

IN THE EFATE ISLAND COURT
HELD AT PORT VILA

Civil Case No. 5 of 2008

Judgment

(Civil Jurisdiction)

BETWEEN: CHIEF POPOVI, of Tanoliu Village, North Efate
Claimant

AND: MR ANDREW KALONTAS, of Tanoliu Village,
North Efate
Defendant

Coram: Justice Ann Carlo
Justice Eddie Karis
Justice Harry Joshua

Clerk: Jona Mesao
Date of Hearing: 17th November 2008
Date of Judgment: 6th March 2009

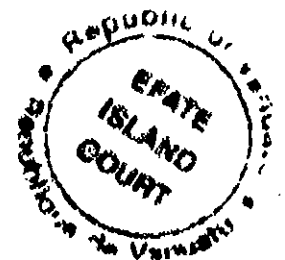
JUDGMENT

Dispute we istap bifo long Kot ia emi concernem raoraon ova long chiefly title ia "Popovi" we emi originally blong Udaone emia long Tanoliu village, north Efate. Tufala parties we istap dispute ova long chiefly title ia emi, Chief Popovi we oli save long em olsem Philimon Pakoalaelae Popovi registered olsem Claimant mo Chief Andrew Kalontas Popovi registered olsem Defendant mo emi represented by Mr Saniel olsem spokesman blong em.

Claimant emi faelem claim ia long namba 20th August 2008 mo Kot ilistim case ia long first hearing blong em long 17th November 2008. Kot emi further adjournem case ia iko long namba 8th December 2008 from we Defendant ino preparem mo redi yet blong faelem olgeta response documentation blong em. Claimant tru long spokesman blong em, emi talem se tru long blood line blong family blong em, em nao emi tru bloodline blong title ia Popovi.

CASE BLONG CLAIMANT

Mi olsem Claimant blong case ia, mi wantem emphasistem very strong se long bilif blong mi long kastom ikat tu olgeta existing land boundary we oli stap around long Udaone wetem olgeta paramount jifs blong olgeta. Long north west ikat Elolapa (known olsem Lelepa) we jif blong em emi, Natamatesaruru, long east ikat Siviri, we jif blong em emi, Taripoamata, long side iko long south further interior, ikat Imere, (known olsem Mele) we jif blong em emi, Poilapa mo long side iko long coast (solwora) ikat Moso we jif blong em emi, Matuele mo Alickau.



Mi wandem talem tu long this honorable Kot ia se ibin kat wan bigfala namba blong olgeta genealogical fore father ancestors we oli kam down from wan interior village long Udaone we oli sigaothem Elema. Then oli muv koko oli kam stap long Tanoliu we iexist tedei. The only last surviving forefather blong mifala we imuv on and on until oli kam settle long Tanoliu village long 1900s emi Chief Kalnagis Tivate mo woman blong em Ruth we emi woman Ambae. Kalnagis Tivat emi stret (Patrilneal genes) great grand father blong mi. Yu save luk long family tri structure we istap long statement blong mi. Kalnagis Tivat emi stret original bloodline blong Popovi mo mi, mi stret namba four (4) nearest of kin mo blood blong Popovi Chiefly Title.

Taem late Daniel Popovi emi ded long 1990 smol brother blong em Pakoalaelae iko andanit long coffin blong em blong tekemaot Popovi Title. Long 1993 taem Obed papa blong mi ided mi (Philimon) mi mi stanap long mat blong tekem out tufala Chiefly Title. Chiefly Title we emi Pakoalaelae mo Paramount Cheifly Title we emi Popovi. Long custom blong Efate, Patrilineal system blong bloodline nao oli kat priority raet ova olgeta kastomary own inherited property olsem Chiefly Title mo kraon. Ownership blong kastom isave change long different direction or follem different (woman) system blong blood nomo, sapos man ino moa exist we iminim se oli ded everi wan.

Kastom blong Udaone (we oli save tudei se Tanoliu) emi part blong Vanuatu Constitution we article 95 (3) iquarentim kastom blong Tanoliu village emi administer follem break down ia. After we Kalnagis ided long 1920s (original and nearest of kin), Daniel emi tekem ova Title ia Popovi (external kin and blood). Afta we Daniel emi ded, Obed emi tekem ova long Chiefly Title ia Popovi (nearest kin) mo taem Obed emi ded, Philimon emi tekem ova Chiefly Title ia Popovi (nearest of kin and existing Popovi). Mi wandem upholem long this Kot se Popovi Chiefly Title emi wan Paramount Title mo emi kat ofis blong em. Mi wantem upholem long this Kot se Popovi emi kat wan kastom land boundary w Kastom jurisdiction blong em iadministerem insaed mo isoem we istat mo iko finis long em. Kastom administrative jurisdiction blong Popovi ino ova lap long aotsaet kastom boundary ia.

Mi wandem upholem long this Kot se Popovi emi kat olgeta kastom property ranging blong em from Cheifly position boundary blong kraon, different stones mo minerals andanit Udaone kastom land boundary. Blong Kot ifaenem wan stret man blong tekem ova Cheifly Title ia, wetem history blong mi ia, mi biliv strong se mi nao mi stret bloodline folem kastom blong Efate blong tekem ova Popovi Cheifly Title. Mi wandem talem tu long this Kot se mi kat sapot behaen long mi blong tekem Popovi Cheifly Title. Support ia emi kam long Vaturisu we emi high kastom body long Efate, Marakinavata we ihighest kastom body long north Efate, neighboring Cheifs mo majority long ol members blong community long Tanoliu village. Mi wandem upholem long this honorable Kot se kastom fashen or way blong Chiefly transfer ranging from Kalnagis Tivat ikam kasem mi Philimon. Mi proud blong talem long this honorable Kot se ineva kat disturbance whatsoever the way we Popovi Cheifly Title pass or shift on from one person to another. Things oli done very smoothly follem kastom blong Efate.



As Claimant mi wandem confirmem long this Kot se family tri structure blong mi we emi backbone blong kleim blong mi emi specifaem very clear. The blood inherited system we Popovi Chiefly Title ipass tru on and on tru years emi folem saet blong Patrilineal we emi inline mo folem kastom blong Efate. Mi wandem affirmem strong se mifala istret grand (bloodline) pikinini blong Kalnagis Tivat we emi original Popovi Chiefly Title long last eighteen (18) years we mifala iholem Popovi Chiefly Title. Long term blong mi long ofis existing Popovi, mi neva insultem or mekem Tanoliu community isuffer since history blong Popovi long taem blong rulling mo governing.

As Claimant mi wantem kivim brief sum up nomo blong Kot iconsiderem bifo yumi continue iko long matter ia se;

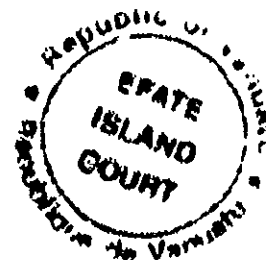
- How nao bambae this honorable Kot isave putum gud Popovi Chiefly Title folem Kasotm blong Efate?
- Wanem stret kastom system long Efate blong inheritem Popovi Chiefly kastom Title?
- Wanem stret kastom category long Popovi bloodline istret long Popovi Chiefly Title?
- Wanem nao kastom procedures long Efate blong inheritem wan Cheifly Tiltte?
- Who nao istret man blong save kam Popovi?

Hemia nomo emi presentation blong case blong mi.

SUBMISSION BLONG CLAIMANT

Mi, Philimon Pakoalaelae olsem claimant blong case ia mo same taem witness namba one mi explainem very clear long Kot se Udaone emi identify as sovereign paramount kastom land boundary. Follem nomo olketa narafala paramount kastom land boundaries wetem paramount jifs blong olgeta we oli stap. Olgeta kastom land boundaries ia ikat, Elolapa (Lelepa) we paramount jif blong em emi Natamatsaruru. Long east blong Udaone, Siviri we paramount jif blong em, emi Taripoamata. Long south blong Udaone emi Imere we paramount jif blong em, emi Poilapa. Long north blong Udaone long coast emi Moso mo paramount jif blong em, emi Alikau mo Matuele. During long proceeding blong case ia, Kot ibin witesem jif Matuele we ibin wan witness blong Defendant.

