

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

Civil Case No. 25/06
Judg. No. 6108

BETWEEN

WILFRED RORY
(Clemen)

AND

FAMILY NIMBWEN
(Difenden)

IN THE MATTER OF: DISPUTE OVA JIFLY TAETOL

Coram: Jastis Pierre Kai
Jastis Douglas Fatdal
Jastis Robert Niptick

Clerk: Wendy W. Raptigh

JUDGMENT

Brief background blong case:

Case antap hemi wan dispute ova long wan jifly title. Clemen ibin kam registerem case long Court long 1st September, 2006. Clemen mo defendant tugeta iblong Atchin nomo. Clemen hemi stap kleim se hemi stret man blong karem title ia blong paramount Jif from hemi stret bloodline. Difenden hemi disputem claim ia mo talem se hem nao hemi bloodline blong Paramount Jif mo title ia iblong hem.

Trial blong case itake ples long 7th February, 2007 long morning. Original claimant igat 2 witness mo Counter claimant hemi gat 8 witness.

Issue:

Case bifo long Court ia hemi blong finemaot se, hu ia nao igat raet blong karem title blong paramount Jif between tufala claimant ia antap?

History blong case:

Case blong Original Claimant - Wilfred Rory

Termasmas emi man Lejernavun mo emi marridem Letangter we emi woman Sowol. Tufala i gat tu boy nomo, first born neim blong em Malaran mo second wan neim blong em Sususu. Malaran emi marridem Lemalaran woman Petelep mo Sususu emi maritem Lrtersusu woman Melparav.

Story I go olsem, wan taem I gat one fait (haos fait) betwin Lejernavun mo Peterbu. Long fait ia lo man Peterbu oli kilim ded Termasmas mo spoilem gud body blong em.

Sususu young brata blong Malaran emi frait tumas mo emi tekem wife blong em mo tufala I pul I go long smol island long Melep. Tufala I stap wetem Nasigamilep.

Nasingamelip mo Sususu tufala I marridem tufala stret sisters we tufala I woman Melparav.

After we ol man Peterbu oli kilim ded Termasmas, Malaran I singout Nasigamilep mo Sususu long Melep smol island se yu tufala I kam luk mi, festaem long mainland. Taem tufala I kam, Malaran I talem long tufala se yu tufala I luk mi, mi mi wan istap be yu tufala tu, I gud yumi holem tait place blong yumi.

Nasigamilep yu bae yu holem graon we mi mi stap long em mo Sususu bai yu yu holem blong yu olsem we yu been holem finish I kam. Mi (Malaran) bai mi livim yu tufala mo ol ples ia mi livim long hand blong yu tufala blong yutufala I holem tait mo no leko. Bai mi mi go liv or stap antap long Petelep.

Malaran emi tekem wife blong em Lemalaran mo tufala I go antaplong Petelep mo Palika blong em I givim wan bountry blong land long em we oli kolem Malarr we neim ia I still exist tede. Long ples ia now Malaran mo wife blong em tufala I stap liv long em.

Malaran mo wife blong em Lemalaran tufala I gat two boy. First born emi Womak mo second wan emi Varvar. Tufala boy igru up mo Womak emi maretem Lewomak woman Lekumkum. Afta long sam taems we oli stap, Varvar brata blong Womak istap mekem wan fasin we ino stret, emi stap tekem woman blong brata blong em bakeken. Tufala istap mekem fasin ia for sam taem mo Womak istat blong lukim sam sign we smol brata blong em mo wife blong em tufala istap mekem.

Wan dei Womak iwantem trikim wife blong em blong kasem tufala mo emi talem long wife blong em Lewomak blong mekem wan laplap. Wife imekem laplap mo man blong em igo kilim wan faol blong putum long laplap. Afta we laplap itan Womak isingoutem smol brata blong em finis emi go insaed long kitchen mo kaikai quick taem nomo mo emi go outside. Afta wife blong em wetem smol brata blong em tufala igo kaikai bakeken. Taem tufala istap kaikai Womak istap outsaed mo talem long wife blong em se bae yu jes go long garen blong cutem wan banana mo yu karem ikam long haos mo mi bae mi go long Petelep fes taem.

