

IN THE MALEKULA ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Civil
Case No. 13/08 IC/CIVL

BETWEEN: JEFFRY WILLIAM
Claimant

**AND: MANSEL DAVID APIA
LAURENT MALRES
ARNOLD ANTOINE JIMMY
COLLIN TAUR
JEAN PAULO LINO**
Defendants

Date of Hearing: 17 April 2018
Venue: Lakatoro Court House
Before: Justice Douglas Fadal, Justice Joses Lingi, Justice Patisson Peter
In attendance: Mr. Jeffery William, Mr. Mansel David Apia, Mr. Collin Taur, Mr. Jean Paulo Lino Representing Late Gaspard Tommy
Nonattendance: Mr. Arnold Antoine, Mr. Laurent Malress
Clerk: Collyne Tete Maki

JUDGMENT

The matter registered before the Island Court was in accordance to the *Island Courts ACT CAP 167 section 10. Application of customary law: Subject to the provisions 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 and also;*

Guided by the Island Courts (Civil Procedure) No 28 of 2005 Rule 1 subsection 1 to 7 stated "Starting of a civil claim"

The claimant of the case Mr Jeffry William originally from Tautu village Central Malekula filed an application within the Malekula Island Court for the chiefly title of Naur nasara situated on Tautu village Central Malekula. In 2015 the matter was listed before the court for hearing. Before the hearing of the Chiefly title case there were Three (3) other applications being filed the application for struck off filed by defendant Mr Mansel Apia David which was heard from the 05th of May to the 08th day of Mary 2015 where the matter was dismissed by the court. The second application before the court was an application to join in as a party filed by Mr Jean Paulo Lino on behalf of Mr Gaspard Tommy which was heard by the court and



the court granted the application on the 08th day of May 2013 for Mr Gaspard Tommy to be represented by Mr Jean Paulo Lino.

After the applications being heard and completed there was another application to stay chiefly title being filed by the defendant Mr Mansel Apia David on the 14th day of February 2017. The matter was listed by the court on the 17th day of April 2018. Before the application was heard before the court clerk informed the court of one letter submitted by the 3rd defendant Mr Arnold Antoine Jimmy of Tautu village that he would not appear before the court upon medical grounds and the second defendant Mr Laurent Malress of Tautu village wishes not to attend in court due to work commitments.

The Application to stay the Chiefly Title case was filed by the defendant Mr Mansel David Apia of Tautu village and stated that the matter should not be listed before the court for the following reasons;

1. The main land appeal case no 13 of 1996 is pending appealing the Malekula Island Court decision dated 03 May 1985 before the Supreme Court in Port Vila
2. That since the chiefly title in custom normally touches upon the ownership of a given land, it is safe and proper in the circumstance to await the final decision in the appeal no 13 of 1996 hearing the claim

His sworn statement in support of the application stated;

1. Chiefly title claim blong Jeffry William emi concernem chiefly title blong kastom kraon wei oli stap kollem Danev/Naur wei Malekula Island kot I bin declare long 3 May 1985,
2. Decision blong Malekula Island court wei I givim ownership mo title blong chief long kastom kraon a "Danev/Naur" emi still pending before the Supreme Court long Port Vila,
3. From we Chiefly title emi touch wetem ownership long kastom kraon ia wei oli declarem long favour blong mi David Apia, mi belivem se emi proper nomo blong kot ia I wait long final outcome blong Land Appeal case no 13 of 1996 bifo emi save decidem blong chiefly title wei Jeffry I filem long kot.

He further mentioned in court during cross examination process and referred to a Supreme Court direction dated 25 March 2011 Point number 5 stated "First *Block Davev/Naur*" in accordance to that point 5 of the decision, Mr Mansel Apia David does not agree for the chiefly title to proceed because he was given the right by the Malekula Island court of the Chiefly title in the matter of the PRV Land matter and it is now still pending appeal before the Supreme Court.

He further mentioned that the matter still pending before the Supreme Court is an issue of Land and Chiefly title and classified Land case and chiefly title case being the same issue of the said Nasara Naur. He also stated that why has taken some years from 1985 to 2013 for the claimant Mr Jeffry William to file the matter of the Chiefly Matter before the Island Court.

