

IN THE EFATE ISLAND COURT  
HELD AT PORT VILA  
(Civil Jurisdiction)

Chiefly Dispute Case No. 04 of 2008

**BETWEEN:** PARAMOUNT CHIEF POILAPA III TI VATELAPA, TASILA  
MALASTAPU & SIMON POILAPA  
(Claimant)

**AND:** KALOKAI MASAAL  
of Mele Village, Efate  
(Defendant)

Coram: Justice – Ann Carlo  
Justice - Harry Joshua  
Justice – Jerry Shem

Clerk: Manu Jacky

Joel Jacob

Date of Hearing: 25<sup>th</sup> June 2012  
Date of Judgment: 03rd of August 2012

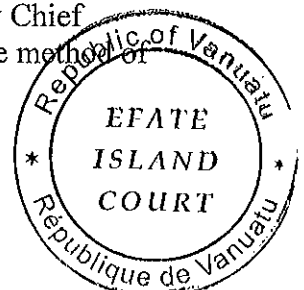
### JUDGMENT

Efate Island Court was mandated by a consent order of the Supreme Court dated 30 November 2011 to determine who is entitled to vote for the Paramount Chief of Mele Village. The orders were that the Island Court was;

- (I) *to determine (by name rather than just by position or reference) exactly who is entitled to vote for the Paramount Chief of Mele village*
- (II) *to oversee that election and declare the results of the election.*
- (III) *to give such directions as may be considered necessary to ensure that smooth taking up of the office of the duly elected paramount without further delay.*

For ease of better understanding and of the interest of every one, it is apparent that background summary of this long outstanding issue be outline.

The case was first filed in the Efate Island Court on 27<sup>th</sup> of February 2008 by Chief Polilapa III Tivatelapa, Tasila Malastapu and Simeon Poilapa challenging the method of



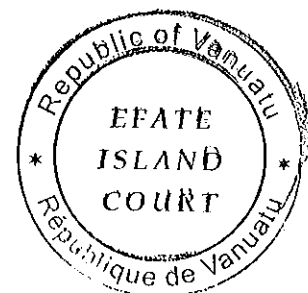
ordaining Chief Kalokai Masaai of Mele Village which alleged to have contradicted the accepted custom practiced in Mele and Efate.

This court identifies two principle issues during the trial;

1. *Was the democratic system of electing the Chief of Mele village, an acceptable and recognized customary practice?*
2. *Was the procedure followed by Mr Kalokai Masaai to acquire the Chiefly title of Mele village, in accordance with the customary practices and procedures?*

It is necessary to mention the findings, declarations and Orders of this court on 16<sup>th</sup> of May 2008 because we will be referring to them as we deal with this matter.

- *For a body such as Imere Council of Chiefs (ICC) to be appointed as an interim commission to gaze onto the issue of determining, the Paramount Chief in our view was irrelevant.*
- *The Imere Council of Churches (ICC) has no authority to take part of any affairs that is within and known as the customary practices established by the ancestors. The Christian principles are very clear. It outlines the rules and procedures known and practicable within its jurisdiction only.*
- *There is uncertainty within the procedures followed by the said Imere Council of Churches (ICC) to allow the process of the ordination. The Court assumes that the people of Mele village did not distinguish what are the exact customary practices to pursue to an ordination.*
- *The procedures adopted and used by the people of Mele village is at the period time where Chief Titongoatapu I and Chief Kalsautu Poilapa I were appointed in 1900 during the influence of Missionaries. In our view the democratic election has not been a method to be second-hand to elect a Chief.*
- *To acquire a Chiefly title, it must be pursue through the bloodline system and not through a democratic system of election. Defendant in his defense submits that to inherit a Chiefly title it is on the hand of the people in the village to decide whether or not a person is qualified for the position. It is the people's intention to which merely based on the behavior of a person to succeed. We cannot accept that statement. A Chiefly title is inherited only through the bloodline system from generation to generation until today. It is obvious that, Defendant has no connection to the Chiefly lineage of the Paramount Chief Titongoatapu I. We believe that, according to custom, a Chiefly title or a Paramount title is a custom property that inherited by a tribe. That custom property cannot pass on to another person that relates to another tribe. If so, then we must say that, that custom property is misused.*
- *The Court in its finding, note that, the Paramount title inherited by Chief Kalsautu Poilapa I is not taken according to custom.*
- *The origin of the said Paramount title was from the tribe where Chief Titongoatapu I belongs to.*

