

IN THE ISLAND COURT
REPUBLIC OF VANUATU
SITTING AT THE LUGANVILLE COURT HOUSE
VANUATU

LANDS CASE 1 OF 1989

(Land matters)

LORETHIA KARKAR – EAST SANTO

BETWEEN: TICE ISHMAEL
ORIGINAL CLAIMANT

AND: NWARMOKOS
COUNTERCLAIMANT 1

AND: JULES WORSEKSEK
COUNTERCLAIMANT 2

AND: KAVERAC THOMAS NIAL
COUNTERCLAIMANT 3

AND: MAY THOMAS NIAL
COUNTERCLAIMANT 4

CORAM:

Island Court Justices:

1. Justice BEN ROVU KENRELREL of HOG HARBOUR, East Santo
2. Justice PETRO RITE of PORT OLRV, East Santo
3. Justice SAM VULA of South Santo

Acting Senior Magistrate: RITA BILL NAVITI

Island Court Clerk: ANTONY LESSY

JUDGMENT

BACKGROUND:

LORETHIA KARKAR 2015

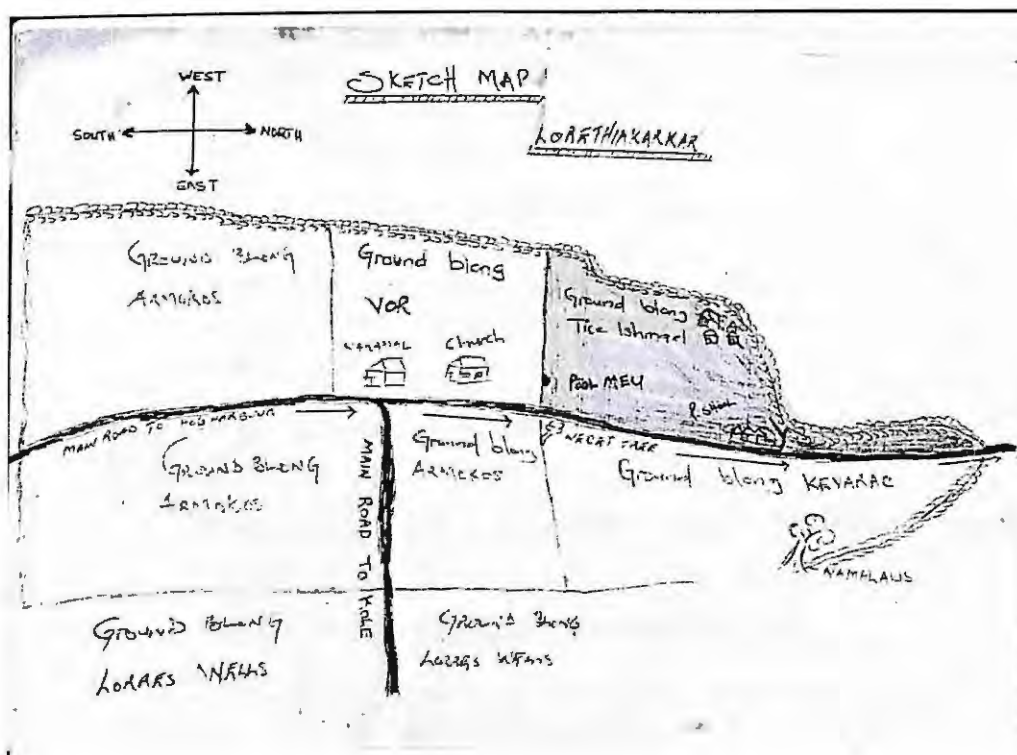


This land dispute was filed in 1989 and publicized in around the same year, when the counterclaimants filed their claims.

The land:

The land is situated on the Eastern part of the Island of Espiritu Santo, on the way to Hog Harbor Village; in the province of Sanma. The original claimant refers to it as LORETHIA KARKAR. Attempt to change the name to LORELORASERI and MEU failed. LORELORASERI was the name of a mountain and MEU the name of water could be possibly allocated to a piece of LORETHIA KARKAR's land.

Its boundaries were not marked by the usual customary boundaries such as mountain, hills, creeks, rivers and large stone or rocks; but trees and the tar sealed road. That part of LORETHIA KARKAR shared boundary with Lorum on the southern side;; but it is surrounded by hills on the Northern and Western parts and the public tar sealed road to Hog Harbor Village on the East and the custom demarcation of Neget on the South side.