Mr Donald Maljungmen of Tautu village whom is the spokesperson on behalf of Mr Jeffry William for family William responded and stated;



1. The Chiefly title and Land are two (2) different issues and that the Chiefly title is administered under the Islands courts act CAP 167 and not Land cases;
2. The matter pending before the Supreme court which is Land case 13 of 1996 is a Land matter namely PRV and not chiefly title;
3. During the PRV Land case 13 of 1996 the claimant Mr Jeffry William was the spokesman on behalf of family William;
4. The decision of the Magistrate civil case 29 of 2012 dated 21st day of August 2012 order number 2 stated “ *Each party may file their claim for their individual nasara before the island court or a village court.* ” The Magistrate did not challenged the parties or ignored the matter of the chiefly title to be filed by each parties, but given the right to parties to file their cases of Individual nasara before the Malekula Island court or to the village court. Given this order the claimant filed the Chiefly title matter before the Malekula Island court on the 6th day of September 2013;

Mr Collin Taur of Rano village Northeast Malekula representing family Taur responded in court and stated;

1. The defendants Mr Mansel David Apia’s’ application to stay the chiefly title case 08 of 2013 that is being filed is similar to the Application to struck off Chiefly title case 08 of 2013 that the Island court has heard and dismissed. This shows that he is trying to drag the chiefly title case;
2. He further referred to a Supreme court decision dated 28 June 1990 orders made by the Chief Justice Frederick G. Cook and the order stated that the Land case to be registered before the village court for hearing; and to the Island court for appeal
3. There was never a case filed for court hearing of the PRV Land within the village court.
4. And also stated the Island is the proper court to deal with the Chiefly Title case.

Mr Jean Paulo Lino of Rano village, Northeast Malekula on behalf of Late Gaspard Tommy response as follows;

1. The Chiefly title case must proceed before the Island Court;
2. The Chiefly title was never challenged by the Island court;
3. The Land case that Mr Mansel David Apia is refereeing to is of the said Land namely PRV.

CLOSING SUBMISSIONS

Mr Mansel David Apia responded in his closing submission and submitted that the Malekula Island Court should not list the Chiefly title case of Naur for hearing due to the pending Land appeal case within the Supreme Court.

Mr Jeffry William stated that Chiefly Title case is not the same issue as the Land case pending before the Supreme Court.



Mr Collin Taur submitted that Mr Mansel David Apia had mentioned that he had won the Chiefly Title case when challenging the PRV Land case. This is not true because there was an appeal before the Supreme Court which meant that the Malekula Island court Land judgment dealt by the Malekula Island court the decision is no longer valid.

Mr Jean Paulo Lino responded that the Chiefly Title case must be heard by the Malekula Island Court.

COURT FINDINGS

1. The three defendants Mr. Jeffrey William, Mr. Collin Taur and Mr. Jean Paulo Lino who were part of the PRV Land case during the year 1985 all stated in court that the matter being dealt with by the island court and now pending before the Supreme court was a Land case namely PRV and not a chiefly title;
2. Mr. Mansel David Apia is claiming and stating in court that he is the declared and rightful custom owner of the Naur Nasara that has been dealt with by the island court Land case of PRV which is now pending appeal before the Supreme Court. But the latest Court of Appeal Judgment of Civil case 2222 of 2017 point 15 stated *“Throughout this Supreme Court claim the appellant has tried to convince the court that an order should be made paying the compensation sum to him. No such order could be made in these proceedings. However there has been no resolution as to who is the custom owner of the land who therefore is entitled to the compensation. It will be in the interests of all who claim this land to have ownership resolved as soon as possible.”*

In accordance to the court of appeal Judgment point 15 clearly shows that Mr. Mansel David Apia is not the declared chief of Naur Nasara yet.

3. The supreme court decision clearly stated that there is no customer owner which clearly shows that the Malekula Island Court decision dated 1985 was either dismissed or quashed with no recognized chief of the Naur nasara
4. The matter pending before the Supreme Court for appeal is a Land issue to sort out the Land boundaries but no of a chiefly title case.



5. The Parties Mr. Arnold Antoine and Mr. Laurent Malress chose not to be part of the chiefly title case 08 of 2013;
6. And lastly only the Island court could deal with customary cases as stated in the *Island Courts ACT CAP 167 section 10. Application of customary law: Subject to the provisions 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 and also;*

Upon the findings the court hereby makes the following orders:

ORDERS

1. The application to stay the Chiefly title 08 of 2018 filed by Mr. Mansel David Apia is dismissed by the court;
2. The defendants Mr. Arnold Antoine Jimmy and Mr. Laurent Malress will not be as parties to the Chiefly Title case 08 of 2013;
3. The Chiefly title case 08 of 2013 is to proceed for hearing before the Malekula Island Court;
4. In accordance to the Island Court ACT CAP 167 section 22 states “ *Any person aggrieved or not happy by an order or decision of an island court may within 30 days from the date of such orders to appeal to the Magistrate Court* “.



Dated at Lakatoro this 17th day of April 2018

BY THE COURT

Justice Douglas Fadal

Justice Patisson Peter



Justice Joses Lingi