

1984/09/03  
10/06/010

IN THE SUPREME COURT OF THE  
REPUBLIC OF VANUATU

LAND APPEAL CASE N° 2/84

BETWEEN : NAPAT ITI  
          JOHNNY KOMECHI  
          KUARES JACK - APPELLANTS  
          IAUPOKI NAKAO  
          MISUWAREN CHARLIE

AND : NASSE KVARAGKIRI  
          JACK NEVEN - RESPONDENTS  
          SAM KAHU  
          PHILEMEMON NAHALA

CORAM : The Honourable Mr Justice F G COOKE, CHIEF JUSTICE

COUNSEL : Mr HUMBLE for Appellants (Vasaris & Co. Solicitors)  
          Mr RISSEN for Respondents (Public Solicitor)

CUSTOM ASSESSORS : Mr TOM NUMAKE  
                          Mr PETER

INTERPRETER : Miss MARGARET RUSSET

INTERPRETER AT JUDGMENT : Mrs CHRISTINA NARUN

JUDGMENT

This case was heard before the Island Court Tanna on the 3rd of September 1984, when the Court concluded that in considering the custom story that had been related before it, the right on which the Volcano Tanna stands goes to the four brothers NASSI KUARAKIRI, SAM KAHU, JACK NEVEN and PHILEMON. The Court declares that they are the real customary owners of the land on which the Volcano is situated.

From the above decision the Appellants appeal to this Court. They state:-

We, the undersigned represent the land owners who own the land which reaches the Yasur Volcano on Tanna.

We wish to appeal against the judgment of the Tanna Island Court concerning the land which the Volcano sits on. We are appealing because we do not agree to the boundary of the land on which the Volcano sits on, and in addition the ownership of the four craters, of the Volcano.

We would like the Supreme Court to hear this land case again.

Signed : Napit Iti  
 Johnny Kamutu  
 Kaures Jack  
 Iaukolpi Nakou  
 Misuwaren Charlie

Under section 22 (1) of the Island Courts Act No. 10 of 1983 any person aggrieved by the order or decision of the Island Court may within thirty days from the date of such order or decision appeal therefrom to:-

1. The Supreme Court, in all matters concerning disputes as to the ownership of land.
2. The Court hearing an appeal against a decision of an Island Court shall appoint two or three assessors knowledgeable in custom to sit with the court.
3. The Court hearing the appeal shall consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it think fit.

Section 25 on evidence states:-

In any proceedings before it, an Island Court shall not apply technical rules of evidence but shall admit and consider such information as is available.

Such being the case I hold that as this is an appeal from the Island Court where hearsay evidence is admissible, the same criteria applies in an appeal to the Supreme Court.

I am fortified that such is the case by judgments in the Tongan Land Court where it was held by Harwood J, on the 19th August 1985, that hearsay evidence that land belonged to the ancestors of the plaintiff is admissible in a dispute over title between the alleged owner and the crown:- Havea Tu'cha'atecho -v- Deputy Minister of Lands at Nukualofa.

Also Noble Kalaniuvalu -v- Minister of Lands 2 Tongan L.R.40, and Viliami Manatau -v- Motu'apuaka, 2 Tongan L.R.86.

In view of the importance of this case to the people of Tanna and the lack of evidence adduced before the Island Court, I allowed the Appellants and Respondents to call such evidence as they wished.

The appeal was heard in Tanna and was fourteen days at hearing. I have set out the judgment in parts in an attempt to simplify the matter.

JUDGMENT

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PART I

The History of the Volcano

This is incorporated in the Geology of Tanna which is taken from a Geological Survey by J.H. Carney, PL. D. and A. Macfarlane, B. Sc. and printed for the New Hebrides Government (now Vanuatu) in 1979.

The history shows that the island of Tanna is a result of Volcanic eruption which took place some centuries ago. It is stated in the survey that Yasur Volcano, by comparison with radio-carbon estimates from similar ash cones in the island of Ambrym (in Vanuatu) caldera is perhaps no older than 400-500 years.

The Geology is as follows:-

TANNA

Tanna is the largest of the four southern islands described in this report and has a total land area of 550 km<sup>2</sup>. It has a crescentic coastal outline and has been built up by successive phases of volcanic activity and reef limestone growth. The oldest rocks belong to the Green Hill Volcanics, a Late Pliocene series of subaerial basaltic lavas in the north and associated basaltic-andesite pyroclastics in the east. The Tanna Reef Limestones, of Plio-Pleistocene to Recent age, rest on the older volcanics and were formed during three main phases of fringing reef development and contemporaneous uplift. The two oldest units are overlain by the Late Pleistocene Tukosmeru Volcanics which are made up of a large basaltic stratovolcano in southern Tanna and an extensive series of andesitic pyroclastics in the central and northern regions. A succeeding episode of basaltic-andesite to andesite volcanicity belongs to the uppermost Late Pleistocene to Recent Siwi Group of southeast Tanna and includes the presently-active Yasur Volcano.

Holocene deposits include a coastal platform of Recent raised reef along the western margin of the island, alluvium and an active fringing reef.

GREEN HILL VOLCANICS

Distribution and Stratigraphic Relations

The Green Hill Volcanics take their name from the village of Green Hill in north Tanna where the formation has its greatest lithological and morphological expression. In this area the volcanics give rise to a sharply-dissected terrain rising from sea level to about 400 m in the central part. Their morphology is in marked contrast to that of the overlying Tanna Reef Limestones which form smooth and grass-topped rolling hills.

South of the main outcrop the formation lies beneath a blanket of lavas and pyroclastics belonging to the Tukosmeru Volcanics and Siwi Group. Exposures are confined mainly to the more deeply-incised rivers and to coastal cliff sections.

Content and Subdivision

The formation is made up of subaerially-erupted basalt-pyroclastic sequences derived from two former centres located

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respectively in the Green Hill and Waesisi-Lowniel areas. Accordingly the formation has been subdivided into two units, namely the Volcanic centres of Green Hill and Waesisi-Lowniel and the Pyroclastic deposits which lie between them.

At the Green Hill centre the lavas are sparsely-phyric and have radially-disposed attitudes. The more porphyritic basalts of the Waesisi-Lowniel centre, on the other hand, are considerably faulted and have an easterly dip commensurate with that of the immediately-adjacent Pyroclastic deposits which contain rare flows of basalt and basaltic-andesite.

The relationship between the Pyroclastic deposits and the Green Hill centre is not known as access to the critical outcrops was denied by the local people. The pyroclastics appear, however to grade laterally southwards into the Waesisi-Lowniel centre; lavas of this centre are petrographically similar to those of the younger Tukosmeru Volcanics and may be intermediate in age between this formation and the Green Hill centre.

#### (i) VOLCANIC CENTRES

The Green Hill centre comprises basalt lavas and subordinate, interbedded pyroclastics with an overall thickness of at least 200 m. The succession dips radially outwards from a focal point near Lownimhapon, and to the east has been eroded into concentric and arcuate basalt ridges left by the preferential removal of interbedded and softer pyroclastic deposits. Similar arcuate ridges to the north have trends anomalous to those east of Lownimhapon and may delineate the sites of former parasitic centres. In the west the lithology is dominated by scoria and tuff.

The most continuous exposures through the easterly-dipping part of the Green Hill centre are found in the Loakita River. Massive well-jointed and 1.5 m thick basalt flows with scoriaeous top and bottom surfaces outcrop in the lower reaches of this river; thicker units of red, crystal-rich lithic tuffs interbedded with yellow pumice lapilli tuff occur between the basalt flows. Occasional well-jointed lava bodies petrographically similar to the flows are probable feeder dykes.

Stratigraphically lower lava units, up to 3 m thick, in the middle Loakita River pass down-section into massive basalt lavas with rubbly interflow units which form a series of rapids in a gorge cutting through the western-most of the arcuate ridges. The same lava-pyroclastic alternations are found in the river sections further to the north and in the Loweai River there is an accompanying swing in dip slope in this direction. Compound or multiple basaltic lavas outcrop in the Loanbus River as 1.5 m thick flows separated by 0.5 m thick rubbly zones of scoriaceous breccia.

Pyroclastic lithologies dominate the Green Hill centre west of Imwavin. On footpath exposures north of Itonga they are westerly-dipping, pale-grey and fine grained tuffs with clay and pisolitic intercalations, and occasionally contain more indurated bands with ejected blocks of basaltic lava. Coarse agglomeratic

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units in nearby river sections contain breadcrust and cowdung bombs, up to 40 cm across, and have steep northerly dips south of Itonga at variance with the regional trend; they may have been derived from parasitic cinder cones. The apparent high stratigraphic position of the pyroclastics suggests that they largely post-date the basalt lava-pyroclastic successions exposed elsewhere around Green Hill.

The Waesisi-Lowniel centre is exposed in coastal cliff sections around Lowniel and Waesisi where it comprises two extensive outcrops separated by an infilling of younger Siwi Group pyroclastics.

North of Lowniel a 70 m thick sequence of massive to lenticular units of coarse scoria and tuffaceous breccia, interbedded with lensoid masses of compound or multiple basaltic lava flows, is exposed in vertical section; the basalts are more porphyritic and richer in olivine than those of the Green Hill centre. The scoria content decreases towards Waesisi where the lava-dominated succession is intruded by numerous small feeder dykes. East of Lowniel the succession is displaced to the south-east by normal faults, and associated fault-drag probably accounts here for the local easterly dip. Lenses or wedge-like units of scoria and tuffaceous pyroclastic breccia with intercalated compound lava flows are again found in the cliffs west of Waesisi; the variable dips of the lavas may indicate derivation from several local sources. Numerous feeder dykes cut the section; they are 2-5 m wide, follow sinuous courses and send out branch-like offshoots which become gradually transgressive before passing into overlying compound flow units. Many of them have massive lava centres which become more scoriaceous outwards and merge gradually into surrounding coarse pyroclastics.

Inland of the coastal sections scoria and yellow pumice tuffs, with massive porphyritic basalt intercalations and with a gentle westwards dip, can be seen in the road-cutting on Lowanialu hill; they probably occupy the flanks of the Waesisi-Lowniel centre. Flow units observed in landslide scars on the escarpment to the south of Lowanialu hill indicate that here the lavas are thicker and more massive than those at the coast. They can be traced laterally for two kilometres and appear to pass beneath the northern flank of the Main Cone unit of the Tukosmeru Volcanics.

#### (ii) PYROCLASTIC DEPOSITS

Pyroclastic deposits outcrop in eastwards-draining rivers between Green Hill and Waesisi and, as they also occupy a small inlier north of Towalov hill, are considered to extend westwards beneath the Tanna Reef Limestones. They are composed of coarse to fine pumice tuffs and pyroclastic breccias with occasional massive or brecciate lava intercalations and are overlain with lithological conformity by similar, but generally finer grained pyroclastics of the Tukosmeru Volcanics.

Regional dips (15-20°) are to the east, commensurate with an overall increase in grain size downstream suggesting a transition in this direction in both a lateral and a vertical sense. Numerous west-north-west to north trending faults, with predominantly westerly downthrow, displace the deposits.

Type sections of the Pyroclastic deposits are exposed in the Loanatonga and Lenuai rivers. The upper reaches of the Loanatonga River contain massively-bedded, yellow-brown pumice lapilli tuffs with some finer well-bedded horizons and occasional intercalations of welded flow-banded tuff. Downstream these pass up into coarser, more massive tuffaceous pyroclastic breccias with cowdung bombs, ca. 20 cm in size, and smaller angular blocks of black glass; compositionally the glass is probably andesitic as it is identical in appearance to an analysed block from the Lokunowla River to the south. The breccias are followed by a 2-3 m thick, coarse black agglomerate which passes up into the flow-banded glassy sole of a 30-40 m thick unit of feldsparphyric basaltic-andesite. This unit has an unusual pseudo-pilloidal internal structure where the lava is separated into oval masses infilled by basaltic breccia. A coarse breccia containing abundant angular blocks of black glass, set in a red, fine grained and welded matrix, is exposed at the river mouth.

