

**IN THE TANNA ISLAND COURT**  
**OF THE REPUBLIC OF VANUATU**  
(Land Jurisdiction)

Land Case No.4 of 1997

**BETWEEN:** TOM NUMAKE  
**Applicant**

**AND:** RAKATNE TRIBE  
**Respondent 1**

**AND:** FAMILY NAHINE  
NISSINAMIN  
**Respondent 2**

**AND:** FAMILY NIPIKNAM  
**Respondent 3**

**AND:** FAMILY IAHLIAN ASUL  
**Respondent 4**

**AND:** FAMILY KASO INAM  
**Respondent 5**

**AND:** FAMILY NAHEU FAILET NAMEL  
**Respondent 6**

**AND:** NATUKA MATAUA  
**Respondent 7**

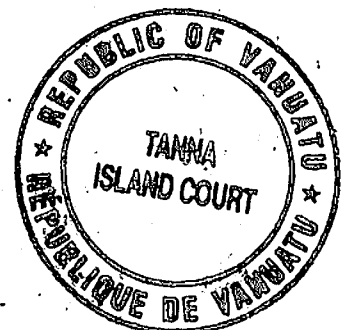
**AND:** FAMILY NAWAKAI KAPATANGTANG  
**Respondent 8**

**Coram:** Magistrate Edwin A Macreveth  
Island Court Justice Joshua Kausiamar  
Island Court Justice Micheline Noar  
Island Court Justice Charlie Tukama

**Clerk:** Blandine Tepi

**Date of hearing:** 22 - 24 September, 2014

**Date of decision:** 25 September, 2014



## JUDGMENT

This decision concerns an application lodged by Tom Numake asking the Court to refrain from dealing with the land of Niougan also known as Lengknowgen situated at whitegrass, Tanna. In support of his application, he advanced the following arguments.

1. That he, Tom Numake had been previously being declared the custom owner of Lengknowgen by the Native Court in, 1973.
2. That the Supreme Court has made confirmation of his right of ownership over the land in question.
3. That the Tanna Island Court cannot re open the claim as the Native Court declaration of ownership is legally binding and is a complete bar to the present proceeding over the declared boundary of Niougan.

In response to his application, every party to the claim completely objected to his claim. Their arguments forwarded are summarised as follows;

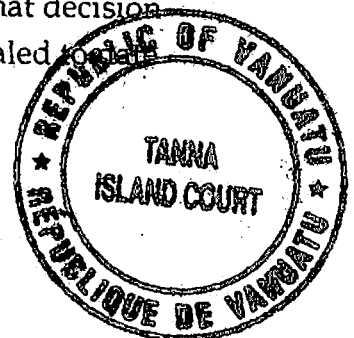
1. That the Supreme Court has referred the matter down to the Tanna Island Court for re hearing of the whole boundary as directed.
2. That the land declared by the Native Court has wrongfully declared customary land belonging to other tribes and thus, requires a fresh trial.
3. That the Native Court has only declared land in respect to a fenced paddock and not the whole land as mapped by the applicant in his plan marked as Appendix "A".

Given this disagreement on the part of the respondents, the Court conducted a full hearing in order to properly ascertain the whereabouts of the declared boundaries of the land of Niougan.

From the raised sentiments and in our consideration, the issues for the Court to determine are as follows.

*The first issue is whether the declaration of land ownership of the land of Lengknowgen by the Native Court in 1973 to the applicant is still valid or not?*

The answer to the question is in the affirmative. The pre independence decision was issued on the 26th of February, 1973 in Civil Case no.1 of 1973 between Tom Numake as plaintiff and Nisak being the defendant. There is no doubt in our mind. That decision is very much alive having its transitional legal effect at date. It was not appealed to date.



(2) *Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom."*

Besides, the respondents cannot argue that the decision should not be followed because it was not a decision made in accordance with the rules custom of the area. That argument cannot be sustained by reason that they had not appealed the decision.

Secondly, the Court in adjudicating the claim and did applied custom. This piece of evidence is reflected from the history and custom practices as contained in the Native Court judgment.

We note also that the Supreme Court has in its ruling to the same issue at page 2 point 7 in Land Appeal Case no.08 Of 2009 has clearly underlined the same principle as discussed above.

