

BETWEEN: TATNEL KAISING

Original claimant

AND : TESBI KAITES

Counter claimant

Coram: Magistrate Edwin Macreveth  
Assessors: Justice Daley Philip  
Justice Frederick William  
Justice Robert Niptik

Clerk : Wendy Raptigh

### JUDGMENT

The land disputed by the parties is situated on the south western part of the island of Malekula. It lies inland from the village of Lawa registered as *Ofmoba land*. Its land boundaries commence at Wikmo village at the south moving northeast wards to Loghowoi ending at a Navel tree and follows southwards to Nulepe river. From there, it runs southwards to Tumbogho on the east and back to Wikmo village. For specification purposes refer to the advertised map filed therein by the original claimant.

Both parties are vying for the ownership of the disputed land. The issue for determination is of ownership.

### HISTORY AND CUSTOM

Before embarking on the subject matter; and for purposes of better understanding the reasoning of this judgment, a brief discussion of history and custom practices of the concerned area are outlined below.

There are two main tribes of this island of Malekula namely, the *Big Nambas* and *Smol Nambas* tribe. The claimants to this case belong to the *smol nambas* tribe. They are therefore expected to practice the *smol nambas* custom usages and processes.

It is essentially important to note that the custom practiced in this locality varies from that habitually observed by the *smol nambas* tribe in the central part of the island of Malekula. A *nasara* is divided into three *nakamals*. It is often described in the following words "A *nasara* is like a house which has three main parts, the front, the body and the back or tail". Authority or respect is always paid to the head or front of the mansion. The head of the house or *nasara* is traditionally called (*Amai*), the body (*Amahai*) and the tail (*Amesuwe*). These three organs within the organization are in some respect associated with the paramount chief who normally resides at the head of the *nakamal*, *Amai*. The word *nasara* is interchangeably used for referring to a *nakamal*.

The paramount chief has his own *nakamal* and a governed land boundary. He would also have subordinate chiefs whom have their own allotted parcel of land. A chief earns his chiefly name or title by way of performing a *namangi* (pig killing ceremony). There are *namangi* ranks for a chief to climb to the highest title. Pig killing ceremonies are traditionally carried out at a *nasara* whereby stones are erected in celebrity of the event. During a *namangi* ritual other chiefs from other *nasaras* will also appeared with their pigs in support and witness of the performing chief. The slaughtering of their boars will also be marked with stones at the surrounding of the *nasara*. *Nasaras* do not differ in terms of rank but are displayed for similar purposes. The first ever created *nasara* or *nakamal* of a chief becomes his original *nasara*.

The principal chief has the absolute authority to overrule his people including those residing at adjoining parts of the *nasara*. For his status of seniority, he takes responsibility over the sharing of land to his people. The head chief governs the whole land boundary encompassing allocated piece of land allotted to the different parts of the *nakamal*. This is a monarchy type of organization whereby the paramount chief normally governs his subordinate chiefs living within his governing land territory.

All subordinate chiefs and their subjects are accountable to the paramount chief in respect of every social affairs. Any other tribe that migrates into the area seeking refuge or simply looking for residence would automatically remain under the authority and control of the big chief. In coming strangers into the land are housed under a separate *nakamal* called *Venembukolit*.

It is generally accepted that a moving clan is sometimes allowed to perform pig killing ceremonies on others soil or nasaras. It is traditional that such an occasion cannot entitle such individual or tribe to claim ownership over the land or nasara of performance.

Land is communally owned based on common descent, residence within a nasara and participation in common activities. Land is customarily transferred or inherited patrilineally from the paramount chief to the eldest son. The son then has a duty to distribute land to other members of the bloodline or nasara. This is a male dominated constitution which is closely connected with the land tenure system. This cultural principle flows eternally from generations to generation. By custom, land cannot be transferred from one tribe or bloodline to another.

A tribe or a bloodline is identified with the land through its nasara or nakamal. Individuals within a tribe are closely tied up with his territory by affinity and consanguinity through blood and marriage. History also shows that there are customary boundaries or landmarks in existence from ages to the present. These boundaries are usually indicated by creeks, rivers, dense forests, rocks or other physical phenomena.

With this brief summary of the custom practices and usages, the Court now present each parties claim commencing with the primary disputant.

