

**IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Chiefly Title Appeal
Case No. 3199/18**

BETWEEN: NIAR BATICK
Appellant

AND: ELSIEM HARRY
Respondent

Date of Hearing: 22nd July 2020
Date of Judgment: 14th August 2020
Before: Supervising Magistrate Trevor NAIEU
Justice Robert NEPTICK
Justice Lorna BONGVIVI

Appearances: Counsel Willie K for Appellant & Niar Batick
Counsel James T for Respondent
Joseph Johny & Elsiem Harry for Respondent

JUDGEMENT

Introduction

1. This is a Chiefly Title appeal filed against the decision of the Malekula Island Court dated 31 January 2018.

Background

2. The Claimant in the Court below one Elsiem Harry filed a claim application for Chiefly title *Marsangafur* as the Paramount Chiefly title over the Supreme



(b) order that any such cause or matter be reheard before the same court or before any other island court..."

B). Rule 16.35 (1), (2), (3), (4), (5), (6), (7) of the Civil Procedure Rules No. 49 of 2002 states;

"Appeal to the Magistrates Court

16.35 (1) This rule applies to appeals from island courts to the Magistrates Court.

(2) The appellant must:

(a) file a Notice of Appeal in the Magistrates Court; and

(b) give a copy of the notice to each other party.

(3) Each party must give an address for service of documents to the Magistrates Court.

(4) The Island Court must ensure that the notice of the appeal and all supporting documents are given to the Magistrates Court.

(5) The magistrate must:

(a) fix a first hearing date; and

(b) tell the parties about this.

(6) At the first hearing, the magistrate:

(a) must appoint 2 or more assessors knowledgeable in custom to sit on the appeal; and

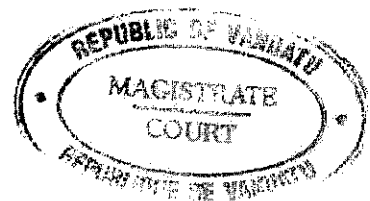
(b) may make any other orders, or give any directions, for hearing the appeal; and

(c) must fix a date for hearing the appeal.

(7) At the hearing of the appeal, the assessors sit with the magistrate..."

Grounds of Appeal

5. The Appellant through former counsel Mr. Boar submitted thirteen (13) grounds of appeal (of which current counsel relied on) against the findings and Orders made by the Court below.



Batamar nasara inland uphill and moved with his people to live along the coastal area then establishes two other *small nasara* along the coast namely *Repenapok* and *Batamar*.

14. According to the Appellant's family tree, he Niar Patick is the eldest (first born) in today's generation of this man namely *Batin Naot*.
15. During the nasara site visit, the Appellant shows ten (10) wood custom carvings (tamtam) to the Court. Each tamtam symbolizes the face painting pattern and color to be dressed in by the individual when performing each of the ten (10) ranking steps of the *Namangi* in *Batamar* nasara starting from *Narkol* to *Markon*.
16. The Appellant stated that the *original supreme Batamar* nasara of this man *Batin Naot* (Markon) is the one inland uphill while the also *Batamar* nasara along the coast is a *small nasara* and was created as a result of the movement of *Batin Naot* and his people to the coastal areas to access marine food and to welcome the arrival of the gospel. During the site visit of both the nasara, he thoroughly explained the physical custom remains (buried standing and laying stones including the heap stones) and the boundary of both the nasara including the custom protocols performed in each nasara.
17. At the inland uphill *Batamar* nasara, the Appellant explained that the line of buried standing stones totals up to seventy four (74) symbolizing the seventy four (74) number of chiefs that attended and witnessed the *Namangi* in that nasara.
18. Also during the nasara site visit, the Appellant identifies and explain the heap of stones to be stones dropped there by people who came to witness the *Namangi* and this is a custom protocol. He also identifies and explain a stone to be the *registration stone* of the chiefs who attended the *Namangi* whereby in both the nasara, the stones are located at the entrance of each nasara.
19. Stated that the *Namangi* and other custom rituals were performed inside the center of *Batamar* nasara and that the performance of the *Namangi* and other custom rituals has occurred in both the nasara of *Batamar* inland uphill and *Batamar* nasara along the coast.
20. Identifies during both the nasara site visit which stone represents the paramount chief *Markon* including the other stones planted around and beside it.
21. Stated that because he is the eldest (first born) male blood related to *Batin Naot* the original paramount chief (Markon) of *Batamar* nasara during the ancient times, he should be declared the paramount chief (Markon) of *Batamar* nasara.



Discussions

30. It is of custom importance and proof that physical custom remains of important custom rituals such as performing the *Namangi* to become a paramount chief to date still exist in a nasara therefore it is very vital that the Court do site visit to the nasara claimed.
31. In the Island of Malekula, the crucial physical custom remains are usually buried standing or laying stones and heap of stones of whom each has its own custom meaning, purpose, identity or represent a paramount chief and his body guards or represent a number of paramount chiefs that came to witness the *Namangi* or other custom rituals.
32. The custom requirement in the Island of Malekula for one to be crowned a paramount chief of a specific nasara involves a series of individual custom performances or steps to be individually performed before earning each higher level of chiefly title ranking. The last level of ranking is the authority and title of a paramount chief. This is referred to as performing the *Namangi*.
33. There can only be One (1) custom recognize *Namangi* process or procedure with its different level of ranking in a single specific nasara but there cannot be more than One (1).
34. It is a common movement during the ancient times not only in the Island of Malekula but most other Islands in Vanuatu that living began inland then movement occur to the coastal areas to access sea food, medical care (hospital) and to welcome the arrival of the gospel. Therefore it makes sense that original supreme nasara of a paramount chief will be located inland.
35. We find it difficult to believe and describe why *Marsangafur* a person of high status and respect as a paramount chief would built an altar then had sexual intercourse with his wife on top of that altar while his people look on and still maintain his title as paramount chief.
36. We find it difficult to believe that important custom rituals specifically the *Namangi* performed by the claimed paramount chief *Marsangafur* would occur outside the nasara because it would have no value in custom. We are mindful however that certain areas inside a nasara would be restricted as Tabu.
37. We find the Appellant's paramount chiefly title *Markon* custom story, the physical evidences shown and clearly explained including his movement very convincing and true.



DATED at Lakatoro this 14th day of August 2020.

BY THE COURT



Trevor NAIEO
Supervising Magistrate

A handwritten signature in black ink, appearing to be 'R. Neptick', written over a dotted line.

Justice Robert NEPTICK

A handwritten signature in black ink, appearing to be 'L. Bongvivi', written over a dotted line.

Justice Lorna BONGVIVI