

**MALEKULA ISLAND COURT
OF THE REPUBLIC OF VANUATU
HELD AT LAKATORO/ MALEKULA
(Civil Jurisdiction)**

Civil Case No. 4/06
Judg. No.

BETWEEN : **DAVID MALRORY
CHRISTOPHER MALRORY
(Claimant)**

AND: **ANDREW MALRORY
DILE MALRORY
HURRY MALRORY
(Defendant)**

IN THE MATTER OF: Claim rights of custom ownership to property.

Coram: **Jastis Frederick David
Jastis Johnsen Frazer
Jastis Maxwell Arhampath**

Clerk: **Wendy W. Raptigh**

JUDGMENT

Brief background blong case:

Case ia antap hemi wan dispute ova long wan coconut plantation. Claimant ibin karem case ikam long Court mo registerem long 28th March, 2006. Claimant istap kleim se Plantation iblong hem from Willie (papa blong hem) nao ipem graon mo planem ol coconas ia. Wheas ol Defendant oli talem se coconas plantation ia iblong olgeta from papa blong ol Menmen nao ipem graon mo Menmen wetem papa blong hem (pupu blong olgeta) nao oli planem ol coconas ia.

Case bifo long Court hemi blong finemaot se, whu hemi shud ownem coconas plantation ia wei stap long dispute ia?

Trial blong case ia istat long 24th April, 2006.

Afta long trial Court ibin decide blong visitim disputed site bifo oli save givim decision blong ol. Court ibin manage blong go visitim site long 23rd October, 2006 long morning.

Ol parti blong case ia evri wan blong Pinalum mo oli ol extended family (meaning ol papa blong olgeta oli ol stret brata). Coconut property ia hemi stap long Pinalum village nomo, wan area long North East part blong Malekula.



History blong case:

David Malrory nao hemi main claimant. Claim blong hem iread:

Statement concernem right long properties blong papa blong mi Willie Malrory.
Right blong mi long property blong papa blong mi Willie Malrory emi ko olsem.

Pupu blong mifala, Johnney Malrory emi pem wan area blong land long Lorry Rengenmal.

Pupu Johnney Malrory emi gat tri sons – fas son emi Papa blong mi Willie Malrory, second emi papa blong Andrew, Dile mo Herry we emi menmen Malrory mo las wan emi Charley we emi bonem mi wetem Christopa Malrory.

So pupu Johnney Malrory emi dividem area blong land we emi pem long tri part, mekem se papa blong mi Willie emi planem kokonas long area we emi blong em.

Papa Willie emi marrietem mama Ester Buktan and tufala ino gat pikinini.

Papa Willie emi gat worry concernem future blong em, or even ol property se whu nao isapos blong ownem samteam sapos emi ded.

So from reson ia imekem se papa Willie igat strong tingting blong ko askem fas bon son blong smol brata blong em Charley Malrory. We emi mi David Willie Malrory blong kam olsem stret son blong em.

Papa blong mi Willie Malrory em ipem evri samting we Mama emi nidim long taem mi born, emi pem hospital fee we emi five pound wetem wan ruster fowl.

Long thirty day afta we mi bon, papa Willie emi mekem wan kaekae, mo sem taem emi pem woman we ilukaotem me wetem mama long ten pound.

Mi live wetem papa blong mi Willie wetem mama Esta kasem we tufala iputum mi mi ko long circumcise. Tufala imitim evri expenses long taem ia mo givim mani blong mekem kastom olsem pem nambas iko long ol Uncle blong mi.

Taem mi skul long Amelvet tufala ipem skul fee blong mi. Papa Willie emi pem wife blong mi, mo mitim evri expenses long maret blong mi. So papa blong mi Willie emi mitim evri expenses long life blong mi, since mi bon kasem we ided.

Taem Papa blong mi Willie Malrory ilaef yet mi David Malrory olsem only son blong em mi givim VT10,000, one pig wetem sam yam blong papa blong mi imekem wan kastom oli kolek Nejeseen. Mi nao mi stanap long behaf blong papa blong mi Willie Malrory taem mitufala imekem kastom ceremony ia iko long uncle blong papa long Walla em ia long 19 November, 1998.

Taem papa blong mi Willie emi ded mi David Willie mi mekem evri expenses long ded blong em kasem thirty days.

Wetem wan las kastom ceremony we mi bin mekem long behaf blong papa blong mi Willie emi blong pem ol nephew blong em.

Mi givim VT20,000, mi pem wan pig long elder Tino Meteso long VT25,000 mo givim long ol nephew blong papa blong mi Willie.

So tudei afta we papa blong mi late Willie Johnney Malrory emi ded evri right long properties mo future blong emi stap long mi David Willie Malrory.