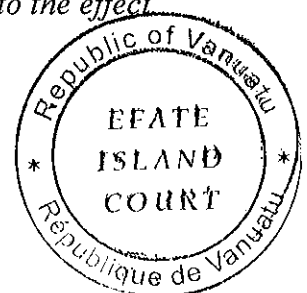


- *In the evidences made by Claimant, it is evident that Defendant is originally from the northern part of Efate and related to the family line of Kalpapres. This statement is not disputed by defense.*
- *The Court did hear that Kalokai Masaai is a Chief. We note from the evidence that, defense did not proof beyond reasonable doubt that, Kalokai Masaai is related to Paramount Chief Titongoatapu I.*
- *The Court asks this question, how does defense establish that Kalokai Masaai may able to bestow the Paramount Chiefly title? According to the evidences adduced before this Court only, the relatives of Chief Titongoatapu I may be allowed to inherit the said title.*
- *The Court also noted from the Claimants witness, evidences produce by Chief Kalontano Poilapa III confirming that, Chieftainship title of Langa family is only for the tribe, not Paramount. Claimant did not dispute this evidences. While the Court has the same opinion, that Chief Kalontano Poilapa III was ordained according to custom practices however it did not mean that he is qualified to be Paramount Chief of Mele village.*
- *The Paramount title must be determined by the small Chiefs represented by each tribe in Mele village. We note from the history of Chiefly inheritance between Chief Titongoatapu I and Chief Kalsautu Poilapa I, that according to evidences adduced before this Court, the original birth of the Paramount title was from the tribe were Chief Titongoatapu I is related.*
- *How did Chief Kalsautu Poilapa I, accessed to the said title, merely, when Chief Titongoatapu I was sick. We note that, Chief Titongoatapu I is originally from Lelepa/Magaliliu region, this statement was not challenged by defense. The Chiefly status of Langa belongs to the small nakamal in Mele village. And this statement was reconfirmed by witness 5 of the Claimant. Therefore we say that Chief Kalontano Poilapa III is from the Langa tribe.*

Subsequently, this court makes the following declarations and Orders;

### **Declarations**

1. *The proper customary practice to acquire a Chiefly title is by inheritance through the bloodline system from generation to another.*
2. *The method of electing a Chief by way of secret ballot is not the customary practice of Mele village and Efate.*
3. *The election procedures followed and made on the 4th November 2006 in relation to the ordination of Chief Kalokai Masaai as the Paramount Chief of Mele village, is null and void and have no effect in law and custom.*
4. *The ordination process followed and made on 8<sup>th</sup> October 2005 in relation to the ordination of Chief Kalontano Poilapa III is in accordance with the customary practices of Mele village and Efate, but only considered as a lesser Chief in his nakamal.*
5. *That Chief Kalontano Poilapa III is the Chief in Langa's tribe and has no authority to rule as the Paramount Chief of Mele village, Efate to the effect*



6. *The ordination of the Paramount Chiefly Title rest on the hands of the small Chiefs of each nakamal represented today in Mele village, Efate, including Chief Kalontano Poilapa III.*

### **Orders**

*Accordingly this Court hereby makes the following Orders:*

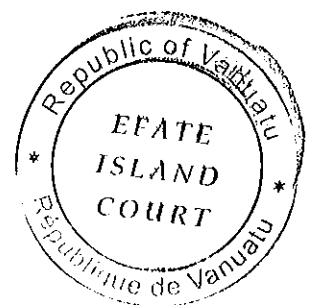
1. *That only the lesser Chiefs represented by each nakamal that exist in Mele village today has the ultimate authority and power according to the principles of custom rules to appoint and ordain the Paramount Chief of Mele village.*
2. *That the village council members existed prior to the disputes is directed to call a meeting and to set procedures according to custom for the appointment and ordination of the Paramount Chief of Mele village.*
3. *That the village council members existed prior to the dispute is hereby directed to call a meeting and to set procedures according to custom for the appointment and ordination of the Paramount Chief within four (4) months as from the day of this judgment.*
4. *That both parties are hereby directed to keep peace, harmony and good order in the community at all times.*

The decision of the Island Court was appealed to the Magistrate Court in which the Magistrate upholds that decision. The decision of the Magistrate Court was further appealed to the Supreme Court. The Supreme Court struck out the appeal and referred the matter back to Mele village Council to oversee the appointment of the new Paramount Chief. Unfortunately, there was disagreement in the council on who should vote for the Paramount Chief of Mele village which resulted in the Supreme Court directing the Island Court to clarify its decision on 16<sup>th</sup> of May 2008 that according to custom, who are today the "*lesser Chiefs represented by each nakamal that existed in Mele village*"

Though this was a consent order of the Supreme Court, one party tends to disagree with the order which directed specifically for the election and present submission against the democratic procedure of conducting election.

For us to give answers to the direction issued by the Supreme Court and the clarification on the first decision of this Island Court which mention "*that only the lesser Chiefs represented by each nakamal that exist in Mele village today has the ultimate authority and power according to the principles of custom rules to appoint and ordain the Paramount Chief of Mele village*", this court frame the following question to direct parties to provide submissions could give some assistance to the court.

1. Mele village council of Chiefs;
  - What was the purpose of the setting up of this council, how was it being set up and how effective was the council?

