

(Land matters)

BETWEEN: FAMILY SANDY AVELVEL
ORIGINAL CLAIMANT
AND: FAMILY JOSEPH NETVAN
COUNTERCLAIMANT 1

CORAM:

Island Court Justices:

1. Chief MIKE NARE TOMBU
2. Chief JONATHAN NIVWO NELOW
3. Chief JASON NOVWAI TAHONAMBON METE

Senior Magistrate RITA BILL NAVITI

JUDGMENT

BACKGROUND:

This land dispute was registered in or about 31 August 1994. Public notice was sent out in around 16 November 1994. It read:

"Mr. SANDY AVELVEL ibin lodgem wan klem blong graon long Tafea Island Court long 31 augst 1994. Nem blong gron a hemi NOMPUN YATEVEH lo area blong South West Erromgango (lukim Map) Sapos eni man hemi tink sehem i gat raet long graon ya, hemi gat 30 days blong ikam kelem blo hem. (30 days istartlong 16 November 1994) Fee 30 000 vatu.

Document blong submittem icom long Kot:

Wan written statement blong klem we ibe islong custom (including wan family tree wetem wan map we igat boundry blong groun we man i klem).

Maximum blong five (5) written statements blong ol witness we ibeis too lo custom."

Thank you

Steve Felix, Island Court Clerk.

JOSEPH NETVAN filed a Counterclaim on 24 May 1995.

THE LAND:

The land is called NOMPUN YATVEH situated at SOUTH SOUTH WEST ERROMANGO.

The Land's boundaries:

- **South of the land:** at the seashore from ISVOTENU at the sea shore it runs straight line to NETOUVOR at the West,
- West then it continues to a first creek yet at the west; it longed the creek up to PUNMELAH continues running TO RANEMRANGAU. It then descends running slightly to East;
- North of the land from RANEMRANGAU it descends running slightly to East, then runs to RAUMPUMRONGO, further down to PUNEMPAKU at a creek, longing the creek to OROVU; further down to PUNYEMLANG and ends at OKOR at the South;
- South the seashore.

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 difference categories of land, one of which shall be urban land.
- **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 and 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 and 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".
 - **Erromango 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);
 - **ADOPTION** (adopted child from the bloodline in custom can inherit land)
 - **COMPENSATION** (Land can be acquired through any kinds of compensation)
 - **NGOKLIN NARAM AMAFTIT** Chiefs of neighboring lands can place a new custom owner on land where its tribe has vanished, on condition that the chief own the land on the Eastern side
 - The Governing system of **ERROMANGO**:
The governing system of Erromango does not differ from the governing system of Tanna and other part of Vanuatu where there is a head of the tribe or land, sub-tribes, warriors, spokespersons and the ordinary people.
 - The Head of the tribe or the Paramount Chief as it is called in other part of Vanuatu is the **NATMONUK UNAM** who is the paramount chief over the land or tribe;
 - It comes to **NATMONUK UNAM** who are chosen within the Chiefs bloodline to assist the chief in the managing and controlling of the land. They join the **NATMONUK UNAM** in the formulating and making rules for the good governance of the people living in the village or the tribe;
 - **NATMONUK UNAM** could also have in his govern **NATMONUK NEIVENTE** who are chosen amongst people who come from outside the tribe but of chiefly title. These would usually be a brother in law, but not necessarily;
 - **NATMONUK UNAM** has warriors, polices and/or security officers whose duties are to ensure that the rules and orders issued from **NATMONUK UNAM'S** meetings are complied with. He also looks after the security of the **NATMONUK UNAM** and his people;
 - **NATMONUK UNAM** has his own **ALI** or **TORONGAT** whose responsibilities include being spokesperson and/or messenger. His duties is to announce the rules and enforce them;
 - Then the **TENONONG** meaning the people.

INTRODUCTION:



Page 2

On arrival and before the trial, the Justices declared their close relationship with both parties. After discussion with them they confirm that they are confident to sit as impartial Justice to give justice in this case. I am satisfied that the court that they composed will be impartial. Although there were no opposition raised in court as expected. The Senior Magistrate explains:

- the relationship of each Justice to both party,
- informs the court the difficulty and the unavailability of any justice, should any of the current sitting justices be disqualified.

Indeed the Erromango list of appointed Justice is limited to 4 justices one of whom is the original claimant in this case. Bearing in mind that the decision making in the Island Court is based on the majority rule; and that the Senior Magistrate must ensure that the matter is dealt with fairly according to law; It would not be justice if this 12 years old land case be adjourned sine die just for lack of justices when the current members are confident over their impartiality.