The laws:

- Constitution of the Republic of Vanuatu,

LORETHIA KARKAR 2015



- **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 different categories of lands.
- **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 an 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 an 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".
 - **Sanma 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);
 - **WILL** a custom owner may bequeath his right to anyone in custom. Custom will cannot be interfered with;
 - **AS COMPENSATION FOR PAYING A DEBT:** "TAFRHA" Custom land can be owned or placed as a security to someone who had paid the custom land owner's debt; The same can be restituted once the said custom land owner has refund the payee or his debt;



- **Land tenure in Sanma:**

The parties have not discussed the customary governance and management of lands in the disputed area. Although there is mention of "VUSTER" meaning Paramount chiefs, there is no information on how he managed and controlled the lands.

INTRODUCTION:

The parties object to Justice Ben Rovu Kenrelrel and Justice Petro Rite. On the allegation that the Ben Rovu Kenrelrel used to demand sum of money from the claimants in land cases so that the decision would go in their favors and Petro Rite is uncle to Johnalson (Counterclaimant 3). After consideration the court found no evidence to support the objection against Justice Ben Rovu Kenrelrel and that Petro Rite's relationship with Counterclaimant 3 is not close enough so as to cause any conflict of interest. The objections were rejected both Justices Ben Rovu Kenrelrel and Justice Petro Rite are allowed to continue sitting as justices in this matter.

The issues in this dispute are:

1. **Whether the Original claimant TICE ISHMAEL is the custom owner of the disputed part of LORETHIA KARKAR?**

THE FACTS

ORIGINAL CLAIMANT- TICE ISHMAEL

The original claimant is represented in court by PHILIP NARE:

Family tree

NERE mothered

- a. **WOUAR** wedded NERE and fathered
 - i. **KALSEI**. **KALSEI** wedded **ARSULITHIA** and fathered
 1. **THEWOC**
 2. **THAT** and
 3. **NOSOC**
 - a. **THEWAC** and **THAT** had no issues
 - b. **NOSOC** wedded **ARMARAR** and fathered **TICE ISHMAEL**. **NOSOC** died when **ARMARAR** was pregnant. 3 months later **ARMARAR** cohabited with **NARE**.
 - i. **TICE ISHMAEL** was born at under **NARE'S** care.
 - ii. **TICE ISHMAEL** married **ARPORE** and fathered **ARMARARO**.



- iii. TICE ISHAMEL became widow and remarried TIVE and fathered
1. WARTES,
 2. PHILIP (spokesperson) and
 3. JOHN

The original claimant claims that TICE ISHMAEL was in his mother's womb when NOSOC (his biological father) died. 3 Months later his mother remarried NARE. Not long after, his mother and step father (NARE) also died;

NEV TURCET cared for TICE ISHMAEL. In 1931 TICE ISHMAEL went to the Presbyterian Mission at Hog Harbor. In 1942 as a young boy, he joins the army in World War II;

He got married to his first wife N'WARPOVRE in 1947. His wife was the daughter of N'WARHOVRE and REUBEN who sold him a piece of land at Hog Harbor.

In 1964 TICE ISHMAEL started to work the disputed land.

COUNTER CLAIMANT 1- NWARMUKOS & FAMILY

She claims under CAVTEN or CAPTEN. Her claim is base on last surviving bloodline of MAVWOR OR YAVWOR. Her sketch map covers the all boundaries of LORETHIA KARKAR

Family tree

MAVWOR OR YAVWOR wedded ARAR SAM and fathered
SUL and ELAN-WOR (PETER MAVWOR) who was taken to Queensland Australia,
SUL wedded AMKOS and fathered
CAVTEN/CAPTEN wedded ARWUL and fathered
AMKOS.CAPTEN died and ARWUL remarried KALRET
AMSKOS wedded NAISER (OF Ambrym) and mothered young CAVTEN;
YOUNG CAVTEN wedded Katrin and fathered KAVENSON

She said that her mother ARWUL showed her all the custom Nasaras, Graves, custom Stones and boundaries. Most of the evidence over customary activities is situated outside the disputed sketch map provided by the Original Claimant;

She produces evidences showing that WOR SEKSEK stayed with CAVTEN at CAVTEN's Nakamal when she was still a child and that WOR SEKSEK ruled the land when CAVTEN died.



Evidences also show that at one time VOR wanted to marry AMKOS but relatives objected to that union because both VOR and AMKOS are closely related. That decision caused AMKOS to marry to NAISER (spokesperson);

PUTSUN, SUL PAUL, ARWUL and KANG-HAR told NAISER (native of Ambrym) not to take AMKOS away to Ambrym because she is the only surviving bloodline of LORETHIA KARKAR.

