

IN THE MALEKULA ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Land Jurisdiction)

Land Case No. 10 of 1984

BETWEEN : TOLSIE AWOP & FAMILY
Original claimant

AND: DADDEE LAPENMAL
Counter claimant 1

AND : FAMILY UTISSETS
Counter claimant 2

AND : CERILO LAPENMAL
Counter claimant 3

AND: FAMILY LOLINMAL
Counter claimant 4

AND: MARCEL SARONGNEE
Counter claimant 5

AND: JEAN CLAUDE MULUANE
Counter claimant 6

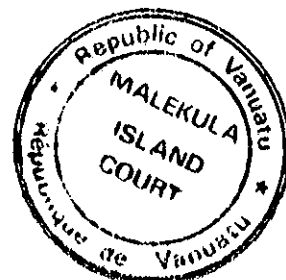
AND: FAMILY BAIPA
Counter claimant 7

AND: JOSHUA KEN
Counter claimant 8

AND: FAMILY LESINES
Counter claimant 9

AND: FAMILY KILETEIR
Counter claimant 10

Coram : Magistrate Edwin Macreveth
Justice Lorma Bongvivi
Justice Douglas Vatdal
Justice Robert Niptik



Clerk: Wendy Raptigh

Date of hearing: 13th – 31st of August, 2007

J U D G M E N T

The land in dispute is situated at Rano mainland, north east of the island of Malekula. This customary land is registered before this court as *Amelprev*. The advertisement caused by the principal disputant invited 10 parties to file a counter claim. The parties in contention over the land are claiming land ownership, right of use and dispute over boundary.

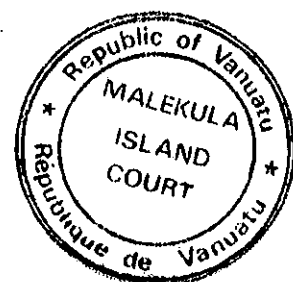
Its boundary is generally described to be bounded by the land of Peterprev on the south, Potender, Vasa on the west and Lawor on the northern side. Its territory commences from coastal sea shore at Tepev Lelep, connecting Peterprev to Klever at Peterlep and linking up with Potender. It then runs thereon to Artaur creek joining up to Lawor. It follows downwards to Loadpaul lake, Potovaru creek, Molven linking to the road covering the roadside at Jinemtenvo bridge ending at Jinvetapin at the seacoast on the south at Worlep creek. For specification purposes regarding its boundaries, refer to the advertised and sketch map filed therein by the original claimant.

Before embarking on the subject matter and to guarantee better understanding of the reasoning of this judgment; a brief discussion of the relevant laws and custom processes and usages of the contested area are outlined below.

THE LAW, CUSTOM AND HISTORY

It is our immediate note that the area of concern does not have a land policy. In spite of such missing guidelines, there is significant information gathered from the hearing regarding customary principles of land ownership. We have also consulted the Land Policies adopted by the National Council of chiefs, Malvatumaori. Upon thorough reading we noted that such guiding land values share a similar approach to the recognized custom practices of this district as discussed below.

Briefly, the relevant law under Article 73 of the 1980 Constitution stipulates that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. Article 74 provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu. Article 95(3) states that customary law shall continue to have effect as part of the law of this jurisdiction.



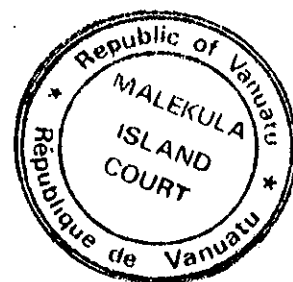
Turning to the customary practices, generally the island of Malekula is predominantly a patrilineal society. There are two main tribes in the island of Malekula, namely *Big nambas* and *Smol nambas*. The inhabitants of the area of dispute belong to the *smol nambas* society. Ownership of customary land is communal or collectively owned based on common descent, residence within a *nasara* and participation in common activities. A tribe or bloodline is identified with the land through the *nasaras*. Individuals within the clan are closely tied up with their territory by affinity and consanguinity through blood and marriage. A group of persons belong to a family line and a territory is sometimes identified with a totem, such as a plant or an animal.

It is the common trend that the first person to explore, live and control a land boundary would eventually become the original chief of the territory. This chief on behalf of his tribe or family would normally be referred or regarded by the public as the original custom owner of the land. He would become the paramount chief or sometimes referred to as *big faea* of the land boundary. The members of his tribe or group communally own undivided interests in the land.

The tribe which forms the land owning unit is normally based on blood relationship, meaning, they are all related by blood, having descended from a common or original ancestor. This family unit would be regarded as the *big faea* having a single bloodline. In practice, the first person and his family to arrive at the disputed land and built a *nasara* there, are the custom owners of the land. It makes no difference whether they left again for some other reasons, they would be designated as the custom owners.

The paramount chief has control and authority over his land boundary. It is a political monarchy type of organization whereby the supreme chief normally exercise authority over his subordinate chiefs residing within his land territory. Any incoming tribes accepted into the area would remain under the control and authority of the principal chief. After exchange of custom processes, such a clan may be allocated a parcel of land specifically for subsistence use only. He would be allowed to take part in *namangi* ceremonies and other custom processes in the land. But, such event cannot entitle such individual chief to claim ownership over the place of performance. All subordinate chiefs also referred to as *smol faeas* are accountable to the head chief in respect of every social affairs.

Chiefs are usually nominated on the basis of custom values, wealth, bravery and other common characteristics. The land owning chief and his subordinates would all have *nakamals* and *nasaras*. A man earns his chiefly title or name by way of performing a *namangi* (magi) or pig killing ceremony. The common chiefly name is *Mal*, *Mel* or *Mulon* a naming word that would procedurally be received by a man at an ordination during a magi feast. There are different stages



of status in hierarchy for a chief to acquire. Pig killing ceremonies would normally occur at a nasara. The first ever built nasara of a tribe becomes the original nasara. A nasara is usually identified by man made features such as erected stones, natural plants such as namele palms and other identical phenomena.

Land is traditionally transferred or inherited patrilineally from the chief or original ancestor to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings, relatives and kinships. This is a male predominated system which is twinned with the land tenure system handed down from generation to generation.

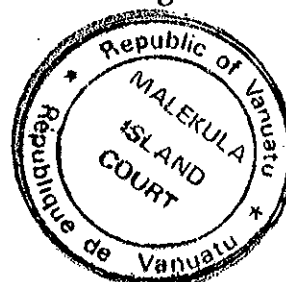
The only exceptional condition to the general principle of land ownership is that in the situation where there are no more surviving male heirs to the land then, ownership will pass on to the matrilineal offspring. This is typically seen where a woman's children having bloodline to the extinct patrilineal line are given land acquisition.

Conversely and by custom, the matrilineal descendants cannot claim land ownership if, there are surviving male descendants. Any claim following the matrilineal lineage would be culturally limited to a claim of right to utilize the land. Conditions are normally attached to that right of use as well. Example, such a claimant is duty bound to perform a customary rite of recognition to the uncles in exchange, prior to any use of the land.

We now dwell with the issue of adoption. The traditional position is that an adopted male child would have the right to acquire land ownership on condition that his adoption is arranged within the family bloodline itself. Also, a claim of ownership of an adopted child would prevail, in the circumstance where there are no other surviving bloodline of the land owning unit. An adopted claimant having no connection to the original ancestor or bloodline cannot inherit land of the father upon death but would be granted limited right to use the land. Whereas, the land formerly belongs to the original owners of the land.

Boundaries of land in the past and present are normally indicated by natural features, such as trees, rivers, hills, man made features and other geographical phenomena. Tribes barely traveled to other faraway land due to tribal wars over territorial conquest and other social problems. Boundaries dividing each chief's kingdom is normally surveyed by the concerned high chiefs and their people.

Beside the application of law and custom principles, the court in determining the issue of ownership has reminded itself of the relevant provisions stipulated under the Island Court Act, Cap 167. For instance, in deciding the evidence



before us, the court must be guided by section 25 of the Island Court Act. That particular section provides direction that in any proceeding before the Island Court, it shall not apply technical rules of evidence but shall admit and consider such information as is available.

Section 10 of the same Act states that subject to the provisions of the act, the 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 written justice, morality and good order.

Given the basic understanding of the traditional processes and the law, the relevant information submitted before the tribunal is as follows.