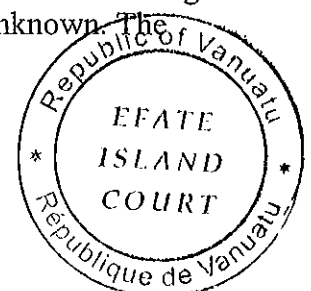


- Who were the people elected to this council, how were they elected and what is their term in this office and when was the last council elected?
  - Was this council properly represented, properly set up, and gained the respect of the whole village?
2. Nakamals or Nasara in Mele;
- How many nakamal existed in Mele by name, and what is the name of their Chief and what is the role of the Chief in the village?
  - How were these nakamals being represented in the Village Council?
  - How were lesser or head Chiefs recognized in Mele Village?
3. Election;
- How the election be conducted?
  - Is it necessary to involve the full population of Mele in this election process and why?
  - Will the election contradict the traditional hereditary system of passing Chieftainship?
  - What are the disadvantages of the election of Paramount Chief in custom?
  - What are the advantages in custom for the election of a Paramount Chief?

### **Claimant Submission**

The submission of the claimant was more recalling chronological events before and after the dispute which is convenient to mention.

1. That started when Malasikoto was part of the ordination of Titongoatapu which contradict the principle custom of Mele. It is not according to the custom of Mele for a native from another area to be ordained Paramount Chief.
2. Chief Kalsautu Poilapa I succeeded Titongoatapu in order to rectify and amend customary principles within Mele and Efate from 1946 to 1963. There was no dispute during this era.
3. Peter Poilapa II succeeded his father as the next Paramount Chief of Mele village. Peter Poilapa reign for a period of 1963 to 2003. During his era, he was referring to the Paramount Chieftainship government of Mele as "*there is only one queen in Mele*", which means there is only one Paramount Chief in Mele. During his time he was informing his people of Ti Vatelapa to succeed him.
4. Peter Poilapa formed 9 to 10 councils and he did mention that if Poilapa II died, his son would succeed him with the usual custom practice of involving the highest custom authority in Efate, the Vaturisu to perform the ordination of Chief Poilapa Kalantano Ti Vatelapa III on 8<sup>th</sup> of October 2003 who succeeded Chief Peter Poilapa.
5. On 4<sup>th</sup> November 2004, defendant was voted in a democratic election claiming to be the Paramount Chief of Mele by people who's identity are unknown.



process of his ordination was overruled by this court to be against the principle of custom of Mele and Efate.

6. The disputed was claimed to have started when Dick Namata, the adopted son of Paramount Chief Kalantano Ti Vatelapa was not happy and plot the attempted downfall of the Paramount Chief from his throne. That was when the initial proceeding commenced in the Supreme Court to challenge the election of the Defendant.
7. The matter ended in the Island Court and a decision was made on the 16<sup>th</sup> of May 2008 with findings and orders mentioned earlier.
8. Chief Kalantano Poilapa III appealed the decision of the Island Court to the Magistrate Court and a decision was made on the 29<sup>th</sup> of September 2009 adopting the decision of the Island Court.
9. Chief Kalantano Poilapa III appealed the decision to the Supreme Court which the Supreme Court directed the two parties to the Island Court decision.

First witness (Simeon Poilapa)

On oath, Simeon Poilapa who refers to him as Simeon Pilapa IV reaffirm his submissions filled in relation to this case. He recalled the events happening before and after the chronologically as states in his submission.

He emphasizes that a Paramount Chief must own land and be the person who look after the welfare of the people and restore peace at all times in the community.

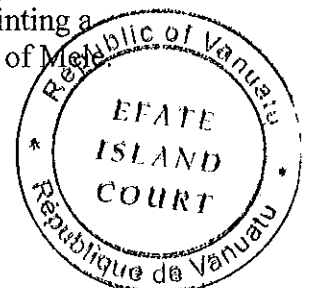
He strongly believes that according to the principles of custom, he did comply with the order of the Supreme Court of 6 June 2011 and therefore the meeting by the council on 30 June 2011 was lawful in Custom which lead to his ordination thereafter. During his ordination, he gave his custom blessings to his 16 councilors of Mele village. He strongly believes that his ordination was done in accordance with custom and Vativisu Council approve of him to resign as the authority of the royal family as succeeding Paramount Chief.

He did confirm that Chief Ngos was the first Chief of Mele but was more from the matrilineal line and his ordination was not done according to custom and was not according to the bloodline principle of custom of Mele.

He continues to maintain that his success on this paramount responsibility was eligible by custom and through the principle of customary inheritance through bloodline. His ordination was on the 26<sup>th</sup> of August 2011 and was in accordance with the orders of Supreme Court.

He stated again that according to his knowledge, Chief Ngos was the first Chief of Mele but he is not from Efate.

Chief Poilapa I reigns from 1946 to 1963, a period of 17 years unopposed. Chief Peter Poilapa II succeeded his father in 1963 to 2003, an accepted governing period of 40 years until he passed on the title to his son Kalontano Poilapa III in accordance with the principles of custom. He mention that Mele custom is the same custom applied across entire Efate and the sole responsibility and decision of appointing and anointing a succeeding Paramount Chief of Mele rest entirely on the Paramount Chief of Mele.



He mention that after the Supreme Court order, they went back to the village and attempted to group together with the defendants function so that orders of the Supreme Court could be complied with., however, the defendant and his group refused. In his submission, on 30<sup>th</sup> of June 2011, the existing council appointed by Peter Poilapa II had waited in Mele farea for the respondent and his group to attend but they refused. They proceed accordingly by complying with the orders of the Supreme Court and subsequently ordained the new Paramount Chief of Mele.