She produces evidence to show that VOR controlled and managed the land; that he practiced witchcraft in the area; that everyone were scared of VOR because many evil spirits were following him and that VOR performed many custom activities in the area close to the dispute land at MEU and IETHKAR.

COUNTERCLAIMANT 2 – VORSEKSEK & FAMILY

He is claiming under YAWAR or WAR

He exposes his family tree as follows:

1. YAWOR or WOR wedded LECAYA and fathered

- a. **REMNODERE**
- b. **ARPEOV**
- c. **WOR/ELAN PETER MAWOR** and
- d. **SUL**

REMNODERE wedded his sister ARPEOV, fled with her to RAKE and fathered WORSEKSEK, KALSEI and TOWOR;

WAOR/ELAN PETER MAWAOR was taken to sugarcane plantation in Australia;

SUL wedded AMKOS and fathered CAVTEN/CAPTEN, who wedded ARWUL fathered AMKOS (the current claimant);

He confirms the Counterclaimant's evidences that WOR was living with CAVTEN and explaining that his ancestors REMNODERE and HARPEOV are brother and sister. That their union contradicted custom practices and brought shame on the family, so they fled LORETHIA KARKAR and found refuge at RAKE. They had children one of who was WOR. That when WOR grew up, his father told him to go back to his grandfather's land at LORETHIA KARKAR; so he came back to the land and lived with CAVTEN/CAPTEN.

During his time at LORETHIA KARKAR, WOR performed many custom activities on the land. He would change green leafs of bread fruit and Nagae nuts into red colored leaves. The site of these activities is names as LORETHIA KARKAR meaning RED BREAD FRUIT LEAVES and VATH KARKAR meaning RED NAGAE LEAVES. That



one of his family member is called RIETH. RIETH is the name of the person who changed the colors of leaves.

He recounts that water "MEU" was created by two children. The children were playing with water left by rain in a hole on a wood. After some period of time, the water exploded into a river that runs down to the sea taking within its current the two children and brought them down by the sea where they changed into stones.

Counterclaimant 3 and 4

Counterclaimant 3 – THOMAS NIAL and Counterclaimant 4 – MAY THOMAS NIAL are brother and sister whose ancestors have been allocated a portion of the land within the disputed area by Counterclaimant 1's ancestors; they alleged that the disputed portion of LORETHIAKARKAR claimed by the Original claimant was included in the part of the land initially allocated to their ancestor JOHN WAKA. Their claim is more of proprietors' rights to occupation rather than customary ownership rights;

Application of the facts to the law:

Article 73- provides that Land belong to custom owners- we quote *"All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants"*;

Article 74- Basis of ownership and use- we quote "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 different categories of lands.

52. Village and Island Courts

Parliament shall provide for the establishment of village or island courts with jurisdiction over customary and other matters and shall provide for the role of chiefs in such courts.

The Parliament, in accordance with Article 52 and 76 has enacted the Island Court Act Cap 167. One of its functions is to determine customary ownership of lands in the Republic of Vanuatu. In its endeavor to do that, the Island Court must use the rules of custom as the basis of ownership and used of land in the Republic.

The Island Court is required to determine "~~the indigenous custom owners~~ and their descendants".



"indigenous" is defined in the Google search dictionary as produced, living, or existing naturally in a particular region or environment.

"Custom" is defined in the Osborn's concise Law Dictionary as "the rule of conduct, obligatory on those within its scope established by long usage; a valid custom must be of immemorial antiquity..."

To be declared the custom owners of the land in dispute, the original claimant must convince the court on the standard of probability that his ancestors existed naturally on the disputed land from the date immemorial.

