mary his mother has wedded NAMPAS and she has now gone to YENAKWILLIE. He continue to describe STEPHEN NASSE caused disturbance by non-compliance of the custom rules and procedures and how he was forcefully removed from him from IPIKAGIEN and placed him in YANAKWILLIE. He traced his generation from NATONGA.

- **NATONGA** married NAUWAN MURY and fathered NAMAKA;
 - **NAMAKA** wedded NAUKA and fathered SAM NATONGA;
 - **SAM NATONGA** wedded IALELE and father JALSON NAMAKA;
 - **JALSON NAMAKA** wedded JANNETE and fathered SAM;
 - **SAM** wedded MONIKA.

His boundaries marks extend over the creek at IAKALANGLANG up to the IKITI VILLAGE and LOUNASUMAN nakamal. This court will only deal with the boundaries within the dispute as public in the original claimant supported by the first counterclaim with which the majority of the parties more or less agree to.

COUNTERCLAIMANT 5 – FAMILY PUKA

This claimant is represented by TAKIFU NAKOSI.

He opens his case with a complain over the management of this case. He said that he was not aware that this case is coming for trial and question the work of the Tanna Island Court over the public notice. Had he not passing by the office of the Island Court on 29 JUNE 2012 he would have been missed out from this trial.

This court acknowledges that there were some mis-management of this disputes. In 1993 a dispute was registered by KAUKARE there is no evidence of public notice been sent out. In 1994 this counterclaim against lodged his claim and the clerk at time registered anew claim under number 6 of 1994. The administration of Island court had 2 case opened for the same land. The current clerk was concentrating on case 2 of 1993.

This claimant seems to have formed a land trust called PUKA LAND TRUST equipped with proper stamp.

Family Puka's history goes back from the creation era, where, he said IPIKAGIEN LAND was still under water, when his ancestors arrived. When the dried land finally appeared the stone for Tupunis were discovered at the LOUNAPAL(YENIMAKEL). The stones began to question each other and discovered that Pig arrived there first. They then wondered whether pig arrived with another creatures, but pig said he was with NATIK (poison-witchcraft). They then decided to find settlements over the land. Some tupunis did not wish to settle up the mountain because they would not be able to face the bad weather. So TARO, ULBEI (a kind of banana), and Kava decide to go up the hill, because they grow low unlike NAMAMBE, NANTAO, BREADFRUIT ...ETC which grow tall. They remained in remain at the coastal area. They inquired as to the pig settlement, it replied: I will die for you when you are ready for harvest I will be kill to accompany you. The Natik said I will be the bodyguard for all of you; its function was to keep them and made sure the law prevailed around them all the time. Everyone then declared that

"pig" would be their YARMANING or King. That is why PUKA is the king in this whole area. As evidence for his sovereignty this family successfully hosted a toka in 2003 to which people around Tanna participate and witnessed his rang. That toka was held in YENIMAKEL (LOUNAPAL). There never been a TOKA before me, this is the first ever successful toka held in his Nakamal.

He continues to say that IPIKAGIEN was were he fed his pigs in preparation towards a Toka or any custom ceremony. According to his story, none ever lived at IPIGAGIEN, the current inhabitant came with the missionaries or to harvest breadfruit. His stones for the abundance of pig are all situated in a triangle form at the three corners of the boundaries of IPIKGIEN: from the pig's head at siwi lake, to the pig's gut at IKAMTI and to its body at LOCKMARI.

In cross examination he does not recognized the Negau, does not know why parts of the pig were situated in trial form over the land from SIWI to IKAMTI and further to LOCKMARI.

He claims to be the King or Supreme Nakamal in this area. He has under him two highly respected lenees: RINGAU and IWAKALPI yet none of them witness in support of his claim. Instead RINGAU gave evidence in support of the lenees of PIGAKIEN and approved of the adoption of JACK RIDERS as NASSE NOHOT. He condemns the adoption of Wilson as another NASSE NOHOT led by STEPHEN NASSE NOHOT.

His successful Toka dance was attended by neither the lenees of IPIKAGIEN nor those of YENEMEHA. Nothing show that he has control and management over the social affairs of this area. The only involvement of his administration was done by his lenee RINGAU at the adoption of JACK RIDERS, where his lenees were requested to attend to the ceremony where SEMU MAGAU, SALOKI and other notable members of the land to witness the bestowal of the name NASSE NOHOT upon JACK RIDERS. He traces his generation from KITI.

