

BETWEEN : ANDREW WELWEL

Original claimant

AND: FAMILY ROROMAL

Counter claimant 1

AND : JEHU BONGNAIM & OTHERS

Counter claimant 2

AND : FAMILY BAYEO & OTHERS

Counter claimant 3

AND: FAMILY MALONSU & OTHERS

Counter claimant 4

Coram : Magistrate Edwin Macreveth
Justice Louis Mera
Justice Reuben Bakmelip
Justice Lorma David

Clerk: Wendy Raptigh

Date of hearing: 18th - 22nd of May, 2007

J U D G M E N T

The land in dispute is situated at Metamli on the northern part of the island of Ambrym. This customary land is registered as *Melwe Metamli*. For this decision, the court will only in substitute use the word Metamli to refer to the land. The advertisement caused by the principal disputant invited 4 parties to file a counter claim over the land in contention. Counter claimant 3 is disputing the land boundaries while the rests of the parties are claiming land ownership. The subject matters for determination are of dispute of ownership and boundary.

Its boundaries are generally described in these words. From the western side commencing from north to the south. It starts at Ranber, Lonwao, Fanjenebal,

Enwomul, Ranubarvo, Walulu, Maribo, Fanberarme then bounded by a creek to Harnararau. On the eastern side from south to northwards. It rounds up from Hanararau to Lonlilibiwe, Bulufankon, Waumyune, Entubol, Hohor, Ranbetewau, Fanijen, Tonorby, Marinbaganamelhe, Ranwau and ending up at Lilibor. On the northern side beginning from east to west. It links onward from Lonlilibor, Liujeulamalimel, Fraptaje ending at Ranratasar. 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 for purposes of better understanding the reasoning of this judgment; a brief discussion of the relevant laws and custom processes and usages of the concerned area are outlined below.

THE LAW, CUSTOM AND HISTORY

It is our 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 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 principles share a similar approach to those 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 Ambrym is predominantly a patrilineal society. In the concerned territory, 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 habitually become the 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. The members of his tribe or group communally own undivided interests in the land. Land is shared amongst his

relatives and kinship. The tribe which forms the land owning unit is normally based on blood relationship, that is, they are all related by blood, having descended from a common or original ancestor.

The community as a whole would have other chiefs beside the land owning chief. A chief would normally be nominated by the community based on wealth, bravery and other common characteristics. The land owning unit would also have a chief, a nakamal and a nasara. There would be other chiefs as well within his controlled land. A chief earns his chiefly title or name by way of performing a namangi (magi) or pig killing ceremony. There are different stages of status in hierarchy for a chief to acquire.

Pig killing ceremonies would normally occur at a nasara. Nasaras do not differ in terms of ranking but are displayed for similar purpose. A nasara is usually identified by man made features such as erected stone, natural plants such as namele palms and other identical phenomena.

Other tribes may be allowed to settle into the land and form part of the community as a whole, depending on their circumstances. The land owning chief or headman would allocate these comers parcels of land specifically for subsistence cultivation. Everybody within a territory would normally be referred to as man or woman of that particular territory. However, in order for an individual to claim ownership he or she must prove that he or she is a descendant of the original ancestor.

Land is traditionally transferred or inherited patrilineally from the chief to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings and others as mentioned earlier. This is a male predominated system which is twinned with the land tenure system. The bloodline of a tribe flows infinitely from generation to generations unless proven otherwise.

The only exceptional rule to the general principle 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 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. In essence, it is the traditional notion that such sole right cannot extent to include ownership. 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.

In practice, land right is as well sometimes transferred or conveyed to the mother's issues upon the death of an uncle. This is normally seen whereby the descending children of the mother having connection to the patrilineal bloodline take charge of their uncle's funeral service.

Turning to the issue of adoption. An adopted male child would have the right to have 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. This is seen whereby the adopted claimant having no connection to the original ancestor automatically inherit the land of the father upon death.

However, any adoption arranged outside this blood relationship would only be recognized with limited right to use land. It is the traditional view on such an acceptance into another family is normally classed as secondary to the patrilineal system. The right of an adopted child over land acquisition would only extent to a right of use.

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.

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 it, the court is guided by section 25 of the Island Court Act. That particular provision gives 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 Island Court Act states that subject to the provisions of this 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

The original claimant in his presentation led evidence that Roriri is the first ever original ancestor of Metamli to settle the land. Incoming tribes whom have migrated from south east Ambrym have come to settle at Fanbung. Other clans from west Ambrym have also sought refuge under his tribe during past volcanic eruptions.