#### **ORIGINAL CLAIMANT**

Tatnel Kaising in his presentation, led evidence that he is originated from the nakamal of Ofmoba. The first ever human being to live this land is Nawanmorongo. He created the nakamal of Ofmoba. He is the paramount chief and he comes from the head of the house so called Amai. Nawanmorongo had several marriages (confirmed around 6) during his reign. He had various sons. The first son Nemetetahimaha died without having any children. Consequently, as a result of the situation; Palmeleun, whom is the eldest from the second wife therefore, inherited the father's chief title. A family tree was produced before the Court for perusal in illustration of his history and past relations to the present. There are three nakamals at the land of Ofmoba.

His chiefly ancestors have earned their chiefly ranks following certain proofs for having performed several namagis and accepting other nakamals to seek refuge under his nakamal. For instance, women from Opmovet and Venembea nakamal had sought safety under his hands after fleeing from tribal war. And amongst other data, chief Kaisingbuas also gave land from Amai to many local residents for cultivation purposes such as Latapas to Loloy and Lowoimes to Masing

Venevil. He has also buried the last surviving bloodline of Amesuwe nakamal by the name of Natunsal. He has also given some portion of land at Amesuwe, Venevetkumb to one Kambornbot.

In his counter argument against the defendant's claim he provided that Kaites ancestor, Talpehkumo whose son is Nemenwas had originated from the nakamal of Venembea. He is a stranger to the land of Ofmoba. He was accepted to live and work the land of Amahai (second nakamal) besides chief Nawanmorongo and his people. Other strangers moving into the land including the defendant are housed at the nakamal of *Venembukolit*.

He added that Kaiding, one of kaites' brother has lately planted coconut palms in parts of Amahai nakamal at Lowoi Metemete and Mahapo. This land of Amahai was handed down to him by way of a customary will by Kawasvagan. Prior to his death, the deceased had declared that Kaisingbuas will take care of his son Kambongranmap and his property at Amahai. In support of this fact, he added that Kambongranmap was living with them for many years. Kaisingbuas had paid his wife Letbin.

However, despite the relatively long friendly relationship, following some differences over the land in question, Kambongranmap has moved away from his side. Kambongranmap has joined hands with Kaites to forcefully removed him from his own land for 16 years. As a result of this dispute, he has suffered major losses to his properties on the land.

He further laid emphasis that he was traditionally and highly recognized as a high chief. That is why on the 28<sup>th</sup> day of January, 1988 during a visit to the nakamal he was asked by Kailoune, kaites, Bongran and Wimbong that as the paramount chief he be seated at a stone while they sit under him during a photo session taken at the site by a worker of the Vanuatu Cultural Centre. He alleges that the defendant and his co witnesses have recently fabricated false stories in opposition of his perfect history. Prior to that decision, a village court has given judgment in his favour in 1986 as custom owner of Ofmoba.

The majority of his statements were not challenged at the course of examination save, that the defendant has disagreed that Nawanmorongo is not a native or chief of Ofmoba. When questioned by the Court, he was noted to have maintained his evidence in chief that he is indeed from Ofmoba. More importantly, this party has genuinely admitted that the defendant is also from Ofmoba land but remains under his authority. This is a very crucial point of fact noted by the Court.

Witness, David Wimbong Paramount chief of Tepehe and Lampetef nakamals stated that the history recited by the original claimant is correct. One of the proof is that chief Nawanmorongo has been gardening at the land of Tepehe nakamal. That is where he built his bedlike platform of yam. Nawanmorongo also gave parts of Tepehe land to other nakamals. He has also witnessed Kambongranmap's staying with Kaisingbuas. He rejected the defence claim questioning Nawanmorongo's status of origin by arguing that the defendant has just fabricated his so called history.

In witness, Lui Saubaal said that Kaisingbuas had given him land at Ofmoba. He went on to provide that the counter claimants' father Kaites has never mentioned this history throughout various court sessions held over the land. The defendant had had great difficulty in tracing his family tree during a court proceeding held back in 1975. He has witnessed that the father could not name his grant parents such as Nemenwas. Tatnel was the only person whom had assisted him in his history for naming his past relations. He questioned as to where did the son, Tesbi collected these stories because he is from the nakamal of Venembukolit. He is also an eye witness to the visit to the old nasara site of Ofmoba in 1988 as referred to above.

Chief Shemson Thompsen high chief of Lawa also confirmed the 1975 event as told above. He went on to state that in 1986, he has witnessed a village court declaring that the counter claimant is a native of the smol nakamal Venembukolit. On interrogation, he explained that historically the land in question belongs to Tatnel's chiefly line. Nemenwas is an outcast to the land because he was once accommodated in the nakamal of strangers, Venembukolit.