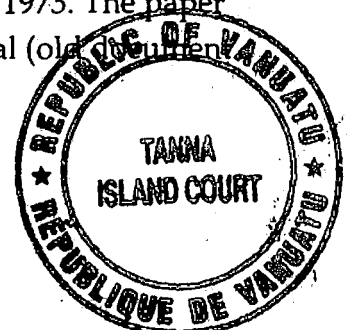
The observation of the Court of Appeal in the case of *Kalotiti v Kaltabang (2007)VUCA 25* which is fairly similar to this case stated " *In our opinion it does not follow that the failure to mark out the boundaries in 1972 renders the 1972 New Hebrides Native Court meaningless or of no continuing relevance. The judgement awarded individual rights to Kalran, and difficult though it may be, the boundaries of that land will have to be determined on the basis of the best evidence available as to where the boundaries exists. In our opinion that is a matter within the jurisdiction of the Supreme Court. The Native Court has given a judgment on custom ownership. The Supreme Court would not be revisiting that issue, but would simply be making consequential orders to give a proper effect to the judgment."*

In light of the above remark and in our view, the decision of the Native Court is binding on parties and cannot be re visited except by way of an appeal. If the respondents do not feel comfortable with declared ownership and the tendered sketch map, then they have every right to challenge its accuracy and validity at the Appellate Court alone.

*The second issue is whether the sketch map marked as Appendix "A" attached to the judgment is the correct map specifying the declared land to Tom Numake. If so, then the next question would be -Does it correspond with the wording of the decision?*

The answer is in the positive. The reason for the Court's conclusion is supported by the following evidence.

1. The Court has carefully verified the questioned sketch map marked as Appendix "A" and found it to be the correct original map attached to the judgment of 1973. The paper material or fabric used for sketching the hand drawn map looks original (old document)



and cannot be re open by this Court because it lacks jurisdiction. It is therefore, binding on this Court and by far constitutes a complete bar to any claim of ownership over the same declared land territories.

It is important to understand that a Native Court decision made before independence had binding force on indigenous custom owners of land after independence by virtue of Article 95 of the Constitution. For ease of clarity to the parties, decisions on custom ownership made under the former legal regime were binding and enforceable on the parties in dispute and remained so until Independence. At independence, the Constitution of the Republic of Vanuatu became the supreme law of the country. A new system of Courts was established, and the Constitution directed Parliament to provide for the establishment of Customary Land Tribunals or Island Courts with jurisdiction over customary and other matters, and to provide for the role of chiefs in such courts.

As to ownership of land in Vanuatu, and for transition from the old legal regime to the new one, the Constitution provided:-

#### **"LAND BELONGS TO CUSTOM OWNERS**

73. *All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants."*

#### **"BASIS OF OWNERSHIP AND USE**

74. *The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu."*

#### **"PERPETUAL OWNERSHIP**

75. *Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with recognized system of land tenure shall have perpetual ownership of their land."*

#### **"RIGHTS, LIABILITIES AND OBLIGATIONS**

92. (1) *All rights, liabilities and obligations of the Government of the New Hebrides, whether arising out of contract or otherwise, shall, as from the Day of Independence, be rights, liabilities and obligations of the Republic of Vanuatu.*

(2) *Nothing in subarticle (1) shall prevent the Government of the Republic of Vanuatu renegotiating rights, liabilities or obligations assumed under that subarticle."*

#### **"EXISTING LAW**

95. (1) *Until otherwise provided by Parliament, all Joint-Regulations and subsidiary legislation, made there under in force immediately before the day of Independence shall continue in operation on and after that day as if they had been made in pursuance of the Constitution and shall be construed with such adaptations as may be necessary to bring them in conformity with the Constitution.*



in nature) and has the same condition or quality to that containing the written judgment.

2. Secondly, from the site inspection of the declared boundary, we are satisfied that the land demarcated by the two dry creeks of Lamanan on the south and Lenil on the northern side and other geographical phenomenon there on do correspond to the attached map.

For illustration, the Native Court had referred to the same map attached in two different parts of the judgment.

Firstly, the evidence provided at page 1 says that the Court had visited the land to inspect its precise boundaries and condition. The boundaries visited are those contained in the hand drawn map marked as appendix "A" when it states: "A plan of the area in dispute (not to scale) is attached as Appendix "A". Plaintiff and the defendant are in substantial agreement as to the position of the boundaries, except on the eastern boundary, where there is a difference of opinion, as indicated in the plan."

Secondly, at page 5 it reads "These witnesses are called on the basis of information obtained in the court's visit to the area of the land in dispute (vide Plan at Appendix "A")".

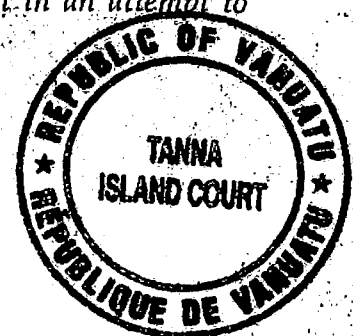
It follows that the next question would be what was the subject matter for the Native Court's determination? Was it in regard to a declaration of ownership over a specific land demarcated by a fence or was it a declaration over a boundary of land as illustrated by the sketch map marked as Appendix ?