To re enforce his history he provided that dwellers of the area have long recognized his tribe as the customary owners of Metamli. Upon Wakumel's wedding Jomae received the first bride price. Jomae Tugon had taken charge of the funeral rites of Yelyel. When Jomae allowed Melwe his first nasara to be bulldozed into a soccer field none of the claimants had stopped him.

Certain local occupants of the area have purchased land from his family. An example, on the 24th of January, 1985 Liunaim and his son Cliven have purchased a plot of land from Jomae in the amount of VT4000. Shem Hivirkon Bera has recognized Jomae's rights in 1993. A copy of such ceremony is contained therein the file marked as A1. Then, on the 9th of June 1994, chief Willie Tokon and Arnold Loweth signed a letter informing the public that his tribe owns the land of Faliple. A copy of such communicate is marked as A2.

He further added that he is a longtime claimant of the land in question and has been declared custom owner by several courts. Also as descendants of Roriri they still retain Yelyel's physical appearance, to being lighter in skin. His chiefly ancestors held very important rank in pig killing. Yelyel had performed a namangi gaining a chiefly title of Sakran Woyang.

In his concluding statement he argued that his family tree has a total of 12 generations compared with other disputants having less generations. For such a fact, he would be regarded as the first original native to settle the land. A copy of his family chart is made available to the court illustrating his past generations to the present.

Apart from the above information, he also presented counter arguments against other counter claimants in which he provided the following statements.

Family Roromal is originated from Ranbeteon, west Ambrym. He has never took part in any past courts regarding the land of Ranber and Fanberarme. He cannot claim the land of Ranber, Lonwao, Enwomul through the matrilineal bloodline since, there are living male bloodlines of those land.

He contended that Melwoyang from Jehu family has no blood connection to his family tree. Mel's father is Titoktok not Yelyel. Lewa has caused confusion and dispute to the area.

Family Bayeo and his faction had never disputed the questioned land boundary with him in the past. His tribesmen and other claimants from Metamli have been gardening the land for many generations free of dispute.

Family Malonsu and his co claimants have all migrated from west Ambrym and cannot by custom own the land in dispute. They have been living under his authority. Hulumato had asked permission from him to build a tourist project on the land.

He called three witnesses in support of his claim. Witness, George Batutu told the court that his tribe of Brangmarhe has gained the highest chief title in the region. Despite such higher personality, his tribe continue to pay due respect and are subjective to the authority of Roriri family. His ancestors have been given right to use the land of Faliple and Fanberarme.

Witness, Jeredly Tatau brother of the original claimant, re iterated that they are the original indigenous of Metamli. Parts of the advertised land worked by other families belonged to his clan.

Chief Lenkon explained that Rungmel is Fenmo's father. The residents of Bangter and Lonorkon have been utilising the land following rights given to Fenmo. Melwe is the first original nasara. He enquires as to why Roromal family is claiming land because his ancestors have originated from Ranbeteon. He further questions that if Jehu is claiming to have come from Ranmuhu then why claim Metamli.

A lot of questions were posed to this claimant and his witnesses. They have maintained their proper statements despite constant objection from the rest of the parties touching the parental status of Tugon Jomae. Andrew has strongly refuted their statements as having no profound proof and submitted that the court should not honour their claims.

Counter claimant 1

Timothy Roromal appearing for Roromal family is claiming ownership over two (2) parcels of land. The claimed territories cover, Ranber, Ewomul, Maribo Towalulu, Fanberarme, Lolibliwe and Lonwao area.

In the first part of his claim he alleges that the Fanberarme area is owned by the community of Fanla following the land declaration of the north Ambrym Area Council of chiefs. He further contended that there is no other reason as to why would Lewakon and others of Metamli witness the land in favour of the community of Fanla. A copy of such document is tendered before the court marked as R1.

The later claim covers Ranber area. The reason of his claim of ownership is sourced from one Rungmel origin of Metamli. He asserted that one of his ancestor, Timothy had no male issue except a daughter by the name of Awa. Upon Awa's marriage her pride price was paid together with the said terrain by one Natin and his brother Tainmal Roromal of Fanla. Thus, by virtue of such performed custom arrangement, the land would remain under the ownership of the descendants of Roromal Family.

Three witnesses were called to testify in his favour. Mark Sumkon briefly told the court that the boundaries claimed by family Roromal are true and correct. He explained on examination that the land is bounded by a navel tree. Etul Roromal, the oldest witness re confirmed that the contested land is customary land owned by the community of Fanla. Makekon Roromal plainly provided that Roromal's family tree is true and correct.

This party and his witnesses defended their statements despite their coming as immigrants to the land. It is their belief that the two parcels of land belonged to the Fanla community given the council's decision and the paid custom process.