THE ISSUES:

The QUESTIONS that this court must answer in this dispute are:

1. Who is the indigenous custom owner of the land NOMPUN YATVEH?
2. Did the indigenous custom owner transfer the land in dispute to the Original claimant?
3. Is Joseph Netvan the rightful descendant of the indigenous custom owner of the disputed land?
4. Should he inherit the custom land known as NOMPUN YATVE?

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- FAMILY SANDY AVELVEL

He is claiming the land **NOMPUN YATVEH** on the basis that:

1. The original indigenous custom owners have transferred the customary ownership of NOMPUN YATVEH to old Avelvel;
2. The descendants of the said Avelvel are the members of Family of the current original claimant.
3. The last bloodline member of the aforementioned custom owners one Wai (woman) has confirmed the prior transfer; And
4. Compensation;

The original claimant alleges that:

1. NOMPUN YATVEH was originally owned by

- A. NOWEAI SOVU;
- B. NOVWAI NEYOR; and

C. NOVWAI NOMPUNPAU. Each of the original owners had a daughter, there were no sons.

- NOVWAI SOVU fathered UVEH;
- NOVWAI NEYOR fathered UMPOLPAL, and
- NOVWAI NOMPUNPAU fathered WAI. The 3 girls married to a village in the South of Erromango island called UNPANG.

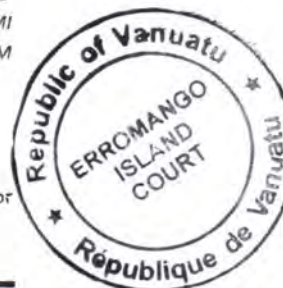
1. NOVWAI SOVU's daughter was swapped with the people of UNPANG where TAKMAN of UNPANG was given to NOMPUN YATVEH. But there were no groom for her, so she was given in marriage to AVELVEL with the disputed land. The exact term in bichlamar was: "*OLI MEKEM KASTOM KAKAI OLI GIVIM LONG AVELVEL MO OLI TALEM SE KEL IA TAKMAN YU TEKEM MO LAND IA NOMPUN YATVEH EMI BLONG YU. YU HOLEM MO YU STAP YUSUM.*"

2. In 1936 Sandy Avelvel and his parents went to UMPON SAUVAU VILLAGE, (Wai and her husband Panet's village) for Wai to treat Sandy Avelvel with custom medicine from Kava, and PANET asked permission for

NOMPUN YATVEH



- him and Wai to go and reside on NOMPUN YATVEH. AVELVEL agreed and they move to the disputed land. AVELVEL placed them on an area and requested them to be his messenger.
3. John NAWILAK is the only son of WAI and PANET. In 1940 old WAI and her husband PANET were very old, when AVELVEL made a custom food and gave it to them and their Son JOHN NALIWAK to thank them for their services as messengers of AVELVEL from South to North. In reply John Naliwak said he will continue living on the land if he enjoy life otherwise he will go back home.
 4. Wai and her husband PANET and their son JOHN NALIWAK were obedient and respected AVELVEL as head of the land and work within the boundaries;
 5. In 1966 John Naliwak's daughter, one Aida was impregnated by an unknown man; Wai requested of John NALIWAK, if she could place the title of the land upon AIDA's son. JOHN NALIWAK was not so sure and cautioned WAI to get permission from AVELVEL. John's reply was in the following term "SAPOS YU WANTEM GIVIM NEM BLONG BOY LO LAND IA YU MAS ASKEM SANDY AVELVEL SAPOS HEMI TALEM YES, YU GIVIM NEM BLONG EM MO SAPOS HEMI TALEM NO YU LIVIM FROM WE EMI LAND ONA..." and again; "MAMA SAPOS SANDY EMI TALEM YES YUTUFALLA I MUS LUKAOT GUD FROM WE PIKININI BLONG ROT IA MO BLAT IA INO GUD MO MI SAVE GUD STAMPA LONG LINE BLONG HEM..."
 6. At one time WAI called for AVELVEL, he went to see her and she told him of her intention in this terms: *MI WANDEM PUTUM NEM BLONG PIKININI IA LONG LAND IA NOMPUN YATVEH ...WANEM THIN THINK BLO YU? MI GIVIM NEM BLONG EM OR MI NO GIVIM NEM BLONG EM?... "SAPOS YU TALEM NO, BAE ME NO GIVIM NEM BLONG EM, MO SAPOS YU TALEM YES BAE ME GIVIM NEM BLONG EM FROM LAND EMI BLONG YU..* And wanted to know AVELVEL's response. AVELVEL replied: "YES, EMI ORAET GIVIM NAME LO HEM..."
 7. On his return to RAMPUNAYAU village, Sandy's brother opposed to the name being given to the boy, but it was too late, she had already given it.
 8. The next time AVELVEL met WAI at PUNIAKUP village, she said: "MI PUTUM NEM BLONG BOY IA FINIS "JOSEPH NETVAN" and further said: PIKININI IA ME GIVIM NAME BLONG EM EMI BLONG YU MO YU TEKEM MO LOUKATEM WETEM BLONG YOU".
 9. SANDY AVELVEL picked up a hand full of ground and in-an- opened hand displaid before WAI and said: "YU LUK PIS KRAUN IA I STAP LEI TAUN LON HAND BLONG ME, MI NO HOLEM, HEMI OLSEM PIKININI IA YU PUTUM LO HAND BLONG EM ISTAP OLSEM NOMO BAMBAAE MI NO HOLEM. SAPOS MI LUK FASEN BLONG EM I GUD MO EMI RESPECTEM MI PAPA ME HOLEM. BE SAPOS MI LUK FASEN BLOG EM EMI NO STRET MO INO HAREM MI MO RESPEKTEM ME PAMPAI ME SAKEM EM GO LUK PAPA BLONG EM... and furthermore:
 10. SAPOS MI LUK FASEN BLONG EM I GUD BAMBAAE MI MEKEM WAN KASTOM KAIKAI BLONG EM MO GIVIM RAIT LON EM LON PIS LAND IA NOMPUN YATVEH.
 11. Old WAI replied: "YES EMI OLSEM SAPOS YU LUK FASEN BLONG HEM I GUD YOU HOLEM EM, BE SAPOS EM INO GUD YOU SAKEM HEM IGO LUK PAPA BLONG HEM BE OLSEM MI PUTUM LO HAN BLONG YU EMI STAP ANDAP WANEM DESISIEN YU TEKEM..."
 12. Joseph Netvan never offered a custom food to old WAI for the custom name, since he got the name until her death in 1984;
 13. WAI's son one JOHN NALIWAK offered a custom food and 3 000 vatu to SANDY AVELVEL at PUNYAKUP village to thank them with the following words: "KAKAI IA MO PIKININI IA JOSEPH NETVAN WETEM LAND IA BLONG YU MI GIVIM BACK LO YOU OLSEM WE MI WETEM MAMA BLONG ME, WAI MO PAPA BLONG MI PANET TAIM MIFALLA IKAM LONG 1940, OLFALA BLON YU AVELVEL HEMI BIN MEKEM WAN KASTOM
 14. SANDY AVELVEL offered 2 custom food at UNEVSEM village to JOHN NALIWAK to thank him for returning his land back and repeated the conditions over JOSEPH NETVAN;



