

(Land Matter)

BETWEEN: **FAMILY IARU**

ORIGINAL CLAIMANTS

AND:
FAMILY IATA
COUNTER CLAIMANTS 1

CORAM:

Island Court Justices:

1. Justice CHARLEY TUKUMA
2. Justice MICHELLINE NOAR
3. Justice BRUNO KEHMA

Senior Magistrate

RITA BILL NAVITI

JUDGMENT

BACKGROUND:

This land dispute was registered in or about 25 May 2001. Public notice was sent out on the same date. It read:

"TAFEA ISLAND COURT ibin receivim wan land claim lo kraon we oli kolem "IKAOUS LAND" we istap insaed lon NAMALIA KIS TRIBE. Family IERU nao iclaim se olgeta nao ikastom ona lo lan boundry ia.

Sapos any man or parti iting se hemi tu ikat interest or any raets insaed lo kraon ai, hemi lo 30 day kam putum claim blo hem lo Tafea Island Court.

30 days period ia istart long namba 25 May iko kasem namba 25 June 2001."

Counterclaim filed his claim on 24 June 2001 and paid the appropriate fees of 30 000 vatu.



THE LAND:

The land is called IKAOUS OR IKAUS situated in the middle bush area close to TAFEA COLLEGE. It is a customary plot of land within the motherland of IOUNE

It would seems that IKAUS customary land is larger, but this court will only concentrate on the sketch map filed by the original claimant

- In the North:** from the NIMALIPAR it runs West to NEKPAD;
In the West: From the NEKPAD it runs at the foot of the hills to NUIWIA.
In the South: from NUIWIA amongst the hills at the west it runs straight line to a NIKAWIK at the East;
In the East: It runs from NIKAWIK down South to NAPIK LOWIASIA, across the main road, longing the cattle project continues North to NIMALIPAR;



PROCEDURE:

Both parties produced their witnesses' statement during trial.

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".
- **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 exception to the above principle rule:
 - **KAMEP or Last surviving bloodline**, (Woman can also inherit land where she is the only survivor);
 - **ADOPTION** (adopted child from the same bloodline in custom can inherit land)
 - **COMPENSATION** (Land can be acquired through compensation for taking part in tribal war)
- **Land tenure in Tanna:**

The Customary boundaries of lands in Tanna began and supported by the well known custom story of "SEMUSEMU":

"SEMUSEMU" was a most feared devil who devoured every native on the island of Tanna. However a woman survived and mothered twin boys "KASASAW" and "KANIAPNIN" who were brave heroes that killed "SEMUSEMU" the devil.

They then cut "SEMUSEMU"'s body into pieces and drew them into various spaces within Tanna while called out the names of the main tribes. Main tribes would then exist where the piece of flesh fell. From there ALL the tribes' land boundary would principally run from one creek to another from North to South and down ward from the mountain to the sea.

Customary ownership of Land depends on **Custom hierarchy**.

Custom hierarchy is recognized by the well known "Toka" dance; (the highest ceremony in custom). Each Tribe is guided and controlled by a sense of respect to that "Toka" which is considered as superior seal over all their cultural activities. A nakamal would gain superiority if its people would successfully host "TOKA" dance. In each Superior Nakamal there must be:

- One **IEREMERA** (paramount Chief);
- **Assisted by an IENEE** (a public relation officer & advisor to the paramount chief);
- **The IEREMERA must possess a KWERIA** (A crown made of Eagle's feathers). The preparation of KWERIA and 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: SUN, RAIN, YAM, BANANA, COCONUTS, ALL KINDS OF EATABLE FRUITS, FISH AND SEA SHELLS ...ETC.

INTRODUCTION:

This land dispute was not properly presented on custom basis. It would seem that the Custom governance in this area was not properly set up. The parties to this claim are claiming customary ownership, but they both cannot and do not understand their position in the custom of the area. The land in dispute is given to them by the main tribe which is IOUNE TRIBE. Both disputing parties are sub-tribes of IOUNE TRIBE.