David Willie Malrory
(Signed)



Claimant igat tu witness. Fes Witness Rhoda blong Pinalum hemi kam witnessim se hemi adoptive girl blong Willie mo hemi gru up wetem David long haos blong Willie. Hemi talem se hemi neva lukim Andrew mo hemi neva save se Willie I adoptem Andrew. Long wan custom ceremony long Wala David nomo istanap wetem Willie mo givim VT10,000 mo wan pig. Since year 2000 ikam kasem Willie ided Rhoda olgeta nomo ilukaotem hem be ino Andrew. Namba tu witness – Helen Joseph blong Rano hemi sista blong Willie hem tu italem se hemi neva luk Andrew long haos blong Willie be hemi stap lukim David nomo wetem tufala sista blong hem. Ol occasions olsem circumcision, maret, pem ol uncle, Willie imekem evri wan blong David. Willie ided long hand blong David, Rhoda mo husband blong hem mo hem (Helen). Long 10 dei blong ded blong Willie, David imekem custom from ded be ino Andrew.

Case blong Defendant

STATEMENT BLONG MI ANDREW MALRORY

Mi Andrew Malrory mi gat honour mo respect blong presentem statement ia long Court. Bae mi tokbaot smol history blong mi olsem wanem mi kam stap long Pinalum. Papa blong mi Menmen Malrory hemi man Rano Island. Bai mi tokabout olsem wanem papa blong mi ikam stap long Pinalum mo ownem graon long Peterpriv. Samtaem long yia 1930 Menmen Malrory hemi mov out long Rano smol Island blong kam stap wetem sista blong hem Kathline James we imaretem Chief Jack James long Pinalum.

Number tu toktok blong mi iolsem wanem mi kam ownem graon long Peterpriv. Taem hemi stap long Pinalum, igat wan olfala we nem blong hem Lorry Regnmal istap askem papa blong mi blong stap helpem hem long o lwok blong hem especially long garen. From reason ia nao olfala Lorry iwantem givim wan smol pis graon long papa blong mi.

Olfala Lorry Regnmal igivim smol pis land ia long papa blong mi, mo hemi talem se papa blong mi bae imekem garen mo planem kokonas long hem. Papa blong mi imuv iko mo wok long ples ia hemi mekem garen mo planem koknas long taem ia. Pupu blong mi Malrory istap yet long Rano IIsand.

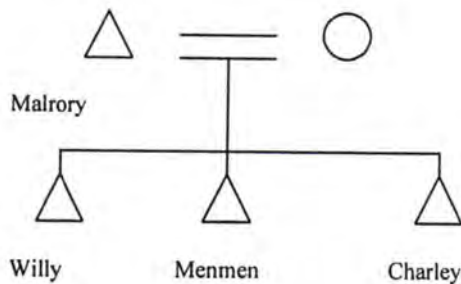
Taem pupu blong mi iharem se Lorry Regnmal igivim wan pis graon long papa blong mi Menmen pupu blong mi iout long Rano mo kam luk papa blong mi long Pinalum. Taem pupu ikam luk papa long pinalum Pupu italem se inogud yu wok nothing long graon ia, imo gud blong yumitu givim wan present long Lorry Regnmal. Papa blong mi I pem long wan amount blong 3 pound long taem ia.

Pupu ibin ko askem narafala pis graon long olfala Ureless long Amelpriv. Olfala Urleless iletem graon ia long olfala pupu blong mi Malrory, mo pupu blong mi ikam askem papa blong mi, blong bae tufala ipem long amount ia 2 pound wetem wan pig we oli callem Newere long language. Taem ia pupu Malrory ilive yet long Rano Island. Taem papa blong mi ilive long Pinalum mo istap wok long area ia mo pupu blong mi ilive long Rano mo istap kam blong wok wetem hem long garen.

Since 1942, pupu blong mi Malrory imuv wetem ol family ikam long Pinalum blong live wetem papa blong mi. Oli stap ko kasem 1943 papa blong mi ioat blong ko long New Hebrides Defense Force (NHDF) long Port Vila long Efate. Hemia nao short statement.



Family Tree



Attached wetem ol document blong hem igat wan map blong plantation we idispute mo wan decision blong Fredy Regnmal, (we oli pem graon long hem) we talem blong Dilly Malrory nao bae hemi incharge long disputed plantation.

Defendant igat 2 witness. Fes wan hemi Ailo Peter hemi blong Rory. Ailo hemi klear em out se Andrew mo David tufala iwan famili nomo. Wan papa igat tri sons, fes son Willie, 2nd son Menmen mo 3rd son Charley. Willie hemi adoptem Andrew. Charley wetem Willie tufala itekem ol stret sista. Witness igo on blong talem se hemi normal blong ol pikinini oli go kam between Willie mo Charley from ol papa oli stret brata mo ol mama oli stret sista. Ol coconas insaed long fanis Papa blong Andrew, Menmen wetem papa blong hem nao tufala iplanem. Decision long 8th November, 2004, raet blong usum plantation ibin go long Dile from Dile hemi wan neutral man insaed long famili, hemi no dispute wetem wan long tufala ia. Second Witness – Roderick Rangonmal blong Pinalum hemi owner blong graon hemi confirmem nomo se Menmen ipem graon long pupu Lorry Rangonmal be ino Willie Malrory.

