

**IN THE EFATE ISLAND COURT
HELD AT PORT VILA**

Civil Case No. 01 of 2002

(Civil Jurisdiction)

BETWEEN: CHIEF WAYA TENENE
Original Claimant

AND: SUAL KALMARIE
First Cross-Claimant

AND: KALMETABIL KALMET NMAK
Second Cross-Claimant

DECISION

Representative of the Second Cross-Claimant filed an Application for Enforcement Orders purportedly of the Judgments of the Efate Island Court dated 7th August 2002 and 16th April 2004 in Civil Case No. 01 2002. This Application is made in pursuance to Rule 9 of the Island Courts (Civil Procedure) Rules 2005.

To put matters into perspective, it may do well to revisit the trend and/or course to which this dispute has taken. On 27th June 2002 the Supreme Court formulated six (6) questions and directed the Efate Island Court to answer them accordingly. On 7th August 2002 the Efate Island Court entered judgment on the matter. That Judgment was appealed to the Magistrates Court. On 7th January 2003 the Magistrates Court dismissed the appeal and confirmed the Island Court's decision of 7th August 2002. The matter was further appealed to the Supreme Court. On 25th June 2003 the Supreme Court quashed some parts of the Island Courts declaration and issued direction as to the manner upon which the parties and the people should follow in electing a chief. That Ruling was yet again appealed to the Court of Appeal. On 7th November 2003 the Court of Appeal ruled that the Supreme Court was not the appropriate forum to rule as it did. The Court of Appeal was of the view that the process of hearing in the Supreme Court was flawed. It ordered that the matter be referred back to the Efate Island Court. On 16th April 2004 the Efate Island Court entered judgment yet again reaffirming the declaration made by that court.



on 7th August 2002. That judgment was again appealed to the Magistrates Court which appeal was dismissed. Proceedings were further filed in the Supreme Court of which proceedings that Court dismissed. It followed that the Judgment of the Efate Island Court dated 16th April 2004 remained enforceable. That Judgment is now the subject of the application for enforcement filed herein.

Court Judgments are enforceable only for and against the named parties of any particular proceeding unless specifically ordered otherwise. In this matter the Judgment Creditor Kalmetabil Kalmet Nmak has since died. The Original Claimant also has since the date of Judgment died. I am asked to issue enforcement orders for the credit of a party who has since the date of judgment died.

For completeness the Efate Island Court declared late Kalmetabil Kalmet Nmak the paramount Chief of Erakor Village. Mr. Timteo Kalmet appears to be seeking orders that would facilitate the succession of the chiefly title to Chief Charley Kalmet. The application also seeks interlocutory orders. I, as the Supervising Magistrate cannot entertain and or issue orders of the kind sought. I lack the jurisdiction to grant the interlocutory orders sought.

Furthermore I cannot enforce the Judgment of the Island because the Judgment Creditor has since died. I also lack the jurisdiction to declare that the succession of the chiefly title bestowed on Mr. Charley Kalmet valid.

The Judgment of the Efate Island Court cannot be enforced for the credit of those who were not parties to the proceeding. Accordingly I order that the Efate Island Court must as soon as possible hear and determine whether the succession of the chiefly title bestowed on Mr. Charley Kalmet is valid and according to custom.

Costs in this application shall lie where they fall

Dated at Port Vila this 2nd day of July 2009





Steve R Bani
Supervising Magistrate

