

CIVIL CASE.

NO I of 1973.

NATIVE COURT, SOUTHERN DISTRICT.

"T-1"

PLAINTIFF - Tom Numake, New Hebridean of Tanna, resident at Isini,  
Tanna.

DEFENDANT. - Nisak, New Hebridean of Tanna, resident at Middle Bush,  
Tanna

SUBJECT.

The rightful ownership of the area of land known as NIOUGAN in the Southern locality of WHITEGRASS, TANNA.

APPLICATION. lodged by Tom Numake, Plaintiff, on 23rd. April, 1970 the hearing having been deferred as Plaintiff has undergone a term of imprisonment in the interim.

RECONCILIATION.

The Court attempted reconciliation but neither party to the action would agree to reconciliation.

HEARING.

Native Court Southern District, in Civil jurisdiction, at Louknapuktuan at 0900, Wednesday, 21st. February, 1973.

President - G. C. Norris.  
Assessors - Jack Nepiko,  
David Nasu.  
Interpreter - Foulu Abbil.  
Plaintiff - Tom Numake.  
Defendant - Nisak.

EVIDENCE.

(1) Before receiving oral evidence the Court ruled that the land in question would be visited by both parties to the action and the members of the Court in order to establish its precise whereabouts, boundaries, and condition. A plan of the area of land in dispute (not to scale) is attached as Appendix "A". Plaintiff and Defendant are in substantial agreement as to the position of the boundaries, except on the Eastern boundary, where there is a difference of opinion, as indicated in the plan. This disagreement is not of major significance in terms of the over - all area of the land concerned. The land adjoining the Eastern boundary is in the ownership of the Defendant Nisak, and the Plaintiff Tom Numake fully recognises Nisak's rights to the land on the Eastern boundary of the area in dispute. There are no Yimyayims or places associated with Custom traditions and ceremonies on the land in dispute. Tom Numake states he erected his Eastern boundary fence about 70 yards inside his Eastern boundary in Custom right in an attempt to avoid any dispute with Nisak (Defendant) arising.

(2) The Plaintiff requested to describe the nature of his complaint.  
Plaintiff Tom Numake states :-

"I wish to develop my land for cattle - rearing, and charge rental to cattle-owners for grazing on my land."

Nisak did not agree to pay rents, and claimed that he - Nisak - is the owner, and all rents should be paid to Nisak. This dispute has been the subject of seven Custom meetings without agreement being reached. This dispute started through the cattle rental prices, then became a boundary dispute, and then a question of ownership.

(3) The Defendant is requested to comment upon the grounds of the dispute as described by the Plaintiff.

Defendant Nisak states :-

" Yes. The price charged by Tom Numake is too high, and Tom Numake seemed to be trying to push my boundary back to the East. I claim ownership of the whole area under dispute."

(4) The Plaintiff is requested to describe the basis of his claim to ownership.

Plaintiff Tom Numake states :-

" My Tribe is IOUNE and because my village Louioakitan (Louiouanou) is on the North side of this IOUNE Tribe, I am called IOUN HIU FA MIN. There was a man named Ielome Tukiapen who came from a village called Rakaurne to a tribe called NAIH FA MIN and lived in a village called Ilisilis. When this Ielome came to Ilisilis, the people of this tribe bought him and the thing they bought him with was the piece of land near the sea called Iuiak. Because he was bought by a piece of land, he was no more called RAKAURNE but was called NAIH FA MIN. And also because of this, his family is called NAIH FA MIN and not Rakaurne. There was a woman whose name was Ta who came from a village called Lamasak of the tribe called IAMANU and married to this man Ielome Tukiapen at Ilisilis village. Ielo Tukiapen had a son then whose name was Tom Nalauas. A woman from Iamannouhne whose name was Numanipen came to Ilisilis village and married to Tom Nalauas and had 5 sons. One of them is Jimmy Ielom my father. There was a man called Numake Tuan from Louiouakitan village and he was from a tribe called IOUN HIU FA MIN (Also called Naka Ioun.)

