

**IN THE MALEKULA ISLAND COURT
HELD AT LAKATORO/ MALEKULA**

(Civil Jurisdiction)

Civil Case #. 13 of 2007
Judg. #

**BETWEEN : MALSERAKE JOSELITO
(Original Claimant)**

**AND: HILAIRE NIOVENMAL
(1st Counter Claimant)**

**AND: ELIE BAHORMAL
(2nd Counter Claimant)**

**MATTER : DISPUTE OVER JIFLY TAETOL BLONG PONGSINE
NAKAMAL**

**Coram: Jastis Wesly Tawi
Jastis Johnsen Frasher
Jastis Freddy Malress**

Clerk: Wendy W. Raptigh

JUDGMENT

Brief backgraon blong case:

Civil Case # 13 of 2007 hemi wan customary matter concernem dispute long Jifly taetol blong Pongsine Nakamal, hemia long Walla Island. Emia ol findings blong Island Kot long taem blong trial.

Issue: Whu ia long olgeta claimant ia igat raet long custom blong karem taetol blong Paramount Jif blong Pongsine nakamal?

Summary long claim blong wanwan claimant:

Original claimant (OC) – Malserade Joselito

OC emi klem se descendant blong em Bouhor iout long Sanaliu (mainland) emi go daon long Melvarvar (Selnabou) mo emi float long bamboo mo go long Wala island. Long island emi go stap wetem Sevri long Lolomassing Aop, from Sevri emi man Sanaliu tu. Afta samtaem Bouhor iout mo go long Pongsine, long taem ia nakamal ino form yet. Afta we Maltawo mo Meltekru

tufala ibon, afta samtaem then trifala (Bouhor, Maltawo mo Meltekru) oli startem nakamal blong Pongsine. OC ikleim se evidence we iprufum see emi man Sanaliu long mainland emi taem we bladlaen blong Sevri ifnis long David, David ibin adoptem back Gilbert - 3rd generation blong Raphael we emi blad laen blong Bouhor igo bak long Sanaliu in order blong maintainen blad laen blong Jif long Sanaliu.

Long family tree Mongire, Malserake, Raphael oli bon long Pongsine. OC emi gat 8 generation we oli laef afta we Pongsine iform.

Counter Claimant 1 (CC1) – Hilaire Niovenmal

CC1 emi klem se emi kam from South Pentecost long Panbo reva. Emi bin kam long Wala island long form blong shark. Ino long taem nomo we ipas emi bin go bak long Pentecost mo mekem kastom ceremony long ol family long Pentecost mo sem taem registerem em bak long boundary blong em Vul reva to Panbo reva. Emi gat wan nasara long Pentecost we nem blong em Raprap. CC1 emi klem se emi fes man we ikam long Wala island, mo emi buidim Pongsine afta we igat sam raorao long Ama.

Counter Claimant 2 (CC2) – Elie Bahormal

CC2 emi klem se Mrewla nao emi founder blong Pongsine nakamal. Pongsine emi 1st nakamal blong Amel Lowo. Mrewla emi tribe long South Malekula emia long Unua. Long Wala Mrewla ikam soa long Tsitsung mo pruf blong em nao se oli holem pasis ia yet kasem tedei. Big Jif blong Awop ikam tekem olgeta mo oli go stap long Tsinawep. Afta long Tsinawep, big Jif idecide mo talem long Meltekrou (pikinini blong em) blong karem Mrewla igo mo statem nakamal ia we tedei emi Pongsine. CC2 iklem se emi stap finis long Pongsine taem tribe blong Pentecost ikam. Long saed blong ol man Sanaliu, Pongsine nakamal tru long Mrewla nao emi recifim olgeta long Wala island. Igat pruf istap tedei we Sanaliu igivim graon long Pongsine (Mrewla) long mainland. CC2 emi gat 6 generation we oli laef long Pongsine.