Witnesses (Michel Ova, Tarimiala, Pakaloni Fenua)

All these witnesses provide evidence to the effect of confirming principle of custom to become a Paramount Chief is through bloodline which is inline with the custom of Efate.

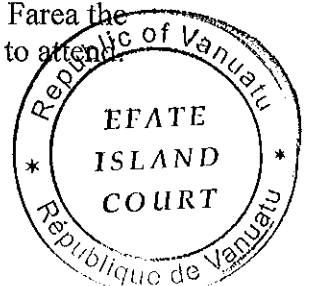
They were recalling and confirming that on 30<sup>th</sup> June 2011, the defendant and his group refused to attend the farea for the council to comply with the orders of the Supreme Court so that lesser Chiefs could appoint a paramount chife.

They do confirm that the respondent and his group has attempted 4 different ways of ordaining him to the Paramount Chief with out success. Michael ova said these people have no right to claim Paramount Chief since their generations originated from lelepa, Buffa, Elluck Malta, and further hold that Massai has no land but only Nikara.

Their evidence conform that Mele is under the umbrella of the vatirisu who owns the custom of Efate.

### **Defendant submission**

1. There was a new council set up by the claimant, Simeon Poilapa, but his council has not so far performed the Paramount Chief role, leaving the old council chaired by the chairman Dick Namata to carry out the day to day wok of the council in the village.
2. There was an existing council prior to the dispute under the chairmanship of Marik Dick Namata and that is the council to be involved in the process of the appointment and ordination of the Paramount Chief of Mele.
3. The council under the chairmanship of Marik Dick Namata conducted a meeting at a different venue and on the 30<sup>th</sup> of June 2011 to overlook at the process of the ordination of the Paramount Chief.
4. The Island Court declares that the Paramount Chief of Mele village was not hereditary through bloodline. We cannot agree with this submission. This court does not make any declaration to that effect.
5. The defendant submit that on 30 June 2011 the village council that existed to the dispute could not use the village farea to elect the new Chief because Simeon Poilapa refuse to give the key to the farea. This statement is not true, we have submissions from the claimant and his evidence that they were at the Farea the full morning on that same day but the defendant and his group failed to attend.



First Witness ( Kalokai Masaai )

According to the evidence presented by Masaai, he claims that he originated from Mele and has a nasara. There is 7 generation to his family genealogy and he is the 6<sup>th</sup> generation. There is not enough genealogical evidence to support he was once a Chief in Mele.

He said there were 3 Chiefs who were at Mele before Poilapa and they are Malasikoto, Ngos and Titongoatapu. He stated that Poilapa I was ordained Paramount Chief through political move and election and was not done according to custom.

From what he understands is that to become a Chief in Mele is when someone is being prayed over until the age of retirement. This evidence does not have support of the customary law recognized.

He challenged Simeon as not the right person to be ordained the title Poilapa, rather it should be his first born son. We find no evidence to support there is dispute in the customary procedure of handing over the title from holder to the successor which in fact recognized by custom.

Masaai said recently there is no Paramount Chief in Mele since there are only few people who attended Poilapa's ordination, but do confirm there are some people from the Masaai group who attended Poilapa's Ordination.

He claimed that there are 12 tribes that reign long time until today, therefore he is a Chief. We disagree with that evidence since there is no evidence to support it.

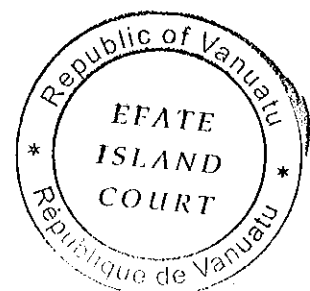
He does confirm that his attempt ordination 3 times was by election

His emphasis is that Supreme Court directed him to conduct meeting but Simeon Poilapa did not give them the key to the farea to conduct the business of the Chief. That statement is not true; we find no evidence to prove this statement.

Second Witness ( Titongoatapu ,)

This witness do mention again that he knew there were 3 Chiefs long time. They are Malasikoto, Ngos and Titongoatapu, however he confirm that Titongoatapu is from lelepa.

He confirmed that the dispute does arise only during the period of Poilapa Ti Vatelapa but earlier there was no dispute. This witness does confirm that the ordination of Simeon Poilapa IV was ok because the title was passed on from Poilapa I, II and III and to him.





He does gave evidence to the effect of upholding that Paramount Chieftainship must be done through election. We cannot accept this procedure because it contradicts the principles of custom.

Third witness (Philip Malastapu Holitapu)

This witness was once the assistant Chief to Poilapa III Ti Vatelapa but breakaway to join camp with Masaai. He does seem to agree that the right person to be ordained this Chieftainship is the first born son of Poilapa III. This witness knew there were 9 councilors who elected Kalokai Masaai. There was no evidence to support this statement.