- **KITI** married KAPALY and fathered NAKO YAWALE;
 - **NAKO YAWALE** fathered KAMOI;
 - **KAMOI** wedded NARUA and fathered MOSES;
 - **MOSES** wedded LIDIA and fathered TAKIFU NAKOSY
 - **TAKIFU NAKOSY** married MERRY and fathered CHARLEY WILLIAM.

He produced two witnesses to give evidence over his land boundaries excluding the spokesperson, but both failed the test of cross examination. The first witness supported the fourth counterclaim NAMAKA and second one destroyed his evidence over the boundaries when in answering the cross examination does not know the customary boundaries; instead insisted that he came to inform the court that the IPIKAGIEN was a surveyed land. This land was fully surveyed by the Missionaries. This statement show how ignorant the witness is, over many social issues and development within the area.

When ask if he had control and management over this area of IPIKAGIEN and YENEMEHA, all he could say, is that he is the big boss, he arrived first just after the land became dried and that he does not know any of the claimants.

However when questioned on whether it was possible that a Toka dance be hosted in IPIKAGIEN he reply in the affirmative and that another NAIIO APAMAH could also be raised here.

This implied that IPIKAGIEN would have had a Supreme Nakamal of its own, with its "kitchen" or assistant as YIENEMEHA.

His case could be a perfect case for a Supreme Nakamal in this area had his lenees and witnesss supported his statement, but his lenees failed him as well as his witnesses, thus discrediting his evidence.

FINDINGS:

After hearing all the evidences and reading the pleadings the court finds that:

1. The disputed IPIKAGIEN's boundaries as start from the passage at the beach LAMANAKNAPA. It runs on the creek to LETTER BOX, continue from there to NOUNALULU KAPUKAL, from there, it passes the red stone close the SIWI Lake at the foot of the YASUR VOLCANO to THE ROAD JUNCTION to LENAHEL. It goes around IKITI area along the creek to IAKALANGLANG straight to IKAMJI at the coastline. From there It goes by the beach back to LAMANAKNAPA. The land LOUNAIKAPEN, IATELEKAI and LAPATAKIVI were disputed by IPIKAGIEN's brother land of YENAMAHA. Evidence produces by Kaukare show that the land was sold by NASSE NOHOT on 17 September 1964 to one ROBERT HEMAR. The deed of sale was witnessed by: SALOKI IERI OF Launanunan; DOFMANY PITER of Maleliou, NAMAKA JONNY of IPIKAGIEN WILLIAM NESSAM male Nurse of LOEARFI and TINNING JOSEPH of the French Delegation. That in itself establishes the control and management of that particular land by the IERMANENG of IPIKAGIEN. Today Raymond Nasse for NASSE NOHOT agrees that that land has been used by both the inhabitants of both land admits having it as a shared boundary.
2. The Original claimant has reached this area in the middle of 1800s and has tremendously contributed to the social lives of the people of IPIKAGIEN. Many developments that are enjoyed today are the fruits of his ancestors work. It is his fate that he should not be given a custom title but a Christian title to continue to assist the people of this area. Had it not been so, he would have been made a Chief or an lenee. It is a pity that his ancestors' ethics and conducts were not inherited by the present generation of KAUKARE has to secure and maintain their good deeds instead hatred had germinated within a once peaceful community giving rise to this dispute. It thus, causes much disturbance leaders the fall of the Government of NASSE NOHOT in the late 1950s. All kinds of criticisms were leveled against him, but blind are those who cannot see his ancestor's good deeds. He was praised in few literatures that fly within his files. He has contributed a lot in building this area for the current generation. He has fought the darkness with the Missionaries and placed peace when fights broke out of ignorance. 200 later the faithful KAUKARI the great warriors descendants are still fighting for their occupation. The descendants of those for whom he laid his life wished him out of their area. It is common, in every human to protect his interest. All reasonable man would not pack up and leave behind all his assets as well as his cultural attachment to the land where his ancestors were buried. The court is find an injustice here
3. There are two NASSE NOHOT before the court. This is the result of two custom adoptions for the title of NASSE NOHOT. Both NASSE NOHOT are descendants of the rightful NASSE NOHOT. The true facts are that:
 - a. NASSE NOHOT fathered 3 girls no son. He arranged for a SEMU MAGAU to married his first born daughter SALOKI to bore his Heirs. However SEMU MAGAU deserted SALOKI. Saloki then mothered JACK RIDERS. JACK RIDERS was bestowed with the title "NASSE NOHOT" in the presence of high ienees and other notable people with the approval of SALOKI who was guardian of that name at the death of her father.
 - b. The second adoption of the name NASSE NOHOT to Wilson was made without the lenee of IPIKAGIEN and without consultation with the neighboring lenees as required by Custom law on adoption.

