

(LAND JURISDICTION)

BETWEEN: FAMILY MOKONO
CHARLEY TOMATE
Original Claimant.

AND: CHIEF ORAH PETER as Representative of
OF LAMEN BAY COMMUNITIES
EPI
Counter Claimant no 1.

CORAM: JUSTICES Magistrate EDWIN MACREVETH
BENJAMIN KORAH
ATIS WILLIE
ANDREW AVIO.

CLERK: SEMI JOEL

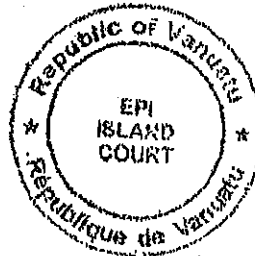
Area of dispute: Velague at Lamén Bay, Epi.

JUDGMENT

This dispute concerns land in Epi Island. The Original Claimant by way of a statement of claim registered its claim before this Court on 13th of September, 2000. Upon advertisement of the area, it attracted a Counter Claimant to register its claim filed herein.

The Contentious issue before the Court for determination relates to the ownership of Velague land.

For specification, the area in question concerns the land so called "Velague". The Counter Claimant we noted in their map directs us to cover Velague land and extending to other undisputed areas. The Counter Claimant as a party to the case, is composed of four tribes or Nakamal joint as the opposition.



The area in dispute for several years now has been an area for tourist attraction. Such development has largely contributed income to the local inhabitants of the subject area.

To guarantee better understanding of the evidence adduced before this Court, it is worthy to present each parties evidence. The Claimant's relevant evidence are recorded in the following words:

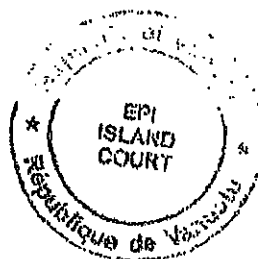
Witness 1, Charley Tomate (the Claimant) in his statement submitted that Family Tomate is known to be an ancient native of origin to the land Velague and Bourgue. He has tendered a document marked as exhibit CW1 containing a sale of the land to a French Planter, Barthelemy Gaspard dated 15th of March, 1886.

A subsequent document marked as exhibit CW2 was advanced to the Court to re affirm the sale aforesaid and that Tomate is a Chief. On cross examination, he also stated that he was at Velague with his father who was a labourer of the French planter at Walapea for two years during his childhood. To further re enforce his argument in justification of his claim, he has also produced a family tree tracing his generation back to 1886, marked as exhibit CW3.

Witness 2, Lucie Mosala who appears to be in her early 80 years of age testified that she was born in Lamén Bay, and she was adopted in her early child wood by Willie Waat, a decendant of Chief Tomate. As she grew up around her teenage, she was re patriated to her Island of birth where she married Joe Naunga purposely to secure or look after her brothers land Velague.

On cross-examination, we noted a few weaknesses by reason that she seemed to be uncertain or inaccurate about the boundaries or limits of Velague land. She additionally pointed out that Maite has ordained Chief Tomate. Further questions put to her pertaining the Chiefly System practiced in Epi, shows that Maite is not a Chief.

On the other hand, she could not even located a specific Nasara belonging to chief Tomate. Instead she generally put to the Court that there is a nasara in Velague land.



Witness 3, Joe Naunga, husband of witness 2, only confirms the statements made by witness 2. He stated that he was present during the communication of Willie Waat words advising them to look after their Velague land. This witness has also made contradictory evidence for instance, that Mahite is a Chief and not certain about the limits of Velague.

Witness 4 Isaac Johnson statement only shows that he did hear the story from his grand parents saying that they own land at Liman. Liman is interpreted to name Epi according to Paama's dialect. Unfortunately, he appears to know nothing about the land nor he has never worked or walked on the land. Upon inquiring into the Chiefly system, he has no say.

() Witness 5 is of no great assistance to the Claimant's case. His statement is simply re-affirming witness 4 statements.