Mi bin testifae taem mi stap long witness box se emi very clear se ikat ol dif, different ancestral forefathers blong mi oli kam daon long wan velej long Udaone we oli singaotem Elema mo kam daon long solwota. Rison we imekem oli kam daon long solwota emi from we ikat tribal war mo tu sickness ia malaria. The only last ancestral forefather we ilaef last wan emi Chief Kalnagisu Tivate we iholem Popovi as original Popovi we mi save. Emia nao mi Claimant mi basem history blong mi long em as stampa blong patrilineal genecology blong mi. Mi wantem refer long few questions mo answers



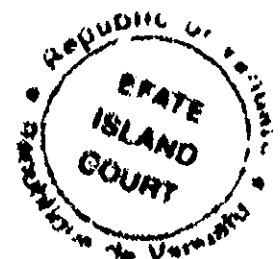
we spokes man blong Defendant. Spokesman blong Defendant Mr Saniel iaskem long mi se "who jif ipresent long 1990 ded blong late Daneil" Ansa we mi talem aot long taem ia se jif Mormor blong Magaliliu village mo jif Andrew Pakoa Kalpoelep blong Eratap.

Next question we Mr Saniel iaskem long mi se, "long kastom blong Efate subordinate jif isave kam wan Paramount jif" Ansa long question ia se, yes sapos subordinate jif ia emi blood line blong jif Popovi. Next question se "kastom blong Efate emi stret blong wan paramount jif blong Nguna ikam performem ordination blong wan paramount jif blong Efate olsem Popovi" Ansa long question ia se, yes olgeta paramount jifs blong Nguna we oli kam ordainem mi, oli ol members blong vaturisu. Mi wantem mekem extra comment nomo se jif Matakoromarata emi signatory tu long vaturisu existing customary law. Narafala question we Mr Saniel iaskem long mi se "Kalnagis Tivate emi wan ordain as Popovi" Ansa long question ia se, yes sapos emi no ordain Popovi, why you mo Andrew dress civilian clothing mo kam up blong tekem Popovi 1990 taem Daniel ided.

Long cross examination Kot ibin askem mi blong mi explainem family tri blong Daniel se emi tru, se Daniel emi wan adopted pikinini. Long ansa mo explanation blong mi, mi talem se long Leosa (lelepa) apu Kalnagis Tivate emi bin karem wan pig we emi blong Daniel blong mekem wan kastom ceremony blong regognison blong olketa paramount jif long Naleoaana long Leosa village wetem olgeta narafala paramount jifs. Daniel mo Obed tu oli stap long custom ia mo Daniel emi faenem aot se pig ia iblong em, then emi rao long Kalnagis Tivate from pig ia. From Daniel iapprochem step father blong em Kalnagis Tivate long foret blong olgeta man long taem ia imekem se Kalnagis Tivate emi harem nogud mo ko daon long solwota long velej. Taem ia Obed we emi papa blong mi ifolem papa blong em iko daon long solwota. Toktok blong apu emi talem stret long papa blong mi se "brother blong yu Daniel emi no stret brother blong yutufala, that's why fasin blong em idiferent.

Long extra comment apu istap rulumaot genealogically se Daniel emi pikinini blong rod blong grand mother Ruth wetem Tapokasi. Mi biliv se mbae Kot ino save over lukim toktok blong apu Kalnagis Tivate we italem long papa stret long mouth blong em se Daniel emi no stret blood (melek or sperm) blong em. Mi wandem emphaistem strong long ples ia se long kastom blong Efate, blong yu save inheritem jifly Title emi tru long bloodline. Mo mi wandem talem se jifly Title ia Popovi emi stret custom property blong mi mo from reason ia nao mi ordain long 27th May 2006. Ol stret pikinini blong Kalnagis Tivate emi Obed we emi papa blong mi emi first born mo Harry emi second born. Daniel we Defendant emi stap basem history blong emi long em ia, emi stret pikinini blong Tapokasi. Mi wandem explainem moa long ples ia se taem we Daniel (adopted pikinini) emi ded long 19th June 1990, bifo burial blong em, papa blong mi Obed Pakoaelaelae emi bin escorted (holding tabia's) by chairman blong vaturisu council jif Tapia Kalsakau blong walkbaot raon long coffin blong late Daniel Popovi. Every witness blong mi oli testify mo confirmem se kastom ceremony ia ihappen bifo burial blong late jif Daniel Popovi.

Long kastom blong Efate wan man isave kam care-taker over two paramount jifly Title. Long kastom mbae mbae ino save performem duty blong tufala paramount Title ia long

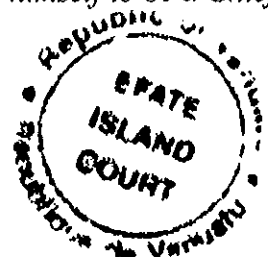


same taem. Hemi save ordain nomo long wan paramount jifly Title mo care-taker long narafala paramount jifly Title until such time we ikat man blong deposem iko long em. Mi wantem talem tu se title mo offis blong Popovi long Udaone, emi kat ol kastomary boundary, varea, doko (jif throne), wede (ordination stone), malala (kastom feasting and dancing kraon), vanua Tapesu (private land), Nawora, mo tu undernit kraon mo above resource long Udaone kastom boundary. Mi wandem mekem iklea long Kot ia se Defendant mo spokesman blong em, tufala ikamaot long Tapokasi. Tapokasi emi pikinini blong wan man Maskyline long Malekula we nem blong em Willy. Tapokasi emi wok long ship blong Misi Peter milen olsem launch boy.

Ruth emi house girl blong Misi Peter Milen. Woman ia Ruth emi blong Ambae mo how emi livim ples blong em long Ambae mo kam long Nguna emi kam long boat blong Misi Peter Milen. Mi tingbaot wan funny English toktok blong Misi we emi very popular long north Efate mo mi hope plante man Efate tu we oli ko long Eles mission school between 1940 -1950 long Nguna oli save long em. English funny word ia emi olsem "*Willy take Takaua to Pele*" Willy Tapokasi emi boat boy blong Misi, mo taem iharem toktok ia emi ko fashem wan cow (woman bulluk). Willy emi think se Misi emi talem se "*Willy take the cow to Pele*" Be stret toktok we Misi italem se emi se Willy Tapokasi mbae itekem Takaua, papa blong Kaloris we emi driver blong Public transport nao ia iko long Pele.

Long case blong mi, mi talem veri clea se source blong power laef line transaction blong Popovi istat nomo long Apu Kalnagis Tivate, then iflow ipass tru long Ruth, then iko long Daniel, then tru long Pakoalaelae mo ko long mi we icontinue developem continuity present generating source blong power we imekem se Popovi Chiefly Title ilaef kasem tedei. Long case blong defendant, source blong power laef line transaction ino some long history blong all jifs blong em. Chief Manatuatuanatokolau ino luk source blong power lae line mo ikat break down of source blong power laefline transaction blong Popovi. Defendant isoem source blong power laefline ifall daon long sky ikam ova Kalnagis Tivate mo tekem nomo Daniel. Daniel ikarem source or connection source blong power blong laefline transaction flow blong Popovi wea emia wan question.