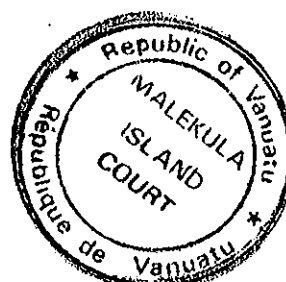
Original Claimant

Elsiem Utissets appeared for he original claimant. In his presentation, he led evidence that Bursiw is the original ancestor of the land of Amelprev having two nasaras, namely Jidwopati and Amelvet. Bursiw later became the paramount chief of Amelprev land. Bursiw's original nasara is Jidwopati situated inland. This is where Malbursiw and some of his early descents had performed their pig killing rituals earning a chiefly title of Mulon Bursiw. Other chiefs from incoming tribes have also been allowed to build five nakamals known as Melnaus, Pakren, Lolombo, Lolnambu and Monder. Relatives of these chiefs are counter claimants to the case. They have come from other land territories. The five (5) nakamals were built around the main nasara of Jidwopati.

After living the land for years, some of his ancestors later migrated down seawards where they stationed at Jigunsinvet, Melmerek. While other relatives of his tribe further moved down to Amelvet .This nasara of Amelvet was never completed due to unknown reasons. His later descendants sailed across to Rano island where they were received by one Iornovnov from the nakamal of Amel Welele.

To re enforce his history he provided that dwellers of the area have long recognized his tribe as the customary owners of Amelprev. For such recognition certain local occupants such as Alick Nawinmal, Etienne and others have purchased parcels of land from Kasi Awop inside the areas of Lolnambu, Lolombo and Monder.

He added that on the 5th of May, 1963 a meeting was held over the land of Amelprev chaired by both the French and British Districts Agents No 2, Mr J. Fabre and D.K. Wilkins. The arbitration report concluded that the land belonged



to David Telvanu being the last survivor of the land of Amelprev. He argues that no one else had ever disputed this report since 1984 when he initially launched this claim at the Island Court. Again in 1998, he was unanimously certified by a land committee in an identification form issued by the Department of Land and Natural Resources as the custom owner of the land encompassing the school of Amelvet. Copies of his documents are contained herein the court file.

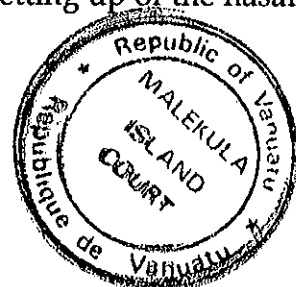
In his concluding statement, he iterated that Tolsie is the only surviving bloodline of the land of Amelprev. He went forth to refer the court to a biblical passage in the Old Testament book of Numbers 27: 8 which reads " *...in case any man should die without his having a son, you must then cause inheritance to his daughter.*" His tribe still possesses a spirit known as Matmat or Berper. A family chart is made available to the court illustrating his past generations to the present.

Upon cross examination by CC8 he confirmed that there are surviving bloodlines of chief Malkelkali of the nakamal of Monder from the matrilineal line. He explained that the setting up of the nasaras have taken place around the 1800's or so. Given the time frame, he does not know the names of his subordinate chiefs and the nakamal of Amelvet nasara. He openly told the court that his defendants have also come from the land of Amelprev from their respective nakamals and have also erected nasaras at Rano Island.

Witness Samson Peter Sarakenmal specifically provided a detailed statement showing Tolsie and Gladis are the true descendants of David Telvanu ancestor of high chief Malbursiw of Amelprev. While Johnny Kalwajin stated that since the establishment of Amelvet school, David Telvanu was the sole owner of Amelprev land. The whole population of Rano and the surrounding communities have always recognized David Telvanu as the custom owner. He stressed out that he has never heard of other claimants history.

The oldest witness, widow Tolsie Kasi, 75 years old verbally said that she is the only surviving daughter of David Telvanu. His father's ancestor is high chief Malbursiw. No one is known to be the custom owner in the past leading up to the 1963 meeting. When cautioned over her claimed history, she replied in response that chief Thompsen and other followers are witnesses to her claim and history. We noted that due to her ripen age she had difficulties of recollection of the past. She has no clear knowledge of the claimed boundaries and other relevant issues concerning the land itself.

The court had the opportunity to visit his original nasara of Jidwopati surrounded by the other five nakamals as told. He further and honestly informed us that he has very little knowledge to say about the setting up of the nasara and



the different patterning of stones as found. These nasaras and nakamals have been created since time immemorial.

A lot of questions were posed to this claimant and his witnesses. Despite the lack of information on the part of Tolsie, Elsiem and his colleagues have been honest and had maintained their proper statements. The opposing parties have strongly objected to their statements arguing that it is traditional that a woman upon marriage to another tribe losses all her rights to the land. Therefore, Tolsie cannot claim ownership of the land by way of the matrilineal lineage. Such claim is contrary to the rules of custom of the area. While, Ferno, CC3 seems to argue that Tolsie is not the natural daughter of David Telvanu but of one Masleng.

Counter claimant 1

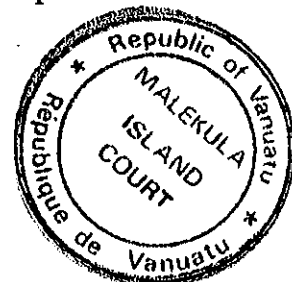
Ulrick Lapenmal appearing for Daddee Lapenmal and family is claiming ownership of the land embodying the nakamals of Lolombo and Lolnambu. Velvel is the original founder of the nakamals. He later moved to Rano Island where he staged another nakamal known as Amel Melmerek.

Ancestor Siswopni had inherited his father's chiefly name Malrowsi after taking part in a magi ceremony. He had adopted this name following custom exchanges of gifts from to his uncle who is a native of Amelprev. Raphael a descendant of Malrowsi had adopted Tade Lapenmal who is from the same tribe.

He submitted in support of his claim that in a meeting in 1975, the British District Agent D. K. Wilkin has held that the land of Lolombo and Lolnambu belonged to Family Lapenmal. The chiefs of Rano have also declared that the land belonged to the same family in a correspondence letter. These documented material evidence are enclosed in his file. There are identical remains of stones and other cultural items still in existence at the two nakamals and his family has good knowledge of custom stories and songs identical to the area of concern.

In his conclusion, he held that by virtue of the performed custom arrangement and other mentioned facts, ownership of the land of Lolombo and Lolnambu would remain under the tenure of Lapenmal's present generations. A Family chart illustrating his past relations down to date is provided for perusal.

His only witness, Chief Lelekteir Stephane briefly told the court that the 1975 document is a proof that Family Lapenmal is the owner of Lolombo and Lolnambu land boundaries. The claimed history produced by Daddee Lapenmal is proper and correct. It is his belief that the land belonged to the Lapenmal family given the forwarded evidence and the paid custom process.



This party and his witness have well defended their statements. However, we noted that his ancestors names were deeply disputed by his cousin brother Ferno Lapenmal labeling his claimed genealogy as fake and fabricated. Ulrick Lapenmal could not advance any set off answers in rebuttal except to provide a mere denial of the allegation.

Counter claimant 2

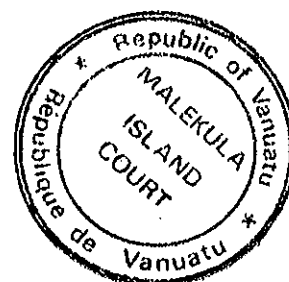
Roy Buktan of Pinalum spoke on behalf of family David Utissets. He led evidence that Bursiw is the original native of the land of Amelprev. Bursiw first settled at Tsibaor whereby he created the original nasara of Melnaus. His son Burkon performed the first namangi at Amel Tsibaor gaining a chiefly title known as *Totonie*. Renkon got involved in a love affair with his own sister. This unexpected conduct forced Renkon to migrate to Rano island with his wife. They came down at Tepewlelep passage and sailed to Rano Island. While, Surkon and his descendants continued to live at Amelprev.

It came to pass that tribal wars and other sicknesses came about and largely affected the inhabitants of Amelprev. As a result, these disasters caused all relatives of Surkon down to Meleskon to die without having any surviving issue. Following this situation, Meleskon decided to call Utissets back to the land of Amelprev. Upon preparation of the last namangi ceremony, Utissets contributed 30 pigs for this chiefly ritual. He was ordained with a chiefly title known as Maltalimelnaus.

For illustration purposes of his claim he alleges that Melnaus is the biggest and oldest nasara of the area having 5 other nakamals such as Pakren, Monder Lonambu, Lolnambu and Jidwopati. He added that dwellers of the other nakamals are immigrants to the area since their nakamals are built at the back of Melnaus. He explained thereon that *nefsu* in language term or incest is still practiced by his tribe at present. He went on to trace his family generations to date with the assistance of a family diagram.