The issues in this dispute are:

1. Whether the boundaries are the original landmark of a custom land separated by creeks as is custom in Tanna?
2. Whether each Nakamal has its own boundaries within the motherland?
3. Whether Family IERU is the original indigenous custom owner of IKAUS?

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 IERU

He submit that IARU under whom he is claiming resided at IKAUS and was looking after Tupunis of men, women, prawns and "Namarai" or river snakes. Those Tupunis belong to the Nakamal or IVARUA. IVARUA is the supreme nakamal of NAMAL IAKIS TRIBE. In custom IARU would be the Tupunis for the IVARUA nakamal.

During tribal wars people everywhere around Tanna would find refuge with IARU. Amongst these people were NALUSEN and his wife LAMAO.





IAWAOU when TUMAN spare his life by giving Kava and a pig to IARU at IVARUA. It is then, that IARU took IWA under his protection at IAKUS. IARU gave him a woman and IWA fathered two sons IATIS and NAWAM. NAWAN fathered IATA and NAKO.

IATA wanted to take the land, but it was impossible because he was under the authority of IARU. IATA is from LETAKRIN.

His generations sprout out of:

- One **NOKAI** who married AIUEN MATURI and fathered IARU (1) in around 1772.
 - **IARU (1)** wedded IAWILEM NOWAN and fathered IAWINAN EWAKI in around 1832;
 - **IAWINAN EWAKI wedded NAWIA AWSIM and fathered IARU (2) in around 1892;**
 - **IARU (2)** wedded KIEL and fathered NOWNAMAM IATIKAOUR in around 1952 and
 - **NOWNAMAM IATIKAOUR** wedded IAWIAI and fathered the current **IARU (3)**

He confirms that his party and the counterclaimant are both sub-tribe of IOUNE who owns the motherland also known as IOUNE. IOUNW TRIBE as called by KASAWSAW AND KANIAPNI when they distributed SEMUSEMU'S flesh.

He claims that he is not related to the counterclaimant.

COUNTERCLAIMANT FAMILY IATA

He submits that the original claimant is trespassing over his land IKAUS. That the land IKAUS was demarcated and allocated to his ancestors while in the same way IVARUA was allocated to the original claimant's ancestors. They both are on the same foot as regard to land. They both are descendant of the IOUNE TRIBE and were both allocated lands in the same area.

IKAUS is a small piece of land allocated to his ancestor IATA through KAWIEMETA; similarly the original claimant was allocated the land IAVARUA through NAWIA AWSIM. Both women are related to the original IOUNE tribe led by TUMAN. TUMAN was the big chief in the area and TUMAN has already made decision on the dispute but the original claimant refused to comply with decision of the custom owner TUMAN.

He submits that this case has gone through the NIKOLETAN counsel of chiefs which confirms the decision of the custom owner, but yet family IARU lodge further appeal to this court.

The counterclaimant originated from:

- **KASU** husband of KESUA who fathered KAPSAM in around 1712
 - **KAPSAM** wedded NALAM TAOTAO OF IPAE and fathered IWA (IUHUA) in around 1772;
 - **IWA (IUHUA)** wedded KAMIL and fathered IATIS and NAWAN in around 1832;
 - **NAWAN wedded KAUIAMETA from IKAUS granddaughter of IATA and TAW in around 1892;**

NAWAM and KAUIAMETA owned the land IKAUS, because KAUIAMETA has no brothers.

KAUIAMETA is the daughter of NAM. NAM is the first born daughter of IATA and TAW and IATA is the only son of TAO and NIMALKAUAI who originally was in possession of IKAUS.