This man is the man who owned the land at White Grass. Numake Tuan's father is called Iouiap Iasu from Louiouakitan village. The people of Numake Tuan's tribe called Ioun Hiu Fa Min, were nearly all lost in fighting, but yet a few were alive with Numake Tuan. When later all the rest died, Numake Tuan was the only one of that tribe alive. He had a wife whose name was Loapil Lop, but they did not have any sons, only one daughter whose name was ~~Maia~~ ~~Maia~~. She is still alive today. When Numake Tuan was old he wondered where he will have a man to take his place and raise up his tribe and to look after his land at White Grass. He ~~had a daughter~~ but yet he thought, a girl cannot look after the land, so he decided to ask some of the tribes outside his to see if they would send him a man to raise up his tribe and own the land at White Grass. Those are the names of the tribes he sent word to: First he asked the tribe called RAKAURNE, But they said no, we are helpers only we have no one to send. The second tribe he sent word to was the tribe called IOUN PIS MIN, but still they said the same thing. He sent word the third time to a tribe called LOUIAPEN, But that tribe - but they answered him no, not one of our men can be on your land, we cannot stand in a place like White Grass. He sent word the fourth time to a tribe called LOUMIA, and these are the names of the people of this tribe he sent word to :- Sumak Keri Bumahua, Iera, Souta, Nohmakai Niluan. Loam Bebut and Nohmakai Niluan were the men who sold the land at White Grass to Mrs. Worthington in the year 1896. These are the words of the people of this tribe who answered Numake Tuan's word when he asked them to give up the land. They will rule over his land at White Grass.



They said, Numake Tuan we cannot send you a man to rule over White Grass, because we are far behind and our place is a wet place. We are like the Nalpalip plant and you can only find this plant Nalpalip growing near the water down the creek. If you take one of us and put him in the White Grass then he will not stand but will be withered because the sun at White Grass is too hot and we are like this plant that cannot grow when the sun is hot and we cannot stand against the White Grass wind also. It is good for you to look for a tree called Nikilha because this tree Nikilha is the only tree for White Grass and can stand strong even when the sun is strong or when the wind blows on it. This tree is the proper tree for White Grass but not the Nalpalip plant like us IOUNHIU PAT MIN TRIBE. So Numake Tuan said, I have asked you four tribes but not one of you have sent mi a man to rule over my land so I am going to send to the last tribe who is my true friend. And so Numake Tuan send word to a tribe called NAIH FA MIN to a man name Ielome Takipen of the village called Ilis-Ilis. And Ielome said to his son Tom Nalauas if he could send his son Jimmy Ielome to go to Numake Tuan and live there with him to raise up his tribe. So Tom Nalauas said, yes I will send him. Not long after Numake Tuan's word reached the Naih Fa Min Tribe, everyone in the tribe agreed to send Jimmy Ielome to IOUN HIU FA MIN, to Numake Tuan. After agreement to send Jimmy Ielome to Numake Tuan, they brought him down to the sea coast to a village called Loukaluas where Numake Tuan lived. These are the things Numake Tuan bought Numake Tuan with. He bought him with 2 pigs and one Turtle. The names of the two pigs were Iausin and Fama. As everyone was watching him that day, he untied a special bead of honour from his own neck and tied it on to Jimmy Ielome's neck. This is a sign of giving him power, handing over to him all his land at White Grass, down to the sea and at Loukouanou village, ruling over all that he had, and raising up his tribe. After doing this he spoke these words to the people who were there as witnesses on what had taken place :-

I cried out for help to the four tribes but not one of them wipe my tears away but you my true Niel ( friend in custom network) has wiped it away. I say thank you very much for giving mi this young man to take my place.

These are the names of the people who were witnesses to these things:

1. Nalin of Italia village north Tanna
2. Numake Baus
3. Nip
4. Tuman
5. Ierumita
6. Johny Makitan
7. Laih
8. KapaLu
9. Soute
10. Tavo Iarispis of Lounelapen village
11. Hiepuat
12. Ietika of Loukatai village
13. Iautim of Loaneai village
14. Naniman
15. Kalia Moken
16. Ielome Asul of Ilisilis
17. Tom Nalauas
18. Harry Kalanu of Lounapalu north west Tanna.

Some years later a women name Mary Tana of Ienfitana in south Tanna married Ielome and had four children of which three of them died and I am the only one of that family alive. Jimmy Ielome was born on 21st. August, 1911. Jimmy Ielome was married on the 27th December 1931. Witnesses to the ceremony were Tom Nalauas and Sam, the father of George Titoga of Isini village. The man who performed the marriage



my grand father Tom Nelaus, let us give to this son the name of the man who put me to rule all his land. And when all in my family agreed to it, I was called Tom Numake Tuan.

This is the name of the man who owned the land at White Grass and from there down to the sea coast. He is of the tribe called IOUNE;

And from this history, I say I have the right to say that the land at White Grass and from there down to the sea coast is mine, and is the land of my tribe, IOUNE, IOUN HIU FA MIN, and NAKA IOUN, but it is not the land of the KOUJAPNE TRIBE."