Counter claimant 2

Jimmy Jehu appeared on behalf of Jehu Bongnaim. He is also defending two other families namely Roriri and Berangmarhe according to the bundled statement of claims. Family trees illustrating their past relations down to date are provided to the court.

In his statement, he testified that Yamtaororo is the original ancestor of the land of Metamli. He detailed on that the publicized area consists of a single boundary instead of two as mapped by the primary claimant. Melwoyang Yelyel settled at the nasara of Raliuje while family Abel lived at Fanbung nasara prior to the arrival of other tribes into the land. Family Berangmarhe of Lisemae later came to find settlement with Sombur son of Bawi. They later moved down and created Melwe nasara. This nasara does not exist anymore since, it has been bulldozed into a football field. These families then shifted to another area and founded another nasara called Enrar.

Moving on to the area of Fraptaje, he alleges that such land area belongs to one Hakma of Lonorkon. Hakma's fourth descendant Tamsi died without having any son except a daughter Muyukon. Muyukon espoused one of his fore parent Yelyel of Metamli. His family having blood relations of Hakma has been using the land since Tamsi's death. He also accounted that there was an attempt to sell the land to a French Trader, Jules by one Rony who claimed to be a member of Hakma's relative. Following this disturbance, Lewa decided to re purchase the land from Rony. He expressed thereon that by reason of this family relation, he is entitled to claim right of ownership over Fraptaje.

He further argued that Jomae Tugon has been conceived at Lonre village prior to her mother's coming to Metamli. One Berber from the island of Pentecost had impregnated Lilikon, mother of Tugon. After Berber's death Lilikon moved to Metamli. She gave birth to Tugon a month later while residing at Metamli with Yelyel and the wife. She was later re married to Yelyel as second spouse.

Upon his birthday, his brother Berber Puekon as a matter of custom practice returned Jomae's umbilical cord at Lonre for burial and marked by a coconut palm. Jomae was always recognized and treated as son of Berber since then. His only brother, Puekon had invited Jomae to take part in his namangi ceremony. Yelyel treated Jomae alike as son of Berber. He did not involve Jomae in his pig killing rite except his natural sons.

At the course of interrogation, he maintained his story over Andrew's status of origin. He further contended that Family Bayeo and others have no right on the disputed land. The residents of Metamli have been working the land since time immemorial. The same argument is adopted in relation to CC1 claiming Fanberarme. A Navel tree marks the frontier dividing the land of Fanla and Metamli. Jehu Jimmy explained that his forefather Lewakon has deceitfully and without good will witnessed the land as part of Fanla land. Lewakon was in bad terms with his relatives over the dispute of the land around the period of the meeting.

Two witnesses are invited to call evidence for his case. Bule Lileekon of Ponsirakon stated that he is a bloodline of Hakma who's daughter Muyukon had wedded Yelyel of Metamli. Jimmy Jehu is the true bloodline of Hakma following the matrilineal line. He has no knowledge of anything planted by Tugon.

Lionet Lengkon witnessed that Jomae had told him once that he is from Lonre. When questioned by Andrew he responded by re iterating that Jomae's father, Berber had come from Pentecost. He further stressed that Andrew had stolen his family tree of Roriri and formulated a false chart.

Counter claimant 3

Lucien Etul made submissions on behalf of Family Bayeo, Saba and Sangul of Tonbang. His statement of claim briefly provided that the areas of Libangworara, Bwetewau, Faraoje, Ulbaro, Horhor, Entubuol, Farliu Teolkoko, Fanjekonkon, Faraglar, Faranhanglam, Lonmaribongmalmal, Lonlilibliwe, Lirbu barkolkol, tefen temen ending up at Harnararao originally formed part of Tonbang land boundary.

In illustration of his claim he stated that the three (3) families have a nasara. Some of their past relatives such as Milinain, Wurwurfang, Nawok and Fenpator have been buried in the disputed area. Family trees were also made available to the court outlining their generations from past to the present.

Moving to his witnesses statements, Louis Marie Bule of Lonre only said that the line mark of Tonbang begins at Libangworara is bounded by a creek running up to Lirbu-barkolkol tefen temen. On interrogation, Louis Marie Bule testified that Berber story is true and correct because Tugon Jomae had given a pig to his family being uncles to Tugon Jomae. By custom, such ceremony would signify that Jomae is from Lonre and not Metamli. Melip Marcel and Narcisse Kebu are re confirming Louis' statement.