Varvar emi harem se bog brata blong em bae igo long Petelep mo emi tingting se Janis emia nomo. Lewomak igo long garen olsem we man blong em italem mo taem emi stap long garen Varvar tu ifolem em mo taem ia imekem trapol long em, be tufala ino save se Womak ihait istap. Taem tufala istap havem gud intercourse blong tufala Womak irexis wetem nalnal blong em mo kilim tufala tugeta long sem taem ia. After we ikilim finis tufala idigim wan hole blong wan meter dip mo planem heads blong tufala igo daon be leg blong tufala emi fasem long rob mo pulum tait igo long brance blong wud mo fasem tait istap.

Few deis ipass bigfala Jif blong Petelep iharem we smol uncle blong em Womak imekem wan fasin we ino gud we ino gud olsem. Jif emi kirap mo takem wan big we tooth ifas long bun blong em mi kivim long Womak blong hemi save letem bodies blong tufala oli save berem gud. Afta we oli berem tufala, Jif blong Petelep isendem toktok igo long ol villages we oli stap long bush se fasin we Womak imekem emi no gud tumas mo tedei mi (chief) mi wantem talemaot se bai ino gat eni man iletem gel blong em long man ia. So imekem se generation blong Malaran emi finis long ples ia nao. Sususu brata blong Malaran em nao generation blong em ilive tede mo Nasigamilep em tu generation blong emi live tede mo emi olem title blong Paramount Chief long

iles des French Territory long New Caledonia.

Mulontamat emi man Lejernavun Atchin mainland. Mulontamat hemi fes man we hemi ko long Atchin. Long taem ia island iempti yet mo ino gat man istap long em. Festaem we Mulontamat ikasem Atchin hemi raonem island be ino faenem wan man nating mo hemi kam bak long mainland. Second taem we hemi go bakeken long Island mo raonem be isemak nomo hemi no faenem man nating. Namba 3 taem we Mulontamat iga bakeken long island mo raonem hemi faenem tufala man. Tufala man ia emi Maleny mo narawan emi Maita. Hemi talem long tufala se igud mi faenem yutufala, mo nao ya yutufala igo bak long ples blong yutufala mo afta long 7 deis yutufala ikam bak lukim mi bakeken blong putum land mak long boundary blong yumi. Afta 7 deis ipass trifala man ia oli kam tugeta mo serem graon tri parts.

Mulontamat emi onem Emelep Atchin boundary blong emi facem Atchin m/land, Maleny emi onem Ruarr we boundary blong emi fasem Wala island mo Maita emi ownem Melparav we boundary blong emi facem Malveveng o Ambae. Trifala man ia nao oli onem Atchin island mo oli stret man Atchin be ino Patunvanu. Mi no save Patunvanu iexist wea, emi kam mo silip wea.

Melmarur station long Atchin island emi jes exist ino long taem. Mulontamat nao emi tes givim station ia Melmarur igo long Asimbel. Asimbel emi gat 2 pikinini Tetejer mo Leterr mowen. Seu, mama blong em Leterr Mowen mo pupu blong em Asimbel. How kam Seu emi stap long Melmarur mo kam blong claimem jifly title blong Melep.

Seou bladline blong family Nimbwen:

Neinvanu emi great pupu blong mi mo emi maretem Leatuny woman Vao island long Tovanu mo emi mama blong tufala pupu blong mi Bonginmal mo Nonmal. Great pupu blong mi Neinvanu emi ronemaot Seu long Emelep from emi mekem trabol long woman blong em. Seu emi ronwe iko long uncle blong em Tetejer long Melmarur mo emi stap kasem 39 years emia yumi save talem se emi man Melmarur finis. During long 39 years ia long Melmarur Seu emi maret mo emi bonem Melteungasi. Melteungasi to emi maret long Melmarur bakeken.

Long second las nakamal blong Melep long year 1911 Neinvanu emi ded finis. Pikinini blong em Nonmal emi ko long Melmarur mo kilim wan pig we oli kolem Pokes, blad shet blong sori mo askem Seu blong kam bak long Melep blong lidim James blong kilim stone blong pupu blong em Neinvanu. Seu emi tes purput bakeken long Melep long taem ia mo emi no kam home yet blong stap long Melep kasem las namanki wei tek ples long year 1923.