#### COUNTER CLAIMANT

Tesbi Kaites claims that he is the rightful owner of the land. He is originated from the head of the house "Amal" together with other families such as Wilkensua, Nanavagun, Nemetetahimaha, Sokowihowo, Nahauaian who have all died without having any surviving issue. He argued that he is the sole surviving bloodline of the land. For that reason, he has the full right to govern his people and the land. He has identification stones, and a bedlike platform used for storing harvested yams in place to prove his claim. He concluded that the original claimant is not a citizen of Ofmoba nakamal but an origin of Moulveo nakamal. Family tree charts are also produced to the Court.

In a supplementary statement he told the Court that his ancestor has originated from a stone called Nevetmoh. This rock once split and then formed a boy who married Watah Numbibi. A twin son was born from this couple, namely,

Palaupage and Polepiea. At the stage of their manhood, their mum had advised them not to cause any problem in the area and its proximity. Following this warning both migrated to other parts of the land. Polepiea moved and settled at Lohkalate where he got married to Watahmopat. This couple later transformed into rocks. Palaupage had a family of three sons who formed the tree (3) nakamals of Ofmoba.

However, on cross examination, he was noted to have encountered difficulties in his attempt trying to link his tale with his family trees. There was no other supporting statement to back this story. Tatnel Kaising has also opposed his whole statement.

Witness Letpen Kambongranmap said that she is originated from the nakamal of Timpses and is related to Netene Mahu. Netene mahu is her great grand father who comes from the nakamal of Moulveo. Tatnel Kaising is also a citizen of moulveo nakamal. A man by the name of Palmeleun had married a woman *Metlibuas* from the nakamal of Venio whom begat 3 sons and a daughter. These children are, Kalum Tetawul, Kaiusbuas, Netene Mahu and Sandu. Kaiusbuas is Kaisingbuas' father whose son is Tatnel Kaising.

After, Palmeleun died at Moulveo, Metlibuas repatriated to her own nakamal, Venio with her son Kaiusbuas. She was later espoused to a man from Ofmoba. Kaiusbuas had followed her mother to Ofmoba where he then married a woman from Lohto. While his other brothers and sister remained at Moulveo. From the said union she had a son, Kaisingbuas father of the primary claimant. Her grand father Netene Mahu and Kaisingbuas are all natives of Moulveo nakamal.

She further held that Kaisingbuas and Kaiusbuas have adopted part of their mother's name " buas". She added this name *Palmeleum* has origins from the bush or inland people such as the Moulveo nasara. The chiefly name Meleun does not belong to the coastal people of Ofmoba.

On interrogation, Tatnel arguably refuted the whole statement labeling it as manifestly false. He clarified that Kaiusbuas' mother is Netanemasing not Metlibuas. He did agreed that the questioned female re married at Ofmoba at the nakamal of Venemkolit. She begat 2 daughters namely, Lembeltahi and Lembelnambo. He denied having any familial relationship with Nete Mahu and Moulveo nakamal. This witness was silent over the responses advance by Tatnel.

The second witness, Kalmasing Bongran did not say much except that he gave a general confirmation claiming that Tatnel Kaising is from Moulveo Nakamal. Witnesses, such as Kailowane Kalsie, Bongran Kalmassing and Masingran Nadunsal could not be called to give evidence as it transpired from their

statements that they are also each claiming the land beside, the defendant. Their entire written statements have no relevance and completely do not support the defendant's case. For that reason, their statements have been ruled inadmissible.

### Analysis & findings

In consideration of the gathered evidence, the Court found the following findings.