Counter claimant 4

Gabriel Malonsu is disputing certain parcels of land namely Enwejemen, Fantor, Lonorkon Fanbor, Faliple Lonlibliwe, Nobo, Enwomul, Ranmuhu, Ponsirakon, Ralimel, Fanrapung, Hanbal, Lonwao, Fanbor 1&2, Fanweyen and Maribo. He claims that the mentioned terrains are owned by Family Malonsu, Brangamo and Hulumato. These families have lived the land for centuries. His ancestors do have nasaras such as Har Fantor a nasara jointly owned with other tribes and Har Farawomul.

He told us that his ancestor Rongen a native of Nehatling land had eloped with a lady from the same land and sought safety at Metamli under one Sikelnaim. Since, Sikelnaim had no male issue he adopted Rongen as his son. The adopting father had paid the bride price of her spouse and upon his death Rongen administrated all funeral related expenses. He concluded that by custom, Rongen had every right to own all the claimed areas of land.

While speaking for his colleagues, he testified that Hakma a native of Metamli and his descendant Naimto have given land to Family Hulumato and Brangamo.

Hulumato amongst others also has nasaras in the area of Ponsirakon, Ralimel. While, Brangamo's nasaras are Har Nobo, Har Bangter which is another Har Pulpul or a company nasara.

The last part of his delivered statement provide that Yamar Lili was imprenated by one Berber. Soon after Berber's death Yamar Lili (Lilikon) was invited by her sister Konten (Muyukon) married to Yelyel of Metamli to come live with them. Tugon was born at Metamli a month after Berber's passing away. On his birth, Berber Puekon brother of Tugon took back Tugon's ambilical cord to Lonre for burial and marked by a planted coconut palm. Since then, Tugon Jomae was always recognized and treated as son of Berber. His brother, Puekon had invited him to take part in his namangi ceremony. Yelyel treated Jomae likewise as son of Berber. He did not engage Jomae in his pig killing ceremony except his natural sons. A family tree of Berber is drawn to the court's attention.

Witness Horry Atata stated that Tugon Jomae's father is Berber who had come from Pentecost Island. This man Melwoyan claimed by Andrew Welwel has no son except a girl who has died in her infancy. At the course of questioning he maintained that Andrew has origin from the island of Pentecost. When subsequently cautioned over Titoktok he replied that it is correct that his father Titoktok had in the past took care of Jehu but he was never adopted. The reason is that he was not yet born so such relationship happened between the family itself. Jehu is the legitimate son of Yelyel.

Sam Matur a bloodline of Malonsu stated that the family tree produced by Malosu is true and correct. Malonsu of Fantor Nasar has every right to own the claimed portions of the land. Fewer question is asked to this witness.

ANALYSIS OF EVIDENCE & FINDINGS

Given consideration of the presented facts and in application of the customary practices or usages of the district and the law; the findings are discussed below following the usual order of presentation.

The primary claimant

This party's basis of claim is by way of the patrilineal lineage of Roriri. However, despite his competency in presenting his case, there is overwhelming objection from the rest of the parties disputing his standing.

Firstly, his status and originally have been heavily disputed by the majority of the claimants and their witnesses. For purposes of illustration a few of these opposing statements are listed here.

Timothy Roromal, CC1 in the course of examination argued that Awa originated from Rungmel his family tree and not Andrew's. Makekon Roromal also said the same when interrogated by CC2. He went on to state that Andrew's grandfather is Berber whom is originated from the island of Pentecost. The oldest witness of the case, Etul Roromal also gave confirmation that Jomae Tungon is from Lonre but having origins from the island of Pentecost.

Jimmy Jehu, CC2 also communicated that Berber Jomae's father had come from Pentecost. Berber lived at Lonre. He had impregnated this woman Lilikon prior to her marriage to Yelyel. Tugon was conceived at Lonre. Yelyel had two wives, Muyukon and Lilikon. Lionet Lengkon stated that Jomae had told him once that his father, Berber had come from Pentecost. He further disputed that Andrew had stolen his family tree and fabricated a false chart.

While, Lucien Etul, CC3 upon questioning, told the court that Berber has no land in the disputed area because he is from Pentecost. Gabriel Malonsu, CC4 when interrogated by Andrew over his family tree, gave the same story. Additionally, Louis Marie Bule of Lonre speaking as a witness testified that Berber story is true and correct because Tugon Jomae had given a pig to his family being uncles to Tugon Jomae. That ceremony would signify that Jomae is from Lonre. A coconut palm is used to identify his cord's burial place.

Upon visitation to the claimed nasaras, such as Melwe, Har Faliuje and others we noted that there is common acknowledgment of the existence of the nasaras. However, it was ultimately disputed by every party that Andrew Welwel has no link to the nasaras because his grand father is a native from Raga.