Stone we family Nimbwen istap clemen:

James isut stanap long ston ia be from se emi stap wok long Port Vila long ship blong government MV Ehprosinie. Long taem blong las namaki ston blong james ivacant istap mekem se Nonmal egivim raet long Seu blong ko stanap long ston mo killim pig blong karem nem ia Meltesaen Maki. Meltesaen Maki emi minim se emi saen nomo o representation nomo be ino position olsem oli stap claim.

Pupu blong mi Bonginmal nao emi putum dei blong namanki we oli kilim long las namaki long year 1923. Bonginmal em nao ibaptisem olgeta we oli kilim pig long ston blong olgeta. Papa blong mi stret Solomon iconfemem se Bonginmal nao emi baptaisem em long las namanki long year 1923 be ino Seu.

Fes Witness: David Brown Pongimal - Atchin

Mi witnessim truth ya we mi nomo mi stret pupu blong Ponginmal em nao iputum dei blong las namangki long nasara blong Melep emia long 1923 Ponginmal imaen man blong putum dei blong namanki mo em nomo ibaptisem ol man long nem Jipon long nasara blong Melep, also Seou emi no baptazem hem Meltesaen Maky even papa blong mi nem Malaut mo papa blong Wilfred Rory nem Malpurnale. So evri man Melep we oli kilim pigs long ston blong olgeta Ponginmal em nomo idoem holi duty ia long nasara be ino Seou olsem we famili Nimpwen italem so mi wantem declarem long Kot ia blong save Nasimal nao ijif long boundary blong Melep mo Ponginmal ijif long nasara blong Melep mo assistant Jiff Kokonmal be ino igat eni naraman bakeken, emia nao right man long raet position mo raet ples blong em.

Witness 2: Vianne Kokonmal blong Atchin

Mi pupu blong Kokonmal, hemi namba 2 jif long nasara blong Amelep. Mi mi man bus nao plaintiff nao oli karem mi igo long smol island. Evri wan we ikam in long island ikam insaed long nasara blong Amelep.

Taem mol famili Nimbwen oli kam long Amelep igat man istap finis, generation blong Pongin nao ipem olgeta ikam long Amelep.

Case blong Counter claimant 2 – family Nimbwen

Chief Willie Malnaim:

Long 1953 taem Jif Melteguasy hemi ded, Jif Willie Malnaim hemi holem power olsem Chief. Chief Willie Malnaim hemi olsem Jif since tufala colonial kavman, British mo French kam kasem taem yumi karem independence. Long 1987 Jif Willie Malnaim hemi ded tufala son blong hem hemi Jif Devisly mo Jif Willison Nimbwen tufala ikarem power olsem Jif.

Chief title argument:

Jif Nimbwen hemi ronem Meltemowen blong go bak long Vao from argument blong power (Jif) be nakamal blong Melnator hemi holem bak hem mo kivim 4 bis graon. One graon long Atchin Island we hemi mekem nakamal long hem mo taem hemi ded oli berem hem long em. Ponginmal oli perem hem tu long nakamal ia we oli callem Nempien (luk statement blong Nicolsen Malmerel).

Initiator Jif Willie Malnaim wetem of Jif oli mekem Wilfred Rory hemi faen long wan wan nasara long wan mane VT2,000 we total blong hem ikasem VT10,000.

Hemia ol evidence mo criteria we famili Nimbwen (Jif Willison Nimbwen) hemi clemem bak taetol ia from. Ikat witness mo proof long criteria we istap long nakamal mo nasara we mifala iwantem pruvum long Island Court.