Lenneth Rangunmal in witness, testified that his great grand father, Rangunmal had espoused lady Lelekterinamel from Utissets tribe. He heard that Rangunmal has also donated some pigs to Utissets making a total of 30 pigs towards that last namangi rite. A family tree is produced to the court in illustration of his story.

On visit, he has shown us Melnaus nakamal and a site alleged to be a temple where the lord's prayer is often recited to the gods.



At the course of interrogation, the original claimant who is also a member of family Utissets has heatedly objected to the sworn family tree labeling it to being fabricated. We note also that other claimants have made opposing remarks that they have no knowledge of any familial connection to chief high Mulon Bursiw. Roy has no other information in reply to the issue except plainly denying the accusation in a generalized manner.

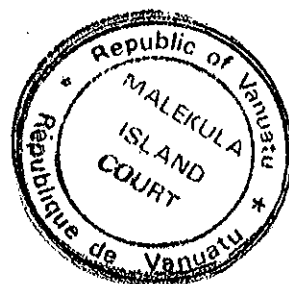
Counter claimant 3

Ferno Lapenmal made submissions on behalf of Cerilo Lapenmal and Family. He claims that the areas of land encompassing the nakamals of Lolombo and Lolnambu belonged to Family Lapenmal, having descended from chief Malrowsi. He explained that the origin of his ancestor is traced back to two sisters of Wala island from the nasara of Lovo. One of these females got married at Portvalim while the other wedded chief Malrowsi of Amelprev giving a son, Nimsinmal and a daughter Lecter Nawi. Lecter Nawi espoused Lapenmal from Rano Island. Their children are Ralenmal and Jinenmal. Ralenmal had a son Masleng who became the father of Cerilo Lapenmal. A Family tree is also made available to the court outlining his relations from past to the present.

Chief Nimsinmal had adopted Ralenmal with a payment of 5 pigs. A lot of customary exchanges by way of pigs and other customary affairs have been reached between Nimsinmal and his nephew Ralenmal. Ralenmal has in the past been deeply involved in the preparation of his uncle's pig killing ceremonies. He has contributed 10 tusked pigs to Nimsinmal for his namangi. At the closure of the festivity and by custom way of reciprocity Nimsinmal did not perform any form of payment in return for his nephew's labour and contributions. The chief instead allocated certain parcel of land to Ralenmal for use. He donated another 3 boars upon Nimsinmal's death and took charge of all funeral expenses. Since then, Ralenmal and his relatives have been using the land of Lolombo and Lolnambu to date.

He added that Masleng has purchased a pig being for bride price payment of David's wife, May. David is from Amelprev. This couple had two daughters, Kladis and Tolsie. Masleng had always volunteered to provide the necessary payments to a local midwife for helping out in the delivery of the girls. David could not afford to do so.

At course of interrogation, he explained and clarified that CC1 has produced a false history and family tree. He contended that the truth fact is that they are originated from the land of Lawor through Lapenmal. They both have a single family tree dating back to Malrowsi and not Velvel as held by CC1. He pointed



out that Lapenmal family could only claim the land by way of the matrilineal lineage of Lecter Nawi whom had married Lapenmal of Rano. He has alleges that Tolsie is the daughter of Masleng and not David.

Moving to his witnesses statements, Daniel Urinmal made confirmation that it is correct that Masleng had paid David's bride price. David Telvanu had sent one Nanisets for a midwife during Tolsie's birth. Jean Louis Combe said that her unties Matil and Marie Jeanne had once assaulted May, because of her pregnancy to Masleng.

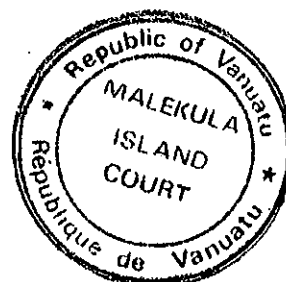
While Felixano Lapenmal provided that Cerilo Lapenmal and Kileteir were disputing the land since 1964 to 1973. Jean Paulo added that he knows that Cerilo Lapenmal did challenge Kasi in 1959. The parties involved including a congregation of Wala and Rano with the representative of the French Government, Masula had visited the land of Lolombo and Lolnambu.

Counter claimant 4

Louis Ureleless representing family Lolinmal is disputing the whole boundary of the land as advertised. He led evidence that the area of Vasa and Amelprev share a single boundary. It was ruled under the sovereign control of paramount chief Batunmal from the nasara of Vetlum, at Vasa. As time passed, tribal war escalated between the natives of Vasa and Portvalim causing the loss of lives of many inhabitants. This conflict brought pressure on chief Batunmal and his family to move down eastwards to where they founded their first nakamal of Pakren. There, Batunmal's wife begat two sons, Nmalaprev and Nmaltelbon. The eldest remained with his father at Pakren while the later returned to Vasa.

After sometimes when the population grew in multitude, Burinmal a later descendant decided to move further down seawards to Potender where they placed the nasara of Potender. Nmalaprev upon reaching his old age, adopted Ignacio son of Louis within the family line in the nasara of Amel Welele at Rano. He provided in illustration of his claim that Louis Ureleles and his relatives have been long recognized as the custom owner of the land of Pakren. Certain dwellers of the area have purchased land from them evidenced by deed of sales agreement. These instruments are contained in his file at pages 14, 15 and 16.

Upon cautioned over his parental status, he continuously maintained that he is the only surviving line of chief Batunmal. He went on to list five chiefs alleging them to be his smol faeas some of whom we note to have no relationship at all to some present claimants. He was also questioned over his status of origin. He



admitted that he was a claimant in the land case Lowo. He could not clarify his changes of family trees and place of origins.

When examined by Ulrich he told the court that there were already dwellers living at Amelprev when he escaped war. He further elaborated that he does not dispute other claimants right over their respective areas of land and nakamals. He accepts that his original nasara would be located at Vetlum, Vasa. He also admitted with explanation that the area in contention is always known as Amelprev.

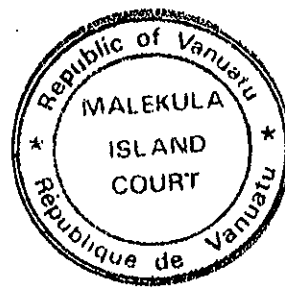
Upon the land visitation, we recalled that he is one of the parties who seemed to know more about the nasaras and their remains. He firstly showed us an altar like stone alleging it to be his arrival stone. He led the parties on to a fallen boulder measuring around 3 metres in stature claiming it as a dancing stone known as *Balbalate*. Men historically, dance around such type of stone during namangi feast. We then proceeded on to sight 2 separate spots alleging them to be a special site containing the high chief's *tabu faea*. This is a segregated area where the high chief would cook and eat. Among others, he also identified us a flat stone located at the centre of the nasara Amelprev alleging it to be a stone used for purposes of circumcision. We have different views to his explanations.

He called three witnesses to testify in his favour. Waniel Emile, testified that he is well informed of the fact that Vasa has a separate land boundary without sea passage since he was a party to the Vasa Land Case no 5 of 1988. Vasa and Amelprev have custom connection through inter marriages in the past. This friendly relationship made it possible for trading business to flourish between the two faeas or paramount chiefs of Vasa and Amelprev in terms of namangi preparation, security and other traditional affairs.

In his concluding words he stressed that the basis for land ownership in the island of Malekula is based on a monarchy type of system whereby a daughter marrying another tribe cannot claim land ownership. He accuses the Convention on Elimination of all forms of Discrimination Against Woman (CEDAW) to have caused serious conflict and disruption with the custom system long practiced.

He re confirmed during examination that vasa and Amelprev are separate in territory. He does not know the name of his claimant's original nakamal at the nasara of Vetlum at Vasa.

Chantal Titen of Batarnar nasara said in his presentation that one of his past relative by the name of Wallaa had espoused a woman from Amelprev. This lady is a relative of family Ureleless having living descendants at date. Many local residents of Rano have purchased land from Louis Ureleless. Amos Ureleless



was unanimously sworn as the sole chief of Amelprev in a swearing ceremony organized by the Land Tribunal Office.

Niowenmal Hillaire, of the nasara Lowo stated that he had learned from his father saying that her grandmother Lelekdile from Pakren got married at Pinalum at the nasara Amelnabaless. Her sons, Mulone and Louis have bloodline link to family Ureleless from the matrilineal lineage.