Wilson's father one GIDEON NAMBAS was cross examined on this adoption and he told the court that there were unbearable challenges against JACK RIDERS, because he was of foreign blood.

- c. Furthermore the purpose of the second adoption would have been to alleviate the challenges and protect the assets of NASSE NOHOT.

There was no need for such an exercise. JACK RIDERS being the son of SALOKI has custom rights over NASSE NOHOT's fortune. It was not necessary for SEMU MAGAU to adopt the child.

4. MAHANA and NATONGA are undisputed lenee of IPIKAGIEN.
5. IALIKAWA/FARONGO are lenees of IENEMEHA and they succeed in their claim over the disputed boundaries;
6. FAMILY PUKA is the Paramount chief (IERMANENG) of KASERUMNE in this area, having his throne at ENUMAKEL. It would be vexatious and frivolous in custom for this high chief to claim over this land. Furthermore his evidence cannot stand the cross examination.

The answers to the issues raised are:

1. Whether the Original claimant FAMILY KAUKARE is the custom owner of IPIGAKIEN? **NO**
2. Which of the 2 adoption JACK RIDERS or WILSON is the right NASSE NOHOT?: **THE ADOPTION OF JACK RIDERS PREVAILS**
3. DOES THE PEOPLE OF IENEMAHA HAVE RIGHT TO THE LANDS called IATELEKAI and its surrounding areas? **YES**

DECLARATION:

ONE:

IPIKAGIEN BOUNDARIES BELONGS TO THE GREAT IERMANENG NASSE NOHOT, THE HUSBAND OF IARIS. IT IS INHERITED BY HIS DAUGHTER SALOKI IN THE ABSENCE OF ANY MALE BLOODLINE, UNDER THE EXCEPTION TO THE CUSTOM RULE OF INHERITANCE IN TANNA WHICH IS ALSO APPLIED IN THIS AREA. SALOKI'S FIRST BORN SON JACK RIDERS RECEIVED HER BLESSING WITH AND IN THE PRESENCE OF GREAT IENEES OF ENUMAKEL. THAT TITLE IS NOW HELD BY **DANIEL LAWAWA. HE IS DECLARED THE GREAT IERMANENG OF IPIKAGIEN. (SEE ATTACHED MAP)**

TWO:

ORIGINAL CLAIMANT:

KAUKARE is placed under the IERMANENG NASSE NOHOT in the person of DANIEL LEWAWA and the IENEES MAHANA & NATONGA. His 'kakles' should remain as originally agreed by the ancestors;

THREE:

COUNTERCLAIMANT 1 NASSE NOHOT:

His (Wilson) adoption fails in custom. However he retains some rights as descendants of SALOKI under **article 73** of the Constitution which states that the land belongs to the

Indigenous custom owners and their **descendants**; but those rights are secondary. This Counterclaimant is a notable family in INEKWILI. He is now placed under DANIEL LEWAWA, the great IERMANENG NASSE NOHOT and the IENEES of IPIKAGIEN. He cannot impose himself in IPIKAGIEN. He must abide and respect NASSE NOHOT in the person of DANIEL LEWAWA and the IENEES of IPIKAGIEN. As the IPIKAGIEN IERMANENG DANIEL LEWAWA must arrange for this party to enjoy a small portion of their grandmother's wealth within IPIKAGIEN.

FOUR:

COUNTERCLAIMANT 2 : NAMIP NASSE NOHOT:

He is the right NASSE NOHOT and now IERMANENG of IPIKAGIEN and own lands in "A" and jointly owns land in "C".