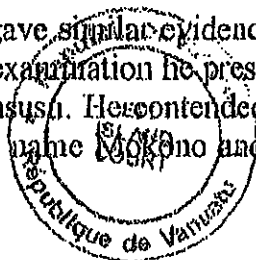
The defendant on the other side, called four witnesses in support of its claim.

Witness 1, Chief Peter Orah statement provides that he has never heard of Velague or Bourgue. Even Chief Tomate and his father Mokono was not made known to him by his grand parent except that there are four nakamals embodied within and in the vicinity of Velague land. Their Nasara's are Lour, Lokalie, Umba, and Lumuwii.

() He pointed out that there is no land called Velague. However, he was only aware of Vela. This is an area of 50 - 60 meters stretching along the sea shore of Lamén Bay. History shows that his forefather originated from the Nasara or Nakamal of Lumuwii where Merai was the first Paramount Chief. A family tree was also produced particularizing the generations.

At the course of cross-examination, he finally submitted that the claimant's family is a migrant to the Island of Epi. They have migrated to Paama in 1913. The Claimant has not challenged this story. He admitted, that he had no knowledge of the sale of Velague land except at date. He does not agree with the sale of land.

Witness 2, Tom Reuben a descendant of Lour gave similar evidence that he has no knowledge of the sale of land. On cross examination he presented the name of his nasara's Paramount Chief, Varamasuh. He contended that the name Tomate has no origin in Epi and that the name Mokono and Tomate



must have come from Ambrym or Paama. Again this evidence in chief remained unchallenged.

Witness 3, Jack Artis and witness 4, Chief Daniel Dick Yolopua statements to shares similar words of the above witnesses.

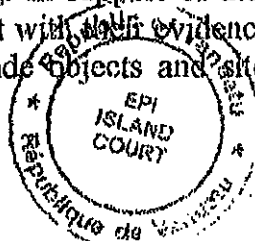
Having highlighted the parties evidences presented to the Court, our duty is to analyze and weight the evidence. The immediate question in our view to answer is whether the claimant has a right in custom to claim Velague land.

The documentary evidence of the sale of Velague and Bourgue in 1886 appeared to place confidence to the claimant to launch his claim. These documents referred to as CW1 and CW2 aforementioned looked perfect in their content. They basically illustrating that Chief Tomate was settling at Velague land. He was a party to the contract of sale, witnessed by Loua, Dende and Farandesi during the formalities leading to the signing of the instrument of the Sale.

The answer to the posed question is in the negative. The Claimant being a tribesman of the Velague according to the documents does not guarantee him the right in custom to have ownership of the land. Moreover, these instruments cannot be construed to give any absolute right to the claimant. It is fundamentally important that custom or the customary practices, practiced from generation to generations be proved by way of evidence. Hence, the Claimants right could only prevail if custom rights are proved. This is the foundation of one's heritage prior to establishing any customary right.

From the totality of the evidence gathered before this Court, we are in doubt that there is no sufficient and relevant evidence of persuasion. The claimant and his witnesses have failed to prove custom for instance, show the Court any undisputed Nasara or Nakamal. The claimant could not also explain the chiefly system practiced on Epi and its linkage to the land tenure. By contrast, they have produced very uncertain contradictory evidence in their appreciated efforts in proving their Claim.

It is attentively noticed that all claimants evidences have been opposed by the Counter Claimant during the course of the hearing. In support of their objections, they have produced and convinced the Court with their evidence. For instance, their evidence are supported by manmade objects and sites



visited during the land visit. The Four (4) Nakamals have been proved before our presence when we visited the pillars of stones used for ordination ceremonies of their Paramount Chiefs.

According to the Chiefly system widely practiced in Epi, there is a Paramount Chief who exercises his authority over his subordinate Chiefs (assistant Chiefs). For illustration purposes, it is proved that in Lour. Varamasusu is the Paramount Chief and his assistants are Varawewele and Varaleng. In the Nasara of Lumuwii, evidence shows that Chief Taritonga has ordained Chief Merai who is also a Paramount Chief. Pillars of stones marking his ordination are in existence and proven to be existing before 1886.