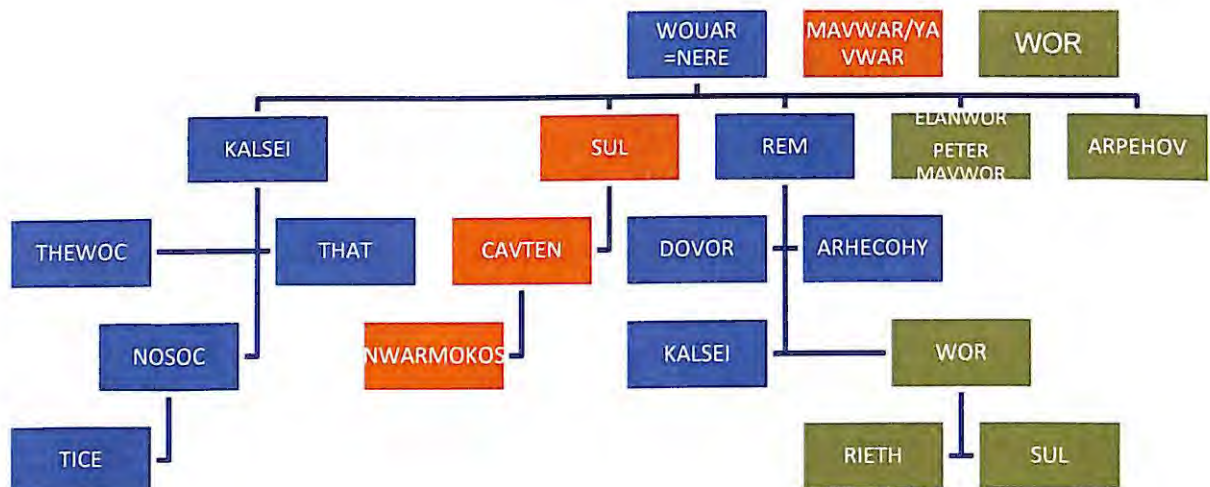
The evidences produced by the Original Claimant are insufficient to safely declare that he is the custom owner of a part of LORETHIA KARKAR on the following grounds:

1. The court has not heard evidence of the original claimant's custom activities and usages in neither the disputed portion of, nor in other area within LORETHIA KARKAR; although there was mention of custom water "MEU". To him that water was sacred. But he did not tell the court why is it regarded as sacred, whereas Counter claimant 2 VORSEKSEK gives details about the water, its creation and usages.
2. Custom Land claims cover large portion of land. Claiming a part of a custom Land could not substantiate a claim over customary land ownership. custom lands are usually large portion of land where one can appreciate the sites of old custom activities performed by the claimant and/or his/her ancestors, material evidences of old Nasaras, Nakamal, graves and sacred places relating to the first occupiers of lands;
3. LORETHIA KARKAR being a large custom land mass, its customary ownership must be declared after hearing evidences over its full boundaries not a part;
4. This court is supplied with ambiguous and confusing evidences over family trees; it is clear that parties and their witnesses were confused themselves or hiding certain evidences; to state a few:
 - a. The Original Claimant's family tree omits the name of the original Male under who he claims. WAOUR's father is not known. WAOUR's wife was NERE who mothered KALSEI, SUL and REM. The descendants of NERE in court today would include the descendant of NOSOC (original claimant),, CAPTAIN (counterclaimant 1) and VOR (counterclaimant 2);
 - b. In the case of Counterclaimant 1 ARWUL showed boundaries, custom stories and custom history of the land to AMKOS. And POTSUN, SUL PAUL, ARWUL and HANG-KAR advised NAISER not to take AMKOS to Ambrym because she was the only surviving bloodline of LORETHIA



KARKAR; yet her close relatives advised against VOR marrying AMKOS because they were closely related.

- c. The persons had not blood relationship with the land; how could they be certain that she was the last surviving bloodline. Furthermore the facts that VOR was living with CAVTEN at his NAKAMAL and at CAVTEN's death VOR controlled and managed the land, could imply that CAVTEN showed the boundaries of the whole land to VOR;
- d. The family trees of the original claimant, Counterclaimant 1 and Counterclaimant 2 seem to connect the 3 of them to a same person. WAOUR, WOR, MAVWOR, YAVWOR and WAR could be the central person. Below is the representation of the 3 family trees. Colored in blue marine is the family tree produced by the Original Claimant; in orange is that of Counterclaimant 1 and in green that of Counterclaimant 2.



Responses to the issue rose:

Whether the Original claimant TICE ISHMAEL is the custom owner of the disputed part of LORETHIA KARKAR?

The answer is: This court cannot be certain, even on the standard of probability that TICE ISHMAEL is the custom owner of the disputed part of LORETHIA KARKAR;

In the light of the above family tree TICE ISHMAEL is at liberty to bring this conflict before the newly established Customary Land Tribunal Management Act for proper determination of his right over the disputed portion of LORETHIA KARKAR;




The parties must keep the status quo until a properly composed Land Tribunal determines his rights within LORETHIA KARKAR customary land;

This decision does not affect the rights of the descendants of JOHN WAKA (counterclaimants 3 and 4) over their occupation over certain lands in LORETHIA KARKAR;

At Luganville, this 1st May 2015

Island Court Justices:

Justice BEN ROVU KENRELREL


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Justice PETRO RITE


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Justice SAM VULA


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Senior Magistrate
RITA BILL NAVITI


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