A lava-agglomerate succession, identical to that in the Loanatonga River, is also found in the upper reaches of the Lenuai River. Downstream this succession continues for 0.5 km and is then overlain by alternations of pumice lapilli tuff and tuffaceous pyroclastic breccia.

Pumiceous tuffs similar to those of the type sections are also found in the Lowkopki and Lenuingao rivers to the north. A massive and unbrecciated olivine-basalt unit is intercalated within the tuffs at both river mouths. West of the type sections finely-bedded and southwest-wards-dipping pumice tuff, alternating with coarse agglomerates, outcrops in the river immediately north of Towalov hill.

South of Lenamthahin Point the deposits are coarse tuffaceous pyroclastic breccias with abundant blocks of black cindery lava. The breccias appear to grade southwards into the lithologically similar scoria-lava succession of the Waesisi-Lowniel centre although the passage is obscured, in cliff sections to the south of the Nunaluan River, by infilling tuff and agglomerate deposits of the Siwi Group.

#### Age and Correlation

In lithology and degree of dissection the Green Hill Volcanics resemble the Plateau Formation of Erromango as described by Colley and Ash (1971). Radiometric measurements on an aphyric basalt from the Green Hill centre gave an age of 2.45 m.y. which dates the volcanics at Late Pliocene and is in excellent agreement with a recent determination of 2.40 m.y. on a basalt lava from the Plateau Formation of Erromango. Colley and Ash quote an average age of  $5.76 \pm 0.59$  m.y. for this formation obtained from a hornblende-bearing basaltic-andesite boulder from a basal



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conglomerate. This Late Miocene date more probably reflects the age of the derived material, source as yet unknown.

### Discussion

The Green Hill Volcanics comprise the remnants of three volcanic aggregations whose exact inter-relationships are not fully understood because of opposition by the Tannese to fieldwork in critical areas. The eroded roots of a Late Pliocene stratovolcano made up of sparsely-phyric basalts and olivene-basalts are exposed in the Green Hill area, and a subaerial depositional environment is indicated by the frequent multiple or compound flow-form of the lavas and by the reddened nature of the intercalated pyroclastic horizons. A second volcanic centre in the Waesisi-Lowniel area features an abundance of feeder dykes intruding a subaerial sequence of multiple basalt flows and thick scoria units. Noticeably the lavas here are porphyritic, petrographically comparable to those of the Pleistocene Tukosmeru Volcanics, and hence possibly younger in age than those of the Green Hill centre.

The Pyroclastic deposits of east Tanna, spatially situated between the Green Hill and Waesisi-Lowniel centres, contain subaerially-derived agglomeratic units with abundant scoria and breadcrust bombs. The 'pseudo-pilloidal' brecciate appearance of the intercalated basaltic-andesite flow in the Loanatonga River does, however, argue for a part-submarine depositional environment. Southwards the pyroclastics appear to grade into scoria units lithologically similar to those of the Waesisi-Lowniel centre. Their coarse grained nature further to the north, and the presence in them of andesitic blocks and a basaltic-andesite lava flow, suggests derivation from a separate centre characterised by an explosive and more acid type of volcanism. The whereabouts of this third centre have not been recognised and its location depends upon one of two possible interpretations, namely:

1. The Pyroclastic deposits represent the eastern flank of a former volcano and their regional eastwards dip is thus primary. There is no morphological evidence to support a centre in the west although it could have been peneplaned, by rapid erosion of soft pyroclastic material, prior to deposition of the younger Tanna Reef Limestones.
2. The Pyroclastic deposits represent the western flank of a former volcano now submerged beneath sea level off Tanna's eastern coastline. This assumes that the increase in grain size eastwards of the pyroclastics is a lateral transition to coarser deposits, i.e. closer to the former centre. In this case the original regional dip must have been westwards and rotation into the opposite direction, by a process such as down-flexuring, must have occurred. Tectonism of this type may have been associated with the later eastwards

downfaulting of post-Older raised limestones age which caused subsidence of Tanna's eastern margin in the Plio-Pleistocene to Early Pleistocene.

The second interpretation is the one preferred although confirmation, that coarsening of the pyroclastic deposits eastwards is a lateral facies change and not just a vertical change up the succession, is still required.

At some stage, following cessation of volcanism, earth movements brought about subsidence of the Green Hill centre beneath sea level. Growth of a reefal complex on the submerged landmass followed, the reef being subsequently elevated as the Older raised limestones. These limestones can be traced southwards into the Middle Bush area where they are presumed to overlie the Pyroclastic deposits. The interpretation of the geomorphology of the early Green Hill Volcanics landmass is to some extent expressed by the distribution of these limestones and is discussed below.

TANNA REEF LIMESTONES

Distribution, Subdivision and Stratigraphic Relations

The Tanna Reef Limestones have an extensive out crop along the western and northern margins of Tanna but are largely absent in the east of the island. They have been subdivided into three units which from youngest to oldest are:

Recent raised reef -

a low-lying coastal platform well developed in the west, but only of sporadic outcrop in the east and southeast.

Younger raised limestones -

a broad and gently sloping plateau along the western and northern margins of the island.

Older raised limestones -

occupy the steep northern and western flanks of the island and extend southwards as a narrow and discontinuous ridge west of the Middle Bush area.

The Older raised limestones rest unconformably on the Green Hill Volcanics in north Tanna but further south their base is not exposed. A tectonic episode of some magnitude preceded the development of the Younger reef limestones as is evidenced in the northeast where they rest unconformably on the faulted Older raised limestones and overlap directly onto the Green Hill Volcanics near Laonipina.

The two older units are widely capped with unconformity by pyroclastic deposits of the Tukosmeru Volcanics, although back-reef or beach deposits of the Younger raised limestones occasionally grade into tuffs and suggest development in part contemporaneous

with volcanic activity. The Recent raised reef, however, entirely post-dates the Tukosmeru Volcanics.

Content

The Tanna Reef Limestones contain the various elements and facies of a regressive reef although, in the case of the Recent raised limestones, fore-reef deposits are not exposed.

Typical sequences comprise fore-reef calcarenites grading into, or overlain by coral-algal main-reef limestones with occasional lenses of lagoonal back-reef type.

(i) OLDER RAISED LIMESTONES

These limestones outcrop extensively in the north and give rise to rounded and flat-topped hills with steep seaward slopes, as typified by Mt. Enumwan. To the west of Green Hill the limestones project above the general level of the Green Hill Volcanics but to the east on the flanks of Loweyakau ridge, where the volcanics have a greater erosion-resistant lava content, they are some 40 m lower. There is also a gradual decrease in limestone elevation eastwards, from 547 m on Mt. Enumwan to ca. 380 m on Napilua hill. To the south of Green Hill the limestones extend as a line of discontinuous ridges with steep seaward slopes and eastern scarps. Between these ridges the river valleys have cut through the younger pyroclastic deposits of the Tukosmeru Volcanics, in some cases to 30 m depth, without uncovering the limestone bedrock.

The most widely distributed rock types are main-reef-facies coral-algal limestones. These are hard, cream coloured and massively-bedded with large coral heads either in their original growth positions or slightly displaced. The limestone matrix is entirely recrystallised and contains poorly-sorted clasts of coral-algal fragments, shell debris and occasional basalt pebbles. Basal deposits of this facies, exposed as debris on the Green Hill-Mt. Enumwan footpath at the contact with Green Hill Volcanics, are well-sorted basalt-pebble conglomerates with a hard and manganeseiferous cement.

Bedded units, each about 10 m thick, of calcarenites and limestone breccias are exposed in the lower and middle outer slopes of Mt. Enumwan. They dip seawards at 10-15° and are thought to be fore-reef facies deposits. The only back-reef facies outcrops recognised by interdigitation of the two units near Yotap. Blocks of andesitic glass within the pyroclastic breccias of the Hill River suggest, however, that periods of vigorous explosive activity, perhaps related to changes in magma composition from basalt to andesite, were a dominant feature of Tukosmeru volcanism at certain times during the eruptive history.

Accumulation of shelly, reworked tuffs at the base of the Pyroclastic Apron took place in pockets along the unconformable junction with the emerging Younger raised limestones. Following uplift of the limestones above sea level, however, continued ash and breccia emissions gave rise to airfall deposits of primary pyroclastic breccia and pumice lapilli tuff which locally were reworked and re-deposited by fluvial action as tuffaceous

(2)

siltstones and conglomerates.

With cessation of Tukesmeru volcanism several northwest-trending step-faults displaced the Main Cone as a series of blocks across its eastern and central sectors. Possibly these displacements were a rejuvenation of the eastwards downfaulting and down-flexuring of the Green Hill Volcanics to the north. In addition, contemporaneous eastwards tilting of the Main Cone might explain the asymmetry of the edifice and would also equate with the regional eastwards tilting of Tanna associated with the uplift of the Older and Younger raised Limestone units.

### SIWI GROUP

The Siwi Group is confined to southeastern Tanna and is made up of pyroclastic deposits and subordinate lavas, mainly andesite or basaltic-andesite, erupted from a series of volcanoes ranging in age from uppermost Late Pleistocene to the present. The volcanic centres lie on the Yenkahe Horst, a prominent ridge bounded by Sulphur Bay and Port Resolution. Uplift of the horst and development of the Siwi Ring Fracture have effectively separated the volcanic centres from the surrounding and more extensive pyroclastic hinterland.

Three main episodes of volcanism can be differentiated in the Siwi Group. These are, youngest first:

Yasur Volcanics - contain the presently-active ash cone of Yasur.

Ombus Volcanics - a recently-extinct cinder cone possibly contemporaneous in age with the Main Cone Caldera lavas of the Yenkahe Volcanics.

Yenkahe Volcanics - the most extensively developed of the three volcanic episodes. Rest with unconformity on both the Green Hill Volcanics and the Tukesmeru Volcanics.

### Yenkahe Volcanics

The Yenkahe Volcanics have been subdivided into the Main Cone, a volcanic edifice on the Yenkahe Horst, and the Pyroclastic Apron which forms a dissected plain surrounding the Siwi Ring Fracture and extending in places for up to 10 km beyond it. Later volcanic-tectonic features on the horst have obscured what was once probably a configuration of aligned centres on the Main Cone edifice. These include a small caldera structure, now containing the presently-active Yasur ash cone, developed across the westernmost centre and a east-north-east trending central graben which

has obliterated other centres to the east. The extrusion of late-stage Caldora lavas is associated with these volcano-tectonic events.

(i) MAIN CONE

The western flanks of the Main Cone are partly covered by the younger Yasur ash cone and consist of subaerially-derived, coarse grey scoria and cinder deposits. Massive big-feldspar basaltic-andesite lava outcrops on the northern flanks at Noanpipi hill and may also be present on the southern flanks although this has not been confirmed in the field. The massive lava is equated with similar flows found in the Pyroclastic Apron on the coast between Lowtolokia Point and Ififa Point.

Coastal exposures of the eastern flanks between Port Resolution and Sulphur Bay are waterlain deposits. Along the northern shore of Port Resolution there is a homogeneous sequence of fine, grey-green tuffs with sedimentary structures which include cross-lamination, load and prod casts and animal tracks; no foraminiferal tests were observed, however. Similar tuffs are also found to the northwest in Yauss Bay where they have a regional northeasterly dip and are cut by a five metre-thick plug-like intrusive, extending from which are two thin and concordant sills or flows of glassy and brecciated basalt. The tuffs between the flows are contorted and contain thin lenticles of poorly-sorted breccias with lava clasts. Westwards along the Sulphur Bay shore these breccias thicken and become extremely coarse with boulders, many in excess of two metres in size, of angular feldsparphyric basalt lava and less frequently, quartz gabbro and diorite. The matrix is tuffaceous and also contains a high mud component; this, together with a complete absence of sorting, suggests deposition by mass-flowage down the steep submarine flanks of the volcano.

