

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

Land Case no.1 of 1998

BETWEEN: NICOLSEN TARI & FAMILY
Original Claimant

AND: MANLY TARI & FAMILY
Counter Claimant 1

Coram: Magistrate Edwin A Macreveth
Island Court Justice Willie Garae
Island Court Justice Edwin Garae
Island Court Justice Stanley Doro

Clerk: Wilson Andrew

Date of hearing: 2nd - 4th of July, 2012

J U D G M E N T

This is the written decision of Kwalsuku land dispute. Oral decision was delivered on the 4th day of July, 2012. The land in dispute is situated at the southern part of the Island of Ambae commonly known as Red Cliff. The land in dispute covers Redcliff SDA mission school which is also referred to as Title no. 2367. The issue for the court's determination concerns land ownership of Kwalsuku land.

Its boundary is generally described to commence on the east at a dry creek leading to the sea. Its border is demarcated by the same creek which follows northwards until it meets a cattle fence crossing westward to the sea shore on the west. Its boundary limits from the west is marked by the shore line running southwards and then turning eastwards ending at the same dry creek on the south eastern part of the land.

For specification purposes regarding its boundary limits, refer to the declared map attached herein.

Before dwelling on the subject matter, a brief discussion of the relevant laws and custom processes and usages of the contested area are outlined below.

THE LAW & CUSTOM

The Law.

Article 95 (3) of the 1980 Constitution says that customary law shall continue to have effect as part of the law of the Republic of Vanuatu. Article 73 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 75 adds on that only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.

The function of the tribunal is to resolve proceedings according to law. Where there is no rule of law applicable to a matter before it, the court shall determine the matter according to substantial justice and whenever possible in conformity with custom.

Section 10 of the Island Court Act, Cap 167 reminds us that customary matters and beliefs prevailing in a territorial jurisdiction of an Island Court are applicable in the court; so far as they are not in conflict with the written law and are not contrary to justice, morality and good order.

The findings on rules of custom forming the basis for land ownership

The gathered information regarding customary principles of land ownership and use are summarised in the forthcoming paragraphs.

The rules of custom forming the basis of land ownership practiced in the area of Redcliff is founded on the patrilineal system. Meaning rights to claim ownership of land is acquired from the father's line. Ownership of customary land is communal or collectively owned based on common descent, residence within a nasara and participation in common activities. All members of the clan shared undivided interests on the land. Land in custom cannot be transferred to another tribe or family but own by a clan and its descendants forever.

It is the common knowledge that the first person and his family who explore, live, build a nasara and take control of a particular territory becomes the original owners or ancestors of the land. It makes no difference if they left again for some other reasons, they would still be regarded as the traditional owners. Tribal members who form the land owning unit are all related by blood relationship for having descended

from a common ancestor. Land is also acquired through other custom processes. For example, a family who takes charge in meeting funeral expenses of a person may be given land use rights.

Land is traditionally inherited patrilineally from the chief or original ancestor to the eldest son upon death. The successor bears the responsibility for providing equal distribution of the land to the surviving descendants of the clan and other relations. This is a male predominated system which is twinned with the land tenure system passed on from ages past to the present generation.

The only exceptional condition to the general principle of land ownership is that in circumstances where there are no more surviving male heirs to the land then, ownership will pass on to the matrilineal bloodline. This is typically seen where a woman's children having bloodline to the extinct patrilineal line are given land ownership.

Chiefs are usually nominated on the basis of custom values, wealth, bravery and other common characteristics. The land owning chief and his subordinates would all have *nakamals* and *nasaras*. A man earns his chiefly title or name by way of performing a pig killing ceremony. The common chiefly name is *Moli* a naming word that would procedurally be received by a man at an ordination during a pig killing feast. There are different stages of status in hierarchy for a chief to acquire.

Pig killing ceremonies would normally occur at a *nasara*. A segregate area from the public confined only to chiefs and men having high status in the society. The first ever built *nasara* of a tribe becomes the original *nasara*. The higher the number of pigs is slaughtered, it would practically mark a chiefly rank at a higher grading step. A *nasara* is usually identified by man made features like erected stones, natural plants such as *namele* palms and other identical phenomena. A chief and his successors upon their death would normally be buried at the *nasara* separately from the rest of the ordinary people.

Visitation of the land boundaries

The court after courtroom hearing paid a visit to the land to inspect its boundaries and test the gathered information with direct evidence at the site. It is noted that most part of the land has significantly been developed with cattle farming, coconut plantations and subsistence gardening by the Redcliff SDA Mission school. Among others, the court also inspected cultural identities like *nasaras*, boundary marks and other mentioned geographical features.

Given the basic understanding of the traditional processes and the law, we now present the facts as advanced before the tribunal.