Some of the claimants have inquisitively enquired as to why would Tugon Jomae allow the bulldozing of his own nasara. We find this fact somewhat odd in the sense that a reasonable person in custom cannot allow the destruction of his own nasaras together with graves of ancestors. Such an action would in one way or another provide room for implication to suggest that he probably does not own or has no connection to the remains. It was told that the concerned families of Jehu have shed tears over the destruction of their ancestors grave. Despite opposition the development forcefully went ahead irrespectively.

Uncertainty adversely remains with his family tree because, two (2) other parties namely, Lionet Lengkon co claimant of CC2 and Timothy Roromal, CC1 are also claiming it. Lionet Lengkon disputed that Andrew has stolen his family tree and

fictitiously drawing up a false chart. By way of comparison, we noticed that his family also bears the same particulars of names such as Roriri and Runmel and so is Timothy. There is no constructive answer to this anonymity.

Further, Andrew's assertion that Titoktok is Jehu's father has no founding support. Horry Atata son of Titoktok has explained that is correct that Titoktok had looked after Jehu as a child. The reason is that he was not yet born so such relationship occurred on a temporary basis but, Jehu is the natural son of Yelyel.

The fact that Andrew has been selling land in the past is not a constructive point of credit to his case. The tribunal is duly informed that other claimants like Jehu has also been selling land. It is the practice of the day that any claimant to the land can vend land. The evidence of selling land is not a complete determining factor of ownership.

Equally, being a long time claimant to the land, it cannot be construed to be seen as the customary owner. It was told that the original claimant had in the past acting on behalf of the Metamli community against neighbouring territories such as Fanla and Tonbang. Consequently, as a result of his personal claim over the advertised land other families elected to stand as separate parties claiming their respective territories.

The same explanation as above would apply in relation to past informal court decisions declared in his favour. Also such argument could not be sustained due to lack of further supporting evidence. Had this party tendered any minutes of documented decisions or event call a witness for confirmation of these past sittings; the result would have proportionately make a valuable difference in weight to his argument.

Another of his argument touches his generations. It was his submission that his family tree would override Jehu's descent chart and others since he has 12 generations. Such perception could not stand and is baseless given the absence of clear scientific or analytical assessment on the life span of past and present population and their health productivity. Realistically there are always social factors that would affect the life expectancy of a family. According to the 1999 population census of Vanuatu, the life expectancy was 70 years for females and 67 years for males. For illustration, a rough calculation from the above statistic would show that a couple could produce three (3) or less generations during their life time depending on their own circumstances.

Finally but not the least, Andrew has genuinely admitted in court that he and Jehu are one family in blood. This admission has far placed obscurity over his genealogy and claim. It is our sense as well in one angle to imply that he is

willingly accepting Jehu's story touching his originality. Development to this puzzle became clearer when Jimmy Jehu made approval that Andrew Welwel is part of his family since raised under his grandfather's abode.

Given consideration to the totality of the gathered evidence, this court is hesitant to grant this party's claim, but pronounce the finding that Andrew Welwel has origins from the island of Pentecost. Guided by the constitutional provisions of Articles 73 & 74 he would certainly have no absolute right of ownership. However, the court in consideration of the fact that he was born and raised under Yelyel's nakamal, he would in custom and law be entitle to some rights over the land. That privilege will be limited to an indefinite right to use the land.

Counter claimant 1

Embarking on the first matter regarding Fanberarme, it is obvious that none of the defendants has disputed his nasaras at Fanla. His drawn family tree tracing his past to the present generation also remained free of dispute. This claimant's early descents have migrated from Ranbeteon west Ambrym. But such background is not a conclusive issue that would entirely bar their claim. Rather, as long as it is proven before this court that they are the original ancestor who initially explored lived and control the land.

In his case, although his family has been living at Fanla for 12 generations altogether, it was not told that his migrating ancestors have been the first people to settle, conquer and have control over Fanberarme. It is witnessed that occupants from both communities are presently farming the land.

Another vital area requiring clarification is that relating to the boundaries of the land. This left the court with an indistinct custom boundary mark vaguely described as bounded by a navel tree and a creek. Even the visit itself could not provide any supplementary information to aid to the court. CC2 on the other side could do nothing more except merely referring to the same identical tree as the frontier dividing the land territories. Despite such effort, ambiguity remains thereon as it was quite difficult to follow a clear boundary line in between the identified areas.

Apart from such general weakness, we noted on land that there are occupants from each party tilling the land alongside each for time immemorial. This is an essential part of the evidence that had assisted the court on finding a reasonable resolution to the dispute.

On the other hand, his adoption of Andrew's approach over the number of generations on the basis that he has 12 generations is unfounded. The same point of explanation as emphasized above would apply to this party's argument.