He disagrees with the process of putting up Simeon Poilapa and his ordination since Masaai is the person authorizes to call the meeting. Again we find no evidence to prove that statement. He confirm he was subject to the authority of Poilapa II and Masaai only reigns in 2004.

Fourth witness ( Marik Namata Dick )

Actually this witness is part of family Poilapa and was part of the Chief government in the village of Mele. During his early life, he witness when Kalokai Masaai, Tauto Lulu, Nano Poilapa and William Males Nano were part of the ordination of Poilapa I. He insisted that to become Paramount Chief it is through election by lesser Chiefs. We disagree with this statement.

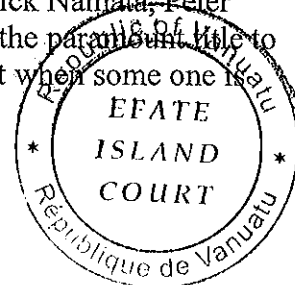
This witness does not know when Masaai one to four reign but confirm Poilapa I to IV ruled in Mele. This witness does confirm that the dispute arises only during the period of Poilapa III and IV, because Masaai disagrees.

**Answers to the questions**

Based on the submission and evidence produced by the parties and the local knowledge of the justices and relevant customary principles, customary laws and precedence set in other cases, the court provide the following answers to the questions posed for the parties.

1. Mele village council of Chiefs;

We noted that village council was set up earlier and were part of the decision to ordain Poilapa I as the Paramount Chief in early 1946. We note that the council represents the "Matarau" or tribes and were appointed by the Paramount Chief to advice and consult on matters relating to the governance of Mele village. The council accepts Poilapa I as the Paramount Chief and there was no record of dispute in the council during the period when Poilapa I and II reign. The dispute in the council started only when Poilapa II handed over the authority to his son Poilapa III. And that is when Dick Namata, Peter Poilapa adopted son disagree with his farther decision to hand over the paramount title to his legitimate son. We note from the submission of the claimant that when some one is



being appointed by the Chief in to the council, it is under the discretion of the Paramount Chief and the “Matarua” or tribes wish to remove him from his duty in a reciprocal manner of allegiance to the Paramount Chief. That is accepted as the customary principle to recognize the empowerment of the Chief.

## 2. Nakamals or Nasara in Mele;

According to the submissions presented, the defendant does not provide any names of any nakamal or nasara that existed in Mele by name, or the name of their Chiefs and what their roles are in the governing system of village of Mele. We note from submissions of the claimant that according to the Vaturisu Customary land law, on point 7.3, the authority of the Paramount Chief to show the land of the lesser Chief, which means that the authority to ordain and recognize the lesser Chief was the sole discretion of the Paramount Chief after ordaining and that is the underlying principle. We feel this is based on traditional knowledge of the Chief to strengthen his governing system and maintain it and it is his custom duty to recognize which Chief is the lesser Chief. The Paramount Chief has a leadership character that does not gain through election but build with knowledge through time and Poilapa has done that over a lengthy period of time. We understand through submissions of the Claimant that during his ordination as Poilapa IV, he recognizes 16 lesser Chiefs.

## 3. Election;

From the submission of claimant, he disagrees totally with election of Paramount Chief. He emphasis that election is not part of the custom of Mele. On the other hand, the defendant submits that election is to be organized by the village council that existed during the reign of Poilapa II. The defendant did not state how the election is to be conducted, but through submission from both parties there were attempts from the existing council to conduct election and ordain defendant Paramount Chief and this court overturned that process as not according to the custom.

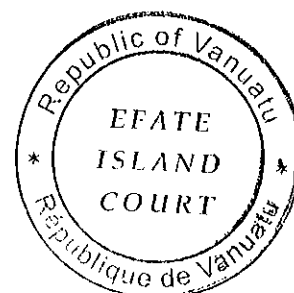
The claimant submits that it is not necessary to involve the full population of Mele on the election and held that election contradict the hereditary system of passing Chieftainship which is widely recognized in Efate.

The disadvantages of election of Paramount Chief in Mele are;

- It opens the gate way for dispute into a well customary established system.
- It will allow any person who is not eligible according to custom to become Paramount Chief any time.

## **Customary Principles and laws**

Before we mention the customary principle and customary laws we provide the definition of customary law;



**Definition;**

*“Traditional common rule or practice that has become an intrinsic part of the accepted and expected conduct in a community or society and is treated as a legal requirement. It refers to customary practices and customs of indigenous and local communities which are intrinsic and central part of the way of life of these communities. They are founded upon long continued practice and usage. They embedded in the culture and values of a community or society; they govern acceptable standards and behavior and are actively enforced by members of the community”.*

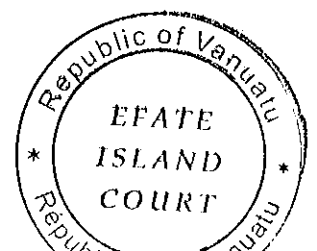
There are certain customary accepted principles which we prefer to mention them since we cannot change them but we are duty bound to accept and uphold them as customary law of this jurisdiction.