The answer is very clear from the judgment itself that the issue in contention begun with differences over cattle rental prices but then further developed into a boundary dispute which then led to a dispute of ownership of the land of Niougan.

There is ample information from the Native Court judgment itself pointing out the subject matter for the court's resolution. We refer to a few below.

Page 1. provides "SUBJECT". *The rightful ownership of the area of land known as Niougan in the southern locality of Whitegrass, Tanna*".

Further down at paragraph no.1 Tom Numake stated that "he erected his eastern boundary fence about 70 yards inside his eastern boundary in custom right in an attempt to avoid any dispute with Nisak".



The last sentence of page 2 of the first paragraph states " *This dispute started through the cattle rental prices, then became a boundary dispute, and then a question of ownership*". While, Mr Nisak's statement also confirms that the dispute was of ownership of the entire land when he said " *Yes, the price charged by Tom Numake is too high, and Tom Numake seemed to be trying to push my boundary back to the east. I claim ownership of the whole boundary under dispute.*"

Also at page 5 (16) Court witness Willie Tuaka stated " *My tribe is Nisinamin. I believe the ground on the northern boundary of my land belongs to Tom Numake*". At (17) Court Witness Iopuat stated " *My Tribe is Nakaione; I believe the land in my ownership is bounded on the west by land leased to Mr.R.U.Paul and on the north and north east by Numake's ground*".

Moreover; the sketch map ( Appendix A) obviously explains it all that the land declared is sitting between Lamanan creek on the south and Lenil creek on the north eastern side running down to the sea coast and bounded by a boundary mark on the eastern side as identified by Tom Numake during the land boundaries inspection.

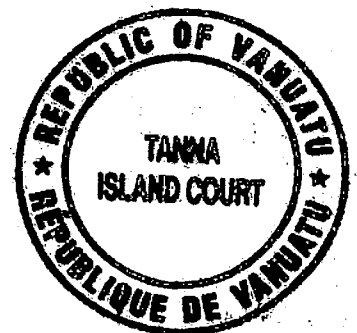
Having read and discussed the above passages, common understanding would dictate in conclusion that the dispute was in regard to land ownership of the whole area of Niougan as mapped and not a dispute over a fenced land territory.

In passing by, we noted that there is misunderstanding from the respondents over the Supreme court orders when it referred the matter for re hearing before the Tanna Island Court. In our opinion, its direction for fresh hearing would be in general relating to the boundaries extending beyond the declared land map of the applicant as claimed by the original claimant (Tribe Rakatne).

As afore mentioned above, this Court is legally bound and completely barred from reopening any proceeding relating to the declared land by the Native Court.

In light of the foregoing evidence, the Court is satisfied with the application made by Tom Numake. Having so said, the relief sought is hereby accordingly granted. Meaning that the Tanna Island Court will now only hear and decide ownership of the disputed land territories located outside the declared land by the Native Court.

Aggrieved parties are informed of their right of appeal.



Dated at Isangel, this 25th day of September, 2014

BY THE COURT



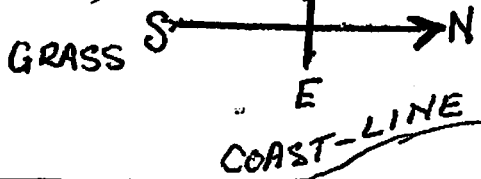
Edwin A Macreveth ( Presiding Magistrate)

Justice Joshua Kausiamar

Justice Micheline Noar

Justice Charlie Tukama

NIC ANNA SEA



N.C.S.D. CIVIL JUDGEMENT No. 1/7

SEA

REGISTERED LAND PLANS. 233 & 241 TITLES 193 + 219 LEASED

TO R. U. PAUL

ERECTED BY TOM NUMAKE (PLAINTIFF)

HIO PUAT CREEK

WILLIE TUAKA

LARRPIS

MOTORABLE ROAD

LRIMANANAN

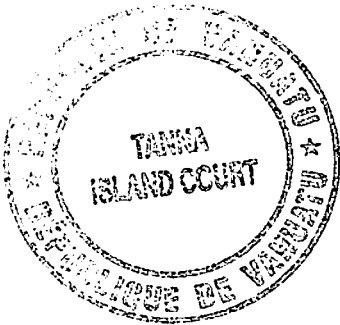
DEER

SULE

HOKRIM

JIMMY KALAPEN

LENILE CREEK



EASTERN BOUNDARY OF "NIUGAN" AS CLAIMED BY NISAK (DEFENDANT) FENCE ERECTED BY TOM NUMAKE (PLAINTIFF)

EASTERN BOUNDARY CLAIMED BY TOM NUMAKE (PLAINTIFF)

NISAK'S (DEFENDANT) LAND - NOT IN DISPUTE

TAGAN

TO MIDDLE RASH