Olsem Claimant long case ia, mi wantem clarifaem se mi bin submittim plante documental backup support ranging from majority blong members insait community blong Tanoliu village, Maraki, Navata council of jifs, Eseman law council blong ol jifs mo Vaturisu council blong ol jifs we ibin ko finis long hearing. *Ikat Tanoliu Community of 25th February 1993 page 15, Tanoliu Community of 25th November 1989 page 16, Tanoliu Community of 18th January 2006 page 17, Marakinavata leta of 4th July 2006 page 18, Eseman Law leta of 27th June 2006 page 19 mo Vaturisu leta of 27th June 2006 page 20.* Mi submittim tu leta blong President blong Malvatumauri jif Noel Manasua dated 15th May 1995, mi quote "*Chief Popovi Daniel emi ded finis be ikat olketa son blong em oli stap be wan ino ordain yet from sait blong kastom mbae mbae Village or community blong Tanoliu Village oli mas lukluk who nao mbae mbae ikarem ples blong late jif Daniel Popovi. (refer long page 21, leta blong President blong Malvatumauri, dated 15th May 1995).* Narafala document emi sworn statement blong Sanieel Popovi we emi spokesman blong Defendant emi mekem long Civil Case No. 169 of 2003 (Supreme Court Case) "*My brother Andrew Popovi (Defendant) cannot claim himself to be a Chief*

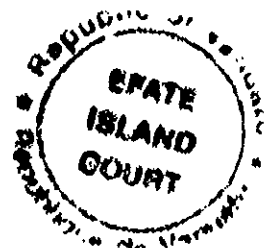


as he has not ordained to hold chiefly Title he is claiming) narafala document long Civil Case No.110 of 2006 w Defendant Andrew Kalontas emi reply long first iko long second Defendant long case ia se "Also never in Tanoliu chiefly custom can a paramount chief land over his paramount chiefly title to another tribe called the Pakoalaelae tribe which the first Defendant seems to suggest, refer Defendant on Supreme Court document of 26th April 2004 page 23.

Mi wandem confirmem bakagen se stamba blong historical klem blong mi emi base nomo long Apu Kalnagis Tivate. Kalnagis Tivate emi original genealogy long klem blong mi mo stret bloodlaen blong Popovi mo emi naflak yam. Automatically emi bin transferem Popovi long Daniel tru waef blong em Ruth olsem custodial (tukurau). Daniel emi sekon Popovi mo emi no stret bloodline mo emi olsem caretaker Popovi. Daniel emi naflak Pero mo Daniel emi transferem Popovi long Obed Pakoalaelae tru long wokbaot raon long coffin blong late Daniel bifo burial long 1990 we Obed emi bin conductem escort ia wetem Vaturisu. Obed Pakoalaelae Popovi emi naflak Pero mo emi bin transferem Popovi iko long Philimon Obed tru long wokbaot raon long coffin blong late Obed Pakoalaelae long 1993. Philimon Obed emi naflak Island cabbage (Noasi). From Kalnagis Tivage ikam kasem mi Philimon imekem four (4) generation blong Popovi finis long historical transfer blong Popovi jifs long kastom covering system insaet Udaone we oli save tudei olsem Tanoliu Village.

Mi wandem talem tu se mi bin explainem mo connectem mi mo olketa witness blong mi olsem witness No. 2 Tanearu Tongoltong mo witness No. 4 Jacky Obed se tufala tu istret bloodline blong jif Kalnagis Tivate. Long chart mi soem tu narafala branching out blong adoption we emi blong Daniel. Family tri blong mi isoem nomo basic jifly family tri blong Popovi. Mi wandem talem tu long this honorable Kot se Popovi kastom governing system ibin establish long Tanoliu Village long 1972 tru long caretaker mo adoption Daniel Popovi. Long 1980 kastom governing system blong Popovi ibin recognize insaet niufala kastom law blong niufala state of Republic of Vanuatu. Long 1938 ikam kasem 2008 imarkem stret 18 years we Obed Pakoalaelae tribe oli rule mo governed as Popovi. Long 27th May 2006 ikat first ordination after 1972 we Tanoliu Village iestablish bakagaen. Ordination ia iblong Philimon Obed olsem Pakoalaelae mo semtaem tu olsem acting (olioli) existing Popovi. (refer photo blong 27th May 2006, page 24).

Mi wandem mekem last remarks nomo blong concludem toktok blong mi se Defendant emi no wan gud mo responsible person blong stap faetem kes ia blong kam Popovi. Emia nao few points we mi wantem Kot iconsiderem long this final submission. Defendant emi salemaot majority long ol kraon insaet Udaone long ol foreign investors during late 1990s-2008 motu salemaot kastom site especially varea mo ol graves blong Udaone. Defendant mo family blong em nomo oli bin stap benefit long olgeta income return blong financial development long Udaone without majority blong community blong Udaone or Tanoliu Village. Defendant emi no bin capable blong reservem enough long blong future generation mo deliberately causem blong kat left over blong only 100 hector blong land blong 500 member blong Tanoliu Village mo future generation blong olgeta oli stap live long em. Defendant emi some without reasonable doubt se emi narafala tribe, that is why emi no care long olgeta custom property land blong Kalnagis Tivate mo olgeta pikinini



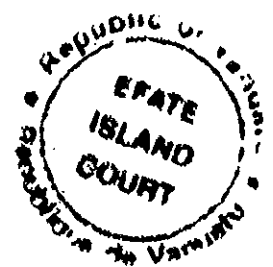
blong em descendants mo pipol blong Popovi long Udaone or Tanoliu Village. Defendant emi producem wan total make up mo false Family tri genealogy we emi traem blong connectem papa blong em (Daniel) mo Mini se tufala iblood line blong Kalnagis Tivate we last witness blong mi (Donald James) blong mi ww emi kamaot long Mini emi bin discouragem connection ia long presentation speech blong em long Kot.

CASE BLONG DEFENDANT

Mi olsem spokesperson blong Defendant mi wantem talem olsem se, papa blong mi wetem ol brata blong em oli stap long Moso Island long 1928 ko kasem namba 1st January 1972, we emi about seventy four (74) years nao. Taem oli startem new Village, papa mo namba tri brata blong em Mr Harry tufala nao istartem mekem haos mo live fastaem long em. Be papa Obed Pakoalaelae emi no stap yet permanently wetem olgeta mo emi ko back long Sunae emia long Moso Island. Long period taem we oli stap ia, papa emi stap holem wok blong jif mo same taem emi stap mekem wok tu blong wan Elder blong Church. Taem brata blong olgeta Obed Pakoalaelae ikam live permanently wetem olgeta long Tanoliu Village, then oli decides blong putum mo appointem se every Tuesdays long each week emi time blong jif. Taem papa istart blong holem meeting mo ol brata blong em, ol nephews Kalsale mo Kalsaf mo wife blong em Leisongi mo man blong em James Arumaolo long Tuesdays, emi stap talemaot long olgeta blong oli mas klinim Village katemaot ol wood we oli stap kolosap mo ol narafala wok we papa italem blong oli mas mekem.

Long taem ia oli stap holem meeting ino gat any division among long olgeta kasem taem we district agent Mr David Brown ikam luk olgeta blong markem kraon mo dividem olgeta which one nao ishud stap. Long taem we oli stap yet long Moso Island long 1961 ikat nomo wan district school istap we oli kolem Eles school emia kolosap long Taloa long Nguna Island. Long 1961, emi kam long wan taem we ol pikinini oli mas mekem exam, Mr Douglas mo Otto tufala tu isetem exam long taem ia mo tufala ipass iko long Eles School long yia 1962. During long taem ia oli stap talem se ol pikinini blong Udaone oli pass iko long Eles School mo Jif Jack Matuele istap askem long community blong oli must katem copra. Ples we oli stap katem copra long em, emi Undine Bay. Long taem ia oli stap katem copra blong pem School fees blong mifala. Mi wandem pointemaot se long taem ia ino kat raorao or mifala ol family istap dispiutum mifala. Ol haos blong mifala istap kolkolosap nomo long mifala. Smol brata ia Harry em nao haos blong em istap long middle blong mifala everiwan. Taem we mi smol mi luk ino kat raorao between ol papa blong mifala.