Continuing west along the Sulphur Bay shore the breccias are underlain by finely-laminated tuffs of Port Resolution-type and the contact is displaced by numerous, closely-spaced normal faults with an average easterly displacement of about two metres. Overlying the breccias and laminated tuffs with probable unconformity, and forming the planed-off eastern surface of Yenkahe, are pale-yellow tuffaceous breccias of an entirely different and subaerial character. These contain lava blocks and may, further inland, enclose a massive lava flow continuous with that exposed on Noanpipi hill. In the extreme east thin veneers of Recent raised reef cap the planed-off Yenkahe surface above Port Resolution.

(ii) PYROCLASTIC APRON

The Pyroclastic Apron is an extensive eastwards-dipping sequence of primary and reworked tuffs, breccias and agglomerates well exposed in coastal cliff sections both to the north and south of the Yenkahe Horst. To the north of the horst, between

Sulphur Bay and Nunaduan River, the succession rests with unconformity against a fossil topography of Green Hill Volcanics (see Figure 3). Although there is considerable facies variation along this section a very generalised stratigraphic order is apparent as follows:

Top - Pumice tuffs and tuffaceous pyroclastic breccias  
unconformity

Breccio-conglomerates  
Big feldspar basaltic-andesite  
Red and black agglomerates with intercalated  
breccio-conglomerates and pumice tuffs

Bottom - Laminated tuffs

### GREEN HILL VOLCANICS

West of Waesisi (A-C), Figure 3) the laminated tuffs occupy broadly anticlinal structures. They are waterlain deposits, grey-green in colour, with cross-bedding, convolute laminae and slump structures. To the west of 'C' the tuffs contain cross-bedded intercalations of thin, coarse breccio-conglomerate units with pronounced reverse grading at the contact with overlying agglomerate. East of Lowniel the tuffs are gently flexured, cross-bedded and display coarse horizons with occasional angular lava blocks, they are here markedly uncorformable upon scoria deposits of the Green Hill Volcanics.

Red and black agglomerates have an intermittent but widespread outcrop along the Sulphur Bay - Nunaduan River section, are found in the rivers between Lowanialu hill and Lake Siwi and are also exposed in coastal cliffs to the south of the Yenkahe Horst between Ififa Point and Imwaki. Between 'A' and 'C' (Figure 3) the basal black agglomerates thin out across the laminated tuff anticlines and have themselves been affected by flexuring. Between 'G-H' and at 'D' and 'J' intermixed red and black agglomerates are intercalated with pumice tuffs and with units of breccio-conglomerate of possible torrential or 'cold lahar' origin.

The agglomerates are agglutinated spatter and cinder deposits composed of shapeless scoria fragments, and ribbon and cowdung bombs (Plate IV) of andesitic composition. The deposits are red-weathered in certain horizons and locally contain abundant blocks of basaltic-andesite, gabbro and quartz diorite, blocks of quartz diorite are particularly common south of Ififa Point. North of Lowniel at 'G' red, welded agglomerates over 20 m in thickness contain two metre thick ribs of red-weathered, glassy andesitic lava with a porcellanous texture and rhyolitoid banding. That this may reflect remelting and pre-consolidation flowage is demonstrated in coastal outcrop between Ififa Point,

and the Yakwanarip River where less-intense welding and vertical compression have in places imparted a discoid and streaky fabric to the agglomerates.

Big-feldspar basaltic-andesite lavas rest on the agglomerates at 'H', and at Whitesands are the lowermost rocks exposed. They are identical in composition and appearance to the massive lavas on the Main Cone northern flanks and are also found in coastal section between Port Resolution and Ififa Point. At Whitesands the lavas have tumescent at top-surfaces and are overlain by coarse breccio-cong-top-surfaces and are overlain by coarse breccio-conglomerate. Epiclastic basaltic-andesite blocks in these breccio-conglomerates are intermixed with primary pumice tuff containing well-preserved, glassy ribbon bombs.

Breccio-conglomerates occupy a massive lens in the cliffs at 'B' (Figure 3) where they rest on the upper part of a laminated tuff anticline and grade laterally into agglomerates. At the contact with the agglomerates they are pale-yellow, coarse tuffs with abundant angular blocks of lava, and bombs either in a complete state of preservation or partly fragmented. Reworked tuff with conglomeratic lenticles is the dominant facies at the contact with the laminated tuffs.

From Whitesands beach westwards to 'I' the breccio-conglomerates thin out completely from a maximum thickness of five metres. They are massively-bedded and poorly-sorted, with a friable, coarse and tuffaceous matrix. Abundant blocks, up to one metre across, of both porphyritic and aphyric lava, together with scoria fragments and complete or fragmented glassy ribbon bombs, are the major constituents. The bombs are similar to those found elsewhere in tuffs and pyroclastic breccias of the Siwi Group but have variable angles of rest and were probably subjected to some degree of transport during or after deposition.

Pumice tuffs and tuffaceous pyroclastic breccias overlie the big-feldspar basaltic-andesite with erosional unconformity at Whitesands and Ififa Point, and overlap onto red agglomerates in the more distal parts of the Pyroclastic Apron. At the eroded contact with underlying agglomerate south of Ififa Point the basal horizon consists of bedded, tuffaceous volcanic sandstones, grits and thin, cross-bedded pebble conglomerates; these are succeeded by finely-laminated, and possibly waterlain, reworked tuffs with thin interbedded conglomerate lenticles. Upwards these sediments pass into coarser, more primary tuffaceous pyroclastic breccias with 5-20% lava blocks and glassy ribbon bombs, the latter attenuated up to one metre in length but seldom more than 10 cm in thickness. Ribbon bombs of identical appearance in tuffs at Whitesands beach are andesitic in composition.

Inland the presumed stratigraphic equivalents of these coastal tuffs and breccias are the coarse, grey and stratified clinder deposits which lie at the edge of the Yasur ash plain on the north side of Lake Siwi. These deposits have a general southerly dip, probably induced by flexuring associated with the

Siwi Ring Fracture, and are the distal extension of the grey scoria and cinders of the Yenkahe Main Cone western flank. A thick tuff sequence extends to the north of Lake Siwi and at the base of Lowanialu hill is coarse grained, with lenticular horizons of red and black agglomerate. In river 2.7 km to the southeast, however, the tuffs are extremely fine grained with cross-bedding and slump structures similar to these of the waterlain laminated tuffs found west of Waesisi; further downstream the tuffs rest on a lava unit with a basal breccia/agglomerate.

The prominent hill immediately to the southwest of Lake Siwi, from aerial photographic evidence, has the form of a small cinder cone with a summit crater and probably contributed to the Yenkahe tuffs in this area. The eastern flank of the cone has been transected by the Siwi Ring Fracture.

(iii) CALDERA LAVAS

Extrusion of basaltic-andesite lavas was associated with a small late-stage caldera, about 1.5 km in diameter and now containing the presently-active ash cone of Yasur, which developed across the westernmost centre of the Yenkahe Main Cone following the eruptions which gave rise to the Pyroclastic Apron. Lava outflow was through a breach in the southern caldera wall and occurred in two stages; the final upwelling was from a source now visible to the south of Yasur as a small hillock of steeply-dipping, red-crust and tumescent andesite. Both of these outflows were ponded against the Siwi Ring Fracture and now form an extensive plateau around the southern flanks of the Yenkahe Main Cone.

Ombus Volcanics

These volcanics comprise cinders, scoria and blocks of feldsparphric basaltic-andesite which make up the small and extinct cone of Ombus with a summit crater breached to the east. To the northwest the cone is banked against the flanks of the Yenkahe Main Cone and to the south straddles the Siwi Ring Fracture.

Yasur Volcanics

(1) MORPHOLOGY

The Yasur Volcanics comprise the pyroclastic cone and ash plain of the presently-active Yasur Volcano (Plate V) whose summit lies at 361 m above sea level. The cone is largely contained within the Yenkahe caldera and has an asymmetric shape. To the north, where it is banked against the inner caldera walls, the plateau is no more than 40 m but this increases to about 150 m southwards with the slope of the caldera floor in this direction. The northwest flanks extend beyond the caldera and drop steeply some 300 m to the Lake Siwi shore. The summit crater is approximately 700 m in diameter and about 200 m deep; when visited in 1975 it contained three pits aligned NNW-SSE of which the northern one, with at least six vents, was the most active.



The volcanic pile is predominantly composed of stratified ash and agglomerate deposits, although Warden (1965) has recorded thin intercalated lava flows cut by narrow red dykes within the crater walls. The outer flanks are covered by grey, unconsolidated ash and scoria and are littered with filamented cording, and smooth breadcrust bombs. The breadcrust bombs have a characteristic striated and knotted surface texture caused by flowage of cooling lava around large feldspar phenocrysts. Individual bombs may reach up to 1.5 m in length, and on impact either remain intact or disintegrate explosively causing small avalanches of loose material. Compositionally the ejectamenta are andesite, ranging between 55-58%.

A notable feature of the volcano is the large debris flow on the northwest flank which took place on 6th May, 1975 after a period of high rainfall and intense volcanic activity. The avalanche left a bowl-shaped scar (Plate V) about 100 m wide and deposited some 50,000 m<sup>3</sup> of debris as a lobate-fronted apron for about 200 m beyond the volcano base. Similar mass movements occurred on the western flanks in 1919 (Rev. K Calvert, pers. comm. 1975) and their lobate flow-fronts are still visible at the edge of Lake Sivi.

At least three small fumarolic areas can be seen along the tree line at the foot of the northern flanks. These areas when active are extremely hot to the touch, give off white wispy vapour and are surrounded by a thin powdery precipitate of sulphur and gypsum.

The prevailing southeast winds ensure that pyroclastic fallout from Yasur is distributed over the entire island as grey ash and dust, particularly during the more violent Vulcanian eruptions. They have also helped create the bare and desolate ash plain which, with a radius of 2-3 km, is a distal continuation of the volcano to the west and northwest. Ash accumulations here have formed a natural barrier, across a small valley which once ran down to Sulphur Bay between Yasur and the Sivi Ring Fracture, and have impounded the brackish-water Lake Sivi in a shallow depression behind it.

#### (11) HISTORIC AND RECENT VOLCANISM

Captain Cook in 1774 was the first European to observe Yasur in eruption. From his anchorage in Port Resolution he noted heavy ash falls but was prohibited from approaching the volcano by the local inhabitants. Later accounts, by Mawson (1905) and Aubert de la Rue (1937) amongst others, suggest that the volcano has been continuously active since Captain Cook's visit with perhaps only minor modifications to the configuration of the crater.

According to Mawson, who relied on the observations of Rev. W. Grey, particularly violent eruptions in 1878 were accompanied by severe earthquakes which raised the Port Resolution area first by 20 ft and then later by another 12 ft. Similar

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volcano-tectonic events in 1888 apparently raised the area by a further 30 ft. In consequence the formerly safe harbour of Port Resolution is now only suitable for small vessels with shallow draught.