Findings blong Kot:

Dispute bifo long Kot ia emi no easy. Evri claimant ia oli no really save gud ol history blong olgeta, ol samting olsem from wanem oli muv ikam long Wala? Might bae emi tribal war, o oli ronwe long ples blong olgeta from oli commitim wan crime mo lukaotem ples blong safety, emia oli no klia. Kot I interest tu blong finem se taem oli kam whu ia irecifim olgeta mo long ol taem ia ibin gat eni exchange long ol custom activities, from bifo eni niu man ikam bae automatically ol nara tribes bae oli kaekae em sapos no bae oli treatem em olsem wan slave.

Apart from ol questions raised ia Kot itraem blong pikimap sam points long ol kleim mo long trial blong weightem mo lukim whu long custom bae emi mo klos blong tekem taetol blong Jif.

OC, Kot inote se emi kam long Sanaliu long mainland, emi float long bamboo mo go soa long Wala island. OC emi gat custom pasis long Wala we emi Loret, ples we emi go soa long em bifo emi go mo statem Pongsine.

Kot ifinem tu se laef long Pongsine istat long Bouhor, so bae iminim se igat 8 generations we oli laef afta long Bouhor we igat; Bouhor, Maltawo, Momgine, Malserake, Raphael, Pierre Marie, Jean Guy mo Bryan.

Kot ifinem tu se OC bae emi kam in long Wala istret nomo from igat man Sanaliu finis long island taem emi kam from emi klem se Wala emi smol island nomo blong mainland.

CC1 iklearem long Kot se emi kam long Pentecost, mo emi wan big Jif blong Pentecost. CC1 emi klem se emi fes man we iarrive long Wala Island mo ino gat man iresifim em. Be question we istap se sapos emi fes man, from wanem emi no stap long fes nasara blong Wala – Ama, instead emi kam long Pongsine anda long Lowo.

Long cross examination taem oli askem se “yu klem Pongsine?” em se “mi stap defendem taetol blong Pentecost we mi kam wetem”. Taem oli askem se wanem identity blong yu emi se shark we istap long entrance blong Pongsine.

Igat possibility se CC1 emi recognized by Pongsine from shark we emi kam long em be fact we istap CC1 emi wantem nomo se Kot imas aware se emi wan big Jif blong Pentecost we ikam long Wala, mo emia Kot ino disputim. CC1 emi gat wan family tree we emi very confusing, especially ikam fasfas taem we ol family imaretem bak olgeta – emia iwan question bakeken se emia emi wan character blong wan bigfala Jif ia long custom?

CC2 emi klem se emi kam long Unua folem Mrewla. Questions arise long ples ia se Isafe o ipossible blong Desmaitis itravel em wan from Unua to Wala? Sapos ipossible then wanem nao Desmaitis imekem long fes arrival blong em blong mekem se ol man bush oli no kakae em but acceptem em ikam long tribe blong olgeta? Emia ino gat ol ansa blong em long Kot ia. Nao nara question se why sapos emi wan Jif bae emi wokbaot em wan long middle bush? Wanem abaot security blong em, so ipossible se emi stap ronwe from ino gat security wetem em. Question bakeken se emi stap ronwe long wanem?, wan tribal war or wan crime we emi commitim. Sapos Desmaitis emi wan big Jif ironwe ikam long Wala then emi big Jif blong Unua long wea? Emia tu CC2 ino klearem long Kot.

CC2 ise emi klem jifly taetol from ol custom activities we emi performem long Wala for example long cross examination oli askem long em se; “yu out wetem taetol blong yu long Unua ikam?” nao emi ansa se “No, tru long ol custom performances” nao question iarise bakeken se Jifly taetol ifolem custom activities or ifolem yu olsem wan blad laen blong Jif.

Nara point long ples ia, CC2 emi klem se Wala emi wan refugee island, be Kot ino acceptem from sapos bae emi wan refugee island olsem we CC2 istap klem then why igat uniform practice blong ol nakamal mo ol nasara? Why igat uniform practice blong tekem rank long ol nasara? Ol activities ia emi stap soem se imas gat wan common practice ia iout long wan ples nomo mo kam perform long Wala island we evri man kam oli usum. Semak tu long langwis we oli usum, emi wan common langis, sapos ol refugee then langis bae idifdiffren from oli ol difdiffren pipol ia we oli stap kam long Wala island. Be emi no happen olsem.