Counter claimant 5

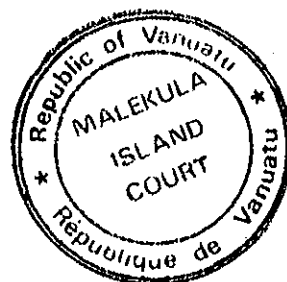
Timothy Maltok speaking for Sarongnee Marcel and family in his genesis provided that Mongo is an indigenous native of Vasa. His spouse bore a son Nomlonmal who migrated to Amelprev and later placed the nakamal of Lolnambu. He became the smol faea of chief Nimsinmal of Amelprev. Other chiefs such as Malmeles of Melnaus, Sumkali of Amel Melmerek and Malkelkali of Jibloge have no surviving relatives from the patrilineal lineage save with few kindred remaining with the matrilineal line at day.

Late Meskenmal later settled at Rano whereby he founded another nasara of Amelvet. This is the birth place of Sarongnee. Whereas, other relatives extended their settlement to the island of Rano setting up the nakamal of Jimbtepeje at the nasara of Melnajej. Malmen had planted few coconut palms and breadfruit trees at the area of Amelvet being bulldozed for the establishment of Amelvet school.

In support of his story, he narrated that there is proof of evidence of 30 erected posts and 2 remains of local stone oven at the nakamal of Lolnambu. Fifteen of these posts belonged to Lolnambu while the rest are erected by the chief of Lolnambu and his people. He explained that these remains would show that Lolombo and Lolnambu share common customary values one being the big faea and the other being the smol faea.

On interrogation, he accepted that chief Nimsinmal is the ancestral chief of Lapenmal and Alex Nawinmal. He also agreed that he would remain under the authority of the big faea. At the field trip, he identified us the same nakamal as claimed by CC1 and CC3.

His colleague Muluane Urbain re confirmed that Sarongnee is truly a native of Amelprev. Sarongnee settled at the nasara of Melnajej at Rano island. Malmen has been gardening at the area of Amelvet school. This witness objected to his brother, Jean Claude Muluane's claimed boundary limits.



Counter claimant 6

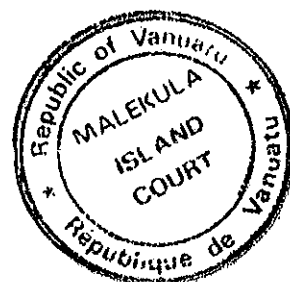
From the outset of his presentation, the court had some difficulties in trying to understand his forwarded statement of claim. The relevant information extracted from his bundle of statements indicate that Jean Claude Muluane is disputing the boundary of the advertised land alleging it to have exceeded its traditional boundaries lapsing into his land of Vasa and Lawor.

His ancestors are indigenous native of the land of Vasa. Vasa and Amelprev are separate in boundaries but share a single frontier mark. Following ravaging diseases and pollution which affected the residents of Vasa, four tribes managed to escape the disaster. The first clan which is his own tribe moved to Lawor and then afterwards settled at Rano island at the nasara Amelamo. The second clan traveled down to Amelvet and later caused settlement at Rano island. The third family unit migrated to Tongre while the other remained at Vasa.

He added that the nakamal of Lolnambu is the last nakamal which marks the customary border between Vasa and Amelprev. This border line connects Lolombo, Nolon and unto Lolnambu. From there it divides the nakamal of Monder and runs seawards to Amelvet school. This land perimeter is also used as the main passage way to the sea coast used by the local occupants of the concerned land territories. It is his claim that Lolombo is a company nakamal whereby every chiefs from Amelprev had undertaken ceremonial pig killing and some other custom exchanges. Lolombo nakamal contains graves of high chiefs. These remains were visited during the field trip.

He clarified during questioning that the claimed traditional landmark came into being through custom connection between the paramount chiefs of nearby land territories such as Lawor, Vasa and Amelprev. He could not provide an answer as to which high chiefs were involved in deciding his claimed customary border.

Two witnesses were invited to testify in support of his case. Jean Denny of Lawor also explained that the nakamal of Lolombo is a company nakamal whereby every chiefs from Amelprev had undertaken ceremonial pig killing and some other custom processes. Lolombo nakamal contains skulls of chiefs. Lolombo has no land boundary but a place purposely used for storing skulls of big men from Lawor and Amelprev. While, Kombe Stephane gave a similar account. Few questions were asked to these witnesses.



Counter claimant 7

Collin Taur is acting on behalf of Killion Taur and the family. He is claiming rights of use over the land of Monder on the basis of a customary adoption. It was told that Nbeckrow whose father is Malkelkali claimed by Counter claimants 8&10 had adopted Baipa. Malkelkali is a chief of the nakamal of Monder at Amelprev land. A family chart was produced to the court tracing the ancestors of Nbeckrow and descending to his present relations.

Nbeckrow handed over a tusked boar known as *burmaly* in exchange to the parents of Baipa from Pinalum in witness of the event. Pursuant to that adoption Baipa and his descendants have been living and working the land of Monder for 87 years since 1920.

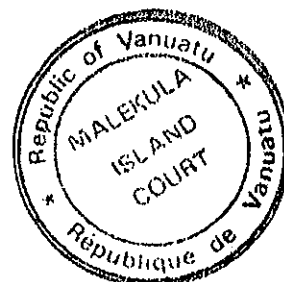
In support of his story, he submitted that the Rano Council of Chiefs had also held by declaring that such adoption is true and correct. The defendant of the case was Joshua Lesnavon, CC7 in our present case. The said decision dated 28th of August 1993 was never appealed until date. A copy of such document is filed herein his court file.

Amos Maltok speaking as a witness also told the court that Nbeckrow had made a payment consisting of a tusked pig to the parents of Baipa. His father has witnessed the adoption ceremony. We noted at the stage of questioning that only the original claimant commented that there was a protest concerning the said decision. Hillaire Lesines has acknowledged the story as correct. While, other parties remained silent.

Counter claimant 8

Gratien Maltape assisted Joshua Ken and Family in his claim. In his genesis he led evidence that he has bloodline connection to Malkelkali, chief of Monder nakamal at the nasara of Amel Melmerek. Malkelkali was murdered leaving his wife conceived with a child. This widow thereafter sought refuge at Amelamu, Rano island where she gave birth to a son, Womurano.

While the remaining relatives at Amel/melmerek were completely wiped out due to tribal war and illness. Maljington Joshua a surviving line had returned to regain possession of the land of Amel Melmerek. Joshua is seen as owner of the land of Monder, since he has been selling land the other local residents such as Thomson Maltok and family Mark.



On interrogation, he stated that Malkelkali is not a paramount chief. He agreed that his relative Thompsen was an assessor to the arbitration report in 1963. His family tree is also disputed by the parties asserting it to have no connection with Jingonmal. He has not produced any convincing side argument in answer. Few questions were asked to this party due to mounted difficulties faced at this stage. The claimant is young and seemed to have no thorough familiarity over the content of his claim. He guided the court to view his claimed nakamal and nasara of Amel Melmerek.

A few questions were asked to this witness. It is our observation to see that at the end of his evidence in chief, this claimant decided to withdraw all his listed witness with a substitution of Louis Maltok. This witness in his oral evidence simply stated that Nbeckrow is a bloodline of Amelprev.

Counter claimant 9

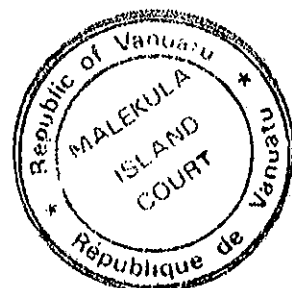
Hillaire Lesines appearing for family Lesines submitted that he has origins from the nasara of Pakren. He is claiming the nakamal of Pakren and its surrounding land area. Malsinial is the original chief of Pakren. His ancestors after the creation of Pakren re stationed at Amelvet. With the use of bamboo raft they sailed across to Rano Island where they had erected a stone at Peter in remembrance of their arrival. Another stone was planted at Lemare. His ancestors were the founders of Wopo Atan and Wopo Mare. He recognizes other dwellers of Wopo Atan and Wopo Mare like, Nbeckrow, Lesnavon and Sarongnee as natives of Amelprev.

At the course of questioning he detailed thereon that chief Malsinial had performed his pig killing at Amel Pakren together with other chiefs. He firmly defended himself to have not stolen the disputed name of Malmisseve.

Joseph Sarisets and David Roy provided similar general information statements that family Lesines are true offspring of Pakren. Throughout the walk party to Pakren and other areas, he frankly told the court that he has less knowledge about the nasara since, they have been created from ages past.

Counter claimant 10

Kileteir Jeffrey representing family Kileteir is disputing the whole boundary of Amelprev beside the original claimant and CC 4. He provided that Monder is the original nasara of Amerlprev. Amelvet is their second nasara. His original



ancestor chief Tarenmal had two sons namely Bilbil and Nubele. Bilbil remained at their nasaras at the mainland while Nubele settled at Rano Island.

