

IN THE EFATE ISLAND COURT
HELD AT PORT VILA

Civil Case No. 8 of 2008

(Civil Jurisdiction)

BETWEEN: **CHIEF MASONGOMAPULA** of Siviri Village,
North Efate
Claimant

AND: **EDDIE KALOWIA** of Siviri Village,
North Efate
Defendant

Coram: **Justice Ann Carlo**
 Justice Francis Aru
 Justice Tomson Andrew

Clerk: Jona Mesao

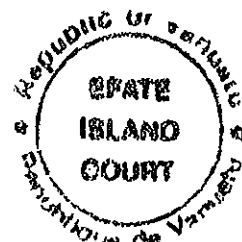
Date of Hearing: 22nd September 2008

Date of Judgment: 24th September 2008

JUDGMENT

Whereas, on 5th May 2008, an application was made under section 13 (b) of the Island Courts Act CAP 167, where the Claimant applies for the followings;

1. *That a declaration of the bestowment of the title "Taripoamata" on 26th January 2008, upon Eddie Kalowia, is declared null and void.*
2. *That a restraining order prohibiting the Defendant, his families, friends and agents from using the chiefly title "Taripoamata" pending further order of the Court.*
3. *That a restraining order prohibiting the Defendant, his families, friends and agents from calling or organizing meetings at Siviri Village or any other place pending further order of the Court.*
4. *That a restraining order prohibiting the Defendant, his families, friends and agents from creating or causing instability on Siviri Village.*
5. *And the cost of this application.*



In this application, the Claimant stated that, on 4th January 2008, the Magistrate Court heard an appeal brought by the Defendant against the Claimant in relation to the Chiefly title "Taripoamata". Upon hearing the parties in these proceedings, the Court hereby quashed the entire judgment of the Efate Island Court in which was dated 20th June 2005 and accordingly issued an order remitting the matter back for rehearing in a differently constituted Island Court. The Claimant raises arguments that, Defendant is not originally from Siviri village; however, on 26th January 2008, his families and relatives, came together at Siviri village and do performed an ordination ceremony in the early hours of 26th January 2008, bestowing the name "Taripoamata" upon the Defendant. The Claimant claimed that, Defendant's action obviously is in breach of the Orders made by the Magistrate Court on 4th January 2008.

In response, Defendant said that, he has already been aware about this application. He emphasizes that, he has already been ordained as the Paramount Chief of Siviri village, north Efate. He (Defendant) says that, his lawyer has already made a letter to the Efate Island Court Clerk and clearly mention that they, will object to any proceedings occur in the future in relation to this matter unless the matter be preside over by a Magistrate.

Having heard, the arguments made by the spokes person for the Claimant and upon hearing the facts presented in relation to the ordination made on the 26th January 2008, by the Defendant, the Court hereby make the following findings.

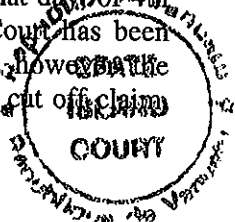
The Court is satisfied that there is an appeal made by Defendant on 10th August 2008 in Civil Appeal Case No. 4 of 2006 in the Magistrate Court. In this appeal the Magistrate Court made the following conclusion;

"Firstly it became obvious that the Court below failed to make a decision on the evidence properly adduced before it and secondly, the Court had acted so imprudently, having regard to the manner in which members of the Court conducted themselves."

In regards to the above conclusion, the Magistrate Court hereby makes the following Orders;

1. *The appeal is allowed.*
2. *The Judgment of the Efate Island Court dated 20th June 2005 is quashed.*
3. *This matter is remitted to the Efate Island Court to be tried afresh by a differently constituted Court.*
4. *The Respondent shall bear the costs of this appeal to be fixed by the court failing agreement.*

In view of this Court, it is satisfied that, Defendant did ordain during the period time where the Magistrate Court has remitted the matter to the Efate Island Court to be retried by a differently constituted Court. The Court assume that Defendant on that day of 4th January 2008, has been fully aware that, the decision made by Island Court has been quashed by the Magistrate Court according to point 3 of the Order, however, the substance of the claim in the said dispute is still in question. This is not a cut off claim.



The understanding of the Court in interpreting point 3 of the Magistrate's Court Order dated 4th January 2008 is that, the matter has been remitted to the Island Court for a fresh hearing; but the original claim is still in dispute and pending before the Island Court. Therefore the action of the Defendant in proceeding with the ordination made on 26th January 2008 is in breach of the Magistrate Court Order dated 4th January 2008.

THEREFORE, the Court makes the following Orders:

ORDER

1. That, the ordination made in relation to the chiefly title "Taripoamata" on 26th January 2008 upon Defendant Eddie Kalowia be declared null and void.
2. That Defendant, his families, relatives and agents be restraint from using the chiefly title "Taripoamata" until a full hearing of the chiefly title dispute shall be entertain by this Court.
3. That Defendant, his families, relatives and agents be restraint from calling or organizing meetings at Siviri village or any other place until a full hearing of the said dispute be rendered by this Court.
4. That Defendant, his families, relatives and agents be restraint from creating or causing instability at Siviri village, north Efate.
5. That both parties their relatives and agents shall maintain peace, harmony and good order in the community at all times.
6. The Court will sit and determine the Chiefly title dispute "Taripoamata" on 3rd November 2008 at 8.30am, Siviri village.
7. No order as to cost.


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Justice Ann Carlo


.....
Justice Francis Aru


.....
Justice Thomson Andrew



Dated at Port Vila, this 24th Day of September 2008.