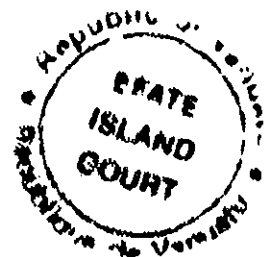
Taem mi start blong kam wok long Vila mo samtaem mi stap ko bak long Village mi stap joenem ol meeting we papa blong mi istap holem mo mi stap harem ol toktok olsem we papa istap talem se "united we stand, divided we fall". Taem mi stap harem ol toktok olsem ia istap meaning se ol papa mbae oli wok tugeta. Since we mi smol mi neva harem long ol narafala papa se papa blong mi emi blong different papa. Be taem mifala istap mo live long wei, ikat problem tu se ol man oli stap agaisem olgeta (others). Long living blong mifala long wei, plante taem ol kasen brata blong mi oli stap kam luk mifala mo stap sigaotem Matua (bigfala papa) long papa blong mi. Mi wandem talem long Kot ia se



mi no remember or luk long taem ia we mifala istap since 1972 (about 22 years) afta long ded blong papa se wan long tufala ia, ikam mo talem se mbae emi tekem ova Jifly Title. Mi remember nomo wan taem long 1969 taem mi ko wetem papa long wan bigfala meeting long Ifira we oli kolem Tanakoro mo meeting ia iblong ol jifs raon long Efate, mo taem ia papa italem se mbae mi joenem em mo brata blong em Harry Tongolton. Long taem blong meeting ia, procedure we oli usum iolsem se, taem oli sigaotem yu, yu stanap mo talemaot jifly title blong yu mo wanem Village yu kam long em. So taem we oli sigaotem Village blong Udaone, papa istanap mo talemaot se mi nao Paramount Jif blong Tanaoliu Village mo mi kam wetem brata blong mi Harry Tongolton. Chairman blong meeting long taem ia emi Graham Kalsakau iaskem long papa se who ia boy ia we yu kam wetem em? Mo papa italem se emia, emi Sanieel we emi boy blong mi.

Mi wantem talem tu se ol narafala meetings we istap take place naowia brata Andrew nomo nao istap ko long em, emia long Epau Village mo Imere Village. Next taem we oli ko bak long meeting bakagen long Epau Village, emia long taem ia nao oli changem nem blong ol Jifs raon long Efate ikam long Vaturisu. Mi wandem talem tu long Kot ia se since long twenty two (22) years we mifala istap long Village long Tanoliu mi no luk se ikat any dispute blong Jifly title ia Popovi. Papa oltaem emi stap tekem ol Jifs olsem John Mariwota blong Tikilaso mo Jif Faleawia blong Epau mo istap wandem tumas blong oli mas mekem wan ordination bifo emi pass away. Olsem long taem ia emi stap mekem preparation ia Jif John Mariwota blong Tikilaso emi kam stap wetem em mo oli stap wok tugeta from preparation ia. Hemia from reason se grand father Jif Kalnagis Tivate iko ded long Nguna mo oli bin berem em long cemetery blong Nugna Island mo afta we Jif Tikilaso emi ko bak long Nguna plan blong ordination ia inomo happen. Mi refers long page 1 paragraph 6 long statement blong mi. Long taem ia papa italem se mama ided finis mo mitu mi no feelim gud from mi stap sick long high blood pressure. Mbae mi divaedem yufala ol boy's blong mi long two.

Long Saturday 9th June 1990, Paramount Chief blong Tanoliu Village, Chief Daniel Popovi emi sigaotem four sons blong em Douglas Popovi, Sanieel, Wilson mo Andrew mo talemaot wishes blong em long olgeta se: Douglas mo Wilson yutufala ilukaot Presbyterian Church blong Tanoliu Village mo everi Church property mo bambae tufala iincharge long everi Church service activities, Sanieel mo Andrew yutufala itekem over Chiefly authority mo kat power blong ordainem other subordinate chiefs mo power blong givim up raet (cede) mo allocatem pieces blong land along wetem chiefly title iko long subordinate chief taem oli ordain. Andrew emi must tekem ova chiefly title blong Popovi mo Saneil bambae emi Atavi Chief. Paramount Chief blong Tanoliu village, Chief Daniel Popovi emi mekem wishes blong em long 9th June 1990 mo long following Friday 15th June 1990 emi passed away long garden blong em long Esema custom land within Udaone custom land. Wetem help blong Donald James mo George Jeffery we tufala ia iko assistem Defendant Andrew Popovi oli carry out ded body ikam long residence em long night. Mo wetem help blong Mark Lister, dead body emi finally reached Vila Central Hospital Murtuary for safe keeping until burial date. Long 17th June 1990 all pikinini blong late Chief Daniel Popovi ikam tugeta long residence blong Paul Lenis emia long Independence park long Vila mo tokabaot how nao mbae mifala iko about ol wishes blong late Chief Popovi. So ol nine (9) pikinini blong late Chief Daniel Popovi,



ikat, Douglas, Saniel, Wilson, Andrew, Alice, Leitava, Leingatch, Memelyne oli agree se funeral service bambae itekem ples long Tuesday 19th June 1990 long 2pm emia long Tanoliu Presbyterian Church mo Andrew Kalontas nao mbae itekem ova Chiefly title Popovi. First born son Douglas emi kivim consent mo power blong authority iko long Andrew taem emi performem custom mo kivim wan mat iko long Defendant Chief Andrew Kalontas. Then Pastor blong Assembly's of God Church, Pastor Stephen Tapasei ipray over long newly conferred Chief Andrew Popovi. Long Tuesday 19th June 1990, clerk blong Presbyterian General Assembly Pastor Pakoa Boua Maraki iko pray over long coffin blong late chief Daniel Popovi long Vila Central Hospital Mortuary before, Port Vila Municipal Hearse car itransportem dead body iko long Tanoliu village. Taem ded body blong late Chief Daniel Popovi iarrived long Tanoliu village preparation blong (wata) custom gifts iproceed rere blong taem after long funeral service, mbae olgeta custom gifts (wata) ishared iko long ol friends, Chiefs, Government Ministers, family mo community we oli present long taem ia.

Long 2pm Tuesday 19th June 1990, everi pipol oli assemble tugeta blong bambae Chief Kalnaure Murmur blong Magaliliu village mo Paramount chief Kalsong Natanmatewia blong Natapau village long Lelepa Island imekem ordination blong Andrew Kalontas. During long taem ia ikat olgeta incidents ia ihappen mo preventem ordination blong Andrew Kalontas. Timothy Obed (then VMF officer) iseizem control long car blong Maria Crowby mo ran over long ol wata custom gifts we Popovi family oli preparem specially blong ordination blong Andrew Kalontas. Philimon Obed, Donald James mo Kalkaua James mo others oli confrontem two chiefs we tufala irere tu blong carryout ordination. Follem ol incidents ia MP Donald Kalpokas isuggest se Andrew mo Saniel iwokbaot raon long coffin blong late chief Daniel Popovi mo Philimon Obed mo member group blong em oli forcem Obed Pakoalaelae ikam ran around coffin blong late Chief Daniel Popovi.

