

BETWEEN: **LEKOLAN GONGOI & APRIL KALWATSIN**
Litzlitz, Central Malekula
Appellant

AND: **BERSI TIMOTHY**
Litzlitz, Central Malekula
Respondent

DECISION

The Applicant in this matter applies to the Malekula Island Court divide the custom land declared to Esau Willie and Bersi Timothy and The Applicants are the descendants of one Lolonmal whom the court found the land belonged to him but has no male surviving blood so he adopted the Esau Willie. The Island court determined that both the claimants to have "equal raets" and urged them to reach a compromise

Background

On 26th November, 1993 Malekula Island Court made a declaring Esau Willie and Bersie Timothy to the Custom land of within Litzlitz village known as Ulkot (according to Bersi) and Langanout (according to Esau Timothy) after full process of hearing including sight visit on the land and identifying customary sites. The Court found there are 2 nasara within, big nasara Langanaut is owned by Esau Willie and small nasara Ulgot is owned by Bersie Timothy.

On 3rd November, 2009, the Supreme ordered the Defense counsels of the parties to formulate 3 simple question for clarification by the island Court of its 1993 Judgement.

On 30th October, 2013 the current Applicants appealed to the Court of Appeal seeking the Court to clarify if Esau Willie was acting in a representative capacity and secondly whether the land in question is own by Thomas and his life blood descendants?

The Court of Appeal referred the matter back to the Island Court instructing the Appellants Lekolan and April in light of the agreement reached between the counsels to file an application to the Malekula Island Court seeking clarification of its decision and asking it to rule on the quesitons set out.

In response to this, the Malekula Island sat again and on 5th August, 2015 resolved to clarify the decision of 1993 as regards to "equal raets" in light of the 3 following questions:

1. *What was the capacity of Esau Willie in pursuing the claim before the Malekula Island Court in land case no. 2 of 1993;*
2. *If it was in a representative capacity, then who were the other persons that he was representing besides himself; and*



3. *If those other person including Lekoan Gongi and April Kalwtsing then, what were their interest in the land.*

The Malekula Island Court made clarification as follows:

1. *"...The only surviving descendants of the land are the children of Thomas 'daughter Lekoan and April. They would no doubt in custom have some right over the declared land".*
2. *"...Esau was representing himself and his adoptive family namely Lekolan Gongi and April Kalwatsin and their descendants. The interest on the land would be on an equivalent capacity with Esau Willie as Customary Owners of the declared land beside Bersie Timothy. Sharing of the declared land any rental proceeds therein from any development will be on an equal basis amongst themselves".*

Current Applications

On 6th October, 2015 Esau Willie applied to the Malekula Island Court seeking sharing of land on the grounds that he is not enjoying the fruit of his judgment as original claimant as the other interested parties are occupying and working on almost parts of the land.

Again on 9 November, 2023 representative of Lekoland Gongi and April Kalwatsin applied to the Malekula Island Court for Enforcement against Bersie for not complying with the court order orders of 2015. They alleged that he was not happy with the decision so he went ahead sold parcels of land for himself where both parties are declared to and were told to share the proceeds equally.

On 21 August, 2024, Bersie Timothy applied to the Malekula Island Court to divide the land between him and Esau Willie based on three questions:

1. *What custom boundaries separates the parties?;*
2. *What nasara/ nakamal each party has a right to?*
3. *What bloodline determines the boundary of each party?*

Determination

We have considered all three applications in light of the Previous Orders of the Supreme Court and Island Court, we are satisfied that the only issue left in this matter is sharing of the land because the parties themselves since 1993 were not able to compromise in the manner of sharing.

It has become clear that land sharing is not only an issue between two landowners but also there is dispute exists between Esau Willie and his representative adoptive family to the extent that Willie Esau is not enjoying his declared land as there is no equal sharing of land nor proceeds to the land.