Furthermore, it is evident that CC1 has also placed heavy reliance on the council of chief's decision for launching his claim. Even so, these facts have been largely subjected to dispute as advanced by Andrew, CC2, CC4 and their witnesses in challenging the council's decision as unreliable. It was CC2's emphasis telling us that his forefather Lewakon has deceitfully gave the land to the Fanla people. He was in bad terms with his relatives during the meeting but Fanberarme is originally part of Metamli.

The tribunal was fortunate to verify the contents of the tendered paper. On perusal we apparently noticed that almost all representative of the disputants in this case have been witnesses to the case. Nonetheless, despite the availability of such minutes, it could significantly offer no assistance to the court. The court was more particularly interested in the reasoning of such declaration to show whether he has any customary right over the land. There was no evidence to this essential element to give explanation for his claim.

Further developing thereon, our reading shows that such tendered document is not a decision but a general notice informing the public of the court's decision. Added to that according to the minute, the contested land boundary was between Fanjewer and Fanla. It is not clear as to whether it covered the boundaries of Fanberarme. Consequently, that fall short has influenced our mind not to fully honour CC1's claim of ownership.

Turning to the land of Ranber, CC1 is only disputing the land following alleged blood ties by way of the matrilineal line of Awa. It is accepted that the land is originally part of Metamli land. His overall claim could not survive as there are discrepancies over his relevant family diagram as summarized beneath.

Firstly, it transpired from the gathered evidence that Lionet and Andrew are also claiming this name Rungmel. In our case, Timothy is claiming that Rungmel is an original native of Metamli. Besides, he has strongly urged the tribunal by ruling out any connection with Lionet and Andrew's family trees. The result of our comparison of his family tree with his opponents is that they do share some similarities in names, yet he vowed to have a different personal.

Given his stand and practically, the onus of proof rested on him to provide other supporting material to substantiate his claim. There was no information forwarded as to whether Rungmel had any nasara at Metamli or Ranber. Our assessment of the evidence concludes that Rungmel is an ordinary member of the

community of Metamli. He has completely failed to disclose any compelling evidence to ascertain that Rungmel is the original ancestor of the land of Metamli.

Our observation of his demeanour throughout the trial is that there is likely hood that this claimant is claiming one of the above disputant's ancestor. He has utterly attempted to distort the truth. There is no mystery that can be hidden behind the bible.

The court has dismissed his story that there are no other surviving issues of the past generations dating from Timothy. Contradictory to his argument denying the existence of such family descendants, fortuitously he has himself stated in his submission that the land has been in use by Timothy's father following his mother's (Lilon Tor) bloodline having origins from Hulumato family of Metamli. Hulumato family could not comment or give confirmation of this statement. This bit of information was only made available during submission.

More over, the 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. Therefore, in the absence of evidence proving that Timothy or Rungmel is the original land, his claim cannot stand. He has fell short of providing clear and consistent rule of custom forming the basis of ownership and use of land.

In consideration of the totality of the evidence, the court is hesitant to wholly grant his claim in respect of Fanberarme. The fact that residents of both communities are working side by side, is indeed a sign of unification. For purposes of fairness and good order, it would be the most appropriate approach to share the land amongst the two rivalries. The claimant would certainly also be entitle to a right to use the land of Ranber given the development caused on it over many generations.

Counter claimant 2

This party collectively claims the land by way of the patrilineal system. We noted the only opposing party to this claimant's case is the original disputant. While, claimants such as CC1, CC3, CC4 and their witnesses have positively supported CC2's submissions. There is common understanding among each other.

Having given careful consideration over the entire information assembled before the tribunal, we are satisfied that there is sufficient information supporting this party's claim. The findings are discussed in the following paragraphs.

As mentioned firstly, there is overwhelming confirmation from every parties and their witnesses affirming that Jehu Bongnaim is the original ancestor of the land of Metamli. Secondly, upon visit to the claimed nasaras of Melwe, Har Faliuje, Enrar and others we noted that there is common recognition of the existence of the nasaras.

Thirdly, CC2's statements opposing the original claimant's genealogy has been extensively being supported by the majority of the defendants. Louis Marie's statement is vitally important to the court. He comes from Lonre area testifying that Berber story is true and correct because Tugon Jomae had given a pig to his family being uncles to Tugon Jomae. Such ceremony would traditionally certify that Jomae is from Lonre. The burial place of the umbilical cord is also visited marked by a coconut palm, now fallen down. All accepted the story as accurate except rejected by Jeredly brother of the original claimant as false.

On the other hand, it is evidenced that all disputants have strongly refuted the original claimant's claim as false and has no origin to the subject land. This is shown by the statements of the following presenters namely, Makekon Roromal, Lucien among others. We do not wish to re iterate their statements here to avoid repetition. These evidence have far out weighted the evidence provided by Andrew and his witnesses pertaining to his status and originality.

