

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

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Civil Case # 43 of 2011  
Judg. #

*(Civil Jurisdiction)*

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

**AND: AISEN JIMMY**  
**(1<sup>st</sup> Counter Claimant)**

**AND: LEKUM JEPHETH**  
**(2<sup>nd</sup> Counter Claimant)**

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

**Clerk:** Wendy W. Raptigh

**JUDGMENT**

**Brief background blong case:**

Emia emi second issue long case ia, fes issue emi bitwin Johnsen Frezher mo Maklin Malbury concernem famili tree blo yufala blo finem whether tufala iwan blad nomo or tu different man. Court findings lo issue ia Kot ifinem se Johnsen Frezher emi fes bon blo Maklin Malbury therefore Johnsen Frezher emi raet person blong klem Jifly taetol blo Potun mo Maklin Malbury imas kam daon mo stap andanit long Johnsen Frezher.

Second issue Kot ilukluk long em we emi chiefly taetol blong Potun nasara.

**Issue:** Who nao lo custom iramet man blo karem taetol blo chief blo Potun nasara?

**Claim blo Original Claimant:**

OC emi klem se emi kamaot lo nasara blo Amelinges lo mainland tru lo Blad laen blo Maltarimb we emi paramount Jif blo Amelinges. Maltarimb, emi originated from Nangai tree we emi stampa blo Nuwiliu wota long Amelinges. Paramount Jif emi mekem 3 nasara igat 1<sup>st</sup> nasara Emil Bale, 2<sup>nd</sup> nasara Emil Toro mo 3<sup>rd</sup> nasara Emil Amelinges. Pikinini blo Maltarimb emi Natam. Kastom biliv se Uripiv iformed lo riva blong paramount jif Maltarimb nao Natam inemem island Uripiv, imin se yu luk wan samting and yu sek. Natam emi fes man mo mekem fes rod ia seltera. Emi finem wan spring wota



mo nemem Lulwi afta lo Nuwiliu lo Amelinges. Natam wetem tu pikinini blo em Bungli mo Nikelperiv olgeta nao oli buildim nasara Potun. Potun emi main base nasara blong ol customary activities. Nikelperiv itekem fes castom faea ikam lo Uripiv mo go lo pocklul, potun nasara. Long nasara Potun igat ol identity or provement blo ol properties we iblo family Natam. Family Fresher oli tru blad laen blo Maltarimb mo Natam therefore oli stap klem blad laen ia nao se oli raet man blo karem taetol blo chief blo Potun nasara. Mo igat 3 stage blo go tru long em lo custom in order blo karem taetol blo chief. Attached wetem claim emi sam documents olsem wan letter from Malvatumaori we icertifyem se OC emi tru blad laen blo chief blo Uripiv island mo emi declared owner blo Metabon 1 mo 2 lo bushman's bay. Nara document emi deed of sale 15<sup>th</sup> June, 1979, wan letter from Ministry of land (letter 25<sup>th</sup> July, 2007) mo lastly wan order blo Supreme Court concernem bushman's bay – Metavin land case.

**Claim blo 1<sup>st</sup> Counter Claimant:**

CC1 emi klem jifly taetol blo Potun nasara tru lo Seaika lo famili tri blo em. Seaika emi out long Lemerek nasara long mainland mo emi ko lo Uripiv island mo go soa lo wan pasis oli kolem Seltera. Pasis ia istap insaed long boundary blong Potunbaur. Rison why CC1 iklem from emi gat ston insaed nasara Potun mo ikat chair mo sam nara custom properties. Wan lo ol custom klem blo em, emi se igat tu ston istanap lo each saed blo ston blo em, emi ston blo emil Bud mo nara ston blo emil Jeanuamb. Tufala ston lo saed blo ston blo em istap profum se emi bigfala chief. CC1 emi stret blad blo Seaika therefore emi stap klem blad ia nao olsem big chief blo Potun nasara.

**Claim blo 2<sup>nd</sup> Counter Claimant:**

CC2 oli klem se oli descendants blo high chief we ikam from main land mo imuv igo lo Uripiv island. Chief Dwelnani blo nasara Potondar. Fes ancestor blo arrive lo Uripiv island emi Numeltasi, emi kam so lo selenbae lo form blo wan shark. Lo Metelij emi stap performem ol custom rituals blo em blo jenis from human to shark mo kam bak human. Igat wan taem Numbeltasi ilukluk igo lo island mo lukim smok faea then emi mekem raft mo swam igo lo Uripiv. Emi go shore lo Potun mo rod we emi follem igo emi seltera. Long Ngalu taun emi luk wan man wetem woman blo em mo gel blo tufala we oli kam from Ambrym. Later Numbeltasi imaretem gel blo man Ambrym ia mo putum nem blo waef blo em Lembeltasi (gel ikam from Ambrym). Afta sam taem tufala igat wan boy nem blo em Masta. Masta emi later gat wan son nem blo em Mesmes. After sam raorao lo Taun, Mesmes imuvaot nao statem nasara Potun. Wullosij igat wan son nem blo em Lekum we ilaen blad ikam kasem CC2. Wetem laef blad blo Chief Dwelnani emia nao CC2 istap klem raet blo karem taetol blo Chief insaed lo Potun nasara.