FIVE:

COUNTERCLAIMANT 3 IALIKAWA/FARONGO TRIBE

This tribe succeeds in his claim. They represent the population of IENEMAHA who are join owners of the land in "C". They and NASSE NOHOT should manage the 3 plots in join customary ownership.

SIX:

COUNTERCLAIMANT 4-MAHANA/NATONGA

This claimant is the IENEE of IPIKAGIEN and custom owner of land in "B"

SEVEN:

COUNTERCLAIMANT 5 FAMILY PUKA

This claim cannot succeed.

ORDERS:

1. THE DECALRED CUSTOM OWNERS MUST NOT EVICT ANY PERSON HAVING INTEREST IN THEIR RESPECTIVE BOUNDARIES WITHIN THE LAND BOUNDARIES OF IPIKAGIEN, OR REPOSSESS ANY DEVELOPPED PLOT OF LAND; UNLESS THEY ARE COMPENSATED FOR THEIR DEVELOPMENT OVER THE LAND. (SECTION 13 (C) OF ISLAND COURT ACT CAP. 167).
2. KAUKARE IS PERPETUAL OWNER OF IRAPI LAND PLOT 6. THE BOUNDARIES BEING:
 - a. MANGO TREE AT ROAD TO IARKE MISSION RUNNING SOUTH TO NAMLOU TREE FURTHER SOUTH TO CREEK AT IENEMAHA;
 - b. LONGING THE CREEK WEST TO BANIAN TREE CONTINUING TO MANGO TREE BESIDE ROAD TO LENAHEL;
 - c. RUNNING NORTH TO BANIAN TREE BESIDE ROAD TO IARKEI and;
 - d. RUNNING EAST TO MANGO TREE;

- 4.3 KAUKARE MUST SURRENDER ALL THE PLOTS OF LAND NAMED IATELEKAI AND ITS IMMEDIATE SURROUNDING TO IERMANENG OF IPIKAGIEN WHO SHALL PLACE IT AS JOIN BOUNDARIES FOR THE USE BY THE PEOPLE OF IENEMAHA AND IPIKAGIEN. FOR AVOIDANCE OF DOUBT ANY DEVELOPMENT DONE AFTER THE DISPUTE IN THIS AREA SHOULD NOT BE COMPENSATED. (AS THE COST IN THE CAUSE);
- 4.4 KAUKARE MUST RE-NEGOTIATION THE BOUNDARIES OF ALL PLOTS OF LAND WITH THE GOVERNMENT OF IARMANENG OF NASSE NOHOT AND HIS IENEES.
- 5 KAUKARE FAMILY, HIS AGENTS OR RELATIVE MUST NOT BE EVICTED WITHOUT PRIOR COMPENSATION FOR THE DEVELOPMENT THAT WERE DONE BEFORE 1993. ANY PERMANENT DEVELOPMENT MADE AFTER 1996 IS SUBJECT TO DETERMINATION BY THE IENEES;
6. FOR THE SAKE OF PROPER MANAGEMENT OF LANDS IN IPIKAGIEN, THE DECLARED NASSE NOHOT IN THE PERSON OF DANIEL LEWAWA MUST RESTORE HIS CUSTOM GOVERNMENT;
- 7 FOR THE SAKE OF PEACE AND GOOD ORDER IN THIS TERRITORY MAHANA AND NATONGA BEING THE IENEES IN IPIKAGIEN MUST TRY THEIR BEST TO ASSIST IARMANENG NASSE NOHOT IN PERFORMING RECONCILIATION WITH EACH OTHER AND THE MEMBERS OF THE COMMUNITY. THOSE INCLUDE THE ISSUES OVER GRANDSON OF SALOKI WILSON AND THE FORCEFULL REMOVAL OF STEPHEN. HOWEVER STEPHEN'S RIGHTS ARE SUBJECT TO DANIEL LAWAWA'S DECISION.
- 8 DANIEL LAWAWA MUST NOT UPHOLD HIS DECISION UNREASONABLY FOR AS DESCENDANT OF SALOKI HE HAS SOME RIGHTS OVER NASSE NOHOT'S WEALTH.

AT IARKE, this 9 July 2012

Island Court Justices:

Chief SAMSON IERU



Chief JIPALO



Chief MOSES NIMAHEN



Senior Magistrate

RITA BILL NAVITI