CC2 emi soem se emi gat 6 generation stat long Mrewla we oli laef long Pongsine nakamal, Mrewla, Bahormal, Laurent, Rene, Paulin, mo Rene.

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 ol findings:

Custom blong North East Malekula emi wan Patrilineal system we taetol blong Jif emi follem blad blong Jif tru long ol man nomo. Emi common practice tu se man we emi originated from wan nara ples bae emi no save kam wan Jif blong wan nara ples be emi Jif nomo blong area we emi kam long em.

Wetem emia Kot istap lukim se claimant we emi gat moa weight long matter bifo long Kot ia emi OC – Joselito Serake from emi man mainland (Sanaliu) nomo mo emi mov igo long smol island blong Wala. Kot iakseptem se emi blad blong Jif from taem blad blong Sanaim ifinis long Sanaliu, Malserake igo bak long Sanaliu mo ino gat wan claimant idispute se Bouhor ino pikinini blong bigfala kastom Chief blong Tonmalver, Sanaliu, olsem we istap long statement blong em. Sapos emi tru then OC emi only claimant we istap kleim blad blong wan high Jif long mainland we ikam long Wala island.

Kot iwantem talem tu se long custom ol smolmol island outside long mainland oli island blong mainland be oli no island blong ol refugee olsem CC2 italem. Point blong supportem em ya Kot iwantem talem se ol nasara we oli stap long Wala island oli named afta long sam boundary long mainland mo tu ol sem performance blong kilim pig long mainland isemak long performance long Wala island. Ino emia nomo be ol laying blong ol ston long ol nasara isemak long mainland mo smol island. So blong talem se emi island blong ol refugee bae Kot ino acceptem emia. Nara samting tu emi generation blong OC we ilukim se emi gat wan generation blong 8 we oli live afta long Bouhor we emi klem se emi founder blong Pongsine. 8 generation ia iputumaot 6 generation blong CC2 we emi klem se oli live insaed long Pongsine afta we Mrewla ifounder/statem Pongsine nakamal.

CC1 – Hilaire Niovenmal, Kot iacceptem klem blong em olsem we istap se emi kam long Pentecost, might se emi big Jif long Pentecost be emia ino issue bifo long Kot ia. Kot irule igo bak folem nomo common practice long custom se man kam ino save overulem ol man ples. Be Kot inote se nakamal oli recognisem CC1 from symbol long shark istap long entrance blong nakamal.

CC2 – Elie Bahormal, Kot iacceptem tu se yu kam long Unua. Concernem rank blong Jif, follem ol toktok blong yu long Court yu klem Jif folem ol custom performances we yu stap mekem long Wala be blong go bak long history mo finem sapos Desmaitis emi wan Jif, then emi Jif blong wea ples stret long Unua, yu no save talem emia long Kot. Bakeken olsem CC1, man kam ino save kam Jif sapos igat ol manples stret oli laef istap mo blad blong Jif ilaef istap tu. Lukluk igo bak tu long ol generations, Kot ilukim se generation blong OC ilongwan moa taem one icomparem tugeta afta we Pongsine iform. Be, generations blong OC mo CC2 ino long long we tumas so imas gat possibility se tufala ikam long Wala island klosap araon long sem taem nomo, wan afta long nara wan.

Decision:

Wetem ol toktok ya court ikam blong mekem decision olsem:

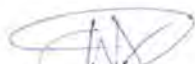
1. Malserake Joselito, Kot ideclarem yu olsem bigfala Jif blong Pongsine nakamal emia long Wala Island.
2. Bahormal, Kot istap grantem yu assistant Jif blong Pongsine nakamal.
3. Malserake Joselito wetem Bahormal, Kot istap askem yutufala blong mas luksave or recognisem Hilaire Niovenmal, from emi gat recognisem long nakamal finis, taem oli displayem shark long entrance blong nakamal Pongsine.
4. Sapos eni party we ino hapi long decision blong Kot ia, emi gat 30 deis blong save mekem appeal igo long Magistrate Kot.

Dated long Lakatoro this 17th dei blong November, 2011.

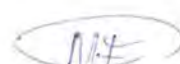
Before;



Jastis Johnsen Frasher



Jastis Wesly Tawi



Jastis Freddy Malress