SUBMISSION BLONG DEFENDANT

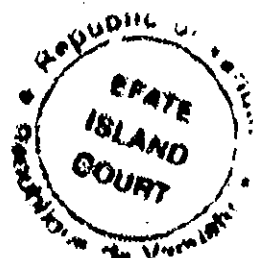
Mi Chief Andrew Kalontas Popovi blong Tanoliu village, North West Efate mi wandem mekem closing statement blong mi olsem, Mi nao mi legally mo lawfully declared custom land ona blong custom land we emi marked green colour long map as evident long Annexe "B" long this Island Court long 1988 mo recently declared by Sunae/Siviri Joint Village Customary Land Tribunal, long January 2008. Mi mi olsem nine generation mo stret descendant blong Paramount Chief Manatuatua Nadokolau we Paramount Chief Kalnagis Tivate emi direct descendant blong em mo Paramount Chief Daniel Popovi emi stret blood line blong man or father to son (nanatu) olsem we emi evident long Annexe "A". Chief Daniel Popovi emi stret first born pikinini boy blong Paramount Chief Kalnagis Tivate mo woman blong em Ruth mo tufala tugeta oli blong Udaone we tudei yumi stap save long em olsem Samoa Point. Chief Daniel Popovi emi assert long this Island Court long 1988 se olgeta chiefs oli mekem ordination blong em long 28th June 1938 folem custom from emi stret blad laen blong man or father to son (nantu) blong Paramount chief Kalnagis Tivate olsem olgeta evidences ia oli stap sowem se toktok ia antap chief Daniel Popovi istap respond long kwestian (15) long page 3 "Annexe B" (Judgment Island Court) mo brata blong em Obed Pakoalaelae tu emi present long taem



ia long Island Court room long 1988, emi conceded wetem no objection. Chief Daniel Popovi emi assert long this Island Court long 1988 se Paramount chief Sunauvea Manatuatua emi Tia or grand papa blong em mo Tua or grand mama blong em, emi Leimasi. Tufala tugeta ikamaot long Elama w tudei yumi save long em olsem Mt MacDonald, refer long Annexe "B" page 2, question 5 (Island Court Judgment). Chief Daniel Popovi emi assert long Island Court long 1988, olsem evident long Annexe "B", page 4 long question (19), (Island Court Judgment) se olgeta chiefs oli ordainem em olsem Paramount chief blong Udaone custom land we nasara or farea blong em, emi farea Asuwia. Tufala brata blong em Obed Pakoa mo Harry Gilbert oli bin conceded se ordination ia emi stret mo folem custom mo traditional practices blong blad laen blong man or father to son (nanatu) long language blong custom.

Obed Pakoa mo Harry Gilbert oli conceded se tufala tu, oli bin ordainem tufala olsem subordinate chiefs. Blong Obed emi Pakoalaelae mo blong Harry emi Tongolutong folem customary rules mo traditional practises blong Udaone. Chief Daneil Popovi emi assert long Island Court long 1988, long Annexe "B", page 5, question (28) se chiefly title ia "Tivate" ibin kat three ancestors blong em finis we oli bin ordained long chiefly title ia olsem Kalmele Kalotiti we emi bin installed long chiefly title Tivate folem nomo ol politiks blong 1978, we taem olgeta nao oli bornem Tanoliu village. Brata blong em Obed Pakaolaelae emi agree long toktok ia long good faith emia long year 1988. Elder Arthur Masongo blong Siviri village, chief Joel Matuele blong Sunae village long Moso Island, chief Esrom Manapanga blong Malafau village mo chief Masavia Laklotal blong Lelepa Island oli bin present long Island Court long 1988 mo olsem evident long Annexe "B" page 3, page mo 9, question (16) (23) (24) mo (42) (Island Court Judgment) oli conceded se chief Kalnagis Tivate emi stret paternal father blong chief Daniel Popovi. Hemi exactly 20 yias since long this same Island Court long 1988 taem emi luk Plaintiff (Philimon Obed) emi deniem olgeta toktok ia antap mo refuse se olgeta toktok ia long Island Court long 1988 emi misconstrue by the Plaintiff.

Hemi evident se Plaintiff emi deliberately stap deceitim this Island Court blong misrepresentem same family tri ia olsem long 1988 Island Court folem own admission blong em, taem emi tekem oath mo assert se ol toktok we emi talem long taem ia emi "the truth nothing but the truth" se family tri we chief Daniel Popovi emi providem long 1988 olsem evidence long Annexe "c" (defence statement) emi true mo accurate family tree blong Chief Kalnagis Tivate. Obed Pakoalaelae emi declare long this Island Court long 1988 se bigfala papa blong em Daniel Popovi emi chief afta long chief Kalnagis Tivate, emi no agaisem any toktok long Kot long taem ia mo folem ol admission statement blong em ia, imekem se Kot isatisfy mo handem daon decision long favour blong papa blong mi Chief Daniel Popovi. Mi wandem talem tu se Plaintiff Philimon Obed emi bin witness blong mi long Supreme Court long year 1995 mo declare se family history we mi chief Andrew Kalontas Popovi mi stap presentem long Kot emi true from we emi semfala wan nomo taem em mo papa blong em Obed Pakoa tufala ibin witnessem festaem finis long Island Court long year 1988. Plaintiff emi witness blong mi long Supreme Court long 1995 mo declare se mi chief Andrew Kalontas Popovi mi appear long Surpeme Court olsem Paramount chief blong Tanoliu village folem ded blong papa blong mi late Chief Daniel Popovi se emi tru mo consistent wetem customary practice

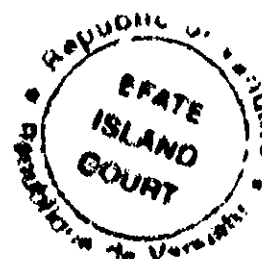


taem em mo papa blong em Obed Pakoalaelae tufala ibin witnessem festaem finis long Island Court long 1988. Plaintiff emi tekem Oath blong em long Vaturisu commission of Inquiry blong year 2000 mo declare se family history w mi chief Andrew Kalontas Popovi mi presentem long Vaturisu commission emi true mo consistent wetem family history blong em tu from emi semfala wan nomo taem em mo papa blong em Obed Pakoalaelae tufala iwitnessem long Island Court long 1988.

Defendant's witness namba one chief Joel Matuele emi declarem long Kot ia se Kalnagis Tivate mo Ruth ikat stret fofala pikinini ia nomo Daniel, Obed, Harry mo Minnie. Witness emi kohed mo talem se emi kat 75 years old taem papa blong em Chief Jack Matuele nao emi bin lukaotem gud olgeta family blong Udaone ia start long 1928 kasem 1971 taem oli reside long Sunae village, emia long Moso Island. Papa blong emi emi talem mo clearem se fofala pikinini ia oli immediate offspring's blong chief Kalnagis Tivate mo Ruth. Witness emi talem tu se ol chief's oli ordainem Daniel oslem Paramount chief Popovi blong Udaone long 28th June 1938 folem blad laen blong man olsem father to son or Nanatu. Witness ia iconinue blong givim evidences se ordination blong Daniel olsem chief Popovi emi follem nomo stret fasin blong customary rules mo traditional practice blong north west Efate especially taem Ruth olsem Tukurao istap mo em nao emi transferem power mo authority ia iko long Daniel. Long evidence blong witness ia emi talem se emi neva save se Minnie emi kat wan chiefly title name "Laumanu" mo emi conceded se emi no stret mo consistant folem customary rules mo traditional practises blong north west Efate blong ordainem woman ikam chief folem blad laen blong man olsem father to son. Woman ifolem nomo custom blong nakainaga or naflak wei emi no accomodatem ol inheritance blong chiefly titles or graon.

Witness namba 2 blong Defendant Elder Wilson Manadola emi declarem long Island Court se ol chiefs oli n bin save mekem ordination blong Andrew Kalontas taem family blong Plaintiff oli causem disturbance blong preventem ol chiefs, Pastors mo Elders blong perforem ordination blong Andrew Kalontas olsem Paramount Chief Popovi. Witness emi talem tu se Obed Pakoalaelae emi wokbaot raon long coffin blong witnessem nomo se Andrew Kalontas emi officially tekem ova chiefly title blong papa blong em late chief Daneil Popovi. Witness ia itestify tu mo talem se Family Popovi oli no performem any custom ceremony iko long Obed Pakoalaelae blong declarem se chiefly title ia Popovi ipass on iko long em. Witness emi kivim evidence tu se brata blong Plaintiff Timothy Pakoa emi drivem wan red car we emi blong Maria Crowby mo deliberately ron antap long ol wata or custom gifts we Family Popovi oli redi long em blong givim long ol chiefs mo ol narafala man we oli kam tu long taem ia. Long saed blong meeting blong village taem chief Andrew Popovi emi sigaotem meeting long faerea oltaem mbae Plaintiff mo ol people blong em nao oli stap boycottem meeting ia mo instead oli ko stap holem unlawful assembly aotsaed without consent blong Chief Andrew Popovi. Witness emi testify tu mo talem se Willie Tapokasi emi wan person we ino wandem stap ko kolosap long ol woman from emi shy mo shameful blong kat close contact wetem ol woman.