**Findings blong Kot:**

Jif Johnson Frezher

Kot iwantem talem se long conten blong statement blong yu mo ol toktok blong yu blong helpem kot wetem ol ansa we yu save givim long kot an swerem sam long ol question we ol Counter Claimant oli askem long yu mo sam ol toktok blong ol witness blong yu wetem ol family tree blong yu court ikam blong mekem ol findings ya. Long saed blong statements and provement (Lowi and Putune) Kot itekem olsem we istap bifo long kot ya



klem blo Potun nasara nomo be ino blo Lowi olsem istap lo statement blo yu. Long saed blo letter from Malvatumaori, Yu no presentem long kot wan desision mo wan meeting we igivim raet long yu olsem wan tru custom bladlaen blong chief blong Uripiv Island. Long letter blong Malvatumaori yu no statem se yu tru custom bladlaen chief of Potune Nasara long Uripiv Island. Kot inote here se sapos CC1 iting se em tru custom bladlaen chief or ibestowem customary rank blong Maltarimb bae em should save se wan paramount jif blong wan differen boundry olsem Amelinges bae ino save claim blong kam owner blong land Title Ex 3601 Metabon 1 and 2. From long kastom land issue Metabon 1 istap long wan diffren land boundry mo Metabon 2 bushman's bay istap long wan differen boundry tufala boundary ia istap long we long boundry blong Amelinges, mo hao nao bae yu claim tru lo custom we yu claim Amelinges olsem original nasara blong yu .

3. deed of sale 15 June 1979; Kot inote lo ples ia se deed of sale ya ino kat pruf long em from yu no soem long Kot wan tru disssion blong Kot blong grantem right ya long yu olsem land owner blong tufala parcel blong graon or land we yu klem. From long year 1979 ikat ol dispute finis ova long ol land we ol expatriate oli usum raon long Vanuatu.

4. Ministry of land (letter 25<sup>th</sup> July, 2007)

5. Order by Supreme court

Tugeta ia 4 mo 5 ino relevant tumas lo case bifo lo Kot ia.

Kot I confuse se who long tufala ya Nickleperiv mo Maltam ibildem Potun nasara from CC1 long question em ansa se Nickleperif. Taem CC3 iquestion ansa se Natam.

Tabu faea; long custom yu no save pem tabu faea. Tabu faea em blong ol tabu man long ol tabu nasaea. Yu no talem long Kot tu se pem tabu faea long wanem?

Kot ifinem sam long ol pepa we yu registerem without any Kot decision we igivim raet long yu.

Kot ifinem se sam long ol pepa ya yu nidim nomo stamp blong stampem be ino follem prosija blong em. From yu talem long kot se I nokat supportive document.

Kot I note se sapos Potun emi lanwis blong Naman olsem we yu talem bae chief to chief kasem yu tete bae yufala I save toktok Naman lanwis.

Kot I confuse tu se sapos yu fes man long Uripiv bae whole Uripiv I toktok Naman lanwis from bae yu toktok wetem olgeta long lanwis blong yu.

OC ineva talem long kot se I gat Potune long Amelinges, long big island.

OC italem long kot se em blong Ameliges. Be yu talem tu se yu mo family yufala I no mekem any wok long land blong Ameliges. Sapos yu se yu aut long Ameliges yu ko long Uripiv chief to chief kam kasem yu fala bae yufala I mas kam mekem wok long land boundry blong Ameliges kasem tudei.

OC ino helpem kot blong talem se ikat sam family blong em we oli aut long Ameliges oli ko stap long sam ol village we oli stap long main land.

OC ino save talem long kot nem blong ol jif we oli givim 6 nem long Maltete, Somal wetem Malwejiri.

OC italem se ikat 3 step blong karem nem mo rank blo kam high jif be em no talem hamas pig I kill long each step. Comparem top ia wetem ol taetol steps kot I fainem out long statement (page 3Frezher's family tree) long generation five (Monsilini) hemi karem five different taetol name through five steps, generation nine (Maltete) hemi karem six different title name through six steps mo generation ten (Malwijiri) hemi karem three different title name through three steps where as long statement page 5 section C yu bin statem mo ansarem kot blong talem se yu kat three titleism ranking step nomo long nasara blong Ameliges wetem three different title name, long Ameliges mo Potune nasara.

