

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

(Civil Jurisdiction)

Civil Case #. 43 of 2011
Judg. #

**BETWEEN : JOHNSEN FREZHER
(Original Claimant)**

**AND: MAKLIN MALBURY
(1st Counter Claimant)**

**AND: AISEN JIMMY
(2nd Counter Claimant)**

**AND: LEKUM JEPHETH
(3rd Counter Claimant)**

**Coram: Jastis Douglas Fatdal
Jastis Shema Tasvaille
Jastis Robert Niptik**

Klak - Wendy W. Raptigh

Court Decision

Brief Background

Matter bifo this Court emi Jifly taetol blo Potune nasara emia lo Uripiv aelan. Afta we Kot I study lo ol case files emi kam blo identify se igat tu issues lo matter bifo Kot ia. Fes issue blo family tree between OC mo CC1 emi wan mo namba 2 issue emi Jifly taetol overall – lo nara toktok Kot inote se Original Claimant (OC) wetem 1st Counter Claimant (CC1) tufala seems to have klosap same family tree nomo. Bae ihelpem Kot big wan sapos Kot ideterminen fes taem which one lo tufala claimant (OC mo CC1) nao bae iracet Claimant blo claim Jifly taetol lo saed blo custom. So Kot emi agree blo harem fes issue fes taem concernem family tree blo OC mo CC1.

Issue: Whether Johnsen Fresher mo Maklin Malbury tufala iwan blad nomo?

Whu lo tufala Johnsen Fresher or Maklin Malbury emi gat raet blo claimem Jifly taetol lo family blo tufala sapos Kot ifinem se tufala iwan blad nomo?

Findings blo Kot

OC emi stap klem se Maltete emi papa blo Malwijri. Malwijri nao emi bonem Johnsalwin, Uni, Waet mo lan we ikam kasem olgeta tedei. Oc italem tu se Marklen (CC1) emi blad son blo Malbury. *— mistake.*



CC1 emi klem se Maltete emi gat 2 boy, Malwijri mo Malbury. Malwijri Banga iadoptem em igo lo Emil Periv nasara. Nao Malbury, Malvanu iadoptem em igo lo family blo em. Malvanu emi laen blo Navin we oli stap lo Potune nasara mo oli blo Potune nasara.

Lo cross examination taem, Kot iaskem lo OC sapos Malwijri mo Malbury tufala ibrata?, nao ansa blo em se 'yes'. Then question blo adoption ikam up, mo Malwijri ise oli neva adoptem em igo lo Emil Periv. Blo confirmem toktok blo em em talem se Malwijri oli berem em insaed lo Potune nasara be ino lo Emil Periv nasara. Malbury, OC ise Malvanu ineva adoptem em.

Tugeta claimant, OC mo CC1 iagree se Malwijri emi fes bon mo Malbury emi second bon.

Tingting ia se Marklen ino stret pikinini blo Malburi, Kot ibrushem aside lo undastanding nomo se issue lo Kot nao ia emi from tufala sons blo Maltete nomo we emi Malwijri mo Malbury.

Matter blo adoption emi no important tumas lo issue nao ia bifo Kot. Wanem we Kot iwantem finem emi sapos itru se Malbury wetem Malwijri tufala istret brata mo whu ia lo tufala ifes bon blo Maltete.

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:

Lo custom emi fes bon nao we istap tekem ol leads lo ol family, thou ol nara brata mo sista oli stap.

Wan question we Kot inote tu se, sapos Malwijri emi adopted igo lo Emil Periv then why oli berem em lo Potune taem emi ded. From wanem tu emi spendem bigfala taem blo em lo Potune nasara nomo.

Nating we sapos itru se Malwijri oli adoptem em igo lo Emil Periv nasara but lo custom fasin bae Malwijri emi no save tekem eni raets blo Jif from blad laen blo Jif ilaef istap. Nao adoption bae isave tekem eni raets nomo sapos ino mo gat laef blad ilaef istap. Back lo family blo Maltete, Malwijri isave karem raets lo family from emi fes bon mo blad blo em ilaef yet istap.



Lo ol findings ia;

Fes samting, Kot ifinem se Malwijri mo Malbury tufala iwan blad nomo, tufala ipikinini blo Maltete.

Second samting Family Mabury (CC1) emi confirm se emi smol brata blo Malwijri. So imin se tufala sons blo Maltete, Malwijri emi fes bon mo second bon emi Malbury.

Whether adoption blo Malwijri emi tru o no gat be Kot iconclude se Malwijri oli berem em lo Potune ino lo Emil Periv.

Wetem ol findings ia Kot istap mekem ruling olsem;

Hed blo family blo Malwijri mo family Malbury emi stap anda lo leadership blo Malwijri wetem descendants blo em. Em (Malwijri) olsem fes bon brata lo blad laen generation.

Kot iorder Family Malwijri olsem fes bon lo laen generation imas tekem bak family Malbury we emi smol brata blo em blo oli unite tugeta olsem wan claimant nomo mo toktok from ol custom raets blo Maltete lo nasara we oli biliv se oli gat custom raet lo em.

Dated at Lakatoro this 20th dei blo December, 2011.

Before;



Jastis Douglas Fatdal



Jastis Shema Tasvaillie



Jastis Robert Niptik