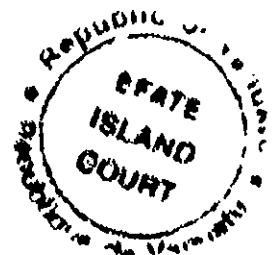
Witness namba 3 Elder Douglas Manasaufaea emi talem long Court se long Sunday 5th March 1989 taem mama blong em Minah we emi wife blong Chief Daniel Popovi emi



passed away, folem custom rule mo traditional practice chiefly title ia Popovi we emi blad laen blong man or father to son, Douglas olsem eldest pikinini boy blong late Chief Daniel Popovi emi recivim title ia authomatically taem we Chief Daniel ided long 19th June 1990. Witness emi confirmem bakagen se Douglas emi performem wan custom ceremony mo kivim wan mat mo passem chiefly title ia Popovi iko long Andrew Kalontas follem wish blong Daniel Popovi we emi mekem long Saturday 9th June 1990. Witness ia iconfirmem bakagen se Douglas ino bin passem any raet iko long Plaintiff blong emi save tek ova long title ia Popovi mo long taem blong ded blong late Chief Daneil Popovi Plaintiff emi bin wokabaot raon long coffin emi shoem nomo se emi witesim nomo se Andrew emi inheritim title ia Popovi long 19th June 1990.

Follem ol toktok ia mi olsem Chief Andrew Kalontas Popovi mi stap declarem long Kot ia blong defendem raet blong customary authority blong mi se stampa blong claim blong mi emi folem Paumaso (birth right) we mi karem long paternal papa blong mi, late Paramount chief Daniel Popovi long day blong funeral blong em taem mi pass long mat mo coffin blong em folem fasin blong custom. Customary practice blong North West Efate, emi talem se inheritance blong ol Paramount chiefly titles oli folem nomo paternal side olsem father to son, (nanatu) blong direct descendant bloodline blong Paramount chief ia olsem we istap long chapter 7, section 7.4 blong Efate Vaturisu custom law taem Vaturisu congress conference blong ol chiefs blong every indigenous villages blong Efate mo offshore Islands oli enactem ikam written law long Mele village long 2007. Olsem evidence long official registration book blong Vaturisu emi shoem se Tanoliu village emi kat nomo one custom Paramount Chief we emi late Chief Daniel Popovi we tedei mi nao mi tek ova long em. Mo mi wandem talemaot tu se mi also wan member blong executive blong Vaturisu mo same taem oli appointem mi blong holem wok olsem vice secretary general blong executive blong Vaturisu council mo mi holem wok ia for years start long 1998 kasem 2007. History blong family tri blong mi emi sem wan nomo we mi bin presentem long bifo, tudei mo tomorrow iko olsem emia we mi presentem bakagen long this Court. Olgeta custom evidences blong claim blong mi emi sem wan nomo olsem emia we mi presentem long olgeta previous Court mo bakaken long this Island Court. Semak long custom practice blong nanatu we emi identifiaem qualification, entitlement mo ownership blong Paramount chiefly titles, emi sem wan nomo blong bifo kasem tudei mo bambae iko long future olsem mi bin presentem long pass Courts mo bakagen long this Island Court.

Authority we mi tekem tudei emi semak nomo long authority we papa blong mi istap hadelem bifo. Hemia emi some fala evidences blong discreditim claim blong Plaintiff. Long November 9th 1988 long Civil Case ELC No. 7 of 1984, this same Island Court emi satisfied mo declarem se tru mo stret Paramount Chief blong Tanoliu village emi paternal papa blong mi late Chief Daniel Popovi II, olsem stret fes born pikinini boy blong Paramount chief Kalnagis Tivate. Plaintiff long taem ia emi tekem Oath mo talem se Chief Daniel Popovi emi Paramount Chief blong Tanoliu village mo emi stret fes mo biological pikinini blong Chief Kalnagis Tivate. Second born emi Obed Pakoa (papa blong Plaintiff), third born emi Harry Gilbert mo last born emi Minnie. Long 1995, Supreme Court Appeal, Civil Case No. 1 of 1995 emi bin harem sem story ia mo same background blong history we ol papa blong mitufala oli bin talem long Island Court long



1988. Long taem ia tu Plaintiff emi bin declarem se raet ia mi bin karem olsem "Paumaso" long taem blong ded blong papa blong mi. During long trial case long Supreme Court Plaintiff ineva askem mi or neva object long presentation blong mi long taem we mifala istap proceed long Civil Case No. 1 of 1995.

Long year 2000, folem wan inquiry we Vaturisu commission emi mekem long Tanoliu village blong faenemaot se who nao emi Paramount chief blong Tanoliu village, long findings blong em commission emi declarem se mi nao true mo stret Paramount chief Popovi blong Tanoliu village wetem olgeta customary land. Long March 2003, mi oslem Paramount Chief blong Tanoliu village, follem law blong Customary Land Tribunal Act No. 7 of 2001, mi bin formally raetem wan leta blong appointem Plaintiff ikam wan adjudicator blong Tanoliu Customary Land Tribunal. After we mi appoitem em folem Part 7, section 35 blong Act ia, Plaintiff emi acceptem nomination ia we mi mekem long em mo karemaot ol duties olsem wan Judge. Long 2008, Customary Land Tribunal emi declarem se semfala custom practice blong nanatu or father to son nao emi determinem ownaship blong wan customary land blong wan custom area we emi foldaon long Paramount chief we emi wearem Paramount chiefly title we emi ko wetem ol estates blong Paramount chifly title ia.

Plaintiff tu emi part long proceedings ia be Customary Land Tribunal emi rejectem ol claim blong em from we ikat plante discrepancy mo irregularity. Mi wandem blong Kot ia itek note se Plaintiff emi neva askem mi oslem Paramount chief blong em blong mekem ordination blong em. Folem custom practice mi nao olsem Paramount chief blong custom area blong mi, mi kat absolute power blong givim blessing mo sem taem facilitatem processb long ordination blong emi folem ol findings we Vaturisu Commission imekem long year 2000. Ordination blong em (Plaintiff) emi no true mo stret long custom practice blong Efate olsem we istap long law blong custom ordination we Vaturisu emi passem long year 2007. Folem custom mi nao mi kat full authority blong holem hed mo ordainem olgeta subordinate chiefs blng Namarakiana blong mi, be ino wan narafala chief blong wan narafala custom area, especially taem chief ia emi no kat anything to do wetem Namarakiana blong mi.

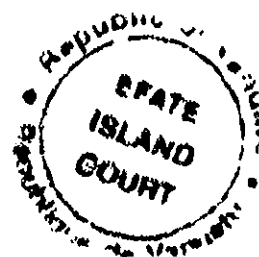
LAWS

"Existing Law"

Article 95 (3) provides that customary law shall continue to have effect as part of the law of the Republic of Vanuatu.

"Village and Island Courts"

Article 8 (5) of the Constitution of the Republic of Vanuatu provides that; Parliament shall provide for the establishment of Village or Island Courts with jurisdiction over customary and other matters and shall provide for the role of Chiefs in such Courts.