(5) The Defendant is requested to comment upon the Plaintiff's statement, and to describe the basis of his claim to ownership.

Defendant Nisak states :-

I do not agree that the land belongs to the IOUN HIU FA MIN tribe. It belongs to the Kouiap Ne tribe, of which I am a member.

The people of my tribe who live on this part of White Grass were wiped out in the tribal wars."

(6) The Court enquires if the Plaintiff and Defendant stand in any blood or family relationship. Both state that neither is related to the other.

(7) The Court calls upon Plaintiff and Defendant to call Witnesses if they so desire. With the assent of the Court, and the concurrence of the Plaintiff, Defence witnesses are called in the first instance.

(8) Defence Witness No.2. - Jimmy Kalapen - states :-

"The evidence given by Plaintiff Tom Numake is largely true, except that the land belongs to the Kouiap Ne tribe. I belong to the RAKAORNE tribe."

(9) Defence Witness No.3 - Lahapis - states :-

"The tribe of the Plaintiff Tom Numake have been the owners by conquest. The land belonged to the Kouiap Ne tribe before the war known as KAMAVGIN - NIKOU", which was called by Tom Numake, the great-grand father of the Plaintiff, Tom Numake. After winning the war Tom Numake (the great grand-father) gave shares of the land, which had previously belonged to the Kouiap Ne, to the Naviliagleswatu tribe which had helped him and to his own Ioune tribe."

(10) Defence Witness No.4 - Yaris - states :-

"I am a member of the Nalimimutigapen tribe; my tribe helped the Ioune tribe to fight the Kouiap Ne tribe in that war and the Kouiap Ne tribe was beaten. The Kouiap Ne tribe occupied the land in dispute."

(11) Defence Witness No.5 - Assessor George Iamakia - states :-

"I believe that the original territory of the Kouiap Ne tribe extended Westwards to the sea in a direct line from the area occupied by it at present, that is over the area which is in dispute. I think the area rightly belonging to the Ioune tribe is the locality immediately south of the White Grass, and this strip extends from the interior to the sea."

(12) No further Witnesses for the Defence being forthcoming, the Plaintiff is invited to bring forward his Witnesses.

(13) Plaintiff's Witness No 2. - Assessor Willie Au - states :-

" The facts put forward by Tom Numake are true, and he is the rightful owner of this land.

Lahapis ( Defence Witness No. 3 ) has no standing in the matter; his family was allowed to stay on the land by the Plaintiff's fore - father Numake Tuan, when Lahapis' family was forced out of its own land in tribal warfare. The land properly belonging to Lahapis is a long way from the land in dispute. ( Witness No. 2 )."

(14) Plaintiff's Witness No. 3. - Assessor Lohmantani - states :- \*

" I accompanied the Court, the Plaintiff, and the Defendant, during the inspection of the land in dispute today.

The boundaries indicated by the Plaintiff are the correct boundaries in custom law, and his statement regarding his rightful ownership is true."

(15) The Court decides to call certain Witnesses who may assist it in establishing the facts. These witnesses are called on the basis of the information obtained in the Court's visit to the area of land in dispute (vide Plan at Appendix "A"). These Witnesses are in the category of persons whose bona - fides ownership rights in respect of adjacent and contiguous pieces of land are not in immediate dispute

(16) Court Witness No 1. - Willie Tuaka - States :-

" My tribe is NISINAMIN: I believe the ground on the Northern boundary of my Land belongs to Tom Numake.

(17) Court Witness No. 2. - Hiopuat - states :-

" My tribe is Nakaione; I believe the land in my ownership is bounded on the West by land leased to Mr. R.U.Paul, and on the North and North - East by Tom Numake's ground".

(18) Court Witness No. 3 - Iaramapin - states :-

" I am the uncle of Willie Tuaka ( Court Witness No. 1. ).

I am familiar with the land rights in disputed area. Tom Numake's statement is correct, and he is the owner in Custom law."

(19) Plaintiff. Tom Numake, requests leave of the Court to elaborate upon the basis of his claim. (para 4 above). The Court concurs.

(20) Plaintiff - Tom Numake states :-

" Numake Tuan caught the turtles at Louanatuan and despatched them to Loumia. He became annoyed when payment was not made, and diverted his turtles to the Kouiap Ne tribe, to which Nisak ( Defendant ) belongs. The people of Loumia under Nahuakai Haulik became angry, and summoned assistance from various tribes extending as far as Sulphur Bay. Numake Tuan and his Ioune tribe were almost wiped out in that war, which is called Kamavgin - Nikou, as mentioned by Lahapis ( defence Witness No. 3 )

The Kouiap Ne tribe was not involved in that war, and the story from Nisak's ( Defendant ) side about their people being killed on White Grass is untrue."