We have also taken great deliberation into the primary claimant's opposing statements against CC2. His immediate argument that Titoktok is Jehu's father by adoption has been completely disproved. We noted, Counter claimant 2 in response to the issue admitted that it is correct that Titoktok had in the past took care of Jehu but was never adopted. Horry Atata's explanation whose father is Titoktok indicated that such familial relationship had occurred on a temporary basis. Jehu is the natural son of Yelyel. If so, yet, there was no advanced evidence from Andrew as to when and where an adoption ceremony had occurred.

Andrew Welwel has also argued that his family tree would override Jehu's family graph since it has 12 generations. Such argument could not be admitted as a finding fact given the absence of distinctive statistic as earlier emphasized. Even the fact that Jimmy Jehu did not provide a complete family tree is not a substantive issue in nature that would completely withhold his claim given vast support and acknowledgment of his family diagram. Therefore, such counter argument would also have no heaviness.

Most remarkably, Andrew on the other hand, has genuinely admitted in court that he and Jehu are one family. CC2 on the same issue made confirmation of such confession and clarified that Andrew would remain under his authority given the circumstances of his status of origin.

As we dwelled upon the evidence over Fanberarne, the tribunal could only find general and vague description of customary landmarks such as a navel tree and a creek. No further material evidence is produced during the walking party. Our observation on land is that both communities are side by side cultivating the land for centuries. As mentioned, there is no satisfactory evidence of landmark provided by both parties that would direct the court to reach a complete conclusion. And in its absence, the court had no other alternatives but to divide the land in equal shares to both communities.

Moving on to Ranber area, by custom CC1 having origin from Ranbeteon, west Ambrym cannot claim ownership because they are not indigenous native of the land. The land forms part of Metamli claimed by CC2 an indigenous descendant of Ranber, Metamli. CC2 and his relatives would be entitled to have ownership. There is also satisfactory material showing that CC2 and his co claimants do have nasaras and have reached other customary processes sealing the area. CC1 could not establish that Rungmel is the original owner of the Ranber. Rungmel would therefore be an ordinary resident of Metamli.

Upon determination of the area claimed by CC3 we firstly noted that the land is wholly cultivated by dwellers of Metamli and Lonre alone for ages. The Tonbang natives have never disputed the land upon its use. Also, the Metamli claimants are in support of Jimmy's claim as correct. The villagers of Lonre seem to have sidelined themselves with this party's claim given their silence on the issue.

In light of the foregoing discussion, we are convinced that Jimmy Jehu has elicited sufficient material establishing his claim.

Counter claimant 3

This party's claim lacks clarity over his claimed boundary. He seems to place his claimed areas deeply inland Metamli. This developed more confusion to the court. Other defending parties such as Andrew Welwel, CC2 and CC4 and their witnesses have also objected to the mapping of his claimed land boundaries.

The court did witness the referred creek and the fallen navel tree. However, there was overwhelming objection from the Metamli parties, labeling the alleged boundary mark as erroneous. There was also no information as to where exactly the referred ancestors such as Milinaim and others were buried. Upon verification of the landscape it is our view that such purported boundary mark is non-existent. The reasons for this conclusion are as follows.

Firstly, we found that the area is currently used on subsistence farming by dwellers of Lonre and Metamli alone for ages. The Tonbang natives had never disputed the land when earlier used by the inhabitants of Metamli.

Secondly, the villagers of Lonre have no say on the issue. They had not disputed the Metamli residents who are farming the area. If they had considered themselves with the land as part of Tonbang some of the occupants would unavoidably have chosen to be parties to the case. Equally, it is questionable as to why then none of the areas inhabitant supported the Tonbang claim appearing as a witness or a party as emphasized. Given such silence, it is implied that the land encompassing Lonre village forms part of Metamli land.

Another discrediting feature affecting this party's boundary is that it is apparent that the contested terrains lie closer to the nasaras and villages of Metamli. Whereas, Tonbang settlements are situated in a far distance from the cultivated areas. It is historical that a land owning unit and their chief cannot work or own far land from their nasaras due to tribal war and other fearing activities.

Based on those discussed grounds, the court has no other alternatives but to wholly refuse their claim.

Counter claimant 4

The root of Malonsu's basis of claim is by way of an adoption. We are satisfied that they have nasaras given the field trip and that they have made developments on the land. Nevertheless, he has fell short of providing clear and adequate evidence for his case.

The immediate area calling for proof is the disclosure of information as to when and where did such adoption ceremony occurred. This question could not be answered by way of evidence.