Ol findings blong case:

Issue we hemi stap hemi whu nao ishud ownem proerty ia – coconas plantation. Wanem we Court ifinem long taem blong Court se tugeta parti tufala istap toktok tumas igo long saed blong graon. Court ya hemi no lukluk long dispute blong graon be long saed blong property nomo.

Court ia hemi notem se ol claimant ia oli ol close related family nomo. Malrory Johnny hemi gat tri boi, Willy, Menmen mo Charley. Willy we hemi fes bon hemi no gat pikinini mo hemi adoptem David (wan boi blong Charley). Menmen hemi gat tri boi, igat Andrew, Harry, mo Dile. Andrew tu iclaim se Willy iadoptem hem tu. Charley we hemi last bon boi hemi gat tu boi, David mo Christopher.

Property we oli stap disputem David istap kleim se olfala Malrory ibin dividem ol coconas ia finis. Court ifinem se ino bin gat division long ol coconas ia but ol coconas iblong Menmen mo Olfala Malrory ibin help blong planem ol coconas ia. Plante ol ansas blong ol question ikam out nao long taem blong visitim disputed property ia. Compar em ol coconas igat evidence se taem Court igo lukim plantation, ol coconut



ino ol same height blong talem se Willie Malrory nao iplanem ol coconas ia long wan taem nomo olsem we David ibin talem insaed long Court. Ol yang coconas we evri wan iagri long hem se Willie nao iplanem Court ibin go lukim mo olio l yang coconas.

Long map we David Malrory I presentem, Menmen iownem wan smol pis graon nomo we oli bin colourem yellow. Rangunmal ibin admit se Menmen nao ipem graon long hem. Question se how nao graon hemi blong Menmen but hei ownem smol coconas nomo be Willie iownem bigfala coconas, we during long ol time blong planting ia Willie ibin stap wok long Bushman's Bay.

Ino gat evidence se Willie iplanem ol coconas long graon from se long taem blong planting Willie istap wok long Bushman's Bay mo Menmen nao iplanem ol coconas, evidence hemi ol heoght blong coconas oli no semak, comparem wetem hemia we Willie iplanem.

Wan nara point long ples ia hemi long taem bifo ikam, Andrew Malrory nao hemi stap usum ol coconas ia, be ino David.

Court ifinem tu se David isave gat raet long ol yang coconas we Willie iplanem, from evri claimant oli admitem se yes plantation ia hemi blong Willie. Ino gat wan claimant idisputem ol yang coconas we Willie iplanem be plantation insaed or long middle nao we tufala parti idisputem we oli ol property blong Menmen.

Law we Court I applaem:

CAP 167 (s.10) – Application of customary law

Subject to the provisions of this Act, an island court shall administer the customary law prevailing within the territorial jurisdiction of the court so far as the same is not in conflict with any written law and is not contrary to justice, morality and good order.

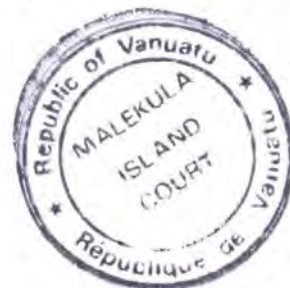
Translate:

CAP 167 (s.10) – Kot hemi mas applaem kastom

Subject long seksen blong Act ia, aelan kot hemi mas aplaem kastom we istap insaed long eria blong paoa blong hem, spos oli no gat conflict wetem eni loa we oli stap raetem, mo no gat konflik tu wetem jastis, morality mo gudfala orda.

Apply Law igo long fact:

According long law ya antap Kot hemi mas aplaem kastom we istap long eria ia Pinalum. Hemi common sense nomo se man we iplanem wan coconas or kaokao, property ia hemi blong hem and spos wan man iwantem usum bae imas kam askem. Hemi common sense tu se wan man ino save kam stap plant long wan area we ino blong hem, hemi save plant nomo sapos hemi askem raet blong use long owner blong graon. Olgeta points ya nao oli ol gudfala orda we hemi ol custom practice blong long taem finis ikam.



Las toktok:

Dispute ia hemi between ol stret blood nomo, mo Court iwantem se bae peace imas stap ol taem. Eni wan insaed long family we bae itraem blong brekem order ia hemi save pass long Court from contempt blong Court Order mo fine or go long kalabus.

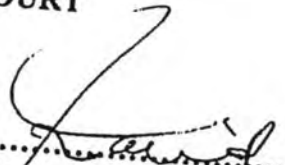
DECISION:

1. Stat tedei igo tufala coconas plantation we istap long antap long map mo middle blong map oli blong Menmen.
2. Out long trifala son blong Menmen, Andrew nao hemi incharge long Plantation ia antap. Spos eni family iwantem wok insaed imas askem or letem blong Andrew imas save.
3. Nara smol plantation we evri claimant oli agri se Willie nao iplanem ol coconas ia (oli ol yang coconas), David nao igat raet long hem.
4. Ino gat oda blong kost.
5. 30 days blong appeal, spos wan ino glad long decision.



Dated at Lakatoro this 1st day of November, 2006

BY ORDER OF THE COURT


.....
Justice Frederick David


.....
Justice Maxwell Arhambat


.....
Justice Johnson Frazer

