

**IN THE MAGISTRATES COURT OF
THE REPUBLIC OF VANUATU HELD
AT LAKATORO**
(Civil Jurisdiction)

Civil Appeal Case No. 07 of 2011

BETWEEN: CYRIACO MALTALIMARE

Appellant

AND: NATASHA MRENMAL

Respondent

Coram: A. M. Laloyer Bollen
Assessors: Robert Niptick and Johnson Selwyn

Clerk: Wendy Raptigh

Mr. Tevi for appellant
Respondent in person

DECISION

This is an appeal from an order of the Island Court made on 29 April 2011 in respect of a child maintenance matter.

The appellant seeks to bring this appeal as of right alleging that the two general grounds on which the Island Court justices decided the proceedings are erroneous are follows:

- (1) Erred in law not to make a ruling as to the evidence brought before the Court to make their findings;
- (2) Erred in law to consider the evidence of the appellant.

It is a common practice under customary law of Malekula that a son would not approach his father when he wants to engage or when he has a personal problem to be fixed. A son will always go to his uncle when it comes to social problems such as engagement, relationship and bride payment etc.



The appellant submits that the Island Court did not mention in its order which evidence before the Court had led the Court to determine findings. It is the obligation of the Island Court to put in written judgment what evidence is not admissible or what caused the Court to make such findings. The first ground of appeal should be allowed.

The written judgment also failed to establish why the evidence of the appellant is not reflected on the judgment. The Island Court did not provide any comment why the Island Court did not accept the appellant's evidence contained in his sworn statement. The written judgment was silent in that respect too. As a result, the second ground of appeal should be allowed by this Court.

The respondent did not provide any oral submission but leave the appeal in the discretion of the Court. The respondent has a literacy problem and this finding is based on the fact that she is unable to write her name in her sworn statement.

During the course of the hearing, the Court had established that the Island Court did not place its findings before making its order. However, such finding was hand written at the end of the evidence given during trial. It is a pure oversight. The Appellant Court finds that the procedure undertaken by the Island Court to make its finding is in accordance with the Island Court Rules of 2005. The hand written findings should be made part of the Island Court judgment. It would be an abuse of process to refer the matter back to the Island Court. Counsel for the appellant should have consulted the Island Court file before making such appeal.

It is also established by this Court that the trial justices had considered the evidence of the appellant that there was a customary ceremony undertaken by the appellant towards the respondent in relation to their relationship. The inference drawn from the customary ceremony and the admission made by the appellant to the respondent had contributed to the Island Court's finding. This is consistent with the common practice of the Malekula customary law. It is a matter for justices of the lower Court to make its findings and this Court is not in a position to challenge such findings.



ORDER

Upon these findings, this Court orders as follows:

1. The first and second ground of appeal is hereby dismissed.
2. The Island Court order dated 29 April 2011 is hereby upheld by this Court.
3. Each party pays their own costs.

DATED at Lakatoro, this 11th day of October 2011

BY THE COURT


Magistrate