Blo add moa, Kot I fainem se long generation three ( Malvasgnavul) hemi killem one thousand pig be hemi karem one title name nomo where as long generation five (Monsilini) killim 500 pigs mo karem five title name mo generation nine (Maltete) hemi killim 600 pigs mo karem six title name mo generation ten (Malwijiri) hemi killim 300 pigs mo karem three title name. Lo cross examination Kot ibin question yu be ino kat wan clear answer mo respond blong explainem bifo kot.

### Aisen Jimmy's Case

Family tree I no complet from long familytree I no soem chief to chief kam kasem Numalgamiliff.

CCI ino save talem long kot se Seaika emi wan big jif from yu answerem kot se yu no save se emi mekem wan kastom long Lemerek or no?

Kot I fainemout se yu kam long smol island long Uripiv without any kastom. How nao bae Seaika I save mekem Namaki taem we long Lemerek emi no mekem.

Kot I fainemout se I no bin tru olsem we yu bin talem long koy se bifo ino kat namaki.

Kot I finem se long ol nem we I stat long Seaika (first generation) kam kasem Benenenumail (twelve generation) emi ol nem we yu no save olgeta from yu talem long kot se yu save nomo history stat long Numalgameliff (thirteen generation) kasem Nehemiah (seventeen generation). Kot I fainemout se yu no save explainem long kot ol nem we I stat long Seaika I kam kasem Benenenumail.

CCI italem long kot se I kam wan namaki nomo long Potune nasara. Hemia taem oli questionem yu be long statement yu no talem long kot se yu killim wan namangi.



CC1 italem long kot se I kat wan namangi nomo long Potune nasara we emi blong em. Be em no save se emi fes nasara or no ?

Kot I note se yu stap klem bloodline blong jif from stone long nasara. Be long statement yu talemout se yu klem from chief to chief ol performance blong olgeta long nasara I kasem Numalgamiliff.

Yu no save talem long kot sam long ol family blong yu we yufala I kamout long nasara Lemerek we oli stap long sam long ol village long main land.

### **Lekum Japeth Case**

Kot ifainem se yu klem bloodline blong high chief Rereal blong Potondar be yu nospecify se big jif Rereal I killim hamas pig from yuse I long taem tumas.

Kot I fainemout se I kat sapportiv saed se man Ambrym I kam festaem long Uripiv.

Kot ifinem se yu no save givim nem blong man mo woman Ambrym long kot be yu save givim nem blong gel blong tufala – Lembeltassi.

Kot ifinem se yu bilif mo follem blad laen blong Jif be yu no givim hamas amanki oli mekem.

Kot inote se yu travel long shark blong go long Uripiv be yu no givim nem long kastom.

Kot iconfirm se ikat confuse long namba blong ol nasaea long Uripov from ikat sam long ol counter claimant ol se 7 nasara , 9 nasara , 8 nasara.

Kot ifinem se yu famili Lekum Jepeth ikat family long main land (long Pinalum mo Mahe) olem we yu respond before Kot.

Kot ifinem tu se yu kat woking place mo yu still wok long area long mainland tedei.

### **Law we Kot 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.

## Kot Decision

### **Follem ol findings ia:**

CC2 family Jepeth yu base long Uripiv island tedei follem histri movment but yu gat ol family we oli live long main land long Tautu, Pinalum, Rano mo Wala olsem we yu talem bifo long court.

Nubeltasi emi out long smol island mo go bak long mainland nasara blong finem waef blong son blong em (masta).

CC2 ibin confirm bifo Kot se yu gat wokong areas long mainland nem Podundar.

CC2 iconfirm bifo court movment, emi begin long mainland Podondar nasara blong high chief dwelldwelnani.

Witness tu ibin confirm before court se Apu Dora befo emi death emi decide blong givim bak working land area we emi (Dora) istap wok long em emas go bak long family Lekum.

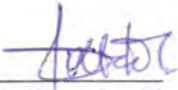
Ikat confirmation bifo court long CC1 mo CC2 se arrival blong Uripiv island emi man Ambrym be ino tribe blong main land.

Mesmes I settemup nasara Potune.

**Wetem ol findings;** blong Island Kot long matter dispute ova chifly taetol of Potune nasara from Uripiv island between Original claimant Mr. Johsen and family Frezher and counter claimant 1 Aisen Jimmy and Lekum Jepeth counter clamant 2; Island court ideclare se chifly taetol blong Potun nasara emi tru lo family Lekum Jepeth.



Dated at Lakatoro this 24<sup>th</sup> January, 2012.



Jastis Douglas Fatdal



Jastis Robert Niptik



Jastis Shema Tasvaillie