(I) To become a Paramount Chief, both parties accepted these customary principles which have developed to become customary law through mutual recognition and acceptance;

- (i) the Chief must be true indigenous person from Mele
- (ii) the Chief must follow blood line
- (iii) the Chief must follow patrilineal system
- (iv) the Chief must have nasara
- (v) the Chief must have land.(including wealth)

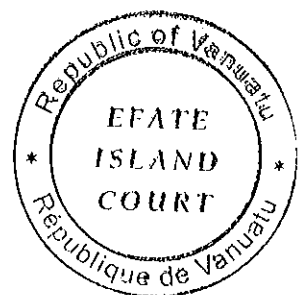
Chief is a person whose authority derives in some measure from personal reputation; combine with positional and personal factors which include the bloodline of powerful leader who gain advantage through inheritance of knowledge and resource. He must be indigenous hereditary leader who ideally have total authority over his monarchy. His leadership is achieving through combination or ritual and economic achievement, and personal qualities. Indeed Paramount Chief must be seen as having a special role and responsibility to preserve custom. He needs to establish and maintained his royal legitimacy as leader and build strong allegiance with is aids, advisors, assistants to strengthen his structural legitimacy to maintain his empowerment. His success must be demonstrated in public activities. We do not see this governing system as prejudicing to the community but only to acknowledge that this system works for more than half a decade with success on the management of the life of people of Mele and recognize and respect their rights.

(III) Efate Vaturisu custom land laws provided the following as custom principles that must be uphold at all times as customary law of this Jurisdiction. These custom principles provide frame work of the governing system of Chief in a society like Mele. These customs were recognized in a conference at Mele in Februay 2007. Both the claimant and defendant sign with other Chiefs from Efate to agree with these principles.



- *Bifo igat wan ordination blong wan big kastom jif, imas gat toktok wetem village kaonsel blong jif blong konfemem graon we Jifly title bai hemi kaframap.*
- *Siposi hemi wan ceremony blong wan big jif, bai Vaturisu kaonsel blong ol jif blong Efate nao bai oli mekem odination blong Jifly title mo oli mas talem aot se baondri blong graon blong big jif ia hemi stat wea ples iko finis long wea ples.*
- *Siposi seremoni hemi blong wan smol jif, bai Big jif blong vilej o Fare ia nao hemi mas talem aot se pis graon blong smol jif ia istat wea ples mo go finis wea ples.*
- *Eni narafala seremoni blong kam jif sapos ino gat approval blong vilej kanosel wetem Big Jif insaet jurisdicksen blong big jif ia, bai hemi no valid mo folem kastom blong Efate.*
- *Long kes blong big jif sapos seemoni blong kam jif hemi no gat approval blong Vaturisu kanosel blong ol Jif bai seremoni ia hemi no valid mo ino folem kastom blong Efate, mekem se seremoni ia hemi no gat mining.*

- (IV) The decision of this court in Civil Case no 01 of 2002 about the election of a Paramount Chief, this court held that election is not part of custom of Erakor which is within the Jurisdiction of Efate Island Court and Vaturisu which exercise common custom and is a precedence set for this court to follow. This court made its finding earlier against the democratic system of election and we refer to that finding again *“To acquire a Chiefly title, it must be pursue through the bloodline system and not through a democratic system of election. A Chiefly title is inherited only through the bloodline system from generation to generation until today.* “This is has long accepted to be a customary law.
- (V) From our custom knowledge, the customary law of succession recognizes that when that customary power is bestowed upon some one, he has full recognition of custom. That is because he acquires that through customary ritual ceremonies and deserves this power. According to custom, this power is transferred through custom procedures and protocol to the next successor. It is performed through a customary transition principle over a period of time through different stages to show and accept the power has been transferred to another person. If the holder does not transferred the power but dies, proper customary rituals are performed and the successor has to go through it as a customary principle of succession in confirmation with the principle of transition. The power cannot be removed without observing these protocols. Ordination of the Paramount Chief and showing of his governing territory are part of this transition of power.

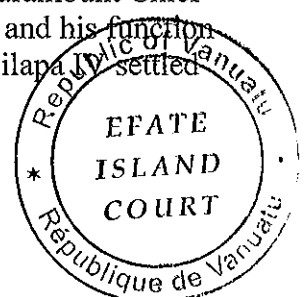


- (VI) Reciprocities are the basic source of recognition of the duty to obey these laws

As a matter of custom principle, this court is duty bound to uphold and apply these unwritten customary principles to restore the custom needed by the people of Mele.