Original Claimant

Nicolsen Tari appearing for his family in his statement stated that he is claiming ownership of the land by way of the partilineal line of his forefather Tangwanamoli original ancestor of the land of Kwalusuku. Tangwanamoli had a son called George Viti whom is directly related to him as a surviving descendant . George Viti had moved to west Ambae (Vilakalaka) after marrying a lady there. He and his descendants have continued to live there to date.

His ancestor had sold the land in exchange of tobacco rolls to Mr Corlette. Since then, his ancestor Tangwanamoli had always been recognised as the traditional owner of the land in dispute. The land was sold to Mr Corlette sometimes in the years of the era of early traders arrival in the island who later re sold it to the SDA mission with a payment of 30 pieces of gold.

Sometimes in the 1970's he had accompanied his father to Redcliff after been called by the Redcliff SDA school board headed by the counter claimant, Manley Tari. At the meeting an amount of 21,000 Franc was issued to his father as rental payment of the land with the belief that his father's ancestors are the customary owners of the land.

He called 4 witnesses to testify on his behalf. Witness, Anderson Tari in his sworn statement told the court that he believes the land belongs to Tangwanamoli. This ancestor has been buried at his nasara located where the school soccer field is today. Such nasara and grave have been bulldozed during the construction of the field.

Chief Samuel Natu 68 years of age provided that Tangwanamoli had sold the land to Mr Corlette who then re sold it to the SDA mission. Tangwanamoli has founded and created a nasara and was buried at the area being developed into the school play ground. He stressed that the history relied upon by the counter claimant related by Thomas Malatai is false by reason that Aruqwaktahi is from Vui Gelato area. Aruqwaktahi is not a native or chief of Kwalusuku land.

Benjamin Bob in his presentation held that Aruqwaktahi was buried at Longana east Ambae. He has no land at Redcliff. He added that every SDA community around the island have common knowledge that the land of Kwalusuku traditionally belongs to Tangwanamoli and his descendants. Ison Banga provided that Tangwanamoli had sold the land to Mr Corlette who then re sold it to the SDA mission. Tangwanamoli has a nasara and grave once located at the school soccer field.

Counter claimant 1

Manly Tari representing family Aruqwaktahi in his statement said that it is common knowledge among the public that the land belongs to his family. Individuals like Luke from west Ambae, chief Gideon Toanatas from Redcliff, chief Mathias Tavoa of Ambanga and John Vire of east Ambae are witnesses to his claim. He claims also that Joel Tangakiak had in the past told his uncle Thomas Malatai that the land which he had sold to the SDA mission belongs to his family.

He is disputing the land on grounds that his ancestor Aruqwaktahi was the first person to explore and live the land of Kwalusuku at Red Cliff. His son is Tari Tiehi whose sons are Teriteriboe, Taritavoa and Qoialaqari.

In his history told the court that once upon a time, Teri in preparation of his pig killing ritual had approached his sister demanding a pig (boar) from her. However, his request was declined. Despite such refusal, Teri forcefully managed to remove the boar in satisfaction of his ceremony. He was given a chiefly title or name of Teriteriboe. Meaning removing something without consent.

After the festivity, his brother Qoialaqari decided to move away and re settled at Ambanga. While his two brothers who were never married had continued to live the land. Qoialaqari begat a daughter named as Gole whose descendant is Thomas Malatai leading to the present generation. After Teriteriboe and Taritavoa's death other clans entered and occupied the land to date.

In his defence statement stated that Nicolsen Tari has no standing to claim land ownership despite the fact that his ancestors have sold the land to Mr Corlette. The land was also sold to the SDA mission by Joel Tangakiak. Nicolsen Tari is originated from West Ambae. He says that Tangwanamoli has migrated from Taenmanu to the land as a refugee. The plaintiff and his father have also received an amount of 21,000 Franc as payment of the land occupied by the SDA mission.

He called 3 witnesses in support of his claim. Chief Edwin Garae in his statement stated that being a chief presiding over the land disputed in several in village courts since 1978, he believes that the land belongs to Manly Tari and his descendants. Thomas Malatai had located places, such as graves, nasaras and names of individuals of the area in dispute during past courts. He believes that the land does not belong to the original claimant because his grand father George Viti is originated from west Ambae. George Viti had been killed and dumped in deep sea. Reconciliation had not been reached yet with relatives at south Ambae (Redcliff).

Chief Samuel Buto of Lolovoli told the tribunal that the history related by Thomas Malatai surrounding the claim of ownership by his descendants is truthful. He considers the claims advanced by Nicolsen Tari is short without any basis. He believes counter claimant 1 is the rightful owner of the land.