"Application of Customary Law"

Section 10 of the Island Courts Act, CAP 167, of 1983 provides that; subject to the provisions of this Act an Island Court administer the customary law prevailing within the territorial jurisdiction of the Court so far as the same in not in conflict with any written law and is not contrary to justice, morality and good order.

ISSUE BIFO LONG KOT IA

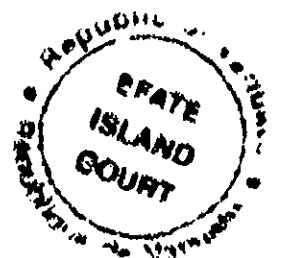
After we Court iharem olgeta toktok blong Spokesperson blong Plaintiff Mr Kennedy Kalfau mo olgeta witness's blong em mo afta we iharem tu ol tokok blong spokesperson blong Defendant Mr Saniel mo olgeta witness's blong em, Court iidentifaem olgeta issues ia nao blong iansarem.

- Hao nao wan man isave iinheritim wan custom property olsem wan chiefly title under long custom?
- Wanem custom fasin nao man ia imas follem blong inheritim chiefly title ia?
- Who nao emi stret man under long custom rules blong iinheritim custom property ia?

COURT FINDINGS

While Court emi mindful long wanem we Constitution italem long Article 95 (3), 8 (5) mo section 10 blong Island Courts Act CAP 167, Court ia emi redi nao blong applaem olgeta relevant customary rules blong helpem em blong solvem dispute ia. Long taem we ikat wan complaint most long ol taem nao ikat denials we narafala party isave mekem againsem wan statement blong wan complainant and sapos iolsem, mbae Defendant nao emi imust oltaem blong mekem defence blong em tru long response. Long view blong Kot ia iluk se, sapos ikat denials long wan statement, then tufala parties imas kivim opportunity blong provum mo disprovum all allegations ia mo producim evidences bifo long Court.

Long case blong Claimant Court ifaenem tru long ol evidences we ol witness blong Claimant oli producum before long Court ia se Chief Kalnagis Tivate we woman blong em emi Ruth, emi kat nomo two stret pikinini folem bloodline, emia Obed Pakaolaelae mo Harry Tongoltong. Obed Pakaolaelae emi first born mo Harry Tongoltong emi second born. Evidence ia witness Philimon Pakaolaelae we semtaem emi Claimant long case ia emi talem taem emi stap givim eveidence blong em long witness box. Witness ia emi talem se stori ia Chief Kalnagis Tivate italem long papa blong em Obed Pakaolaelae long wan village we nem blong em "Leosa" emia long end side iko long Lelepa. Witness emi talem se apu blong em Chief Kalnagis Tivate itekem wan pig we emi blong Daniel blong oli mekem long wan custom ceremony blong ordination, be Daniel emi cross long em from pig blong em ia then, Chief Kalnagis Tivate emi harem nogud tumas mo emi



wokbaot iko daon long solwota. Witness emi talem se papa blong em Obed Pakoalaelae emi ron iko behaen long em mo Chief Kalnagis Tivate emi talem long papa blong em Obed Pakoalaelae se brata blong yufala ia Daniel emi no stret bloodline wetem yutufala, emi kat different papa, that's why emi kat ol different fasin mo attitude. Statement ia Defence ino dispruvum nating.

Witness namba 2, blong Claimant Mr Tanearu Tongoltong emi confirmem bakagen long evidence blong em toktok ia mo emi emphasistem strong se Chief Kalnagis Tivate emi kat nomo two stret sons emia Obed Pakoalaelae mo Harry Tongoltong. Mo emi talem se story ia every man narasaed oli save long em. Mo interestingly Court ifaenemaot se wan long ol witness blong Claimant Mr James Aromalo, witness namba 5 emi talem plante interesting story. Witness ia emi talem se emi kamaot long wan woman we nem blong em emi Minnie Laumau we emi adoptem girl blong Chief Kalnagis Tivate. Witness emi continues blong talem se Chief Kalnagis Tivate, emi kat nomo two stret pikinini emia Obed Pakoalaelae mo Harry Tongoltong. Witness emi talem se Chief Kalnagis Tivate taem istap wetem Ruth, iadoptem pikinini ia we emi blong Ruth hem wan we papa blong em emi Tapokasi mo emi adoptem tu Minnie we em (witness) iwan long ol descendants blong em. Witness ia emi kohed blong talem se everyone we oli stap long Tanoliu village tedei oli save story ia mo emi refer long wan Supreme Court document "*Civil Case No. 101 2006*". Family tri blong woman ia Minnie we first marriage blong em, emi maretem Tapi Kokon mo second marriage blong em, emi maretem Aru we istap insaed long defence statement blong Defendant.

Defendant emi no dispruvum nating evidences ia. Witness namba one blong Defendant Joel Matuele, we emi Paramount Chief blong Sunae, emi talem se emi kat 75 years mo emi testify mo talem nomo se emi save nomo se Daniel mo Minnie tufala istret bloodline blong Chief Kalnagis Tivate. Hemi talem tu long evidence blong em se blong yu inheritim wan chiefly title emi tru long bloodline nomo or yumi save talem se father to son. Witness ia ino helpem Court ia nating blong dispruvum evidences blong Claimant. Witness two mo three blong Defendant oli testify mo talem nomo same toktok se blong yu inheritim wan chiefly title emi tru long bloodline, father to son. Ol witnesses ia oli challegem nomo plante ol customary ceremonies we ihappen long taem we Chief Daniel Popovi II emi ded mo wish blong em blong dividem wok long ol pikinini blong em.

Witness namba four blong Defendant Willy Tabasei emi testify plante long ol recongnition blong Vaturisu Council long Defedant olsem Chief mo ol procedures blong wok mo appointments insaed long wan Land Tribunal. Witness ia emi talem se emi wok olsem secretary blong Customary Land Tribunal. Witness ia ino helpem Kot ia nating blong testify agaisem ol allegations we Claimant mo ol witnesses blong em oli putum bifo long Kot ia blong challengem se Daniel emi no tru pikinini blong Chief Kalnagis Tivate? Kot ifaenemaot tu long ol toktok blong tufala party's se ibin kat plante high ranking Chiefs oli bin stap live bifo long wan ples oli kolek "Elema". Olgeta high ranking Chiefs ia ikat, Chief Manatuatuana Tokolau, Chief Popovi, Chief Atavtapau, Chief Laklosavi, Chief Sunauvea Manatuatua, we Defendant oli talem se oli ol stret descendants blong em, Chief Manearupekevuta Tivate, Chief Kalnagis Tivate, mo ol pipol blong olgeta.

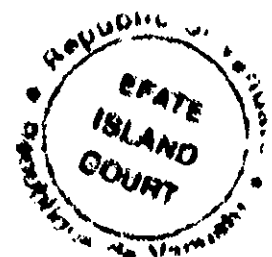


Oli bin aot olsem wan bigfala group blong ol pipol mo kamdaon mo scattered every where long olgeta settlements or villages olsem, Lakennambae Raota, Sanon, Rosia, Tongowia, Malnatap, Makura, Tavaralapa, Livliv, Esema, Sanoa, Komaltol, Udaone mo Sunae emia long Moso Island. Reason we ol high ranking Chiefs ia includim Chief Popovi mo ol pipol oli move aot long Elema mo kamdaon emi from tribal war mo sickness ia Malaria, we icause by Mosquitos. From we tribal war mo sickness ia Malaria istrong tumas imekem se plante pipol includim Chief Popovi, oli ded long Udaone. The only existing man we emi laef mo isafe tru long hospital blong Misi Peter Milen long Nguna Island emi Chief Kalnagis Tivate we Claimant emi kamaot long em. Kot iharem se taem Chief Kalnagis Tivate emi stap long hospital blong Misi Peter Milen long Nguna, emi faenem woman ia Ruth we evidences blong ol witness blong tufala party's oli confirmem se emi blong Ambae.