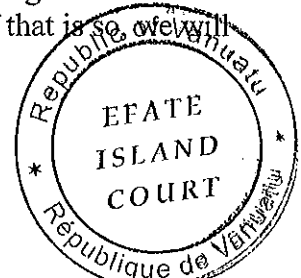
**Court findings;**

- Poilapa was the accepted and recognized Paramount Chief by the people of Mele from the reign of Poilapa I. When Poilapa I used his power to pass on the title to Peter Poilapa II, everyone in the village accepted the process because it was done according to custom procedures and protocols. Poilapa II then passed this title to Kalantano Poilapa III in accordance with custom and later passed on this title to Poilapa IV. There was no dispute within the royal family of this title being passed on to the succeeding holder through transition periods and customary succession principle mention above.
- Masaai does not prove the reign of his title and is very difficult for us to accept that there was once a Chief by the name of Masaai in Mele. That is in supported of our earlier observation in Land case No 03 of 1993 where we quote “ *long observation blong mifala long taem blong ol presentation family masaai oli bin stap tokabaot maltare olsem se igat 2 ples be long common knowledge blong ol man Efate olsem ol narafala paty oli bin talem long court mo tu ol justices blong court ia oli blong Efate we oli save se ikat wan Maltare nomo we hemia istap between Eton, Pan Pan mo Epau*”
- Furthermore our declaration on Land Case No 3 of 1993, we declare some right to Masaai who is under family Sopuso. That in our view does confirm that Masaai is from Maltare who does not own any land on malawora area since he is not an indigenous man Mele.
- We refer to our finding earlier that “ *defendant is originally from northern part of Efate and relate to the family line of Kalpares. This statement is not disputed by defense.*” we are afraid this kind of individual may take on the title but lack the usual attributes of traditional leadership which is build over time.
- We found that the council that existed prior to the dispute was appointed by the Paramount Chief Poilapa. That is supported by the submission of the claimant which is not disputed by the defendant.
- The village council is established and members are appointed by the Paramount Chief in consultation with heads of each families or matarau and organization to advice and consults on matters relating to the governance of the village. We see this as more consistent to the custom of Efate.
- On 30 June 2011, the existing council appointed by late Paramount Chief Peter Poilapa waited in the Mele farea for the respondent and his function but they did not attend. The council headed by Simeon Poilapa settled



procedures according to the custom protocol for the ordination of the Paramount Chief which was accepted by councilors who attended.

- That there were 16 lesser Chiefs who were part of the meeting of 30 June 2011 and chose Simeon Poilapa IV as paramount chief and agree on the process and procedures that happened according to customary on 24, 25 and 26 of August 2011 to ordain Simeon as Paramount Chief Poilapa Ti Vatelapa IV.
- Vaturisu was consulted and approved of the ordination to be according to the custom. Vaturisu made the ordination of Simeon Poilapa IV together with 16 recognized lesser Chiefs of each tribe.
- The ordination was done on the nasara of the Paramount Chief Poilapa.
- The south Efate council of Chiefs and Vaturisu council of Chiefs with authority and power to govern and to protect welfare of the communities in accordance with the traditional Chiefly system in Efate including Mele declare Chief Poilapa IV TI – Vatelapa Simeon the Paramount Chief of Mele. Instrument of appointment was signed by Secretary General of Vaturisu and Chairman of South Efate Councils of Chiefs. That does happen with the customary involvement of lesser chiefs of mele.
- We found that according to the custom of Efate, lesser Chiefs may be consulted on the decision of the paramount holder to who is his successor as a matter of custom governance through reciprocity and importantly their allegiance to the governing system. This amount to their responsibility to chose who is he next Paramount Chief.
- We found that according to custom governance, Paramount Chief has the authority to appoint councils representing organizations that form part of the governing system of Chief in Mele.
- That Paramount Chief has the custom authority to ordain lesser Chiefs and recognize them as lesser Chiefs in Mele. The Chief cannot appoint some one outside his legitimate governing structure which would put his governing system at risk of loosing it to the outside world.
- There were attempts by the council that existed prior to the dispute to elect Masaai as Paramount Chief in separate occasions proved unsuccessful by this court because they were not done according to custom.
- The principles of respect is known in Mele society through the custom governing system of Poilapa which sees power depends on networks of exchange and personal reputation build overtime. That has been observed and appreciated by the custom governance of Mele by Poilapa. The authority of this chiefly crown reign through different personnel within the royal bloodline exercising this power, has build respect, build and understands traditional knowledge over a lengthy period of time that warranted customary recognition as the Paramount Chief of Mele. Generations has accepted him as their royal highness into this kingdom of this custom monarchy of Mele village.
- From our custom knowledge, there is risk of opening a gate to more disputes into this respected traditional mode of governing that was there before independence if we allow them into election. If that is so, we will

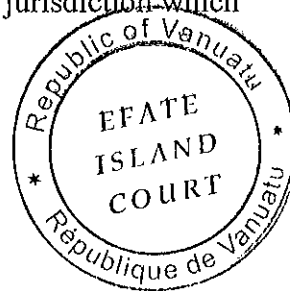


be unable to close this gate and foreigners will enter this traditional system with influence and create chaos in the system. Any person from the outside world will enter the greatest nasara of Mele and claimed him to be the Paramount Chief with democratic election. We cannot jeopardize this customary system with democratic election by allowing Tom, Dick and Harry to come in any time and claim this paramount title without building their reputation over period of time and meeting customary criteria's that enable someone into this monarchy.

