

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

Civil Case # 90 of 2008

BETWEEN : SATO KILMAN

Applicant

AND: FAMILY MALROR
FAMILY KENNETH
FAMILY JULUN & PRV

Respondents

Coram: Magistrate Edwin Macreveth
Parties in person

Clerk: Wendy Raptigh

JUDGMENT

This is an application filed by Walter Kilman as representative of Sato Kilman seeking a declaration order from Island Tribunal to declare him ownership of the land areas known as Tembogh and Amelinges situated at the PRV leased land.

The grounds for his application are summed in these words.

1. The first argument alleges that Sato Kilman was the original claimant in Land Case no. 2 of 1984 and that the land disputed and decided includes the land areas of Tembogh and Amelinges.
2. The second reason provides that the Supreme Court only issued a decision dated 5th of July, 1988 covering the Lakatoro land which its boundaries commences at the PRV fence at Black Gate ending at the wharf at the Marine quarters. Other areas of Amelinges and Tembogh were not part of that judgment cited as Land Case no. 5 of 1984.

It is based on the above claims that he is submitting that this tribunal move to cause a declaration of ownership over the areas in his favour. The onus of proof rests on the applicants shoulder to prove his claim on the balance of probabilities.



Having heard the parties and in determination of the totality of the evidence gathered, the court finds as follows:

The first question for the court to dwell on is whether Sato Kilman was the original claimant in Land Case no. 2 of 1984 as claimed. The answer to this claim is in the negative given the following fact.

1. The sworn statements of Joe Ligo, Gordon Arhnhabat being former Malekula Island Court Clerks and the concerned Island Court Justices suggesting that Sato Kilman is the original claimant and that the land in dispute covered the area of Amelinges and Tembogh could not be sustained. These sworn statements alone could not draw any clear conclusion to the issue. Those witnesses were not present in court and that situation prevented the court from collecting further clear evidence.
2. I note on record extracted from the Island Court Land Registration Book, instead provides that Bue Manie was the claimant 1 while Family Kenneth is the second claimant. The land areas for the court to decide is described and I quote " *Land claimed by Bue Manie is the whole area of Lakatoro station area and extending down to the wharf and where the PRV fence ends at Blackgate*"...This same boundary is also claimed by claimant no.2 family Kenneth. The duo are the plaintiffs while Sato Kilman was the defendant here. My understanding of the process would be that Bue Manie is the original claimant being the plaintiff. This record was made by Joe Ligo former Clerk of the Malekula Island Court.
3. It is correct that Sato Kilman's claim covered the questioned territories. But, the court only decided the ownership of the land as described by the registry book which would normally appear to be the advertised land. It is the common practice in land cases that after hearing, the court must visit the land and that would include inspection of boundaries, nasaras and other identical Phenomena depending on the histories presented by the parties. However, any unadvertised land areas visited will not be part of the judgment. The decision from this court only covered the area disputed and advertised by the original claimant, Family Bue Manie.
4. In addition, the applicant lacks evidence to substantiate his claim. For example, he could not furnish the court with the original copy of the advertised land together with its description or first land payment fees if he was the original claimant. He does not have any of those documents. I am hesitant to say that he is the original claimant or plaintiff.



5. Furthermore, if the applicant was correct then, claimants to the land such as Family Frazer, Family Julun and others would have been parties to the claimed areas. Chief John Selwyn of Uripiv for example, has specifically paid a land claim fee receipted and dated 13th June, 1984 claiming Amelinges. And according to our record Amelinges is still a land pending a decision from the Island Court. From this proceeding, it is noted that interested claimants to the subject areas had no knowledge of any court proceeding dealing with the lands ownership.

I now consider his second argument.

1. I agree with his claim that the Supreme court's decision covers the Lakatoro land beginning at the PRV fence at Black gate ending at the wharf at the Marine quarters. That piece of evidence stands out clearly as per Chief Justice Cooke's judgment at Page 2 when he stated " *In this case, I am to decide who is the custom owner of Lakatoro which is the land in dispute and as is set out in Exhibit 1.* Examination of this document indicates that Exhibit 1 is the whole area of Lakatoro also containing the state land occupied by the Condominium government.
2. It follows from the above fact that I have formulated a conclusion that the land disputed was obviously the land as described above by the registry book. Otherwise, the learned Judge would have made it clear that other unappealed part of the land be in favour of Sato Kilman. I find no words of the judge to that effect. There is no information suggesting that only a certain part of the land was appealed. The entire decision over the land was challenged at the appellate level.
3. More importantly and above all, the decision of the Island Court has been overruled by the Supreme Court and a new decision has been issued giving ownership of the land to the three custom owners, Family Bue Manie, Kenneth and Sato Kilman. That decision below has no legal effect. It is reminded that this court has already issued a judgment to the land and as a matter of law, it cannot for a second time hear the same decided land in issue and cause another declaration. This application is an abuse of the court process.

Therefore, based on the foregoing discussion and findings it is hereby ruled that the relief sought by the applicant in this motion is entirely refused.

No order as to costs.



Dated at Lakatoro this 6th Day of February, 2009

BY THE COURT



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EDWIN MACREVETH
Supervising Magistrate