Despite their distant separation strong relationship rested with both brothers in terms of custom trading of pigs towards namangi businesses. Kileteir contributed 5 pigs to Nialmraj of Lolombo and another 5 to Mersets of Lolnambu. Kileteir has also handed over 3 pigs to Rowsi.

Sadly the population of this tribe living at the mainland instantly declined due to incurable sickness and tribal war. Meanwhile, chief Malkelkali son of Bilbil was murdered. Despite that turmoil, there are existing bloodline of this chieftomship at Rano Island. He explained that upon Malkelkali's death his wife had already been conceived. She later bore a son called Womurano while residing at Tsinator, Rano island.

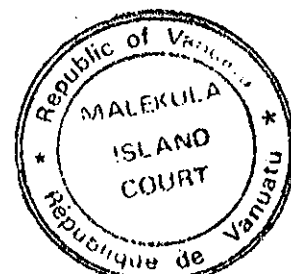
He argues that Family Kileteir has been a long time claimant to the land in question. On the 13th day of March, 1987 he was also certified together with the original claimant by a land committee in an identification form issued by the Department of Land as the custom owner of the land housing the school of Amelvet. A copy of such paper is contained in his file.

Jacque Pascal generally stated that it is his belief that family Kileteir have lineage relations to chief Malkelkali of Amelprev. He restricted himself by refusing to answer demanded questions outside his proper statement. Chief Jean Mark Kileteir produced a like account. Few questions are asked to these witnesses.

ANALYSIS OF MATERIAL & FINDINGS

Our attentive observation shows that the majority of the parties have acknowledged and accepted that the first person to arrive at the disputed land and built a nasara there, is the custom owner of the land. Any other migrating clan to the area would be allowed to partake in a namangi, setting up of separate nasaras and other processes would only be given the right to use the land. The land belongs to the founder, or original tribe and his descendants. This court is of the same judgment that the said land doctrine form the basic foundation for land ownership in this region of Malekula.

Turning to the claims, from the proceeding it undoubtedly stands out that the majority of the parties are claiming their nakamals including the respective areas of cultivation and occupation. We do not believe that there are no surviving descendants of the land of Amelprev, given the very generalized accounts to this court. There is available information showing that several claimants are



originated from the land of Amelprev. However all must bear in mind that, it one's duty to prove his case by way of evidence that he or she has ascended from the original indigenous of the land in contest.

The land visit reveals that there are no real identical phenomema in place to be viewed as the frontiers dividing the land territories for each nakamal. In reality, there is no actual landmarks on land separating the nakamals and their respective areas as claimed. Every nakamal such as Pakren, Lolombo, Lolnambu, Monder and Melnaus are staged in one particular vicinity around the original nasara of Amelprev. The building of other nakamals beside the original nakamal had caused grandeur to the site and extension thereon. Even the 50-100 metres more or less distance to Melnaus and Amelmerek place no isolation to the single administration of the paramount chief Amelprev. There is a footpath understood to be the main route or passage way leading to the sea at Amelvet.

Beside the above, on land that there are occupants from each party tilling the land alongside each for time immemorial. Dividing the land would inevitably be proven an insurmountable task. This aspect is confirmed by the fact that all claimants disputing their relevant nakamals and land could not easily draw dividing land limits.

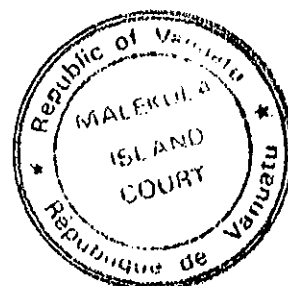
It is those finding facts gathered from the visit that have caused us conviction to pronounce that Amelprev has been at once governed by a paramount chief.

Having so said, we have appreciation for a number of parties and their witnesses whom have made honest comments and statements. For example, amongst other things some have honestly told the court they cannot assert information pertaining to the setting of nakamals or give explanation to the patterning of nasaras and their ruins. The majority of parties had scarcity knowledge concerning the status, names and other personalities of their past ancestors of the land.

Given the nature of the visit and in consideration of the presented facts with the customary usages of the district and the law; the findings are discussed below following the usual order of presentation.

The primary claimant

Having perused and verified all gathered evidence against his case the findings are as follows.



This party's customary basis of claim is by way of the patrilineal lineage of Bursiw the original ancestor of Amelprev having two nasaras, namely Jidwopati and Amelvet. Packaging this disputant with CC2, CC4 & CC10 who are also claiming the whole boundary, his presented evidence has significantly stood out. But first, you will note as well that this party had very little knowledge of the different custom rituals involved in a nasara. Common sense would dictate that it is reasonable that any ordinary person of this period would hardly give an accurate account of past events.

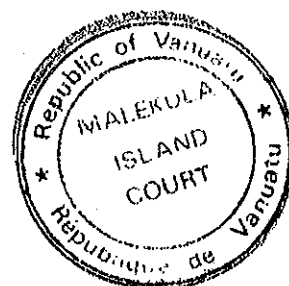
It is noted that this is a common weakness which has also been seen in the case of other parties. That short fall cannot alone undermine his whole claim in light of other forwarded evidence. Rather, the appropriate approach to adopt is as long as it is proven before this court that they are the original ancestor who initially explored, lived and control the land. One ought to bear in mind that the court's foremost duty and interest is to identify the real customary owners of the land in light of all relevant forwarded information.

Also, the fact that dwellers of the area have long ago recognized his tribe as the customary owner of Amelprev given purchase of certain terrain from Kasi Awop could be regarded as a mitigating factor to his claim. But again, this is another common transaction also undertaken by some of the parties in this context respectively. Almost all claimants to this case have sold land to other dwellers.

Having made the above circumstances clear, the first evidence at hand in support of his claim is that his drawn family tree tracing his past to the present generation remains free of dispute. CC2 and his witness have acknowledged and confirmed the existence of Bursiw as the high chief of Amelprev. This is evidenced by the family chart produced by CC2. Ferno Lapenmal has also confirmed that David Telvanu is from Amelprev.

It follows thereon that there is undisputed evidence showing that Mulon Bursiw is the paramount chief of Amelprev, having Jidwopati as his original nasara. This chief and his relations have perpetually lived the land for centuries. His ancestors have performed namangi ceremonies prior to the introduction of the gospel in the area. These unchallenged evidence in chief have strengthened the credibility of his parental status and place of origin.

Another outstanding proof of his case, is that it is proven during the field trip that the land has five nakamals namely, Melnaus, Pakren, Lolombo, Lolnambu and Monder. The structuring of these nakamals are jointly or centered in one peculiar site given the size of the nasara Jidwopati. This is a direct evidence that has influenced our mind to hold that Amelprev has been at once been governed and administered by a high chief. In our case, high chief Bursiw and his people



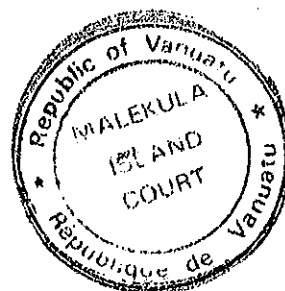
were the ruler. It is in this nasara that other defendants ancestral chiefs have also performed their magi rituals. Their physical appearance to being joined in one area distinctively makes it difficult for dividing the land as claimed.

On the other hand, there is a valid arbitration report in place being issued on the 5th of May, 1963 over the land of Amelprev chaired by both the French and British Districts Agents No 2, Mr J. Fabre and D.K. Wilkins. This meeting concluded that the land belonged to David being the last survivor of the land of Amelprev. We are satisfied that his daughter Tolsie Awop is the only surviving descendant of chief Bursiw from the matrilineal lineage.

There is no shadow and doubt over the trustworthiness of this document but to announce that it is a very essential part of his evidence that has caused us persuasion. All parties have agreed that such event did occurred at Amelvet in 1963. Even some of the claimant's fathers have witnessed this meeting. Upon perusal of the tendered paper, our reading shows that very prominent customary chiefs knowledgeable in custom such as Thompson a relative of CC8, CC10 and others like Toby and Louis had been part of this panel discussion. One may ask the question as to what basis was the decision reached. It is our belief that the same rules of custom land ownership were the central issues in determination resulting in the report.

In addition, the above decision remained unchallenged ever since up to 1984 when he initiated this claim at the Island Court. Again in 1998, he was unanimously certified by a Land Committee in an identification form issued by the Ministry of Land as the custom owner of the land of Amelvet. These circumstantial data have brought room for implication that Tolsie is in fact the only existing issue of supreme chief Bursiw of Amnelprev.