Eruptions of Yasur are intermediate in type between 'Strombolian' and 'Vulcanina' activity. The normal cycle begins with mild explosions which throw gas clouds mixed with ash and lava tatters above the crater rim. This activity builds up gradually and culminates in loud gas detonations and ground tremors accompanied by periods of thick black ash clouds alternating with periods of lava bomb ejection high above, and sometimes onto, the crater rim. Minor culminations of a similar type, but of shorter duration, may also occur following slumps of crater-wall debris into the vents or after periods of heavy rainfall. The number and configuration of the vents within the crater are often altered during the culminations and at times the crater may contain a small lava lake. As far as is known, however, no major lava extrusion has ever been recorded from the volcano.

More intensive culminations, which are associated with Vulcanian activity and may last for several weeks or even months, have been recorded in 1968, 1972, 1974 - 75 and 1977. In these years there was an almost constant pall of thick black ash above the volcano and frequent loud detonations, followed by ejection of large red-hot lava bombs and cold lava blocks onto the outer flanks of the volcano.

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PART II and PART III

In this appeal I think it only proper to set out the claims of the two parties.

For the appellants there were ten witnesses whose evidence briefly was as follows:-

PETER TAFLO, a man of eighty years of age who came from Namipamw. Iatika and who said the land over which his family has control encompasses the Volcano. That Namipamwak Iatika is a family name and that his Nakamal is Lautapas of which he is Chief. That his ownership includes the sides of the Volcano but he did not know who owns the crater inside. He agreed that the area Yenakahi joins the boundaries of the Volcano.

He further agreed that:-

- (a) His father's name was NAMATAU
- (b) WAKO was his grandfather
- (c) His language name is KASARUMENE
- (d) His language is known as NARAK
- (e) SINI KIAMIA was the name of one of his ancestors
- (f) That LAOTAPAS has control over area 5 on the plan exhibit one attached
- (g) That there were four nakamals of YENAKAHI which are:-
  1. IABOKIKAU
  2. EMPLTOKA
  3. ENSEFA
  4. KWONMATUWOK

Then NAPAT ITI who also came from Loatapas Nakamal and was also a Chief of the said Nakamal. He was brother to Peter Taflo. He confirmed his family had control over area No. 5 on the plan exhibit 1 and that it goes from coast line into the crater. He stated that the Land Committee in August 1981 decided that Area No. 5 Loatapas Land should come to him and Peter Taflo and that the said committee consisted of:-

Nasse Kuaragkiri  
Jonan Nalau  
Johnny Kamiti  
Jack Niau  
Chief Nemaka  
Chief Renglau  
Joe Joseph

and that a copy of the findings of the Committee was shown to the Justices of the Inland Court.

He also stated there was a custom meeting in 1983 and that he attended the meeting with Peter Taflo but that the meeting found

that the Respondents were the true owners of the Volcano and land. He said that the land of Yenakahi is area 4 on the plan Exhibit I and that it goes up to the Volcano and inside.

He ended by admitting that he was living at Ianamakel because he was chased out of his Nakamal Loatapas by people of Yenakahi because of a fight.

Then NAKAU IAUKOLPI otherwise known as IAUKAPI or NAKAU YAWKALEPIU said he was the chief of the Nakamal Yenamakel and controls area 6 on plan Exhibit I. He said that according to his ancestors before the Volcano started the land where the volcano is situated belonged to his family line.

- That his nakamal which is a meeting place is closer to the volcano than the nakamals of Nasse the Respondent which are Empitoka and Ensefa and Kwonimatuwok.
- That his nakamal Yenamakel controls the nakamals in Kasuremene area No. 6 Exhibit 1.
- That Nakamal Jonakumali is in Kasarumene whose chiefs are Boida and Isa Nakaut and finally,
- That the nakamal Loatapas has greater control over the area of the two stones Narak and Nave at Sulphur Bay.

Then QUARES JACK whose nakamal is Lapenowing or Lapagnuig said he was the chief of that nakamal and that the Nakamal controls Nalpaimene which is area 1 on plan Exhibit I and that the area goes up to the hill and into the volcano.

- That there are many nakamals in the area but his nakamal controls them all.
- That he knows where Nasse the respondents land is but it does not join the volcano.
- That there are four holes in the volcano, one belongs to Yenakahi one belongs to Kasarumene (area 6 Exhibit I), one belongs to Nalpaimene (area 1 Exhibit I), and one belongs to Nasepmene (area 2 Exhibit I) and,
- That the four custom lands join in the middle of the volcano.

In answer to a question by one of my customs advisers TOM NUMAKI, the witness said that the volcano started at North Tanna (Lenakel) then went to South Aniwa, then Jenapukin and then to White Sands.

He said that the volcano was a man who came one day and stopped and met two women and asked them if he could make laplap to which

they agreed. The laplap (a traditional Ni-Vanuatu meal) was covered with earth. The two women whose names were Sapia and Maunga made a hole for him where he could stay and when he was thirsty they would fetch some water for him in a bamboo pole. At night the man started to build up a hill which is the volcano to-day.

Then JOHNNY KOMECHI also known as KOMETI stated:-

- His nakamal was Ilamanga and that he was N° 1 Chief
- That his nakamal controls Nasepmene, that is area N° 2 on Exhibit I
- That the area starts at Ihalaga and goes up to the volcano into the crater,
- That there are four holes in the volcano named:-
  1. Crisun - belongs to Nalpaemene
  2. Wehiwehi - belongs to Nasepmene
  3. Kasmenen - belongs to Nuhamene (Yenakahi)
  4. Kaunaun - belongs to Kasarumene
- That Quares Jack has control over Napenuwin Nakamal for Nalpaemene,
- That Yenakahi is not close to the volcano but not too far away
- That the other chief of the nakamal is Kamisak and,
- That area N° 3 on the plan Exhibit I Naramene possesses a chief called Misuweren and his nakamal is Yemenwepen.

Then JACK KAMISAK stated:-

- That his nakamal is Ilamanga and he is the chief
- That his nephew JOHNNY KOMETI and he are the chiefs of the nakamal
- That the nakamal controls Nasipmene
- That his nakamal control all the other nakamal in Nasipmene
- # That his father's nakamal was Janpakal (Iankwanpaker)
- # That his father was in control of Ilamanga but living at Janpakal
- # That he knows DAVID NAUKA but he has no rights over the people of Ilamanga.

Then CHARLIE MISIWERING stated:-

- That his nakamal is Menwapen or Yamanwapen and that he is the only chief.
- That he controls area Naramene, area N° 3 on plan Exhibit I but his area does not go up to the volcano, or do his ancestors claim ownership of the volcano.
- That Kieri is not chief.
- That there are five nakamals in area N° 3 and he is chief of three of them and make decisions for them.

Then THOMAS NAWOL stated:-

- He said his nakamal is Isamoa and he is the chief.
- That the red line on plan Exhibit I represents the boundary line of the Presbyterian Mission and should really be known as the mission line.
- That it was drawn in 1870 to prevent the natives from stealing any land.
- That inside the blue line on plan Exhibit II are the following areas:-

Kasuremene  
Nasipmene  
Naramene  
Nauwaneng (Nuhamene)  
Nalpaemene

He expressed a view that it would be quite improper for the Respondents to claim ownership on behalf of their nakamals as there are many chiefs in that area.

In his view SAM KAHU and JACK NIVEN have rights over the land and that NASSE and PHILEMON, two of the Respondents have no right over that land.

- That these two persons came from White Grass.
- That in custom the chief of the big nakamal controls the area.
- That he was adopted by the chief of Isamoa who took me there.
- That as he works for Government, Narua replaced me as chief but that he still makes all the decisions.
- That his uncle MOIKA told him about the Presbyterian Mission line, finally,
- That the mission line is the same line as Nasse (Respondent) wrote on plan Exhibit II.

The last witness for the Appellants was SAM MAUKAUIRA who stated:-

- That he was elected Chairman of the Tanna Island Council by all the chiefs of Tanna.
- That from his knowledge the chiefs of Nalpaimene, Nasipmene, Kasurumene and Navarmene have control over the volcano.
- That according to custom the people of these four areas have a right of ownership of the land on which the volcano sits.

### PART III

The Respondents and witnesses then gave evidence. Briefly their evidence was:-

NASSE KUARANGKIRI whose nakamals were Ian Bitoko and Eusefa.

- That five nakamals controls the grounds of Yenekahi which starts at Nave - Narak close to the sea at Sulphur Bay, then to Lake Isiwu along the blue line on plan Exhibit II to the sea at Napungasen.
- He said for five generations his family controlled Ianbitoko and the land Yenakahi has been the land this nakamal controlled.
- He said Philemon is his elder brother and Sam Kahu and Jack Niven are his brother in laws by marriage.
- He said Nalpaimene does not extend to the volcano also that Nasipmene does not go North to the volcano.
- He said that his nakamal Ionamen blocks the way for anyone else to the volcano but it does not exist today.
- He said he knew Naraemene and the boundaries of the land are South of 12 and 13 on the blue line of plan Exhibit II which of-course means that land does not border the volcano.
- He said that Peter Taffa the first witness for the Appellants is not chief of Loatapas and that Loatapas land does not extend to the volcano. Later he said that the land extends to the bottom of the volcano but does not go up to the volcano.
- He said Yenakahi is all the land within the blue line of plan Exhibit II.
- He states he is the custom owner - there are four of them i.e. the Respondents.
- He said he acquired the information about the land from his father Naunsen and grandfather Poytalowawa about the year 1936. Further that his father showed him the land many times.

- He denies that a great portion of the volcano belongs to Peter Tafla.
- He said he did not hear that Jack Quares is a chief, i.e. fourth witness for the Appellants.
- He said that the four Respondents are custom owners of the land controlling by Nakamal Yaunanim which is N° 9 on the blue line on plan Exhibit II or area 2 on plan Exhibit I.
- He said he did attend a meeting of the Land Committee in 1981, when it was suggested to him that the Committee decided Peter Tafla's nakamal Loatapas controlled the area of Loatapas.

This witness evaded the answer and said he cannot talk about Loatapas. The answers given by this witness to the two custom advisers indicated that he was not sure of anything other than he wants every-thing for the Respondents.

Then JACK NIVEN stated:-

- That he was chief of nakamal Yakwanmatwok which controls the land of Yenakahi. The other nakamals are:-
  - Empitoka - Chiefs who are Philemon and Nasse
  - Ensefa - Chief is Jimmy Namtegnas
  - Iabokikou - Chief is Karenbui Nawao
  - Yuwale - Chief is Sam Kahu
- That the volcano is Yenakahi land.
- That Nalpaimene does not go to the volcano.
- That Nasepmene reaches the bottom of the volcano - he then corrects himself and says that it reaches the bottom of a hill next to the volcano.
- That Naramene is far away from the volcano.

First he says Kasuremene does not come to the volcano then changes his statement and says he does not know land of Kasuremene.

- He said he knows the story of the volcano. That a person was called volcano because of supernatural powers. This story is related under paragraph, 'Stories'.

This witness under cross examination said that the land of Nalpaimene reaches the bottom of the volcano. This witness was evasive and I just could not accept his evidence as the truth.

Then SAM KAHU stated:-

- That his nakamal was Iumalou and he is the chief.
- That he inherited it from his ancestors. His father was chief TIVA and his grandfather chief MISAP. His nakamal is in Yenakahi



and he knows the boundaries because his father told him.

- That the people of Natamal Loatapas have no right in Yenakahi
- That the people of Lapenowing, Ilamanga, Manupen, Kasurumene, Nasipmene, Nalpaimene and Neraemene have no rights in Yenakahi, his father told him so.
- He said he put Jack Naven in charge of the volcano, then he said his father did it.
- That the customary rights are transmitted through the generations and passed to Jack Naven.

Later he said that he could not in accordance with custom speak about the various nakamals. He actually answered many questions about nakamals and then when questions were asked and he seemingly did not know the answer he mentioned he had no right to speak about them. He was not a convincing witness.