15. As agreed in 1966 with WAI, Joseph NETVAN has not reached the standard of been an obedient person, He must now return to his biological father.....

COUNTERCLAIMANT ONE: JOSEPH NETVAN

JOSEPH NETVAN starts his history by stating the original occupiers to the land including the original custom survey marks; he then recount the history of his ancestors from the occupiers down to the current generation. Since it is no challenged, this court recounts the history here:

The discoverer of the lands was NOMPUN YATVEH and his 2 sisters UKOR and POTNINTOK. They had 3 children NETVAN TORO, NOUREI NANPEN and NOUVWAI NOKIVRAM.
From these people to him:

1. The discoverer was NOMPUN YATVEH who come up emerge from the salt water, move up the land and lay on the ground with his 2 sisters UKOR and POTINTOK; they had 3 children: NOUREI-NANPEN, NETVAN TORO and NOUVWAI NOKIVRAM;
2. NANPEN NOUREI walked the boundaries and placed the custom pecs; followed by NETVAN TORO who start outside NANPEN NOUREI's boundaries and went further in mountain. He alleged that the main boundaries starts at RANETURO longing the creek to SOROWOI and ending up the hill at RANEMRANGAU, down to RAUMPUMRONG, PUNEMPAKU creek, OROVU, PUNYEMLAND and OKOR. But this dispute is limited to the land allocated to the "woman" (the female descendant of NETVAN TORO);
3. NOMPUN YATVEH which is now in dispute is the original boundaries of land marked by NANPEN sister of NETVAN TORO,
4. NETVAN TORO marked his original boundaries from the reef at RANETURO up to the mountain at RA NETUKKO. These land is the main land including NOMPUN YATVEH;
5. The people living on this side of Erromango belongs to LOUNIVAL and that include the Original Claimant through his ancestor UMOU;
6. The village of NOVWAI NETURPUM is at OKOR.
7. WAI NOMPUYU with her two cousin sisters UMPOLPAL and UVEH were the third generation of the original NETVAN TORO;
8. They all were married out but WAI remain on the land and visited her husband's customary land from time to time;
9. During her absence, AVELVEL would care for the land and she would make custom food to thank them for their assistance over her land;
10. At one time AVELVEL become too old to look after both lands, he called for WAI to come back on her land;
11. WAI came with her husband, her son JOHN NALIWAK and his wife. When they return they made custom feast and gave 3 pounds and calico to the Avelvel family as token of their appreciation for taking care of their land;
12. At the last call AVELVEL was too old to walk to WAI's village to receive the gifts, he sent his ALI (messenger) SORENAU and his family to attend to the feast and receive the gift on his behave;
13. WAI's son JOHN NALIWAK father a daughter called AIDA;
14. When AIDA was 2 years old, her mother died;
15. WAI look after AIDA until her maturity;
16. AIDA mothered a boy who became WAI's great grandson;
17. WAI named AIDA's baby boy after the land, thus making him her right heir to inherite her ancestors land. In custom the action of WAI sealed the transfer of land to his great grandson NETVAN TORO
18. NETVAN TORO who is also known as JOSEPH NETVAN TORO is married and fathered 3 children who he name after his ancestors: WAI NOMPUYU, NOVWAI NOMPUNPAU and NOVWAI NUVAN



