

IN THE EFATE ISLAND COURTS

Civil Case 5 of 2008

HELD AT PORT VILA

(Civil Jurisdiction)

BETWEEN: SIMEON POILAPA (Of Mele Village, Efate)

Claimant

AND: KALOKAI MASAAI (Of Mele Village, Efate)

Defendant

Coram:

Justice Ann Carlo

Justice Harry Joshua

Justice Raymond Marongoe

Clerk:

Collyne Tete & Anthony Lessy

Date of Hearing: 14 May 2013 to 30 May 2013

Date of Decision: 31 May 2013

JUDGMENT

Efate Island Court is required by the Supreme Court on a decision dated 17th of December 2012 to re hear this case and;

- (i) *To determine and record (by name rather than just by position or reference) exactly who are the Lesser Chiefs represented by each nakamal in Mele Village today who are entitled by custom to appoint the Paramount Chief of Mele;*
- (ii) *To initiate(if necessary) and attend a meeting of those chiefs and observe the process whereby those chiefs appoint the Paramount Chief whether that is by ratification of Mr Poilapa as the Paramount Chief or the appointment of another person as Paramount Chief;*
- (iii) *To observe the ordination of the Paramount Chief if that is not Mr Poilapa and*
- (iv) *To provide a report to this court on these matter*

The Efate Island Court convenes hearing on Tuesday 14th of May and delivers the decision on Friday 31st of May 2013.

The issue now before this court is to determine who are the Lesser Chiefs represented by their Nakamal in Mele Village today who are entitled by custom to appoint the Paramount Chief of Mele.

Both parties were requested to make submissions for the hearing. Mr. Simeon Poilapa as the claimant filed his submission on Monday 13 of May 2013 and Mr. Kalokai Masaai as the defendant filed his submission on Friday 10th of May 2013 and both parties were present before the Courts after being summoned.

Upon presentation of the case the defendants' spokesman made an objection on Justice Ann Carlo and Justice Harry Joshua to the effect that they were all part in past decisions of Efate Island Courts. The objection was rejected as there was no valid reason to substantiate their claims that warrant the justices to step down. ***(Refer to Judgment dated 21 May 2013)***

According to the submissions filed, there is dispute as to who are the Lesser Chiefs in Mele and this court is mandated to determine them according to customs of Mele Village inconformity with existing customary rules prevailing within this jurisdiction.

There are certain customary criteria's that enable an individual to be recognized as a lesser chief and this court uses them as basis to determine the Lesser Chiefs. For someone to;

- (i) Be a chief who is recognized to have owned land in mele
- (ii) Be a chief who represent a tribe or nakamal in Mele Village.
- (iii) Be ordained by a Paramount Chief

According to the claimants' submission filed, there are 16 Lesser Chiefs including him who met on the 30th of June 2011 at Mele Village Farea. These Lesser Chiefs represented each nakamal in Mele Village today and are entitled according to custom to choose and appoint him as next

Paramount Chief of Mele Village after the death of his later father Poilapa II and Poilapa III, in which the appointment and ordination administered by the Vaturisu council of Chiefs (VCC) was done according to custom practice of Efate. He further mentioned that according to Mele history there was no record of a man from Mele Paramount Chief prior to the ordination of Kalsautu Poilapa I in 1946, in which the defendant also admitted. He also mentioned the Poilapa were the holder of the Paramount Chiefly Title from generations to generations which is from Poilapa I to Poilapa III which proofs that Simeon Poilapa IV is the true descendants of the holder of the Paramount Chief Title.

He also submitted that the Paramount Chief has the ultimate authority to ordain head of Tribes as Lesser Chiefs to represent each tribe in Mele Village Farea and also has sole authority to appoint or terminate members of his councils in consultation with head of tribes and mentioned that there is only one Farea in Mele Village led by Poilapa I to Poilapa III. And also that the late Poilapa III was approved by council of Members to be ordained as Paramount Chief and after his death the same existing council approved for him, Simeon Poilapa as the next Paramount Chief in which he was ordained on the dates 24, 25 and 26 of August 2011. Furthermore he mentioned the names of his 15 Lesser Chiefs, their custom Chiefly Titles, their land and their Nakamal and the date of when they were ordained. *(Refer to Page 9 & 10 of his Submission)*

The defendant Mr. Kalokai Masaai submitted according to statement that the village council existed prior to the dispute namely chief Marik Namata Dick Kalsaumi Chillia, Chief Kasmalsa Daniel Tanau Sope, Chief Tarsaliu Daniel Mansale, Chief Napangamiala Thomas Malas and Chief Sokomanu Ati George were given the power of attorney by late Poilapa II to appoint the new Paramount Chief. He further mentioned that the former Paramount Chief Kalsautu Poilapa I, Peter Poilapa II were appointed and ordained by Mele Village council of Chiefs. He further explained that he was also appointed and ordained by the Village councils as Paramount Chief and the ordination was done according to custom procedures and that there were 21 Lesser Chiefs whom are working with him in which nine (9) of them were ordained by a Paramount Chief and 12 others were ordained by the village council.

From the way submissions were presented, the court requires additional evidences in order to declare the rightful Lesser Chiefs in accordance with customary rules and practices of Efate. There for the court decides to call 16 Lesser Chiefs from the claimant side into the witness box to verify the submissions from the claimant.

From his submission, the Mele Village council of Chiefs is established by the Paramount Chief to advice and consults on matters relating to the governance of the village. And the Paramount Chief with the heads of each families or "Matarau" or tribes normally the term of the council members are for life at the Paramount's discretion and the tribes wish. Also stated there is only

one nakamal existed in Mele Village and also mentioned according to election for a Paramount Chief is not a custom practice but is inherited through bloodline system.