Then JONAH NALAU stated:-

- That his nakamal is Yenamaha of which he is chief.
- That the people of Nasurumene belong to the nakamal.
- He said Yalofi Nakamal controls the land on which the volcano stands and extends to Yenakahi who have custom ownership of the land on which the volcano stands.
- He said the leaders of Yenakahi are:-

Boida Lawawa  
Tabite  
Nampangas  
Tehili (father of Jack Niven)  
Jack Nouval  
Naunum (Nasse's father)

He was unable in cross examination to say which of the Nakamal in Kasurumene is the largest. He denied that at a Land Committee meeting of the 3rd August 1981 the decision was that the land of the volcano belonged to Peter Tafli. He stated that land referred to was a piece of land near Lautapas.

Then SAM NAWAKA stated:-

He produced a map representing the land of Yenakahi, Exhibit VII.

- That the volcano is inside Yenakahi land. He was not sure whether some of the land of Kasurumene extended to the volcano or not.

This witness was a young man of 17 years when he drew the map for his father Nasse. He was not sure of area of the various places.

Then PHILEMON NAKALA stated:-

- That he was the brother of Nasse and his nakamal is Empitoka.
- That NASSE and he are the Chiefs.
- That NASSE controls one function and he the other. He is number one chief.
- He said JIMMY KIANO whose name appears in the deed of 1883 was one of his ancestors. Jimmy had a son Yareweli, who had a son Semake, who had a son Kurio, who had a son Kibus, who had a son Boida Lawawa who did not have a child so he adopted him shortly after birth in 1939.
- He said the boundaries of Yenakahi are:-
  1. Nafe and Narak - stones at Yalofi - Ipenkel Village.
  2. Iakunapau
  3. Nikiaumoti - nabanga tree there.
  4. Iangaeng Tchiloutaniken - nabanga tree there.
  5. Namarui tree at Ememesu
  6. Namarui in Lake Isiewi
  7. Sapai - a small hill in the water
  8. Maunga - a small hill in the water
  9. To hill Iakweakwi
  10. To hill Laupetu Iaronan
  11. To hill Nukwetamakem
  12. To hill Tapuetafra
  13. To the coast where there is a stone called Nugungepoan.
- That the volcano is inside the line bounded by this line.
- That in custom the Respondents own the volcano.
- That in the language of the people of Kasurumene the volcano is called Yahuwei.
- That the land of Loutapas does not go near the volcano.
- That Quares Jack is wrong when he says the lands of Naupamene extends up to and into the volcano.
- That Johnny Komechi is also wrong in saying the lands of Naupamene go up and into the volcano.
- He said his father Naunen told him about the boundaries of Yenakahi.
- That Jack Nivon and Nasse looked after him when his father and grandfather died of the plague.
- That he claims ownership of the volcano through his natural father and Boida who adopted him.

- That he was about four years when Boida died.
- That Boida married Bapui who was a sister in custom to old Nasse Kuaragkiri.

Then DAVID NAUKA stated:-

- His nakamal was Ilamanga and he is the chief.
- That his ancestors were all chiefs.
- His father was Tom Kamoie, grandfather is Kahuake, great-grandfather Yawaki, great-great-grandfather Narimeta, great-great-great-grandfather Naputoho.
- He said Johnny Komechi was lying when he said he was Chief of Ilamanga.
- That both are only members of the nakamal of Ilamanga.
- That the people of Ilamanga are within Nasipmene.
- That the boundaries of Nasipmene starts at the bottom of the volcano close to Lake Isivi then follows the two hills, Sapai and Maunga.
- That the lands of Nasipmene go to the bottom of the volcano.
- That the volcano in relation to Yenakahi is to the west.
- That the Respondents have ownership of the volcano.
- That he got his knowledge about Yenakahi land in 1929 when he stayed with old persons at Yenakahi. They were Tapita, Tira, Namtengas, Sam Nohal, Boid Lawawa and Namun.
- He stated that Johnny Kamut had no right to speak as chief of Ilamanga.
- That Quares Jack has no right to the volcano as his land only extends to the bottom of the volcano.
- That Nakau Iakolpis land only extends to the bottom of the volcano, so again he cannot claim to be custom owner of the volcano.

He stated that although Quares Jack and Nakau Iaukolpi were good friends of his they lied to the Court when they said their land extends into the volcano.

Then TOM USUS stated:-

- His nakamal is Iakuepen at Port Resolution. He is Chief.
- That Yenakahi is completely inside the volcano.

- That his ancestors told him about the boundary of Yenakahi.

Three other witnesses Dan Nakaut, Issac Naku and Gideon Nampas gave evidence which was not helpful and naturally the same as the other witnesses for the Respondents.

#### PART IV

The stories relating the origin of the Volcano:

Nakou Iaukolpi witness number 4 for appellants stated page 10 of record.

"According to my ancestors, and I have heard it myself, before the volcano started the land where the volcano is, belonged to my family line. The volcano, when it came up, some of the ashes reached some of my family and killed one Iaujaga. When I was born I lived at Yenakahi. It was too dangerous so I moved to Ianemakel".

Quares Jack witness number 5 for Appellants stated at page 11 of record.

"The volcano started in North Tanna-Lenakel, then to the South then Aniwa, then to Ianapukin and then White Sands. The volcano was a man who came one day and stopped and met two women and asked if he could make a laplap (local dish). They agreed to it. Then the laplap was covered with earth. The two women made a hole for him where he could stay - when he was thirsty they would get a bamboo pole with water in it for him. At night this man started to build up the hill which is the volcano today. The names of the women are Sapai and Maunga".

Johnny Komechi witness number six for Appellant states at page 14 of record.

"The story says there were two women making laplap at the site of the volcano. They were Sapia and Maunga. To make laplap they had to make a hole in the ground and a fire to cook the laplap. Then they covered the laplap with earth, went away for a while and when they came back to the laplap, the fire had destroyed the laplap and had erected a Volcano".

Jack Kamisak witness number seven of Appellants witnesses page 15 of the record states.

"The volcano who is a man came and found these two women who were making laplap. The two women started to eat the laplap, shared half with the man whose name is Volcano. They ate until night time. Then the women said to the man, "Let us go and sleep". When the two women went to sleep in the small house the man stayed outside. The man covered the laplap with earth. The man proceeded to dig a hole in the sand at the place for the fire for the laplap and as he made the hole he came through various lands which today bear the names around the volcano. Sapai and Maunga are the names of the two women. The two women are still in the fire which is the volcano today according to custom".

Jack Niven witness for the Respondent at page 31 of the record states:

"The original volcano was a man - started in Futuna Island, went to Aneityum, then came to Lenakel. After that, he went to Middle Bush, then went to Erromango, then to Aniwa. Then came to Tanna because there was nowhere to stay in Aniwa, then he came across to Sulphur Bay. The volcano was a man named Volcano - the custom name is Metikiki. He was called Volcano because of Supernatural powers. The man travelled about some twenty to forty generations ago. He came to Nakamal Imana. The chief of the nakamal did not want him to stay. Then the people of Yenakahi got hold of a white fowl and kava and chased him out and then he went to a place where the volcano is now."

PURCHASE DEED

February 1883

From the natives of the Volcano Tagove Perauha and the right of passage from this volcano by the Compagnie Caledonienne des Nouvelles Hebrides.

---

Aboard the "Caledonien" twenty seventh of February one thousand eight hundred and eighty three, at anchor in Port Resolution, Tanna.

We, Jeremy Keako, Chief of Sulphur Bay in the island of Tanna, New Hebrides, acknowledge having sold to Mr Charles Peterson Stuart, representative of the Societe des Nouvelles Hebrides, the volcano Tagove Perauha and the right of passage from this volcano to Sulphur Bay; the above sale was made for; one Schneider rifle with two hundred cartridges, one Reifl rifle, eight boxes powder, five boxes caps, one tamiahawk, one large knife, three pieces of print, three dozen pipes, three kilos tobacco and three dozen boxes matches, the whole amounting to the sum of five hundred and seventy francs.

This sale signed by us Jeremy Kiako and natives of Tanna, as witnesses, the day, month and year hereinbefore written.

List:	Jeremy Kiako	his mark	
	Marky	his mark	
	Junno	his mark	
	Sarauke	his mark	
	Nafaho	his mark	
	Karaupuy	his mark	
	Serauwayan (Chief)	his mark	and
	(Signed) Ch. P. Stuart.		

Seen aboard the "Bruat" the 24th May 1883.

The Lieutenant of the boat, Captain of the "Bruat"

(Signed) Benior

(Signed) E. Drum, Captain of the S.S. "Caledonien"

Signed: Morcan, second Captain

Certified correct and signed by Mr Morgan and annexed to the minute of a deed of lodgment drawn up by Mr Chauvalou, Notary at Noumea, the twenty sixth of June one thousand eight hundred and eighty three:

(Signed) Morgan.

Registered at Noumea, the 28th June 1883, folio 32, recto, case 7. Received 1 franc 50 centimes (Signed) Vinard.

There is also annexed to the minute of a deed verifying the lodgement, the original of the said deed of sale, drawn up by Mr Chauvalou, Notary at Noumea, the 26th June 1883, bearing the following mention:

Registered at Noumea, the twenty eighth June eighteen hundred and eighty three, folio 32, verso, case 4. Received one franc fifty centimes. (Signed) Vinard

The 2nd November 1907, the presents have been copied, collated and delivered by the undersigned Mr Falve, Notary at Noumea, from the minute of the said deed in his possession as immediate successor of Mr Chauvalou.

Stamps of Henri Falve

Notary at Noumea  
New Caledonia

True Copy:

(Signed): Henri Falve

Report

of declaration of the natives concerning the sale of the  
Tanna Volcano

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This thirty five day of August eighteen hundred and eighty seven. I went to the Yahue volcano, accompanied by Messrs Garpaud, Givaud and Robert Peterson, with the object of finding sulphur deposits.

Arriving at our destination we found ourselves confronted by about one hundred natives belonging to the tribes of Sulphur Bay and around this volcano.

The chiefs showed us the letter, a copy of which is annexed hereto. Consequently they manifested the intention of not allowing us to take away any portion of sulphur and it was only after a long time that they consented to allow us to proceed to the sulphur deposits, they accompanying us.

Mr Gaspard reminded the Chief of the tribes of Sulphur Bay that he had however sold us the twenty seventh February 1883 to Mr Peterson all this volcano Yhoe without any reserves. The chief acknowledged having sold this volcano but not so he stated the sulphur which was found there. This claim cannot be accepted.

The present report has been drawn up for the purpose of verifying this declaration of the chiefs which confirms the present sale.

In witness whereof we have signed aboard the "Caledonien" at anchor in Port Resolution.

(Signed) E. Guhaus, B. Gaspard, B. Giraud and Robert Stuart.



Witnesses who attended the enquiry on the land at the time of the said declaration.

(Signed) Fumavoli You A. de Villieurs and P. Clain;

The following note is made: Registered at Noumea the 8th September 1887, folio 73, verso, case 1.

Received two francs.

Signed: U. Ulaga.

Extract

of a lodgment deed in the list of minutes of Mr Chauvalou

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Before the undersigned Mr Chauvalou, Notary at Noumea, New Caledonia, assisted by the hereafter mentioned witnesses, also undersigned,

has appeared:

Mr Valbent Dubuisseau, representative of commerce and land owner living at Noumea, acting so he states in the name of, and as Director of the Limited Liabile Company with a capital of five hundred thousand francs, established at Noumea under the name of "Compagnie Caledonienne des Nouvelles Hebrides" whose statutes drawn up by the undersigned Notary on the twenty third of September eighteen hundred and eighty two, have been followed by a subscription and payment also made before him on the twenty seventh October following, and which has been definitely constituted by a general meeting of shareholders on 8th November 1882, a copy of which has been lodged the same day with Mr Chauvalau.