19. JOHN NALIWAK, WAI's unique son has lived and died and was buried on at OKOR within NOMPUN YATVEH.

This is a case where the custom law and the required social activities of owners of land in disputes are all females and married out leaving their ancestors on the custom land for a certain time. The daughters have to leave their parents to join their husbands in their villages.

LAND VISIT:

The visitation of the land NOMPUN YATVEH is a dangerous expedition by the sea. There were no proper vehicle safe enough to transport the court to the land. There is no road to the land itself. By the sea the land has no anchorage and sailors or travelers might battle with the fierce wave to manage a jump on high and Sharpe rock to access the land. We were told that by land the visitation would take at least 24 hours.

The court has walked the coastal boundaries from OKOR to ISVOTENU.

FINDINGS

That both parties do not dispute the facts that

1. NOMPUN YATVEH IS THE INDIGENOUS LAND OF WAI;
2. COUNTERCLAIMANT JOSEPH NETVAN IS THE DIRECT DESCENDANT OF WAI;
3. NOMPUN YATVEH IS A SMALL PIECE OF LAND ALLOCATED TO WAI AS GRANDDAUGHTER OF NETVAN TORO;
4. THAT NETVAN TORO IS THE GREAT GRANDSON OF WAI;
5. THAT WAI HAS LIVED ON NOMPUN YATVEH BEFORE HER MARRIAGE, DURING AND AFTER HER MARRIAGE. She died and was buried on the same land;
6. JOSEPH NETVAN did grow up on the disputed land.
7. THE LAND WAS NEVER TRANSFERRED. It is advised that in custom a land is transferred by naming a child or person.
8. THE ORIGINAL CLAIMANT'S LAND SHARED THE SAME BOUNDARY AT THE WEST WITH THE COUNTERCLAIMANT JOSEPH NETVAN

The evidences show that:

- There is not enough evidence to support the claim that the original indigenous custom owners have transferred the ownership to AVELVEL;
- WAI has always remained silenced over the land until her granddaughter AIDA mothered a son. This is the only time Wai made a decision intending to name the boy after the land;
- In custom naming of a child after a land is evidence of a customary transfer of land;
- The indigenous custom owners had not named AVELVEL after the land. That in custom, would confirm that they had not intended to transfer the ownership of land, but to place it under AVELVEL's management;
- In custom JOHN NALIWAK is custom owner over his father's land. He could in the same manner inherit his mother's land should it not have been transferred to JOSEPH NETVAN;
- PANET and his son JOHN NALIWAK have their own custom land. In custom PANET would have no customary rights over the disputed land;
- In custom and as provided by the constitution of the Republic of Vanuatu, land belongs to the indigenous custom owners AND THEIR DESCENDANTS;

THE ANSWERS TO THE ISSUES RAISED ARE:

1. Who is the original indigenous custom owner of the land? WAI HER ANCESTORS AND DESCENDANTS
2. Did the owner original indigenous custom owner transfer the land in dispute to the Original claimant? NO



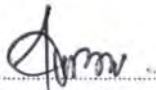
3. Is Joseph Netvan the counterclaimant the rightful descendant of the custom owner of the disputed land?
YES

DECLARATION:


THIS COURT DECLARES:

1. WAI IS THE INDIGENEOUS CUSTOM OWNER OF NOMPUN YATVEH.
2. JOSEPH NETVAN IS THE DIRECT DESCENDANT OF WAI, therefore
3. FAMILY JOSEPH NETVAN IS THE RIGHTFUL CUSTOM OWNER OF NOMPUN YATVEH

UMPONGKOR, (WILLIAM'S BAY), THIS 24TH AUGUST 2012



JUSTICE MIKE NARE TOMBU
(Chief)



JUSTICE JONATHAN NIVWO NELOW
(Chief)



JASON NOVWAI TAHONAMBON
METE (Chief)



SENIOR MAGISTRATE: RITA BILL NAVITI