(21) Assessor David Nasu of the Court states that it is necessary to decide which version of the Kamavgin - Nikou war is the true one.



(22) Assessor Jack Nepiko of the Court asks Nisak ( Defendant) which custom road Nisak and his tribe are connected to. Nisak ( Defendant) appears not to know the answer to this question.

(23) The Court states that it wishes to hear two Witnesses, who are not present, name Sule and Hiokain.

Hiokain is reported to be ill and unable to attend, but Sule can be present tomorrow.

(24) The Court adjourn at 1615.

(25) The Court re-assembles at Lounapuktuan at 0900, Thursday, 22nd. February, 1973.

(26) Court Witness No. 4 - Sule - states :-

" My grandfather named Sule purchased a small piece of this land from Tom Numake's ( Plaintiff) grandfather.

However, I think the land belongs to Nisak ( Defendant) as I believe Nisak's tribe owned the land before the Kamavgin - Nikou war."

(27) The Court requests Nisak ( Defendant) to give the name of the " Yimayim" ( kava drinking ground) situated on his land which is not in dispute.

Nisak ( Defendant) states :-

It is called Loukavit. My family has the custom right at the time of the feast for the new yams to light fires from that place across the land in dispute right down to the sea for the purpose of catching the White Grass rats for food."

The Court states it will refer to existing authorities in due course.

(28) Plaintiff Witness No. 4 - Willie Kouman - states :-

" I wish to tell the Court about the custom regarding the White Grass rats.

In fact, Tom Nalake, who is the uncle of Tom Numake ( Plaintiff) is the person in custom who controls the catching of rats for food on White Grass, because Tom Nalake is the owner of the stones which have the power to make the rats breed. Tom Nalake decides when the rat catching season will start and designates who is to undertake the task initially. Thereafter, any person may catch the rats. So, it is Tom Numake's family and tribe who have the authority in this matter, and Nisak ( Defendant) can only join in at the stage when anybody else can do so."

(29) Nisak ( Defendant) states :-

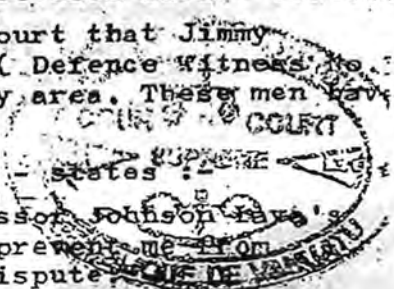
" I agree that Tom Nalake has the right stated by Willie Kouman in respect of the Northern area of White Grass, but I have the right in respect of the Southern area of White Grass, which include the land in dispute."

(30) Plaintiff's Witness No. 5 - Assessor Johnson Lava - states:

" I wish to explain to the Court that Jimmy Kalapin ( Defence Witness No. 2.) and Labapis ( Defence Witness No. 3.) belong to my tribe, and their rights exist in my area. These men have no standing in respect of the land in dispute."

(31) Defence Witness No. 2. - Jimmy Kalapin - states :-

" It is true that I am a member of Assessor Johnson Lava's tribe, but I do not understand why this should prevent me from telling the Court what I know about this land dispute."



(32) The Court enquires if there are any further Witness for the Plaintiff or for the Defendant; Both parties state that they have no further Witnesses, but Plaintiff asks leave to make concluding statement on his own behalf. The Court concurs.

(33) Plaintiff - Tom Numake - states :-

" Lowenatuan, which is the place where my family has the custol right to catch turtles, is on the beach on the Western boundar of this disputed land " Niougan"; it is actually on the beach frontir the Registered land under title. Nisak ( Defendant) Nisak and his tribe have no custom in this coastal area. Infact Nisak's ( Defendant grand-father Fred Natingan returned from Queensland and purchased a piece of land on the coastal area of Niougan from my grand-father that piece of land is now incorporated in the area under registered title.

Some of the persons who have pieces of land inside the area of " Niougan" do not have any right of ownership. In fact, when Robertson, Fowl, Edie, and Wallington introduced cotton on Tanna they were allowed to use the land to plant cotton, as their own land was covered in bush. This dispute only arose because of the cattle busness

(34) Defence Witness No. 2 - Jimmy Kalapin - states :-

" I do not agree that my land in Niougan" was loaned for cotton planting"

(35) The Court adjourns at 1100, and announces that judgement will be delivered at Isagel at 0800 on Monday 26th. February, 1973.