The said Mr Valbaut Dubuissau has hereby lodged with Mr Chauvalau, the undersigned Notary, the documents hereafter mentioned at-to-days date and placed them in the list of his minutes.

1. Tauna Volcano

The first document is a report drawn up by Mr Edward Puchaus, agent of the Compagnie Caledoniennes des Nouvelles Hebrides, in the present of witnesses dated aboard the "Caledonien" at anchor in Port Resolution the 31st August 1887, registered at Noumea on 8th September of the same year, folio 73, verso, it case.

Mr Ulagē who has received two francs, stating the difficulties experienced among the agents of the Campagnie Caledonienne des

Nouvelles Hebrides and the native belonging to the tribes of Sulphur Bay and others living around the volcano of Tanna, regarding the sulphur coming from this volcano, purchased by the Company according to a deed dated the twenty seventh February 1883, registered at Noumea on the 28th June following, folio 32 verso, case 1, by Mr G. Venard, who received the sum of one franc fifty centimes and the removal of which the natives wished to oppose. The chief of the tribes of Sulphur Bay acknowledging having by the above mentioned deed dated 27th February 1883, sold to the Compagnie Caledonienne des Nouvelles Hebrides the Tanna volcano but not the sulphur which is there, which declaration is judged inadmissible by the agent of the Company who has drawn up the report in question in order to verify this declaration of the chief of the tribes of Sulphur Bay, confirming the sale made by him of the Tanna volcano to the Compagnie Caledonienne des Nouvelles Hebrides.

The second document is a deed dated the first September 1887 made in triplicate aboard the "Caledonie" at anchor in Port Resolution, registered at Noumea the eighth September 1887, folio 73, verso, case 4 by Mr Ulage who has received two francs verifying the sale made to the Compagnie Caledonienne des Nouvelles Hebrides by the chiefs hereafter named of the sundry tribes of the island of Tanna (New Hebrides) namely: Jeremy Kaoui and Naukauvet, chiefs of Sulphur Bay, Wapou, also chief of Sulphur Bay, Nalao chief of Gaugavis, Kassague chief of Endelesa, Yaumau chief of Eueai, Mala, chief of Yambetoya, Kahalah chief of Iymanga, Kacuka chief of Embekel, Ulama chief of Yakuhao,

Kuanapi chief of Kuauaugai, Javouelli chief of Selkey, Yapatau chief of Mevebalau, Raveil chief of Ueva, Mabaou and Yatik Akaku chiefs of Kovennenig, Uessouain chief of Epukcilend Uoueu chief of Kalpau, Yakaou chief of Mancubabu, Jnouiwau chief of Takouew, Jaateki chief of Elgen and Koukave chief of Sulphur Bay, of a right constituting a monopoly in favour of the Company of roads for the use of the said company, such roads as it shall deem necessary for some exploitation without indication as specified boundaries and without any reserves with the power to use all materials for this purpose that it shall find on the land: for the making of the said roads and exploitations. These roads should connect all portions in exploitation of the volcano of Tanna with the five bays of Sulphur Bay and Port Resolution. This sale has been made for the sum of one thousand seven hundred and eighty five francs ninety five centimes, plus a sum of fifty francs paid to the interpreter.

The same deed contains the acknowledgement by the chiefs above mentioned at the abovementioned sale of the Tanna volcano, made to Compagnie Caledonienne des Nouvelles Hebrides according to the abovementioned deed dated 27th February 1883.

These two documents refer to a deed dated as has been stated above, 27th February 1883 made aboard the "Caledonien" at anchor in Port Resolution, Island of Tanna, then Hebrides verifying the sale made by Jeremy Kiako (called also Jeremy Kaoui) to the Compagnie Caledonie des Nouvelles Hebrides of the Tanna volcano (also known as Yacave, Uevauka, and Yahoo) and the right of passage from this volcano to Sulphur Bay. This deed has been lodged in the list of minutes of the undersigned Natany according to a deed drawn up by him from this lodgement dated 26th June 1883.

The present sale is made and agreed upon for nineteen suiders, seventy four pounds of tobacco, three pieces of calico, one hundred and eighty pipes, fifty seven packets cartridges, nineteen packets matches, seventy six plugs of dynamite, nineteen boxes powder, thirty eight boxes of caps, one sack lead, nineteen belts, nineteen bottles of rum, in all amounting to the sum of seventeen hundred and eighty seven francs and ninety five centimes, plus fifty francs to the interpreter Jaine, which the undersigned chiefs acknowledge having received and for which they give due receipt.

Messrs Guhaus, Gaspard, Peterson and Giraud and we the undersigned acknowledge having taken possession of the lands herebefore described:

The undersigned Chiefs and their interpreters solemnly undertake, in their own names and their descendants and all the men of their tribes to guaranty the Company the peaceable and perpetual possession of the purchases hereinbefore stated sold and to guard these properties by everybody and with the assistance of all means in their possession.

Made in triplicals aboard the "Caledonien" at anchor in Fort- Resolution the first September one thousand eight hundred and eighty seven.

<u>The Names of the Chiefs:-</u>		<u>Tribes</u>
1.	Jeremy Kaoui and Markauvet	Chiefs of Suphur Bay
2.	Wapau	"
3.	Ualuo	Gaugauis
4.	Kassague	Eudehesa
5.	Yaumau	Eueai
6.	Uala	Yambetoga
7.	Kohalak	Lumauga
8.	KAouki	Eubakel

9.	Mana	Yakahao
10.	Kuauapi	Kuauaugai
11.	Javouelli	Selkeing
12.	Yapatou	Henekabar
13.	Raveil	Uevo
14.	Uabaou and Yatikakaku	Kouememmig
15.	Hessouani	Epukaileud
16.	Ueoueu	Kolapau
17.	Yakou	Manoukaber
18.	Jaouniwau	Yakauar
19.	Jaouteki	Elebeu
20.	Koukari	Sulphur Bay

The witnesses: (signed) A. de Villiers, P.C.  
Alain G. Martin;

The interpreters: Taine and Junno and Agents of the  
Company:

(Signed): E. Guihaus, Ch. P. Stuart,  
B. Gaspard, and B. Giraud.

The mention is made: Registered at Noumea the eighth  
September one thousand eight hundred and eighty seven, folio 73,  
Recto, Case 4, Received two francs:

Signed: U. Ulage.

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"Etessi Land"

(situated at Port Resolution, island of Tanna)

A document which is a deed made in duplicate aboard the "Caledonien" at anchor in Port Resolution dated 1st September 1887, folio 72, verso, case 5, by the Ulage which received five francs, verifying the sale made by Juno, chief of the tribe of Tatavaba in the island of Tanna (Port Resolution, New Hebrides) of a land known as Etessi, situated at Port Resolution, island of Tanna in the East South Eastern of the Peteveau property of an area of 72 acres for the sum of ninety three francs paid in merchandises.

"Lands Ryemurah, Assemuvi, Onea and Uepivas, situated at Port Resolution (Island of Tanna) a document which is a deed made in duplicate aboard the "Caledonien" at anchor at Port Resolution dated 2nd September 1887, registered at Noumea 8th September 1887, folio 72, verso, Case 9, by the Ulage, who has received five francs, verifying the sale made by the chiefs Hakevano of the tribe of Reymurah, Cassavah of the tribe of Assumuvi, Jakaveli of the Onea tribe and Vcui of the Uepivas tribe of all hands and interests on the properties of Ryemurah, Assemuvi, Onea and Uepivas, situated at the end of Port Resolution Bay (Tanna containing an area of six hectares, for the sum of three hundred and thirty seven francs fifty centimes, paid in merchandises.

All these documents are consequently lodged herewith after.

having been signed by Mr Dupuissen.

Cognizance of the fact is taken. Made and passed at Noumea at the office of Mr Chauvalou the 13th September 1887, aided by Messrs Louis Poinsteau, Secretary, and Joseph de Lacaussade, Registry Clerk, both living at Noumea, witnesses to those present.

And after reading, Mr Dubuissan has signed with the witnesses and Mr Notary.

The signitures follow:

Then mention is made: Registered at Noumea, the 14th September 1887, folio 37, verso, case 1.

Received five francs, Signed: U. Ulage.

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JOINT COURT OF THE NEW HEBRIDES

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Before :

James P. TRAINOR, British Judge  
Georges GUESDON, French Judge  
assisted by E. BUTERI, Registrar

The eleventh day of September in the year 1964

JUDGMENT

On the 18th day of January, 1933 Mr. Vibert filed in the Registry of the Joint Court under No. 83 Southern Islands, an application on behalf of the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES (hereinafter called "the S.F.N.H.") for the registration of title to the property called VOLCAN DE TANNA, situated at Tanna, containing approximately 100 hectares, such as described in the said application.

Application No. 83 Southern Islands was duly published and as no caveat was filed in opposition thereto within the prescribed period which expired on 16th May, 1935 the application - based on a conveyance from natives dated 27th February, 1883, registered at Noumea 8th June, 1883, and on occupation - must be admitted as being valid and well-founded under the provisions of Article 26 (2) of the Protocol of 6th August, 1914.

By a letter dated the 20th June, 1964, the S.F.N.H. offered, with a view to the land becoming a Native Reserve, to withdraw its claim subject to the recognition, to the benefit of the S.F.N.H., of a right to use a parcel of 6 hectares to be determined for the possible establishment of an airfield, together with right of access thereto.

The Native Advocate agreed to this proposal as is shown by his endorsement of the said letter on 17th July, 1964.

There is nothing to prevent the S.F.N.H. from surrendering the major part of its rights established as hereinbefore.

ON THESE GROUNDS

The Court creates, for the benefit of the natives of Tanna, a reserve on the said property VOLCAN DE TANNA, such as described in the said application, subject however to a right to use a parcel of 6 hectares to be determined in favour of the S.F.N.H. for the possible installation thereon of an airfield and the enjoyment of the said land and installations necessary for air traffic together with a right of way necessary for access to the said land ;

Declares established and confirms the ownership by the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES of the said rights of user and access ;

excluding, however, all public roads and tracks, anchorages, points of embarkation and disembarkation and sites for public warehouses (if any) on the said property ;

Between the Undersigned:-

The undersigned Chiefs of the tribes of Tanna, hereafter mentioned, in the island of Tanna, assisted by their interpreters Junno and Taine, of the one part, and Messrs Guhaus, Gaspard, representatives of the Compagnie Caledonienne des Nouvelles Hebrides, a limited liability Company with a capital of five hundred thousand francs, whose head office is at Noumea, of the other part.

In the presence and aided by Messrs Clain, Adam de Villiers and Martin, passengers aboard the "Caledonien".

It has been agreed upon as follows:-

The Chiefs hereafter mentioned hereby sell to the Compagnie Caledonienne des Nouvelles Hebrides who accept.

An absolute right constituting a manapoly in favour of the Company over roads for the convenience of the Company, such as it shall deem necessary for an exploitation of any kind, with indication as specified boundaries and without any reserves with the right of using all materials for this purpose which it shall find on this land to make the said roads or exploitations.

Indication of the roads.

These roads should connect all parts marking the Tanna Volcano which has already been bought from the native chiefs by the Company, according to a deed dated twenty seventh February one thousand eight hundred and eighty three, with Sulphur Bay and Port Resolution, the Chiefs hereby acknowledge in this deed the said sale of the volcano made previously.