During cross examination of all 16 Lesser Chiefs they all confirmed in Courts that they were appointed and ordained by a Paramount Chief and they all have their own nakamal within Mele Village and have their own stone of ordination to represent them at the Poilapa IV Nasara. Also they confirmed in Courts that only Lesser Chiefs appointed by a Paramount Chief has the right or authority to elect a Paramount Chief but still disagree that the election process was not a custom practice.

We recorded that the defendant and his function did boycott the Efate Island Court and the court proceed without them for some time.

During cross examination only the five (5) village council members were questioned in which all confirmed they were ordained by a Paramount Chief and that the late chief Peter Poilapa II has given them the power of attorney to ordained and appoint the next new Paramount Chief of Mele Village.

There was no need to call other Lesser Chiefs into the witness box to give evidences since the Court gathered enough evidence to make a decision on this matter.

COURTS FINDINGS

After the presentation and submissions from both parties, the Courts findings are:

- That the claimant and his 15 Lesser Chiefs confirmed in Courts that they were all ordained by a Paramount Chief who proofs that to be in accordance to Efate Custom, Vaturisu By laws and Mele Village by laws that all these procedures were done according to custom to qualify them in becoming recognized Lesser Chiefs
- The Claimant and his Lesser Chiefs are recognized chiefs who represent their nakamal and have land in mele. They did have long history of authority as Lesser Chiefs in their nakamals in mele
- The village council members were appointed by the Paramount Chief Poilapa II and the four (4) chiefs who were ordained by Paramount Chief Poilapa III did pay their allegiance to the defendants side which proofs that the total of nine (9) were ordained by a Paramount Chief.
- The other seventeen (17) Lesser Chiefs submitted by the defendant were not ordained by a Paramount Chief but were appointed by the village council which has no customary power to ordain lesser chief.

- The power of attorney claimed by the defendant to have been given by Poilapa II was not true according to custom and was inconsistent with the customary principles and rules governing Mele Village and Efate.

Before making our decision, we wish to stress that it is so sad to see the defendant and his function making unnecessary application to this court, their boycott and attitude which shows they are using their rights to file unnecessary application that contribute to continuously delay the process of having this matter done according to the principles of custom. It is really important they accept the real custom and uphold the respect and dignity of the custom.

Therefore according to the above findings and our traditional knowledge, We have the responsibility at our disposal under the provision of Section 10 of the Island Court Act, Cap 167 and section 3(1) where Senior Magistrate Vincent Lunabek held in the case of *Waiwo v Waiwo and Banga* that our knowledge in customary law is very important and does not need evidence to prove it. We quote "*Vanuatu Island Courts, it can be stated that an Island Court is competent to find and apply customary law without having evidence to prove it (see Island Courts Act, Cap 167, S.10) because an Island Court is constituted of three Justices knowledgeable in custom and at least one of them shall be a custom Chief residing within the territorial jurisdiction of the court (see S.3 (1) (3)).* *Waiwo v Wawo and Banga,*

Decision

1. We declared the following as rightful Lesser Chiefs of Mele Village according to custom;

(a) The Lesser Chiefs from the Claimant are;

- (I) Chief Simeon Poilapa
- (II) Chief Rave Chillia Warewo
- (III) Chief Kalo Malapa Mataunavila
- (IV) Chief Foster Rakom Marik Vakalo Ni Fenua
- (V) Chief Kalonjuma Sope Atlangi
- (VI) Chief Kaltango Tarimala Munumunulou
- (VII) Chief Kaltukoro Bangalulu Masoipongi
- (VIII) Chief Philimon Mansale Mataulaegoro
- (IX) Chief Lori Eddie Narumata
- (X) Chief Kaltalo Nakmau Melotambo
- (XI) Chief Kalagisu Napanga Napangamiala
- (XII) Chief Kalmanjiji Novi Suposo
- (XIII) Chief Kalorongoa Sope Maringa Melu
- (XIV) Chief Lokin Malas Kaltoa Malastapu
- (XV) Chief Kaljaria Samsen Marikoa

(XVI) Chief Edward Labua


(b) The Lesser Chiefs from the defendant are;

- (i) Chief Marik Namata Dick Kalsaumi Chillia
- (ii) Chief Kasmalsa Daniel Tanau Sope
- (iii) Chief Tarisaliu Daniel Mansale
- (iv) Chief Napangamiala Thomas Malas
- (v) Chief Ati George Sokomanu
- (vi) Chief Tafuralapa Kaltapang Alick Taripakoa
- (vii) Chief Onetapau Malastapu Kaltoa
- (viii) Chief Muanlapa Kalori Anatu
- (ix) Chief Labua Kalmalau

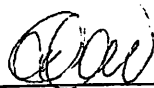
2. Chief Kalokai Masaai does not meet the customary criteria's to be recognized a lesser Chief; therefore he is not a lesser Chief.
3. The customary power to ordain or recognized any new lesser Chief rest entirely on the hand of the Paramount Chief.
4. According to the direction orders of the Supreme Court dated 17 December 2012, part 17 (b), the court directed that all Lesser Chiefs declared in order 1 above to meet at the Mele Village Farea at 3.00 PM today the 31/05/2013 to appoint the Paramount Chief of Mele in accordance with custom.
5. Both group to nominate a representative each from their group to assume the role of the chairman and to convene the meeting. Both representatives to make sure all Lesser Chiefs are present in the meeting.



Justice Harry Joshua



Justice Raymond Marongoe



Justice Ann Carlo