Turning on the other side, it is noticed that the rest of the defendants have heavily made criticizing remarks in relation to the status of this claim linked to the matrilineal system. Those advanced arguments have no profound basis and are turned down. The starting point is that this court is convinced as pronounced that Tolsie is the only surviving blood line of the original ancestor, Malbursiw. It is justifiable in the sense that if, there no more surviving male descendants of the original ancestor then, of course the female descendants would automatically inherit the right of ownership over the land. The Biblical text from Numbers 27 at verse 8 also sheds some light this code of practice. Although this principle may not be binding in our context, however, with greatest respect we find it sensible to be a fair approach to adopt. Tolsie still retains and is a bloodline this patrilineal line.



More fundamentally, it is apparent that those advanced submissions are culturally oriented upon the patrilineal structure patronizing men over women. Unfortunately, such standard norm cannot bypass the applicable laws of this country as discussed below.

Firstly, Vanuatu has ratified the Convention on the Elimination on Discrimination Against Women by the Ratification Act of Parliament no. 3 of 1995. This international law requires that every signatories to it must take all necessary steps to condemn and wipe away of forms of discrimination against females. This court cannot allow custom to discriminate against women.

It must be born in mind also that our Supreme Law, the 1980 Constitution under Article 5(1) stipulates *"The Republic of Vanuatu recognizes, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health-*

(d) protection of the law;

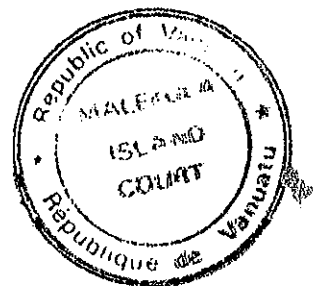
(k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed area..."

It follows as well that the Appellate Court has upheld this philosophy of equality as seen in the classical case of John Noel v Obed Toto (Case No 18 of 1994).

Equally, the provisions of the Island Court Act, Cap 167 is also reminding ourselves under Section 10 that while administering the customary law prevailing within this territorial jurisdiction it ought to apply the right or appropriate measures in so far as the same is not in conflict with any written law and is not contrary to written justice, morality and good order.

Turning to the later statements of CC3, we find no evidence corroborated from other contestants that would convinced us to accepted his assertion. There is no presence of information indicating that there was a meeting held to discuss the affairs of Masleng or any other person with May. Other parties have no knowledge of this allegation. Tolsie is the natural daughter of David Telvanu.

In summation, we are satisfied that this party has elicited sufficient information establishing his claim for land ownership.



Counter claimant 1

Our immediate note shows that his produced family diagram was deeply disputed by counter claimant 3, Cerilo Lapenmal. In consideration of the arguments put forward and his displayed demeanor have left our mind with reservations.

The court is most convinced with CC3 arguments. That is to say with greatest respect that Ferno is a competent witness and knows more than his brother Ulrick. We are completely persuaded that Counter claimant 1 & 3 belonged to one family unit and off course beyond reasonable doubt must have the same family tree. CC1 has produced a false history and family tree.

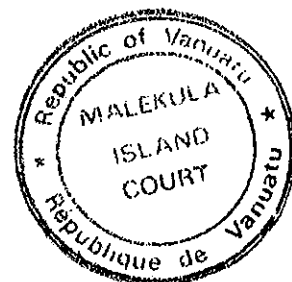
One of the finding fact is that CC1 and CC3 are originated from the land of Lawor through Lapenmal. Their family tree only begin with Malrowsi and not Velvel as provided by CC1. They could only claim the land by way of the matrilineal lineage of Lecter Nawi of Amelprev wife of Lapenmal of Rano.

For the demonstrated qualities we have accepted ferno's story concerning the family tree of Daddee Lapenmal to rule it out as fabricated. It is obvious that the differences in statements and other related documents as shown by their claim is a direct result of the chiefly dispute between this family. It is our note that the Island Court has issued a declaration over the issue dated 22nd of November, 2006 in favour of CC1.

Needless to further investigate other weaknesses of CC1; even if our opinion find no satisfaction to CC1, we are satisfied that this defendant has elicited sufficient information concluding that he is from the nakamal of Lolombo and Lolnambu. CC5 & CC3 who also claim the same, do not dispute his nakamals of origins.

Nevertheless, there remains the central question that demands an answer is whether he has any customary right to claim the land of these nakamals. The answer is in the negative. By tradition, it is only the paramount chief who has control and authority over the land boundary. The land is solely owned by the principal chief who is normally the first person to discover, live and build a nasara on the disputed land. Incoming tribes like CC1 being a smol faea can only claim rights to use the land. Any exchange of custom processes or longtime possession of the land, participation in namangi rites and other reasons cannot forfeit the absolute right of ownership of the big chief.

More over, he has wholly failed to provide a described boundary land mark separating his nakamals from others. As explained all nakamals are staged in one particular domain making it difficult for the court to believe his claimed land.



Even the visit itself could not provide any supplementary information to aid to the court. There are no man made land marks or other identical phenomema in place to be viewed as the frontiers dividing the land territories for his nakamal.

Having weight the nature of his case and in application of the relevant customary usages, we decline to grant this party a right of ownership.

Counter claimant 2

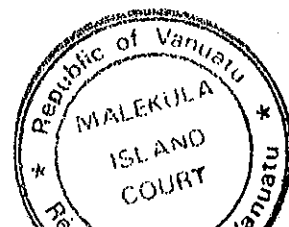
Family Utissets is disputing the whole land of Amelprev. Our analysis of his standing is as follows.

From the hearing, it is seen that his family tree has been intensely disputed by Elsiem and other parties. Elsiem who is a member of Utissets family has strongly criticized the drawn family names labeling it as fabricated and fake. He stressed that their family chart is only traced back to Renkon and Ranio of Rano Island down to the present age group. In reality Utissets family has no bloodline link with high chief Mulon Bursiw of Amelprev.

He additionally pointed out that he would have claimed the land of Amelprev as a party to this case if, Utissets has bloodline connection to Bursiw paramount chief of Amelprev. As far as his family tree is concerned, the sworn family tree is wholly fictitious. He further expressed his deep concern that he had expected a member of his own family Utissets to answer his questions. None has been called to make a statement. While, other claimants expressed concerns that they have no knowledge of this family tree.

It transpired at this stage that Roy Buktan in his effort to defend the claim could only make generalized statements in his perturbed attempt to defend the statement. Coupled with the demeanor of his presentation, it would seem that there is a cover up story of truth in this claim. This claimant has dishonestly attempted to manipulate this court into believing his stateless claim by using third parties like Roy Buktan and Lenneth Rangonmal from Pinalum village to present his claim. The arguments advanced by Elsiem were not substantively rebutted and therefore remain undiscredited.

Further more, there are no confirmation statement to strengthen his history since, no other member of Utissets has spoken as a witness. He only had a witness Lenneth Rangonmal who could only confirm that his ancestor Rangonmal has contributed some pigs to Utisset towards a namangi ceremony. The question remains as to why not a single member of the Utissets family or some other chiefs and persons not called as a witness to the case. We cannot take the risk to



invite probable causes or answers to this query. The claimant himself has the answer to this odd situation.

More over, his claim that Melnaus is the biggest and oldest nasara could not stand. Our finding from the visit is that the area is smaller in size compared to Jidwopati or Amelprev. On the other side, practically, incoming tribes would normally set up their nakamals beside the original nasara of the paramount chief. It is in that understanding that we are concluding that the nakamal of Melnaus is not the original nasara. There is a common saying that "rivers don't run up the hill". The rationale behind this maxim is that it is historical that original nasaras would normally be built inland following the ancestors movement seawards unless someone is a sailor. This is not the story in this defendant's case.

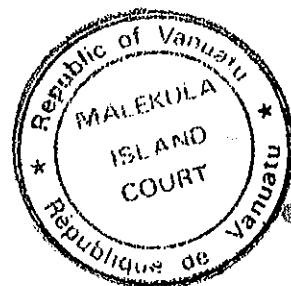
We rejected his assertion over the followed spot alleging it to being a temple. Our verification of it indicates that the referred scene placed no difference in stone assembling or patterning for magi purposes. It is not a prayer or sacrificial area. The rests of the claimants are in favour of our converse to say that his story is unreliable.

Based on the foregoing discussions and in application of the relevant laws and customary usages, we could only find his case stack with uncertainties. There is also lack of providing sufficient evidence. His case could have gained weight had he called more witnesses to call supporting evidence. Given the state of his claim, we refuse to award this party the right of ownership. He would only be entitled to a right to use the land.