And before ordering registration of the said property and the said rights :

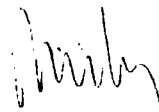
Directs the Chief Surveyor, with the assistance of sworn members of his staff :

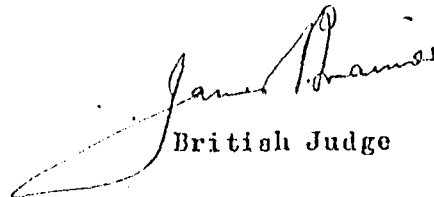
1- to survey and fix the boundaries of the said Native Reserve ;

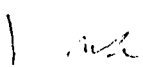
2- to draw a plan thereof and place boundary marks thereon ;

Orders that this report and plan be lodged in the Registry and brought to the notice of the applicants for any observations they may wish to make before the Court proceeds to final judgment for registration.

Given the day and year first hereinbefore written.

  
French Judge

  
British Judge

  
Registrar

JOINT COURT OF THE NEW HEBRIDES

Before :

James P. TRAIHOR, British Judge  
 Georges GUESDON, French Judge  
 assisted by E. BUTERI, Registrar

the eleventh day of September, in the year 1964./.

JUDGMENT

On the 18th day of January, 1933 Mr. Vibert filed in the Registry of the Joint Court under No. 80 Southern Islands, an application on behalf of the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES (hereinafter called "the S.F.N.H.") for the registration of title to the property called ROUTES DU VOLCAN, situated at Tanna, consisting of two parcels with a total area of approximately 5 hectares, 37 ares (1 hectare, 20 ares for the parcel ROUTE DU VOLCAN A SULPHUR BAY and 4 hectares 17 ares for the parcel ROUTE DU VOLCAN A PORT-RESOLUTION) such as described in the said application.

Application No. 80 Southern Islands was duly published and as no caveat was filed in opposition thereto within the prescribed period which expired on 16th January, 1935 the application - based on a conveyance from natives dated 1st September 1887 and on utilisation of the said "roads" - must be admitted as being valid and well-founded under the provisions of Article 26 (2) of the Protocol of 6th August, 1914.

No request was made for the creation of a Native reserve on the said property.

ON THESE GROUNDS

The Court declares established and confirms the ownership by the SOCIETE FRANCAISE DES NOUVELLES-HEBRIDES of the ROUTES DU VOLCAN property, consisting of two parcels, such as described approximately in the said application ;

Orders that these two parcels be the subject of two separate land titles by reason of the creation of a Native Reserve on the VOLCAN DE TANNA property the subject of application No. 83, which property would have formed the material connection between the two said parcels had it been declared to be the property of the S.F.N.H. ;

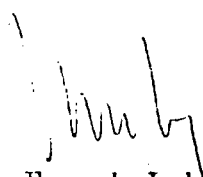
And before ordering registration :

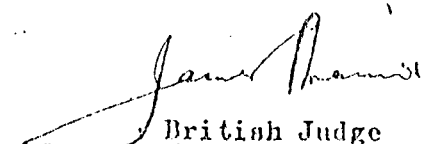
Directs the Chief Surveyor, with the assistance of sworn members of his staff :

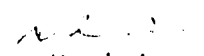
1. to survey and fix the boundaries of each of the said two parcels of land ;
2. to draw plans thereof and place boundary marks thereon ;

Orders that these reports and plans be lodged in the Registry and brought to the notice of the applicant for any observations it may wish to make before the Court proceeds to final judgment for registration.

Given the day and year first hereinbefore written ./.

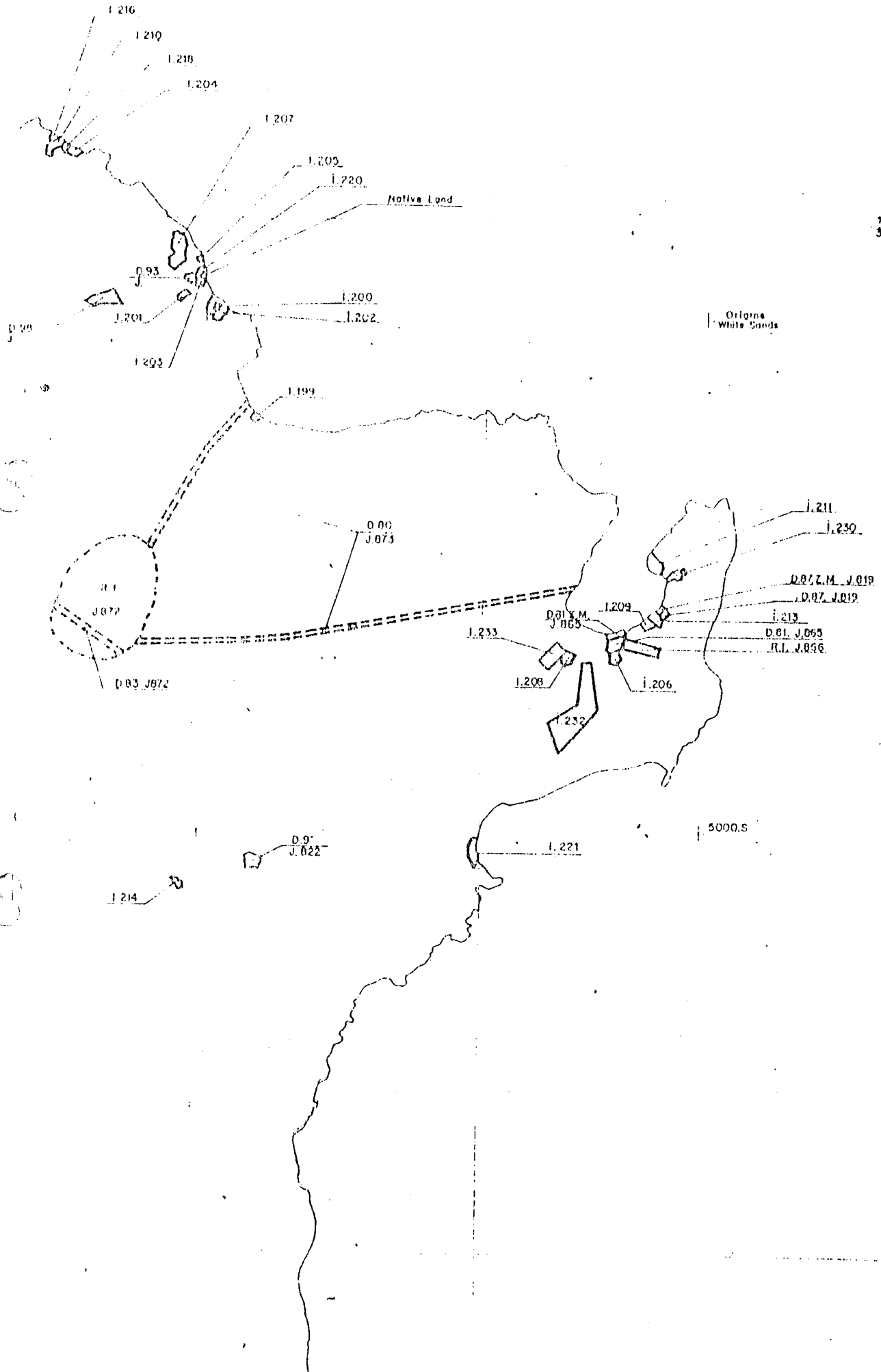
  
French Judge

  
British Judge

  
Registrar

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19° 30'

Original White Sands

5000.5

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PART VIII

Mr HUEBLE, Counsel for the Appellant submitted:-

1. That the appeal in its entirety is based on a factual dispute between two sides each alleging rightful custom ownership.
2. That the ownership of the volcano did not become contentious until someone after 1984 made it clear to the residents of Tanna that the visiting of the volcano could be a viable commercial enterprise to the rightful owners.
3. It was about this time the Respondent commenced his action to prove his family was custom owner of the land that comprises the Yasur Volcano.
4. That it should be understood that the Appellants consider themselves as representatives of all the people of Tanna and that the ownership of the volcano properly vests in all of them and not on a small group who base their claim on custom ownership of land called Yenakahi which allegedly engulfs the volcano.
5. That the Appellants allege that the "Nakamals" of persons controlled by them as chiefs are the rightful custom owners of the volcano. The areas controlled by them are:-
  - i) Nalpaimene
  - ii) Nasipmene
  - iii) Naraemene
  - iv) Naamene
  - v) Loatapas and
  - vi) Kasarumene

That these areas surround the volcano and that the chiefs of them have custom ownership rights over the land upon which the volcano is situated, Exhibit I on the plan.

6. That the Appellants did recognise that Yenakahi land exists on the east side of the volcano extending to Port Resolution but denied that this area designated as a line of hills on Exhibit I engulfs the volcano in accordance with boundary mark on Exhibit II.
7. That when a great deal of hearsay evidence is removed, one is left with two sides diametrically opposed in all respects.

I accept submissions 1 to 3. I would accept submission 4 if made by both Counsel as I am of the opinion in this case that both parties should be the representative of the people.

I note submission 5 as the Appellant's submission but do not accept it. I am of the opinion that the Appellant's submission 6 is correct and I accept such. I accept Counsel's submission 7.

PART IX

Mr RISSEN, Counsel for the Respondents submitted:-

- That I should accept the finding of the Island Court but I regret I cannot do so as no real attempt was made by the Justices to ascertain who were the real custom owners.

In my opinion, the evidence given before the Island Court by the parties made it impossible for any Court to reach a conclusion that the custom owners of the land on which the volcano rests or that the volcano itself belonged to either party.

I think Joe Joseph, one of the witnesses at the Island Court readily had the correct answer when he said in answer to a defendant's question:-

"Are you aware that everybody has a right to the volcano?".

Answer: "Everybody's right finishes only at the foot of the volcano".

In my opinion, on the evidence, that would have been a decision which the Justices could have reached.

I cannot accept the submission of his. Again, he asks the Court to accept strict rules of evidence but this is quite impossible as most of the evidence is hearsay and the legislative realised such would be the situation and included Section 25 in the Island Court Act to provide for the type of evidence admissible.



( PART X )

DECISION OF TANNA COUNCIL OF CHIEFS

The Tanna Council of Chiefs is happy to let you know all the truth about the knowledge we have of the Tannese Custom.

The Tanna Island Council of Chiefs had three meetings about the Volcano Case. The first was on 14th October 1985, the second was on 13th of January 1986 and the third meeting was on the 20th January 1986, which was held at the Lenakel Chiefs Centre.

At the last meeting held on the 20th January 1986, two hundred members of the Tanna Island Council of Chiefs were present. There were four points discussed at that meeting:-

1. Who does the volcano belong to?
2. Who is the custom name of the ground, the volcano stands on?
3. Who is the custom owner of the land the volcano stands on?
4. Who owns the land which is one-mile around the volcano?

The Tanna Island Council of Chiefs is formed out of Chiefs who represent all the areas around Tanna.

The Council of Chiefs believe that seen through custom, the Tanna Volcano was situated in North Tanna, Middle Bush Area, South Tanna and Lenakel before he finally stayed in the White Sands area. Because the volcano stayed at all these different places before, he left custom stories behind there and that will help us to find the true owner of the volcano.

Because of this history of the volcano that we find through Tannese Custom, the Tanna Island Council of Chiefs can find the answer to the first question. We agree that because of the custom the Tanna Volcano that is called Yasur,

- (a) is not owned through one tribe only,
- (b) is not from the Kasarumene tribe,
- (c) is not from the Nalpaimene tribe,
- (d) is not from the Nasipmene tribe,
- (e) is not from the Nalaimene tribe,
- (f) is not from the Nuhamene tribe.

The Tanna Island Council of Chiefs wants to declare that:-

"The YASUR VOLCANO is ~~from~~ the WHOLE TANNESE POPULATION".

The answer of the second question is:-

The name of the land where the Volcano is situated is:-

- (a) is not Kasarumene land,
- (b) is not Nalpaimene land,

- (c) is not Nasipmene land,
- (d) is not Nalnimene land.