Authority blong Atchin Island paramount:

Patunvanu blood line blong Jifly title we igovernem (head) blong Atchin Island. Throne blong hem ie stap long Emelparav. Duty blong hem ie blong touchem eni establishment blong namangi raon long Atchin. Duty ia or position ia emi extenem ie go long Meltegnut afta hemi nogat generation (pikinini), afta Numunmal blong Lekumkum (Atchin Bush) emi kam stap wetem Meltegnud. Numunmal (Lekumkum) hemi gat 3 pikinini tu gel mo wan boe, afta ol man Luwal oli kaekae boe blong putum pis afta long tribal war. Tufala gel imaret iko long Vao. Smal sista we nem blong hem Leianke hemi maretem Tasimbel blong Vao, nasara blong Tevanu we Wilfred

ikamaot long hem. Leianke itekem man blong hem Tasimbel mo tufala ikam stap long Atchin Island mo stap wetem Nimbwen. From we tufala gel imaret long Vao mo boy oli kaikai hem, Numunmal igo pem bak blad line we hemi paramount Jif long Emelparav. Hemi pem Paramount Jif long wan price blong 10 pigs, blong hemi kam registerem hem long Emelep blong tekem Jifly raet blong Meltegnud mo Numunmal.

Numunmal ipem Paramount Jif blong Emelparav we hemi Jif Melterer. Jif Melterer son blong hem Jif Nimbwenmal, Jif Nimbwen son blong hem Jif Seou, Jif Seou son blong hem Jif Melteguasy, Jif Melteguasy son blong hem Jif Willie Malnaim, Jif Willie Malnaim son blong hem Jif Devisly (Jif Willie Nimbwen) mo Jif Devisly Nimbwen son blong hem Jif Roy Nimbwen mo son blong Chief Roy hemi Jif Nimbwen Roy.

Position blong Jif Taetol:

Jif Numunmal/ Jif Meltegnud- tufala imekem nasara (Amal Nuamb) mo givim paoa igo long Meltere long 10 pigs.

Jif Seou (hemi gat 4 rank)

- Theme song namangi hemi Malsei
- Taem hemi kilim namangi nem bong hemi Meltesaenmaki
- Narafala nem blong hem Typong hemi minim shadow blong ol man Emelep
- Narafala nem blong Seou hemi Aelan oli naemem hem afta long wan canoe ceremony

Chief Melteguasy

Jif Seou hemi gat wan pikinini nem blong hemi Salesarame (Melteguasy). Bifo 1937 Melteguasy hem wan nomo hemi Jif raon long Atchin Island long taem ia. Taem ia nao Melteguasy hemi putum papa blong Wilfred long prison from we hemi kiaman blong tekem paoa blong Jif Melteguasy.

Generation mo blood line blong Chief

1. First point

Generation Chief nem hemi Seou. Seou nao hemi hostem namaky ia, mo tu iko wetem welkam singsing we hemi some se Seou hemi kat power mo one (1) taitel.

2. Second point

Seou hemi kat wan pikinini boy mo papa blong hem hemi putum nem blong hem, Sale Sarame. Meltevuasy, nem ia hemi wan chief long taem blong world war II long taem ia ino kat nating wan chief raon long Atchin Island. Meltevuasy hemi wan nomo. Taem ia we Meltevuasy hemi chief hemi putum 3 man long prison, Solomon we hemi papa blong Wilfred, Iasek, Rotao hemia long Government blong Mr. Adam.

3. Namba three chief hemi Willie Malaim, Jif Willie Malnaeim hemi Jif since long tufala Government – British mo French kasem yumi karem Independent blong Vanuatu mo tete pikinini blong hem oli still olem yet.

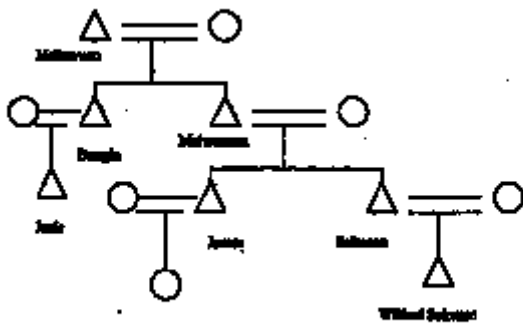
4. Olsem naoia Wilfred Solomon hemi stap disputum mifala family Meltevuasy mo smol brother blong hem Maltape.

Question

Chief Nimbwen hemi papa blong Seou mo Maltape. Nimbwen nao hemi ronemaot generation blong Wilfred long nasara Mare, mi wantem save se long wanem custom reason Wilfred hemi mekem blong givem raet ia blong hemi save kam bak blong disputem mifala family Meltevuasy mo Seou, while pupu mo brata blong Wilfred Solomon oli bin berem tufala long nakamal blong Merator.