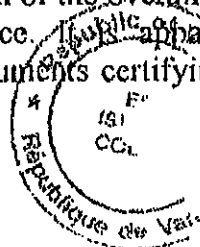
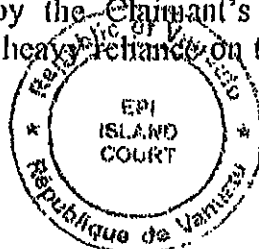
It is evident that there is a customary obligation for a Paramount Chief to allocate land to his assistants together with their boundary limits. As a matter of reciprocity a custom lease is normally paid to the paramount Chief. This Chiefly system and the land tenure system are proved to be intertwined. Thus, any isolation or absence of these two founding aspects relating to land would prove an invalid custom.

It is obvious, the Claimant could not prove the above practices. For example, firstly there is confusion regarding the status of Chief Tomato. The oldest witness of the Claimant produced evidence that Chief Tomato was ordained by Mahite who is not a Chief. We find this evidence to be very odd and does not confirm with the custom practiced in this Island.

Secondly, the Claimant seems to be unclear about the limits of the Velague land. They have mapped areas of land beyond the normal customary boundary of the land. This was one of the prime source of the dispute that triggered the differences between the parties and their relatives. The land velague originally known as vela is only a landing area consisting of 50 - 60 meters in length.

Furthermore, there is no evidence forwarded to the Court pertaining the right to acquire and sell the land. Even the question of how the right was given could not be easily answered by the Claimant.

Given the above discussions and in consideration of the overall evidence, we are not persuaded by the Claimant's evidence. It is apparent that the Claimant has placed heavy reliance on the documents certifying the sale of



subject land in question. However, such documents in our view, cannot be construed or admitted as proof of ownership. We have reminded ourselves to be mindful and conclude that such instrument (CW1) is not a decision of a recognized Court that was in existence during the European settler's era in these islands.

It could be implied that the said documents may have been obtained illegally by fraud for instance. We noted that at the time event, 15th March 1886, there was no proper government in place. Moreover, Chief Tomate could be acting as a spokes person of the Lamén Bay people instead to being a Chief according to the document. This has raised doubts in our mind because there are many arising possibilities regarding his status and origin.

The Claimant has no right of occupation or use over the land as there is no information ascertaining or calculating the period of time they have actually lived in the land.

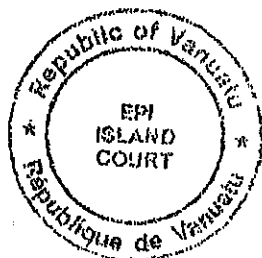
Article 73 of the Constitution is guaranteeing the customary rights of the original land owners of all alienated land. That is to say that all alienated land whether a leased or sold must be returned to the original owners.

The Island Court Act Cap, 167 also gives us the power to determined land ownership. Therefore, in exercise of these powers conferred and in light of the foregoing evidence, the Claimant's claim must entirely fail.

Having so ruled it is this day adjudged that Chief Orah Peter representative of the four (4) Nasara of the Lamén Bay Community is the rightful owner of the Velague and bourgue land as mapped and marked in their claim accordingly.

The cost is certified in the amount of VT 30,000 to be borne by the Original Claimant.

Any appeal must be under taken within 60 days from date.




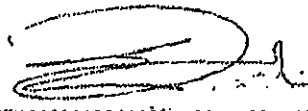
Dated at Rovó Bay, Epi this 17th day of October, 2003.

BY THE COURT.


.....
JUSTICE. BENJAMIN KORA.


.....
JUSTICE ARTIS WILLIE


.....
JUSTICE ANDREW AVIO.


.....
MAGISTRATE EDWIN. M