#### JUDGEMENT.

The Court re-assembles at Isagel at 0800 on Monday, 26th. February, 1973.

- (1) The weight of the evidence in this case i clearly in favour of the Plaintiff, Tom Numake. Plaintiff has demonstrated that detailed knowledge relating to the history and back - ground of the area of land known as " Niougan" which is to be expected of a Tannese with bona fides rights to land ownership.
- (2) Defendant, Nisak, relies on the claim that his tribe - the Kouiaj Ne - owned the area known as " Niougan" prior to the tribal war known as "Kamavgin-Nikou", and upon custom rights of catching rats on "Niougan", but the court is of the opinion that this claim has not been substantiated to a degree sufficient to convince the Court of its authenticity.
- (3) So far as this Court is aware, J. Guiart's work " 150 Years of Cultural contacts in Tanna" is the only written reference which can be considered at all authoritative in relation to the matters under review. Guiard records ( Pages 350 & 352 ) a relationship in Turtle custom between Lowanatuan and Ilisilis, also between Lowanatuan and Loumis, which tends to support the historical basis of the claim advanced by Plaintiff Tom Numake.

Defendant Nisak's Tribe and Kave ground are listed at page 350 of Guiart, but Guiart does not record any custom privileges in respect of this group. This in itself, of course, cannot be held to indicate that such custom privileges did not, or do not, exist; however, it does mean that the Court has to consider what alternative corroboration of Defendant Nisak's claim i before it.



4. Four Witnesses appeared for the Defence; their statements do not reveal a convincing degree of familiarity with the previous history of this area of land

5. Of four Witnesses called by the Court itself, only one - Sule - was of the opinion that Defendant Nisak had a rightful claim; at the same time, Sule stated that his grand-father had purchased his land from Plaintiff Tom Nuzakes grand-father.

At that time the historical events which have been in argument before the Court would have been more vividly in the minds of the generation to which the respective grand-fathers belonged, and the Court is entitled to doubt if Sule's grand-father would have negotiated the purchase with Tom Nuzakes' grand-father, if he had believed his rights would have been better secured in custom by negotiation with Defendant Nisaks' family or tribe.

Furthermore, Defendant Nisak did not refute the claim by Plaintiff Tom Nuzake that Defendant's own grand-father - Fred Natingan - purchased a piece of land in the "Niougan" area from Plaintiff's grand-father.

6. Turning to the contemporary aspects of this land dispute, the Court is entitled to consider the effect of the general local realization that cattle-raising may possibly develop as an industry of local economic importance. White Grass, including the area under dispute, provides potentially good pasture for a large number of stock, and has an important asset - there is no bush to be cleared as a pre-requisite for the establishment of pasture.

The Court weights this fact in relation to the other circumstances of the case, particularly the timing of the development of the dispute over ownership rights.

7. The Plaintiff has employed his resources in the construction of fences on the land in dispute. Would the Plaintiff have undertaken this considerable project if he had been in serious doubt as to his rights in relation to the land

In the opinion of the Court he would have been extremely rash to do so.

8. The Court of two Assessors and the President are of one mind in this matter, and the Court is of the firm opinion that the Plaintiff, Tom Nuzake, is the lawful owner of the area of land known as "Niougan", situated at White Grass Fanna, and that the boundaries declared by the Plaintiff are the correct boundaries in custom law.

9. The Court notes that during the course of the hearing some disagreement has emerged with regard to the status of certain small parcels of land situated within the over-all area of "Niougan". The Court makes no judgements in respect of these small parcels of land because it has not been requested to do so, but the Court strongly urges that such disagreements should be resolved amicably between the parties concerned, without further recourse to Court action.

10. The right of Appeal to the Joint Court through the President on, or before 5th. March, 1973, is explained to both parties to the action.