Generation blong Wilfred Soloman

- Tasibel hemi man Vao.
- Pikinini blong hemi Meltewuen – hem nao Nimbwen hemi ronemaot long Latap Mare.
- Meltewuen ikat tu pikinini Bongin mo Malweraen



My Lord – mi wantem yu askem Wilfred Solomon se whu long olgeta ia hemi Jif finis mo long wanem year? Mo wanem custom or wanem namaky hemi bin mekem or kilim? Wetem generation or blood wei stap? Mo wanem custom singsing blong hem taem oli stap mekem wan custom?

HEMIA OL PROOF BLONG FAMILY NIMBWEN MALTAPE

Welcome song hemi ko oltaem afta namanky itekem ples, wetem singsing nem Malsey ikam oat long hem.

Second point- Taem hemi kilim namanky ia afta oli bin putum nem ia Aaen Maky – afta long taem ia custom hemi jas putum or givim three nem nomo bakegen (bifo 1937 War).

Long taem blong World war II Meltewuasy hem wan nomo hemi chief raon long Atchin island long taem ia. Taem ia nao Meltewuasy hemi putum papa blong Wilfred long prison.

Chief Willie Malnaim hemi bin olsem chief since tufala Government British mo French kasem tede yumi karem independent.

First Witness: Nicolsen Malmerel blong Atchin island.

Mi save gud history blong Wilfred Rory mo hemi wan man Vao island. Mi mi family blong Malmerel. Mi wandem confirmem long kot ia se bifo taem mi smol, mi bin harem long papa blong mi we emi talem se grand papa blong Wilfred Rory we nem blong em, emi Tasimbel emi karn long Tevanu village long aelan blong Vao. Papa blong mi italem long mi se bifo pupu blong

Wilfred emi kam stap wetem family Nimbwenmal blong Atchin mo oli bin stap tugeta koko nao, pupu blong Wilfred emi stap causem problem long olgeta so family Nimbwenmal iwandem ronemaot em iko long ples blong em long Vao island. Ale, pupu blong mi Maljungterter emi ikam stap wetem em mo givim four (4) pis kraon long em, wan long smol island mo three long mainland. Kasem tedei yu save lik se (4) fala pis kraon ia oli boundary wetem ol kraon blong mifala nomo long Atchin island mo island mo Atchin mainland.

Second witness: Dennison Meltetan blong Atchin Island.

Mi mi save gud history blong family Nimbwenmal blong Atchin Island mo family Wilfred Rory blong Vao Island. Mi mi smol chief blong Chief Nimbwen. Mi mi stap kolosap nomo long nasara blong chief Nimbwenmal olgeta long Atchin Island. Stret kraon we Wilfred Rory emi buildem haos long em emi kraon blong family Nimbwenmal. Mi wandem confirmem long kot ia se mi mi save gud kraon we family Malmerel oli givim long papa blong Wilfred Rory mo mi wandem confirmem long kot too se kraon we Wilfred I build long em emi aotsaed long emia we family Malmerel igivim long em. Emia nomo ol toktok blong mi.

Third witness: Marcel Pierre blong Atchin

Nimbwen oli kamaot long Melparav, long taem ia olgeta ibig faea, mi smol faea. Nimbwen ikam igo long Melep, hemia olfala blong ol Meltewossi from 1937 – 1942 (WW.II). After war kasem tedei oli hollem jif kasem tedei.

Fourth Witness: Ketio Jimmykon blong Atchin

Mi kam blong witnessim se Family Nimbwen oli kamaot long Amelparef – hemia stret bladline blong Jif Whurrer mo igo long Amelep.

Fifth witness: Jean Pieree blong Atchin

Meltegwossi hemi high Jif blong Atchin. Hemi putum papa blong mi – Samson Melterongniphath assistance blong hem long smol island. Papa blong mi istap blow long pupu evri morning blong wok (cleanim rod). Evri wik wanwan assistant imas go givim report long Jif mo tekem nara niu wok blong nara wik.

Witness 6: Marcela Tavunwo blong Atchin

Taem oli kilim namangy long Melip, Olfala ia we Melwoussi, mama ise hem nomo ijif blong Atchin.