Counter claimant 3

The court has made findings with regard to Counter claimant 1's claim. We do not wish to re iterate the facts presented by Ferno Lapenmal on behalf of Family Lapenmal. Has pronounced earlier on, we have welcomed CC3's statements and comparatively considered it as the most truthful submissions. It is accepted that the nakamals of Lolombo and Lolnambu belonged to Family Lapenmal, having descended from chief Malrowsi .

This party also has the same problem of identifying his claimed land areas on land. As mentioned there is no real boundary land mark on the land separating the nakamals since they are staged and jointly built in a single area surrounding the original nasara of Amelprev. The land is ruled by a high chief as held.



We now dwell with his allegation that Tolsie is the daughter of Masleng. We find no concrete evidence that would convinced us to accepted his account. There is absence of productive evidence to suggest for instance, that there was at once a meeting held to discuss the affairs of Masleng and May. Other claimants have no knowledge pertaining to the accusation.

Given the nature of his case, we see no other alternatives to his claim except that he would only be entitled to have the right to use the land. He may be conferred some right for land use but be subjected to the authority of CC1 as per the Island Court decision dated 22nd of November, 2006.

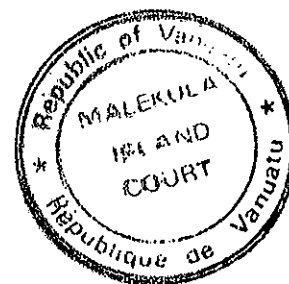
Counter claimant 4

The findings of our assessment of his presented material are in these words.

Generally, this disputant is claiming the entire land through the patrilineal line of high chief Batunmal. We decline to make a declaration as to whether he is the paramount chief of Vasa. This is an outstanding issue that would be later debated in a relevant court of law. But we are satisfied that he has originated from the land of Vasa.

On the other hand, he seemed to have aligned himself with other counter claimants in accepting their rights of ownership over their respective areas of land and nakamals. This is inconsistent with custom practice of the area because only the paramount chief has definite right of ownership of the land under his sovereignty. His acceptance of other parties claim is seemingly associated to the fact that people were living the land of Amelprev upon his arrival. This fact is gathered from his oral evidence adduced during examination by CC1.

His status of origin is questionable. This court is well aware of the fact that this disputant was a party to Land Case no. 1 of 1997 over the land of Lowo. In that particular case, family Ureleless was the second counter claimant in which he produced a separate family of Nesiterenbel originated from Lakajkaj, area at Port Stanley. Nesiterenbel upon drifting ashore at Sale Sandior at the land of Lowo and was received by chief Maltor Lowo. He was then later adopted as son of chief Maltor Lowo. This time in our case, he is instead claiming a completely different family with a fresh history. He claims have originated from this man Batunmal as paramount chief of the land of Vasa. He has relatively failed to clarify his positions in this matter. This latest development has to a far extent placed obscurity and uncertainty over his originality.



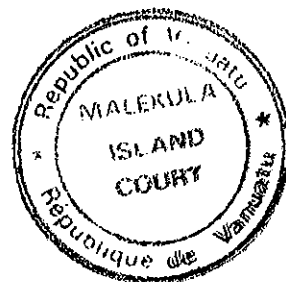
Also, from the walking party, we noticed that he is one of the parties that seemed to know more about the nasaras and their remains. However, our test is that not all his stories are correct. The shown altar like stone to be his arrival stone is accepted. We doubted his version of the fallen boulder to being a balbalate. There is common understanding between the court and the rest of the parties appealing against his perceptions. We agree that there is always a dance pavilion where men would dance during pig killing festivities. Traditionally, balbalate comprises of a wooden stand post whereby performers would dance around it in a circling manner.

Subsequent to that, the court is hesitant to make any conclusion to the referred hollow like places to being a forbidden cooking and eating or *tabu faea* place of the high chief. He could be right but in our understanding in practice, *tabu faea* are normally found inside his own nakamal. This is a segregated cooking area where the chief would prepare his food. The touched locality could also be a dancing area given its concave like appearance on the surface. Moving on to the alleged circumcision stone visited at the centre of the nasara of Jidwopati. We have a different view by reason that circumcision ceremonies are morally classified as *tabu* or forbidden rite which cannot be performed in public arena. It is habitually carried out at a private and restricted locality from the main square of activities.

Conversely, his submission arguing that Amelprev and Vasa have a single boundary is disproved by the following facts. This court has issued a decision over Vasa's land. It was never told in that proceeding that Batunmal is the paramount chief. Also if the area does share a single territory, then, it would have been claimed and advertised in the course of that proceeding in 1988. The real fact is that Vasa and Amelprev are divided in land boundary.

In addition, there is overwhelming evidence advanced from the majority of the parties pointing out that Vasa and Amelprev have separate territories. On cross examination he has made a confession that the area in dispute is always known as Amelprev but not Vasa. This is a direct admission of the true fact that Vasa is a separate land from Amelprev. Moreover, contrary to his claim, witness Emile Waniel has declared that Vasa land territories do not extend to the sea coast of Rano. It is therefore certain that Vasa and Amelprev are separate land territories.

While, Chantal's story that Wallaa had espoused a woman from Amelprev, a family line of Ureless having living descendants at date has no significant effect to this party's case. This bit of information could have gained some degree of weight provided he has furnished this court with a family tree linking the said woman to the claimant's family. The same point of understanding would apply to Nowenmal's statement.



Beside the above, the swearing occasion organized by the Land Tribunal Office in nominating Amos Ureless is in row. Such event cannot be judged on a conclusive basis that the claimant and his relative are the owners of Amelprev unless it be declared by a competent court as chief of Amelprev.

It is accepted that local residents of Rano have purchased land from Louis Ureless and others. However, these documented deeds are by no mean exceptional. This is a common transaction also undertaken by other disputants of the land. Almost all claimants to this case have sold land to other dwellers. His ancestors could be selling land that does not belong to them. This point would apply to every other claimants involved in the sale of land.

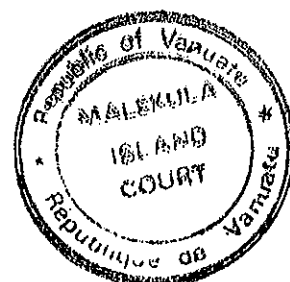
In consideration of the totality of the facts of his case and in application of custom usages, it is clear from the facts that he is not the first person to live and build a nasara at Amelprev. Vasa is his actual place of origin housing his original nasara of Vetlum. He has no customary standing to claim ownership of Amelprev land. However, given the lengthy period in living and causing development to the land, he would be granted a limited righted to use the land. Whereas, the land traditionally remains under the sole ownership of the paramount chief of Amelprev and his descendants.

Counter claimant 5

It is accepted that Mongo is an indigenous native of Vasa. He had a son Nomlonmal who migrated to Amelprev and later placed the nakamal of Lolnambu. He became the smol faea of chief Nimsinmal of Amelprev. He has agreed on cross examination that he would remain under the authority of chief Nimsinmal of Lolombo and Lolnambu.

Similar to other claimants this party could not also provide a clear boundary mark demarcating his claimed land as discussed above.

In determination of the basis of his claim and the application of custom, we see no other alternatives to his claim. He came from Vasa his place of origin and later accepted to live at Amelprev. We have accepted his sound and genuine offer. That is to hold that he would remain under the leadership of the chief of Lolombo and Lolnambu. We are not pre emptying the fact that there is available information showing that his ancestors were involved in other custom processes at Lolombo and Lolnambu. Nonetheless, those factual situations and any other reasons will bring no difference to his claim for land ownership except, that this family would be guaranteed the same land rights as conferred upon his colleagues.



Counter claimant 6

In determination of his position , we find as follows.

Firstly, the tribunal is in doubt of his land limit connecting Lolombo, Nolon and unto Lolnambu. From there, it is noted that his claimed boundary mark divides the nakamal of Monder and runs seawards to Amelvet school. Historically, borders cannot cross or divide nakamals as asserted in his claim. The majority of the claimants have argued that nasaras cannot in one way or another be used as boundary land marks. Secondly, other parties to the case have widely criticized his claimed boundaries as false. Coupled with that data, his own brother Urban Muluane disagrees with his claim. It is normal practice that supreme chiefs would be involved in the surveying of the land boundary. He has failed to supply us with that sort of information.