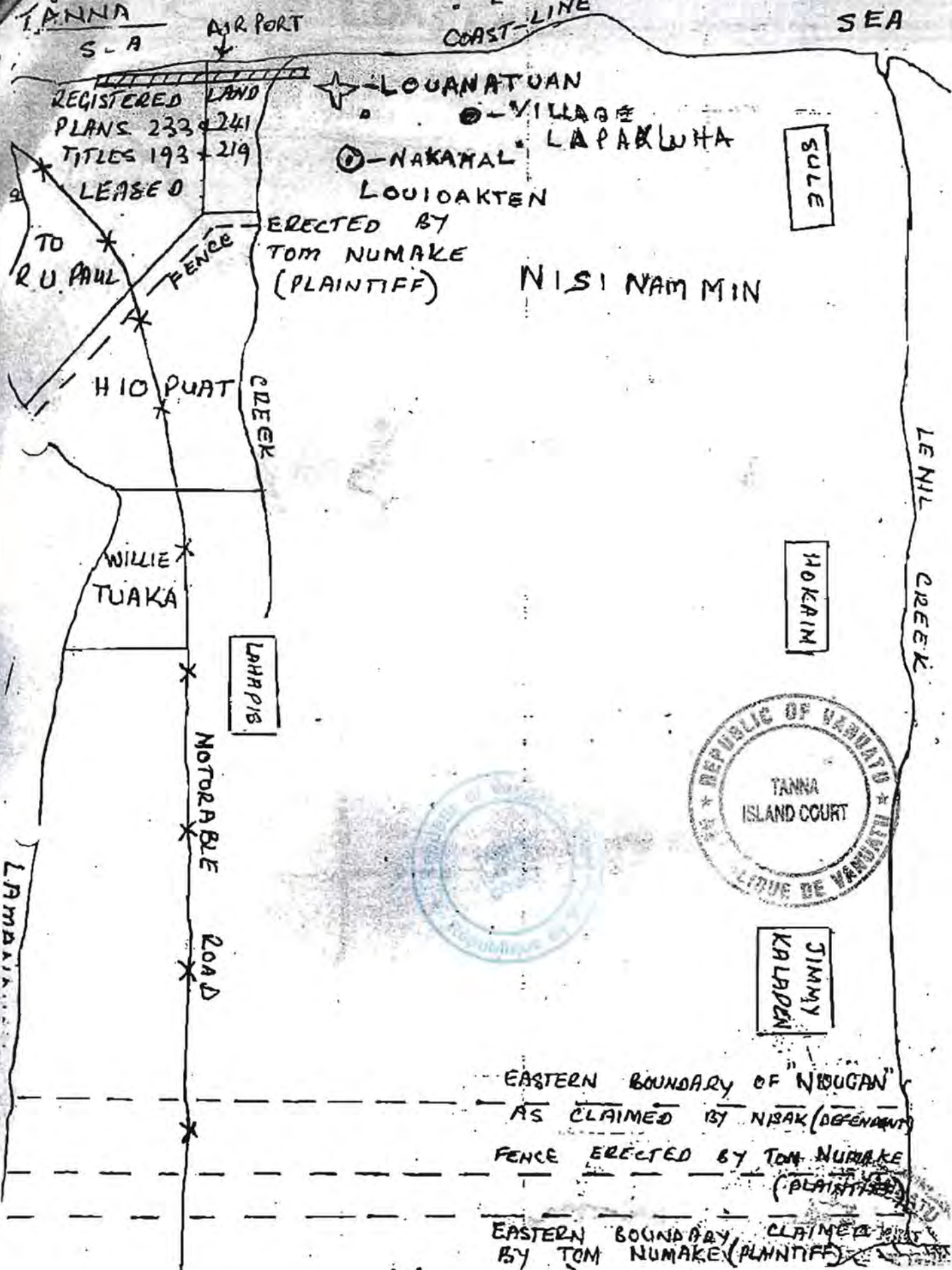
3 days later Nisak came and see me and we went up to Isafel and he told Mr Norris BDA. that he will not go to the Joint Court in Vila but believe that the land at white Grass is belong to Nuzake Tuan and he was wrong the day that it was his mistake. Just after one month Nisak paid at his home karamata.

*J. C. Norris*  
President  
Native - Court  
Southern Districts  
ISLANDIA  
DISTRICT COURT  
SOUTHERN DISTRICTS  
VANUATU

N.C.S.D. CIVIL  
JUDGEMENT No. 1/73



PLAN (NOT TO SCALE)  
AND AREA KNOWN  
AS "NIOUGAN", WHITE-GRASS  
TANNA



LMAMAKA

LAPHPIS

HOKAIM

JIMMY  
KALADEN



EASTERN BOUNDARY OF "NIOUGAN"  
AS CLAIMED BY NISAK (DEFENDANT)  
FENCE ERECTED BY TOM NUMAKE  
(PLAINTIFF)

EASTERN BOUNDARY CLAIMED BY  
BY TOM NUMAKE (PLAINTIFF)