Witness 7: Nono Melterossi blong Atchin

Mi narasaed ston my harem oli se Jif hemi kam long olfala Willie mo mi tu mi luk.

Witness 8: Johnsten Nimbwen blong Atchin

Mi kam witnessim singsing blong namangy blong Nimbwen. Man ia iblong Amelep, hemi bonem tantam mo afta oli kilim namangki.

Ol findings blong case:

Long saed blong Plaintiff: Rory Wilfred

Court itekem statement mo considerem wetem claim blong Jifly taetol blong Emilep. Long statement blong yu, yu stap tokbaot taem yu stap muv long mainland mo go long smol Island, mo yu bin talem se yu raonem smol Island tri taems mo yu no finem tufala man ia: Maleny mo Maita.

Court hemi interest long Jifly taetol mo ceremonie we yu stap putum long statment blong yu, long saed blong cross examination mo statement blong tufala witnesses mo submission blong yu.

Court i note se, witness 1 italem se Nasinmal hemi Paramount Jif blong boundary mo Ponginmal hemi Jif blong nasara mo assistant hemi Kokonmal.

Witness 2 italem se taem famili Nimbwen ikam long Emelep igat man ilaef istap finis.

Long saed blong defendant: Famili Nimbwen

Court itekem statement mo considerem wetem claim blong Jifly taetol blong Emelep. Long statement blong yu yu stap clemem raet blong Numunmal se hemi pem yu long 10 pigs so Melterer Nimbwen hemi kam long inheritem raet blong Numunmal long Emelep. Mo tu long cross examination wetem witness blong yu Johnston Nimbwen hemi confirmem se igat Nasimal long Emelep mo tufala witness ia, Silas Nicholzen mo Tenison Tan. Tufala iadmitim long Court se Nasinmal irecevim tufala taem tufala ikam daon long bush mo crossem solwota igo long smol aelan.

Court iandastand tu se Nasinaml igat famili ilaef tudei long Niu Caledonia long Ile des Pins hemia iconfirm by plaintiff Wilfred Rory.

Long saed blong high custom ceremonie we ol ancestor blong yufala iperformem Court itekem into consideresen mo Court ifaenmaot se tufala parti igat dispute ova se huia stret nao man blong putum date blong namanki. .

Law we Court i applaem:

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

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

Translate:

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

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

Apply Law igo long fact:

Section blong Law we Court ia istap applaem tudei hemia antap - CAP 167 (s.10). Common practice mo custom insaed long nasara ya, long bifo ikam kasem tudei hemi oltaem fes bon son nao hemi stap inheritem title ia blong Jif. Ino eni fes bon but fes bon follem bladline. Pikinini boe we mama igat bel long hem finis afta ikam in long wan nasara bae pikinini boe ya imas putum hem daon mo kam andanit long authority blong ol stret bladline.

Common practice tu se man wei kam from wan nara ples or Island bae ino save karem taetol blong Jif be man nomo insaed long wan area olsem big faea or spos big faea ifinis then smol faea oli save gat raet long taetol blong Jif.

Olgeta points ya nao oli ol gudfala orda we hemi ol custom practice blong long taem finis ikam.

Las toktok:

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

DECISION:

Therefore wetem evri toktok ia Court ikam nao blong givim decision blong hem:

- 1. Court iwantem declerem se Wilfred Rory mo famili igat raet blong inheritem raet blong ol ancestor olsem wan Jif long famili blong hem.**
- 2. Court iwantem declarem se famili Nimbwen mo famili Maltape igat ful raet follem kastom blong save inheritem raet blong Melterese mo Numunmal olsem wan Jif long nakamal blong hem mo famili blong hem.**
- 3. Court ino declarem wan long tufala olsem paramount Jif blong Emelep, follem admission blong tugeta claimant se igat laef blad blong paramount Jif ilaef yet istap long New Caledonie.**
- 4. Long saed blong land, Court ia ino raet Court blong deal wetem.**
- 5. Eni claimant we ino agri long decision igat 14 deis blong mekem appeal blong hem igo long higher Court.**

Dated long Lakatora this 27th dei blong February, 2008

**JASTIS PIERRE KAI
JASTIS DOUGLAS FATDAL
JASTIS ROBERT NIPTICK**