The answers to the issues raised to be:

1. Whether the boundaries of IKAUS LAND are the original landmark of a custom land separated by creeks as is custom in Tanna? **NO, IKAUS is a plot of land within the IOUNE land.**
2. Whether each Nakamal has its own boundaries within the motherland? **YES IKAUS is a plot of land with its own boundaries.**
3. Whether Family IERU is the original indigenous custom owner of IKAUS? **NO, IERU is a sub-tribe who was allocated another plot of land within the same area called IVARUA. Those lands are occupied by TUPUNIS.**

BOTH PARTIES ARE TUPUNIS within the land IOUNE. Therefore IKAUS is a small plot of land in the main IOUNE TRIBE'S LAND.

DECLARATION:


1. **THE BOUNDARIES MENTIONED IN THE SKETCH MAP BY THE ORIGINAL CLAIMANT ARE PART OF IKAUS LAND'S BOUNDARIES (Attached)**
2. **IKAUS LAND IS A PLOT OF LAND WITHIN IOUNE CUSTOM LAND;**
3. **FAMILY IATA IS THE PERPETUAL OWNER IN CUSTOM OF THE LAND IKAUS. LAND BELONGS TO IATA UNDER THE AUTHORITY OF IOUNE TRIBE.**

ORDERS:

1. **THE ORIGINAL CLAIMANT FAMILY IARU (IERU) MUST SURRENDER THE POSSESSION OF THE LAND IKAUS TO FAMILY IATA;**

The parties have 30 days from the date of the Judgment to file any appeal.

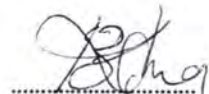
TAFEA COLLEGE, 28 SEPTEMBER 2012



Justice CHARLEY TUKUMA



Justice MICHELLINE NOAR



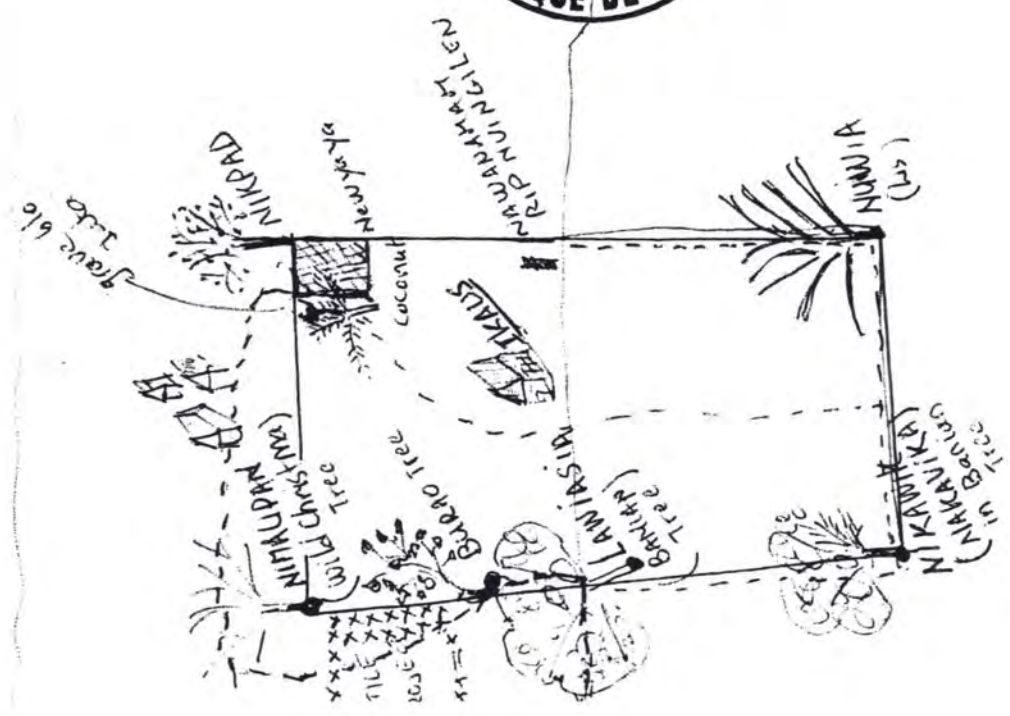
Justice BRUNO KEHMA



SENIOR MAGISTRATES RITA BILL NAVITI



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