Long custom blong Efate sapos Chief Kalnagis Tivate em wan nomo ilaef or pass tru long hard suffering ia tru long sickness mo war, we inomo kat any high ranking chief ilaef then, emi kat full raet under long custom blong holem mo lukaotem title ia "Popovi" kasem taem we emi handem ova iko long stret bloodline blong "Popovi". Mo sapos ino kat any bloodline blong title ia "Popovi" iexist tedei long Tanoliu village, then emi save holem or ordainem title ia long wan long ol descendants blong em. Court emi assume se might Chief Kalnagis Tivate emi save gud se title ia Popovi emi wan Paramount title that's why emi holem taet title ia istap wetem em. Mo Court iassume tu se might Chief Kalnagis Tivate ibin stap storian or tokbaot lelebet title ia Popovi mo ol custom properties blong em long woman blong em Ruth long taem ia. Mekem se taem we Chief Kalnagis Tivate emi ded, woman blong em Ruth emi decidem nao blong givim title ia "Popovi" iko long Daniel mo title ia "Tivate" emi stap nomo long original birth blong em. Court ifaenemaot se Chief Kalnagis emi kat own chiefly title nem blong em we emi "Tivate". Toktok ia tufala party's ino disputim. Court ifaenemaot se taem we Chief Kalnagis Tivate emi ded, woman blong em Ruth ipassem title ia "Popovi" iko long Daniel we emi adopted pikinini blong Chief Kalnagis Tivate.

Question istap se woman emi kat raet under long custom blong Efate blong handem ova wan Paramount title iko long pikinini blong em?

Firstly, long situation blong case ia, Court iunderstand se long taem ia we Chief Kalnagis Tivate ided, inomo kat wan man or any pipol iexist long Udaone, except ol family blong Chief Kalnagis Tivate nomo olsem we Kot iharem. Under long custom yumi save talem se woman emi tukurau or emi kat raet or authority blong handem ova titile iko long ol pikinini blong em. However, Court emi faenemaot se Ruth emi rong under long custom blong kivimaot title ia Popovi iko long pikinini blong em Daniel. From Chiefly title ia Popovi emi no blong Chief Kalnagis Tivate mo ino stret bloodline blong em. Emi wan different person we emi entaetal long Chiefly title ia, therefore Ruth ino kat any raet blong handem ova iko long pikinini blong em Daniel. Ruth emi shud decidem between ol pikinini blong em se who nao long olgeta pikinini blong em nao i stret under long custom blong emi inheritim title ia "Tivate" we emi stret bloodline blong Chief Kalnagis? Long custom blong Efate wan Chief ino save holem two Paramount title. Therefore, Court ia italem se Chief Kalnagis Tivate emi caretaker nomo long Chiefly title ia Popovi.



Long view blong Court ia, blong man isave inheritem wan chiefly title emi tru nomo long bloodline be neither ino adoption nor naflak. Court ifaenemaot long case blong Defendant, ol witnesses oli testify mo basem defence blong olgeta nomo plante long taem we Chief Daniel Popovi emi ded long 19th June 2006. Oli tokbaot plante wish blong Chief Daniel Popovi we imekem long ol pikinini blong em mo tu ol custom properties blong em. Defendant oli challengem tu plante ol customary ceremonies we ihappen long taem we Chief Daniel Popovi II emi ded mo ol custom ceremony we ihappen long taem we Chief Andrew Kalontas Popovi itek ova long chiefly title ia motu Defendant emi refer tu long wan decision blong Island Court we emi dated 9th November 1988 we Court ia emi declarem em ikam olsem customary land owner long ol kraon we oli stap long Udaone mo Customary Land Tribunal iconfirmem.

Court ia iwandem mekem iclia se blong identifiaem wan tru indigenous or stret bloodline blong wan customary chiefly title, Court imas harem ol evidences blong shoem se how nao Defendant or Claimant iredated long ol family tri's blong tufala. Long family tri blong Claimant, Claimant emi sorted out clea se emi kamaot long bloodline blong Chief Kalnagis Tivate we emi maretem woman ia Ruth mo tufala ikat Obed Pakoalaelae mo Harry Tongoltong. First born blong Chief Kalnagis Tivate emi Obed Pakoalaelae we emi maretem woman ia Gladdis mo tufala ibornem Philimon Pakoalaelae we emi Claimant blong case ia. Long family tri blong Defendant, emi talem se emi stret descendants blong Paramount Chief Sunauvea Manatuatua we emi maret long woman ia Leimasi mo folem stret ikam daon long Paramount Jif Kalnagis Tivate we emi maret long Ruth mo bornem Chief Daniel Popovi II we Defendant emi kamaot long em. Defendant emi talem se emi stret descendant's blong ol Chiefly inheritance.

Wetem ol findings we Court imekem ia, Court ia imekem ol observations olsem. Court ia ifaenem olsem se Chiefly title ia "Popovi" emi no stret folem bloodline blong Chief Kalnagis Tivate. Chiefly title ia "Popovi" emi kat own bloodline blong em we tufala party everiwan long proceedings ia ino save mo tufala ino save pruvum bifo long Court ia se one long tufala istret descendants blong Popovi. Therefore ordination blong Chief Philimon Pakoalaelae long 27th May 2006 emi stret folem Chiefly bloodline system blong Chief Kalnagis Tivate mo same taem caretaker long Chiefly title ia "Popovi" folem custom. However, the only point we Court ia iluk istret mo i inline wetem Custom is only Chief Kalnagis Tivate emi kat full raet under long Custom blong cartaker long Chiefly title ia "Popovi" from we emi the only Chief we emi laef during long taem ia mo emi save caretaker long em kasem taem we Chief ia emi faenem stret bloodline blong Popovi. Sapos emi no save faenem stret bloodline blong Popovi, Chief ia emi kat full raet under long Custom blong handemaot or ordainem insaed nomo long bloodline blong em, long wan long ol descendants blong em.

Mo Court ia ifaenem tu se, from we Chief Kalnagis Tivate emi only Chief we emi laef long Udaone other than ol narafala Chiefs we oli ded mo no exist tedei long Tanoliu village includim Chief Popovi, under long custom emi save kam Paramount Chief blong Tanoliu Village.



Afta we Court iharem ol toktok mo ol submissions blong tufala Parties, Court imekem Declaration mo Orders olsem:

DECLARATION

Kot ideclarem se Philimon Pakoalaelae nao emi kat customary raet mo authority long kastom ova long Jifly Title ia Popovi.

Kot ideclarem tu se ordination blong Chief Philimon Pakoalaelae we itekem ples long 27th May 2006 emi stret mo ifollem kastom.

Kot ideclarem tu se Chief Philimon Pakoalaelae emi kam Paramount Chief blong Tanoliu Village start long date blong Judgment ia.

Kot ideclarem tu se Defendant Andrew Kalontas emi no kat any raet under long kastom ova long Chiefly title ia Popovi mo ol kastomary properties blong em.

ORDERS

- Start long tedei Defendant mo ol descendants blong em oli nomo kat any raets under long Kastom blong usum nem ia Popovi.
- Start long tedei Defendant mo ol descendant's blong em oli must usum nomo family nem blong Daniel.
- Ol kastom properties blong Chiefly title ia Popovi oli mas ko bak long Paramount Chief Philimon Pakoalaelae.
- Claimant Chief Philimon Pakoalaelae emi mas luk save family blong Defendant mo ol Descendants blong em mo serem ol kastom properties according long kastom olsem we section 6.5, Chap 6 blong Vaturisu Customary Law italem.
- Kot ikivim raet tu long tufala parties blong appeal within 30 days sapos tufala ino happy long decision ia.


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Justice Ann Carlo


.....
Justice Eddie Karis


.....
Justice Harry Joshua



DATED long PORT- VILA, long 6th March 2009