For this reason, we hereby emphasise again that Esau Willie is the head of the Lolonmal tribe through adoption according to the Custom of Central Malekula. This means that the sons of



Lekoland Congi and April Kalwatsin cannot overrule Esau Willie in any decision regarding the sharing of their part of the land. Esau Willie is the head of the family and they must consult with him in how they share their part of the land following the Malekula Island Court on 15th August, 2015 on “**equivalent capacity**”.

As regards the application from Bersie Timothy seeking to Court to consider the three questions in sharing the land, we refuse consider these question on the grounds that the history of the parties including their sketch maps, historical custom sites and their family history linking them to the disputed land were considered and took proper account of in 1993 before the Court made its decision declaring the winning parties. This exercise has been done and it is an abuse of court process and a a mockery of the Courts effort to do this over again.

Accordingly, we hereby reject this application and therefore dismiss it.

Finally, as to the sharing of the declared land between the parties, we have given the parties the liberty to share it amongst themselves and whatever it has been decided this Court will endorse is as binding on the parties.

We remind all parties concern that the finding of the Malekula Island Court in 1993 was that the setup of nasara Ulkot is the small nasara within the Langanout boundary. Even though they may have separate working boundaries, the Court held that there was a only one custom boundary and both parties have a right to it. In light of this finding, Malekula Island Court ordered that the two parties compromise in the sharing of the land and/ or proceeds of the land.

Resolution

It is in the interest of all parties that sharing of the land on the basis of “equal sharing” that both parties have access to the sea or water front as it is now subject of the main issue being in dispute between the parties.


Parties have agreed and the court hereby endorse the working boundary mark with the Betwolo Creek starting from the sea shore and runs straight up into the hills where the custom land boundary ends. Bersie and his families will reside and work from the Ambet Creek to Betwolo Creek. Esau Willie and his families including his adoptive families will reside and work from Betwolo Creek to Bitok creek.

The parties under the authority of the two declared owners Bersy Timothy and Esau Willie are encouraged to further negotiate with each other on a mutual understanding as to the existing settlement and homes of the parties and families they represent.


Likewise, Esau Willie and his represented family of Lekoland Gongoi and April Kalwatsin are encourage to mutually discuss and compromise as families their sharing of their part of the land so that both parties equally enjoy the land as accorded to them.

Dated at Lakatoro, Malekula this 1st November, 2024.

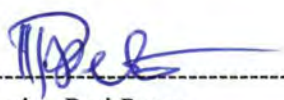




Justice Joses Lingi
Malekula Island Court



Justice Douglas Vatdal
Malekula Island Court



Justice Pati Peter
Malekula Island Court



Hannaline Nalau Ilo
Senior Magistrate



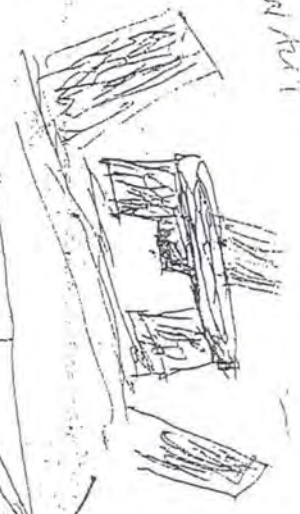
Ambat Creek

LANGANOUT

L'Pouly An'keri

OUTSIDE BOUNDARY
BLOOMER MISSION

Rever's MEMORIALS



MARKOT

BANGASSER



Water Bldg.
WELING

Mission Bldg
Litzlitz Village

MAIN ROAD

First Mission Bangasser

GRAND ISLAND
KETA

Water Rectif

Division of Land
Bismarck's to Netherland's

Pelwolo
Deer

Lisak

JELENG
MASARA

MORU HILL

Tenkoptop
Pelkals
UIRENBAN

BOUNDARY
OUTSIDE
MISSION
Krasem STATE LAND
La Kotarano

Steeply
Rivers

WHITE
SAND