Wilfred Seth of Waluriki on oath said Gideon Toanatas of Redcliff area had shown them sites of nasara belonging to Aruqwaktahi and his descendants including graves at Redcliff. A son of Aruqwaktahi by the name of Teriteriboe had performed a pig at his nasara at Redcliff marked by namele palms.

ANALYSIS OF EVIDENCE & FINDINGS

By law, the primary disputant in principle bears the burden of proof on grounds of probabilities to substantiate his claim with clear and relevant evidence. But also he who asserts a fact must as well prove it by way of evidence.

The function of the tribunal is to resolve proceedings according to law. Where there is no rule of law applicable to a matter before it, the court shall determine the matter according to substantial justice and whenever possible in conformity with custom.

Having made these clarifications, we now present the findings below in the usual order of presentation.

Original Claimant

Although there is absence of documentary evidence of the sale instrument of the land of Kwalusuku to Mr Corlette, there is overwhelming evidence from the plaintiff including Manly Tari and his witnesses confirming that the land has been in the past sold by Tangwanamoli original ancestor of Nicolsen Tari to Corlette who later re sold it to the SDA Mission.

Secondly, the defendant is admitting and confirming the fact that the school board had issued an amount of 21,000 Franc to Nicolsen's father as rent payment for the land on the basis that they were the only claimant to the land.

Given the above admission, the court found no other reasons or evidence explaining as to why the land was sold by Tangwanamoli. Even, the fact that an amount of money was again paid to the original claimant as rent payment. The question we posed is why would past chiefs and local dwellers of the land allowed chief Tangwanamoli sell the subject land to Mr Corlette.

The only reasonable explanation or possibility is that they have had prior knowledge that the land belongs to Tangwanamoli. It is therefore, based on that rationale that Tangwanamoli sold the land of Kwalusuku to Mr Corlette.

Secondly, his family tree is not disputed by the defendant. The only argument forwarded by Manly Tari alone merely alleges that Tangwanamoli had migrated from Taenmanu, central Ambae to the land of Kwalusuku. However, that argument could not stand given lack of supporting information from his 3 witnesses.

Thirdly, it is not disputed by the defendant and his witnesses that Tangwanamoli had created a nasara at Kwalusuku land. There is confirmation of the site now being developed into a play ground for the school.

Moreover, the original claimant has produced consistent information compared to the counter claimant. Chief Samuel Natu principal witness has very good memories of told events which have occurred at the area. He could easily locate places, name chiefs and other past histories. He is a very reliable witness to the case of the original claimant.

Counter claimant 1

Our immediate note is that we found that his claim is heavily disputed by the plaintiff and his witnesses by way of substantiating information showing that Aruqwaktahi is not an indigenous native of the land. Our finding over the issue are supported by reason of the following facts.

Firstly, one of his own supporter Wilfred Seth has made a statement confirming to the contrary to his own claim that Aruqwaktahi is originated from Ambanga , north of Ambae island. Witness, Samuel Buto on the other hand, does not know the original place of Aruqwaktahi.

Equally, we are told that Aruqwaktahi is a cruel person in nature . He had been practicing cannibalism while residing in the area killing and eating innocent people. That fact is confirmed by the site visit of the place at Vatu Aulu where he was hiding human bones after their consumption.

Given his personality, realistically he could never be considered as a chief as claimed. Historically, chiefs do not behave in such a character but be protective of their own people. The court is not pre emptying the fact that chiefs in the past can also eat human. Such practice is only seen where payback is carried out against someone but typically done solely for purposes of peace. And any human carcass is by practice usually shared among tribal supporters and chiefs.

The mentioned facts would coincide with a story told by witness Samuel Natu that Aruqwaktahi had been chased out by chiefs of the area because of his cannibalism practice.

Secondly, his produced family tree is also disputed by the claimant and witness Samuel Natu expressing that the counter claimant has merged two different family lines into one single genealogy. The counter claimant has provided no clear explanation for clarity regarding his standing.

Thirdly, Manly Tari and his witnesses could not establish that Aruqwaktahi and his descendants are indigenous custom owners of the land of Kwalusuku.

The claimed nasara alleged to be owned by Aruqwaktahi and his descendants is false. It is common practice that a chief and his successors upon their death would normally be buried at their chiefly nasara separately from the rest of the ordinary people. In our case, an identified grave alleged to be Taritavoá's is situated around a kilometre away from the nasara site. We noted also that such grave had been disputed by the original claimant as grave yard belonging to a third party.

In addition, we have doubted the areas spotted as a nasara site. Those areas in our view cannot be classified as a nasara belonging to a chief given the fact that there are other existing graves thereon. We are told by the other party that the area houses a cemetery yard. Among others, one of the grave was identified as a grave belonging to Vurowas another person who practices cannibalism by slaughtering humans on the site marked by namele palms.