1. There is proof of *Nemel Who* (a separate nakamal used for accommodating strangers) *ples blong ol tawian*. At the visit, the defendant had given vivid explanation of the different stone patterning and other identical remains at the site. His statement of claim at page 27 also provided a detailed diagram and explanation regarding the structure of the site. Kaites has also given similar explanation at the same time disputing the ownership of certain stones and the yam platform. He has never disclosed these fresh information at trial nor in his statement of claim.
2. Letpen's statement gain less weight due to the fact that Tatnel Kaising has largely criticized her statement in labeling it as fake. Tatnel has advanced evidence in respond that Kaiusbuas' mother is Netanemasing but not Metlibuas. Letpen had no knowledge of this fact and could not either name Palmeleun's father and his origin. She seemed to have scarce knowledge surrounding her own proper statement. There is no real issue over the word Palmeleun. The court's view is that such is a chiefly name for a higher ranking chief commonly use in smol nambas societies. Its application or use has no explicit tabu or restricted area.
3. The Court has had the opportunity to peruse past records of court sittings over the subject land and found the following.
  - All along following historical events regarding village meetings over the land, Tatnel had always recited the same history for generations to date. This is evidenced from documented village court minutes filed herein.
  - Secondly, that on the 3<sup>rd</sup> of January, 1986, Kambongranmap had told that Land Court that he shares the nakamal of Amahai with the defendant. That tribunal gave judgment in favour of the plaintiff as custom owner of Ofmoba.
  - Thirdly, on the 28<sup>th</sup> January, 1988 the Native Court at page 3 had again declared Tatnel and Kaites to have come from the same nasara of Ofmoba.

It as well duly declared the original claimant as the big chief of Ofmoba while the defendant be the second in command.

- In verification of these records, it transpired that none of those tribunals has ever declared the original claimant to have come from Moulveo.
  - Additionally, Tatnel Kaising has honestly told the Court during questioning that the defendant is also from Ofmoba but living under his authority. Thus, coupled with other relevant information adduced before the Court, there is room for the court to pronounce that both parties have come from the same nasara.
4. Furthermore, there is ample evidence presented by the claimant and his witnesses showing that chief Nawanmorongo is indeed a man of honour and authority. He has been taking care of his grassroots' social needs given his chiefly duties and obligations. That is shown by the unchallenged evidence showing that Nawanmorongo and his descendants have been giving land to various people from the concerned area.
- Firstly, that chief Nawanmorongo had given land to Nemenwas to work at Amai where he had followed her mother. Kaiding a relative of the defendant had planted coconut palms at Amahai Lowoi Metemetete & Mahapo. While, chief Kaisingbuas lent land from Amai to various locals for subsistence farming such as Latapas to Loloy and Lowoimes to Masing Venevil.
  - Secondly, there is confirmation support provided by chief David Wimbong that under the ruling of Nawanmorongo, parts of the Tepehe land were also given to other nakamals.
  - A further fact is that prior to Kawasvagan's death, by way of a testamentary will, gave right to Kaisingbuas to take care of the land of Amahai. This is supported by the fact that Kawasvagan's son kambonranmap had once lived under the care of chief Kaisingbuas after his father's death until his adulthood. This past account is also witnessed by chief David Wimbong.

These undisputed facts would inevitably give indication that Kaising buas and the former are figures having personality of honour and responsibility. Those confirmed evidence have significantly discredited the defendant's argument regarding Nawanmorongo's status and origin.



5. On the other hand, the defendant has failed to supply any clear evidence as to whether Telpehkumo, Nemenwas and other descendants down his family tree have performed any namangi ceremony. Additionally, the dispute over the origin of Palmeleun cannot be fully supported due to lack of additional evidence.
6. Another weakness on the part of the defendant is that he could not link his legend to his family trees that Palaupage had three sons forming the tree (3) nakamals at Ofmoba. There was no other information communicated before to the Court in support of his story. Therefore, his entire claim for ownership cannot stand.
7. More remarkably, both parties have presented evidence accusing each other to have come from different nasaras such as Moulveo and Venembea. Having considered the available facts regarding this contentious issue, the Court could only conclude that both parties have originated from the same nasara of Ofmoba but residing under separate segments of the nakamal.

## CONCLUSION

From the totality of the gathered evidence and in application of the custom practices, the Court is satisfied that Tatnel kaising has established his claim by producing sufficient grounds proving that he is originated from Amai. Therefore, in accordance with the custom usages, the head of the house must duly gain authority over the whole land territory of Ofmoba as mapped accordingly.

Having so ruled, Tatnel Kaising is hereby declared custom owner of Ofmoba land.

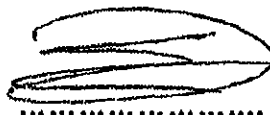
As such, this Court further directs that for ease of clarity, the issue of the paramount chief's title is not considered in this judgment. Such subject matter is left to the relevant courts for its determination.

All costs incurred from this proceeding will lie where they fall.

The defendant has 30 days to appeal.

Dated at Lakatoro this 3<sup>rd</sup> day of March, 2006

BY THE COURT



EDWIN MACREVETH  
Supervising Magistrate