- We found that Vaturisu councils of Chiefs and the South Efate councils of Chiefs possess wealth of knowledge in custom and traditional which means their involvement in the ordination of Paramount Chief Simeon Poilapa IV signifies they are not hesitant to exercise their traditional authority.
- The customary law of succession is about the succession to the status of the deceased which comes along with responsibilities and not merely the privilege to enjoy this status. The successor of the status "*step into the shoes of the deceased and takes over the control of the power*". In this capacity, the successor in status is *responsible* for the maintenance of the village of Mele, by providing the heir with all the rights and powers necessary to continue managing affairs of the village.
- The principle of succession was designed to ensure the welfare of the surviving family. This customary law has the effect of confirming the bloodline's family. The customary law of succession is based on the principle of male primogeniture.
- The customary law of succession is flexible within the family of the deceased, if the heir dies without transferring the power, it is the full discretion of the family on how best to secure the welfare of the village and decide who is best to succeed the heir.

It is the duty of this court to ensure the survival of customary law and to do so; we therefore recognize and uphold the customary principles mentioned above as customary law. We have the responsibility at our disposal under the provision of Section 10 of the Island Court Act, Cap 167 and section 3(1) where Senior Magistrate Vincent Lunabek held in the case of *Waiwo v Waiwo and Banga* that our knowledge in customary law is very important and does not need evidence to prove it. We quote "*Vanuatu Island Courts, it can be stated that an Island Court is competent to find and apply customary law without having evidence to prove it (see Island Courts Act, Cap 167, S.10) because an Island Court is constituted of three Justices knowledgeable in custom and at least one of them shall be a custom Chief residing within the territorial jurisdiction of the court (see S.3 (1) (3) of the Island Courts Act referred to above). Waiwo v Wawo and Banga.* Therefore it is a great opportunity to use our knowledge and set things according to custom.

We cannot set a conflicting precedence for the good of custom in this jurisdiction which must have common practice.

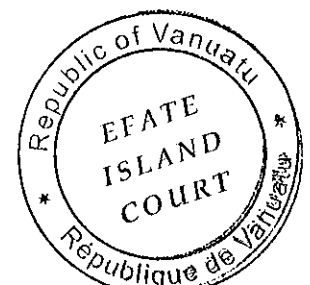


## **Court declarations;**

Therefore, according to the evidence collected, our traditional knowledge and according to our findings, we make the following declarations accordingly.

1. That according to the custom of Mele and Efate, Poilapa was recognized as the Paramount Chief of Mele.
2. That the Paramount Chiefly title Poilapa was handed down from Poilapa I all the way to Poilapa IV according to custom of Mele and Efate through the customary law of succession and transition and that is according to the bloodline principle recognized. That is in line with this court earlier declaration on 16<sup>th</sup> of May 2008.
3. That the custom power of Paramount Chief which was acquire and used during the reign of Poilapa I, was passed on to succeeding Poilapa II, then later was passed on to Poilapa III with recognition of customary law of succession and transition. That same power was transferred to Poilapa IV during the custom ceremony performed.
4. That according to customary law, Paramount authority of Poilapa has the same recognition and custom authority during the discharging of his duties from Poilapa I to Poilapa IV.
5. That according to custom, the Paramount Chief has the ultimate authority to ordain head of tribes as lesser Chief to represent each tribe.
6. That according to custom, the Paramount Chief has the sole authority to appoint members of his council or terminate them in consultation with head of tribes or matarau or what organization they represent.
7. That the councils appointed by Poilapa II and Poilapa III is subject to the discretion of Poilapa IV for the good accepted custom governance of Mele.
8. That the meeting called or organized by the council appointed by Poilapa on 30 June 2011 was done under the prerogative power of the Poilapa as Paramount Chief and was done according to custom of Mele and Efate..
9. That the lesser Chiefs involved in the meeting of 30 June 2011 that approved Simeon Poilapa IV Ti Vatelapa as Paramount Chief to be the rightful lesser Chiefs of Mele approved by the Paramount Chief Poilapa.
10. That the ordination process followed and made on 24<sup>th</sup> 25<sup>th</sup> and 26<sup>th</sup> of August 2011 in relation to the ordination of Chief Simeon Poilapa IV Ti Vatelapa IV as Paramount Chief of Mele village was in accordance with the customary law and practices of Mele village and Efate.
11. That Simeon Poilapa IV Ti Vatelapa is the Paramount Chief of Mele
12. That according to custom criteria's mentioned above, Masaai is not eligible to become Paramount Chief.
13. That election is not part of the custom of Mele mo Efate.

## **Orders**





1. The Defendant is directed to make reconciliation with Paramount Jif Simeon Poilapa Ti Vatelapa IV and apologize to him according to custom for causing a major dispute within the custom governing structure of mele under Poilapa by September 2012.
2. Paramount Chief Simeon Poilapa IV must make proper customary reconciliation with the defendant and his group to acknowledge them back into the village Farea and recognize them under his leadership by September 2012.
3. The defendant is prohibited from claiming him to be the Paramount Chief of Mele.
4. Each parties bear their own cost
5. Both parties are given 30 days to appeal.

Dated at Port Vila this 03<sup>rd</sup> Day of August 2012



Justice Ann Carlo



Justice Harry Joshua



Justice Jerry Shem