Further, we have hesitated to accept a claimed area claimed to be Aruqwaktahi's grave. The grounds for our reservation is based on the fact that if we are to believe CCI's story then Aruqwaktahi should by practice be buried at his nasara or nakamal but not some 100 metres distance away as witnessed during visitation. Again, that story does not at all fall in line with the usual or traditional patterning of nasara setting.

Besides the above information, the defendant and his witnesses have failed to advanced any concrete evidence or explanation in rebuttal regarding the sale of the land by Tangwanamoli. The only available information presented before the court was that Tangwanamoli had prior to the 1970's been recognised by the natives of the region as the traditional owner of the land.

Our overall observation is that the defendant had only commenced disputing the land in the late 1978 after shopping information from mentioned individuals and then transforming them into a claim. From his demeanour in court, he is not quite certain of his told history because he is claiming land which he himself once believed to be owned by the original claimant and his descendants.

Also quite obviously, he had placed reliance on certain individuals named in his statement of claim as the source provider of his historical information later developed into a claim for ownership to the land. He had failed to bring these witnesses or their descendants to reconfirm the related history.

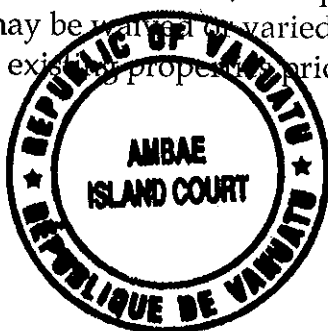
Moreover, his 3 witnesses are not competent in their statements in court. They seemed to have been coached and referring to statements read in court which we have considered to have been fabricated by some other person. They could only provide very general information and in the course of examination could not answer questions requiring deeper information in support of the claim. They looked confused and not well familiar with the history and claim of Manly Tari.

In consideration and verification of the totality of the evidence as advanced by the parties, this tribunal can only find the original claimant's evidence to be consistent and constructive thereby outweighing the defendant's cases. That is to say that Nicolsen Tari has established evidence and proven more than probable that they are the true and rightful owners of the contested land.

DECLARATION

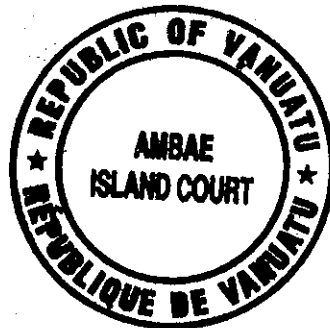
In light of the totality of the gathered findings and in application of the law and the rules of custom forming the basis of land ownership and use, the court hereby this day pronounce as follows;

1. That Nicolsen Tari representing his family and descendants are declared as custom owners of the land of Kwalusuku as claimed accordingly.
2. That Manly Tari's claim is refused and hereby dismissed
3. The declared land territory begins on the east at a dry creek leading to the sea. Its border is demarcated by the same creek which follows northwards until it meets a cattle fence crossing westward to the sea shore on the west. Its boundary limits from the west is marked by the shore line running southwards and then turning eastwards joining up at the same dry creek on the south eastern part of the land.
4. It is also reminded that this declaration does not also affect other property rights on the land, such as rights of claimants or other local occupants to harvest coconuts, garden, graze cattle and other existing development thereon. Needless to mention however, occupiers of the land must bear in mind that these rights may be varied by the owners. The exercise of these rights is limited to existing property prior to this declaration.



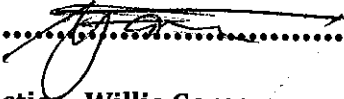
5. As such, it is further directed that that all persons currently in use of the land undertake to cause appropriate arrangements with the declared owners to accommodate their continuous use of the land.
6. Costs necessitated by this proceeding shall fall as found.
7. Any party aggrieved by the decision of this court has the right to appeal within 30 days period at the receipt of this written judgment.

Attached to this decision is a copy of the declared land boundaries of Kwalusuku land (see, shaded land area) to the declared custom owners.



Dated at Redcliff, south Ambae this 04th day of July, 2012


BY THE COURT

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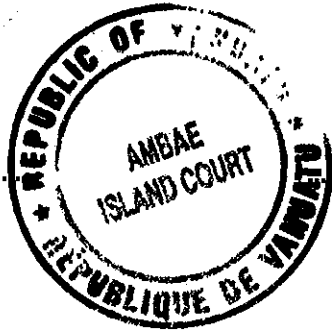
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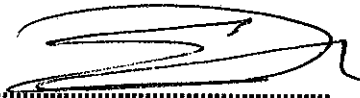
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Edwin A Macreveth
Presiding Magistrate

RED CLIF SCHOOL
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