Secondly, in our case, Rongen is not a tribe or bloodline of Sikelnaim. The common practice is that an adopted male child would only have the right to land ownership provided that such adoption is made within the family bloodline itself. Despite that fact, we have taken heed of the circumstantial situation of this party's basis of claim that there are no present existing bloodline of Sikelnaim. The court has accepted that under the circumstance herein Rongen would eventually be entitled to have ownership of the deceased adoptive father. However, such exception could not prevail due to paucity of further evidence clearing the following grounds.

The followed question posed is whether Sikelnaim is truly the original owner of the land. Extra evidence is required in this subject on the part of the claimant. Other parties have no knowledge of his story. Neither there is any drawn family tree of Sikelnaim made available to the court together with the listing of his nasara on equal footing as other parties of the case. In addition, there is room to suggest that there is a probability that the subject person might have other surviving descendants. In the alternative, if the answer is no and to cast out any doubts thereon then, the ensuing question posed is what was the cause of having a single person without a family tree.

The above scenarios required clarification in furtherance of his forwarded materials. The court found no evidence in this effect suggesting that he is the customary owner. In the absence of such resource, it is our consideration that Sikelnaim is only an ordinary member of the community of Metamli. Needless to mention as well but, for purposes of understanding, being a man Metamli it cannot be taken to mean that he owns the land save, proven otherwise as pointed out.

Moreover, Gabriel Malonsu has honestly told the court on questioning that he is originated from Falitor, west Ambrym. His ancestors have settled the land under the authority of CC2's tribe. This is another critical information that would render his claim void. He is not an indigenous claimant of Metamli. The law under Article 73 of the 1980 Constitution is clear enough to guideline us in this case. It speaks that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. The rule of custom forms the basis of ownership and use of land in Vanuatu. It is reminded that only indigenous occupants of the land and their descendants have the right to claim land ownership as guaranteed by the Supreme law.

In application of the custom principles and the law to the findings, the court is declining to grant any claim of ownership following the alleged adoption. He would no doubt have some lesser or secondary rights.

Moving to the co claimants, we are convinced that there is acknowledgment from other parties of Hakma to being a customary claimant to the land. The deceased and his descendants have given land to the Hulumato and Brangamo family units. Nonetheless, it is unclear whether these lands have been purchased or not. Despite such omitted information, we noted on the other hand that such individual still has existing relatives at present such as CC2 ascending from the matrilineal lineage of Hakma.

It is also confirmed and undisputed that Family Hulumato and Brangamo have also migrated from west Ambrym. Again the wordings of the constitutional

provisions are applicable in this situation. That is to say that being early immigrants to the land legally and by the rules of custom; they have no genuine standing to claim land ownership in this case.

In the light of the foregoing discussions regarding this joint defendants, we have also taken time to consider their period of residence on the land and the custom processes reached and exchanged with other claimants like CC2. There is enormous binding relationship existing between the parties, and this court is very cautious not to disrupt such unionship .Therefore, in view of those remarks, Family Malonsu, Brangamo and Hulumato will have a right to utilize their claimed land areas respectively.

DECLARATION

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

1. That Jehu Bongnaim representative of Melwoyang Family be the custom owner of the land of Metamli as advertised therein.
2. That the original claimant, Andrew Welwel only have right to use the land declared to Jehu Bongnaim
3. That the land disputed by Bayeo family and others is declared as part of Metamli land with ownership to CC2
4. That the disputed area of Fanberarme is divided in equal shares between Roromal Family of Fanla & Jehu Bongnaim of Metamli.
5. That Ranber area is returned to the original custom owners, Jehu Bongnaim while, Roromal family is granted a right of use.
6. That Family Malonsu and others be given the right to use their respective land areas as claimed.

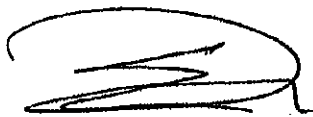
For ease of clarity, those parties who are given right to use the land are subject to the authority of the declared owner of the land.

All costs necessitated by this proceeding will fall as found.

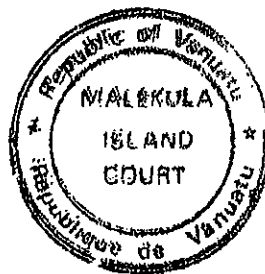
Any aggrieved party wishing to appeal this decision must do so within a period of 30 days from the 30th day of June, 2007.

Dated at ... Magaia North Ambrym, this 25th day of May, 2007

BY ORDER OF THE COURT



.....
Magistrate Edwin Macreveth



.....
Justice Louis Mera



.....
Justice Reuben Bakmelip



.....
Justice Lorma David