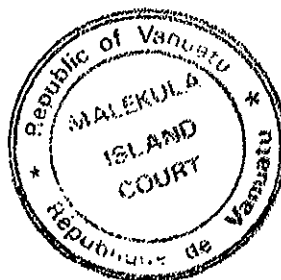
Additionally, as a matter of procedures he cannot claim the area of Amelprev to be part of Vasa land. There is a valid decision handed down by this tribunal. Perhaps his case could be legitimate provided that the claimed land boundaries are not subjected to the said declaration. He has entirely failed to clear and produce any data in that direction.

It also transpired thereon that this party has placed a lot of argument emphasizing writings, passport and others which in our understanding are correct as they are consistent with the traditional beliefs and values. Despite these explanations, we are not convinced with his claimed border. There are loopholes in his overall claim.

In whole, this Jean Claude Muluane has fallen short of substantiating enough evidence to establish his case. For the above reasons, his entire claim must fall.

Counter claimant 7

This disputant is claiming rights of use on the basis of his ancestor's adoption, Baipa. A court convened by the Rano Council of Chiefs has decided on the issue of adoption dated 28th of August,1993. We recalled that only the original claimant made remarks that there was a protest with reference to the said decision. However, there was no follow up statement from the other parties. In the absence of such required data, the above speculation has no room to prevail. Among others Hillaire Lesines, CC9 did acknowledged that Baipa has been adopted. No other disputant has challenged the source of his claim.



Most remarkably, the above decision itself cannot be withheld unless debated in an appealed court. There is no information leading to that direction. Counter claimant 7 who was party to the 1993 case remained silent. Even counter claimant 10 who also claim Malkelkali did not dispute Killion's claim.

Therefore, given the unchallenged facts, in application of the custom and law, we accept the relief as sought accordingly.

Counter claimant 8

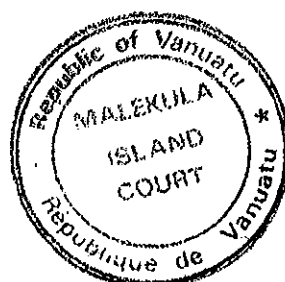
This contestant is also claiming through this chief Malkelkali also claimed by CC7 and CC10. It is our observation at the course of the trial that this party consisted of young men. The main claimant seemed to have no familiarity with his past relations. Even given the assistance of Gratien Maltape, they could only formulate generalized statements. This claimant has decided to withdraw his listed witnesses. Louis adduced no fresh evidence in his oral testimony. This sudden move has in dept weakened his claim.

On the other hand, he has agreed that Thompson a relative was an assessor to the arbitration report in 1963. His family tree is also disputed by the parties criticizing it to have no connection with Jingonmal. He has failed to provide any appealing side story response to the subject matter. Few questions were asked to this party due to the mounted difficulties faced at this stage.

This party has also encountered the same difficulties in providing a precise land marks with respect to his claimed terrain. See the same explanation above.

Despite those irregularities, the tribunal had no problem with his statement of claim concerning Malkelkali and his descendant's movement to Amel Melmerek. Joshua has also been involved in the sale of land like other disputants of this matter. He may be related to CC10 and share the same nakamal. This is confirmed by their family charts given similarities of name.

In determination of his standing in light of the gathered facts, this party lacks evidence in support of his case. As such, his claim for ownership over Monder and Amel Melmerek nasara must fall. The land must rest in the hands of the principal chief.



Counter claimant 9

This party's basis of claim is founded on the patrilineal lineage of his ancestor Malsinial indigenous native of the nakamal of Pakren. He is claiming the nakamal of Pakren and its surrounding land area.

At the stage of questioning he detailed that chief Malsinial had performed his pig killing at Amel Pakren together with other chiefs. We have turned down the argument pointing to the truthfulness of his family tree in particular touching this name Malmisseve for lack of corroborated evidence. One of the Malmisseve family was not called on the part of the opposing parties for a word to the subject.

Throughout the party walk he honestly told the court that he has limited information about the nasara as they have been created in ancient times. The same difficulties over land mark boundary have been encountered by this contestant. As pronounced, the area of dispute is ruled by a high chief confirmed by the gathered evidence during the whole trial. Thus, ownership of every land claimed by the various parties must remain under the authority of the high chief and his descendants.

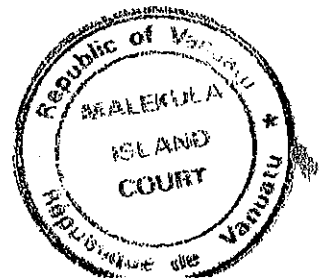
With assessment of his standing in this claim, we hold that he has origins of the nakamal of Pakren. However, in light of the rules of custom forming land ownership, his claim for ownership of the land of Pakren cannot prevail. He would only be recognized with some lesser right to the land of Amelprev.

Counter claimant 10

This defendant is claiming that Tarenmal is the original ancestor of the land of Amelprev. His descendant Malkelkali was the high chief of Amelprev. Following this chieftomship he is claiming that Monder as the original nasara while Amelvet is their second nasara. His submission could not be sustained in light of the following evidence.

Firstly, CC8 and CC7 whose claims are connected to this same person are saying that Malkelkali is not a paramount chief. The rest of the parties are of the same understanding and so is the court as reflected by the gathered evidence.

Secondly, with comparison, we noted a big difference in the listing of their past relations. Yet, it is confirmed from the family trees that this person Tomsen is the same individual listed by CC8 as Thompson. The difficulty facing the court is



that one of them has fabricated names. We elect not to pinpoint which one is a liar given very limited information concerning their family trees and other custom practices. We could not say either whether CC7 and CC10 are related in blood due to hidden truth.

The court doubted his tendered document marked index 4 where which he claimed to have been certified as well beside the original claimant as owner of the land of Amelvet. This document is in our view unreliable given the fact that it has no official stamp of the Ministry of Land. It could be a first draft or a fabricated evidence compared with that of 1998 stamped by the same department produced by Elsiem.

On the other hand, we have most favoured the document of 5th May, 1963 meeting held over the land of Amelprev chaired by both the French and British Districts Agents No 2, Mr J. Fabre and D.K. Wilkins. This arbitration report is by no mean fake. There is no other reason for the assessors to find the original claimant the last survivor of the land of Amelprev. We have emphasized earlier on that it is our belief that the same rule of custom forming the basis of ownership and use of land in Vanuatu were applied giving effect to the decision.

In addition, he had never disputed the claimants recognized rights in 1963. Even in 1984 when Kasi on behalf of his wife Tolsie registered this claim at the Island Court. We noted that this claimant has come to joint in as a party at trial date.

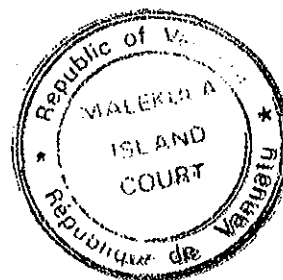
His witnesses could only provide very general statements. Despite attempts made by parties in asking them question outside their statement, they have instead refused to do so. This situation could not to a far extent bring further evidence to strengthen the sworn history.

In whole, this claimant has failed to substantiate clear and sufficient information to ascertain his claim for ownership. The court could only find his claim stranded with uncertainties. In application of the rule of custom, to the facts of his case, his claim for perpetual ownership of the land of Amelprev is refused.

DECLARATION

In light of the foregoing deliberations, it is hereby this day adjudged in the following words:

1. That Tolsie David and family be the custom owner of the land of Amelprev as advertised therein.



2. That the claim by Jean Claude Muluane is dismissed,
3. That all other parties to the case have the right to use the land. Such granted right is given effect light of the fact that claimants to the land have for many years caused development to it. It is for that reason, that they will continue to maintain their existing properties but are subject to the authority of the declared owners of the land.

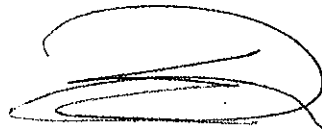
For ease of clarity, it is noted that some parties have no properties in their claimed land. The conferred rights will not mean that they are now given the mandate to use such land save in consultation with the owners.

All costs necessitated by this proceeding will fall as found.

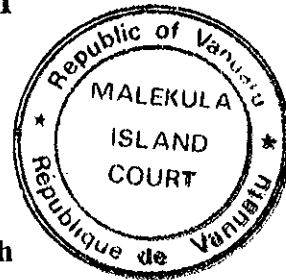

Any aggrieved party wishing to appeal this decision must do so within a period of 30 days from date.

Dated at Lakatoro this 15th day of October, 2007

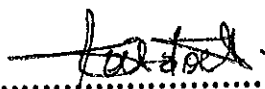
BY ORDER OF THE COURT




.....
Magistrate Edwin Macreveth

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Justice Robert Niptick



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Justice Douglas Vatdal



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Justice Lorma Bongvivi