The Council agreed that the custom name of the land where the Volcano is situated is:-

"TENKAHI LAND"

The Council states that the volcano has four names coming out of the four main languages of Tanna:-

- 1. Nafe
- 2. Nahirak.
- 3. Natuar
- 4. Nahaul

The name Yasur came out of the language N° 1 (Nafe) which is the language the people of the Tenikahi Land speak, on which the Volcano is situated.

The answer of the third question is as follows:-

The land where the volcano is situated on is:-

- (a) not from Iaukalupi and Rigiau,
- (b) not from Iautaka and Kauras,
- (c) not from David Nouka and Johnny Kamuti,
- (d) not from Nasse Kuaragkiri and Philemon.

The Tanna Island Council of Chiefs appoints SAM KAHU and NAVEN JACK as custom owners of the land the volcano is situated on.

The Council agrees that NASE KUARAGKIRI comes from the nakamal IABETOKA and because of the custom right he is the Chief of the TOVA DANCE and the custom song which is called IANTAREI.

The answer of the fourth question is:

The Council of Chiefs agrees that the custom owners of the ground that lies around the volcano are:-

- 1. The KASARUMENE TRIBE,
- 2. The NALPAMENE TRIBE,
- 3. The NASIPEME TRIBE,
- 4. The NUHAMENE TRIBE.

The Tanna Island Council of Chiefs wants to add to this report that because we agreed that the Volcano Yasur is from the whole of Tanna,

- the Yasur Volcano should become a public land reserve,

that the income made should go to the Council of Chiefs, Niko Le Ten, to use it for the needs on Tanna, like for example to pay the headtax of the poor people of Tanna who have no money, or for improvements of roads, water supply, etc.

that half a mile around the volcano can become a public reserve, but not a whole mile.

that the Council believes that the volcano Yasur is on the land of Sam Kahu and Jack Haven of the Nuhamene tribe but those two men CANNOT OWN the volcano because it belongs to the whole Tannese Population.

that because times are changing people could complain about the damages the volcano makes to their properties but if the volcano is owned through the whole Tannese Population, they cannot claim any money from one person in particular.

This is the report the Tanna Island Council of Chiefs, Nik Len Ten, is giving on behalf of the Volcano Yasur and the land a mile around its base.

Signed: Chief Tom Numake  
President T.J.C. of Chiefs, Niko Le Te

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PART XI

The evidence of the appellants firstly by a witness such as Peter Tafla whose evidence I believed stated that his ownership included the sides of the Volcano but he did not know who owned the crater inside. He further agreed that the area Yenakali claimed by the Respondents joined the boundaries of the volcano.

He said his Nakamal was Loatapas of which he is the Chief. He agreed that his language is known as Narak and Kasarumene is the name of his people.

His brother Napat Iti was another clear example and in my opinion a truthful witness. He confirmed his nakamal was Loatapas and that his family had control over area N<sup>o</sup> 5 on plan Exhibit I. He said that the land goes from the coast line into the crater. Area 5 on plan Exhibit V merely shows the land touching the sides of the volcano. He mentioned the decision of the Land Committee held in August 1981 giving the land in area 5 to him and Peter Tafla and that a member of the said Committee was Nasse Kuaragkiri one of the Respondents.

He was totally fair in his evidence and said that at a custom meeting in 1983 it was held that the Respondents were the true owners of the volcano and land. Yenakahi land is area 4 on plan Exhibit I and shows the land touching the base of the volcano.

I found that Nakau Iaukolpi may have exaggerated somewhat. His evidence was that according to his ancestors before the volcano started the land where the volcano is situated belonged to his family line. That is area 6 on plan Exhibit I is closer to the volcano than the nakamals of Nasse the Respondent which are Empetoka Eusefa and Kwonmatuwok.

Kaures Jack was a forceful witness. He replied without any hesitation and seemed to be sure of what he was saying. His nakamal was Lapenowing of which he was the chief and his nakamal controlled Nalpaimene which is area 1 on plan Exhibit I. He contended (but I did not believe him on this point) that his area goes up to a hill and into the volcano. I really think he meant to the sides of the volcano.

Again he said that Nasse (Respondent's) land does not touch the volcano but again I did not accept that evidence. He contended there were four holes in the volcano one each belonging to Yenakahi area 4, Kasarumene area 6, Nalpaimene area 1, and Nasipmene area 2, all on plan Exhibit I.

\* Nakamal - is a meeting place

Johnny Komechi another witness whose nakamal was Kamanga of which he was Chief and whose nakamal controls area Nasipmene (area 2 on plan Exhibit I) actually stated his area goes to the volcano and into the crater. Whereas his land may only border the crater as shown on plan Exhibit I. I did not believe him when he said it went into the crater. His evidence was helpful in that he gave the names of the four holes in the volcano and whom he thought they belonged to:-

1. Crisun - belonging to Nalpaimene
2. Wehuwehi - belonging to Nasipmene
3. Kasmren - belonging to Nuhamc (Yenakahi) and,
4. Kaunaun --belonging to Kasarumene

This evidence conflicts with the views of the council of chiefs that the land on which the volcano is situated is Yenakahi land.

Charlie Misuwaren another honest witness in my opinion merely stated that his nakamal is Lanwapan and he is the chief and it controls area 3 on plan Exhibit I which he says does not go up to the volcano although from plan Exhibit I area 3, it is shown as bordering the volcano.

Thomas Nagwal another witness for the appellants said his nakamal was Isamoa of which he is chief. His evidence was that the red line on plan Exhibit I represented the boundary line of the Presbyterian mission and should really be known as the mission line. He said it was drawn in 1870 to prevent the natives from stealing land. This seems to be confirmed by plan Exhibit IV made from Survey Maps of plots surrounding Yasur Volcano and found in the White Sands Mission House.

The composite map was made by Professor Lamont Lindstrom of the University of Tulsa, Oklahoma United States of America in 1928. He said the mission line aforesaid is the same line as Nasse (Respondent) wrote on plan Exhibit II. He thought that Sam Kahu and Jack Niven have rights over the land but that the other two Nasse and Philemon have no right over the land.

By this I took it to mean the lands of Yenakahi, which seems to agree with the views of the Council of Chiefs.

The last witness for the appellants was Sam Makuaira who was forthright in his views that from his knowledge the chiefs of Nalpaimene have control over the volcano and that according to custom the people of these four areas have a right of ownership of the land on which the volcano stands.

I was unable to accept this evidence as he was not prepared

to substantiate his belief with any concrete evidence or even hearsay evidence. I then listened to the evidence of the Respondents and witnesses.

The main witness Nasse, contended that the blue line on plan Exhibit E represents Yenakahi land which in effect is that the volcano is on Yenakahi land. He disagreed with witnesses for the Appellant and stated their lands do not border the volcano. He further contended that witnesses for the appellants were not chiefs as they claimed to be.

His information that he is the custom owner of the land encompassing the volcano came from his father Naunun and grandfather Poytalowawa about 1936 and that his father actually showed him the land many times.

I find this difficult to accept as this land in the past was a native reserve declared by the Joint Court of the New Hebrides. I cannot possibly believe that his father Naunun or grandfather Poytalowawa ever thought that a Constitution would contain an Article such as Article 71 which states:-

"All land in the Republic belongs to the indigenous custom owners and their descendants".

and because of such foresight it was their duty to prepare Nasse for such an eventuality by passing him such information and actually showing him the boundaries of the land which seemingly by coincidence is also the Presbyterian mission line.

The general impression I got from listening to this witness was that he was not prepared to accept any evidence other than that which stated he was the true custom owner and certainly that all the witnesses for the Appellants were telling lies.

Jack Neven another respondent did not impress me with his evidence. He kept changing his evidence. First he said Nasipmene reached the volcano and then corrected himself and said that it reached the bottom of the hill next to the volcano. Again he said Kasurumene land does not come to the volcano and then corrected himself and says he does not know the land of Kasurumene.

This witness was so evasive that I was reluctant to accept his evidence as the truth.

Sam Kahu, another respondent said his nakamal was in Yenakahi and he knows the boundaries because his father told him. That his father told him that people of Iapenowing, Ilawanga, Wanupen, Kaurumene, Nasipmene, Nalpaimene and Naramene have no rights in Yenakahi. Why his father had to tell him all this is difficult to understand and I just did not accept his evidence. When asked questions which he seemingly could not answer he replied that he had no right to speak about such.

Jonah Nalau, another witness stated that Yelofi Nakamal controls the land on which the volcano stands and extends to Yenakahi who have custom ownership of the land on which the volcano stands.

Sam Namaka, a young man the son of Nasse produced a map Exhibit VII representing the land of Yenakahi as shown to him by his father.

Philemon Nakala, another respondents gave evidence that his nakamal was Empitoka and that he and his brother Nasse are chiefs of the nakamal.

He referred to the deed of sale of 1883 of the volcano to Charles Stuart representing the Societe des Nouvelles Hebrides and said that the name Jimmy Kiaho appearing on the deed was one of his ancestors descending to Boida Kawawa who did not have a child so he adopted him shortly after birth in 1939. He gave the boundaries of Yenakahi which in fact is the blue line in plan Exhibit II. He disagreed with the witnesses for the appellants that their land bordered the volcano. His evidence was that his father Naunen told him about the boundaries of Yenakahi. He said he claimed ownership of the volcano through his natural father and Boida who adopted him.

David Nauka who gave evidence contented that Johnny Komechi, although a friend, was lying by claiming to be chief of Ilamanga. He agreed that the lands of Nasipmene go to the bottom of the volcano. He further said that Kaures Jack had no right to the volcano as his land only extends to the bottom of the volcano, so therefore he cannot claim to be custom owner of the volcano.

The evidence of this witness conflicts with other witnesses for the Respondents who stated only lands belonged to Yenakahi extended to the volcano.

Claims have been made by both parties to this appeal that because their land extends to the boundary of the volcano they have rights to the volcano whereas other witnesses mainly those of the respondent claim that Yenakahi land completely surrounds the volcano and as the volcano is within their land it is theirs.

I am not absolutely satisfied that either of the parties are telling the truth. The general impression I got having listened with great care and attention, was that each party was attempting to put their evidence in an attempt to persuade the Court that they were telling the truth. All witnesses gave evidence which in my opinion was not the truth.

In the end I was left with one view and that was that none of the parties have convinced me that they are the true custom owners of the volcano.

In 1964 the Joint Court made the Volcano and Land surrounding the same a Native Reserve without seemingly any objection from the people of Tanna.

Again from the purchase deed (page 29) and papers following it would seem that all the chiefs of Tanna were concerned in the sale to the French Company of the volcano.

Only when it was discovered that money could be made from the volcano did the dispute arise.

In my opinion, the evidence is so conflicting regarding the land on which the volcano stands, that I cannot accept that either of the parties or their ancestors owned the land. Accordingly, in my opinion, it's Customary Ownership is with the Chiefs and People of Tanna and I so hold.

I therefore allow the appeal only, in so far as I quash the judgment of the Island Court.

Further, in my opinion, the land bordering the volcano along the boundary set out on the plan belongs to the people of those areas. In my opinion, the land of Yenakahi does not surround the volcano. It merely reaches the boundary of the volcano set in the plan on the West side.

#### RECOMMENDATION

I recommend that the volcano be declared by the Government in concurrence with Chiefs and People of Tanna, to be a National Monument under Joint Regulation 11/65 and that any revenue obtained from the volcano be used by the Council of Chiefs for Tanna for the benefit of the people of Tanna.

The plan attached and edged in green contains the area involved.

*Frederick G. Cooke*

Frederick G COOKE

Chief Justice 22.9.86.