

BETWEEN: PIERRE NIKARA
CLAIMANT

AND: TAFURALAPA KALTABANG
DEFENDANT NO. 1

AND: KALTAVAGA KITU OVA
DEFENDANT NO. 2

AND: KALORAEWIA KALTANIK OVA
DEFENDANT NO. 3

AND: KALRONGO OVA
DEFENDANT NO. 4

AND: KERRY NIKARA
DEFENDANT NO. 5

AND: SAMUEL OVA
DEFENDANT NO. 6

AND: GABRIEL KALOMATA
DEFENDANT NO. 7

AND: JARETH OVA
DEFENDANT NO. 8

AND: MICHEL OVA TARIPAKOA
DEFENDANT NO. 9

Date of Hearing: Monday 15th November 2021 to Wednesday 17th November 2021
Date of Decision: Thursday 18th November 2021 at 16:00 Hours
Before: Justice T. FELIX (Presiding Justice)
Justice L. SAKITA (Member)
Justice T. KALANGIS (Member)
Island Court Clerk: Alida ALAIN
In Attendance: Claimant appeared in person – Represented by Gaspard SERVEUX
All Defendants appeared in person – Represented by Tafuralapa Kaltapang
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COURT DECISION

Pierre NIKARA i faelem wan claim i kam long Efate Island Court long date ia Friday 7th May 2021 follem Rule 1 blong Island Court Civil Procedure Rules blong year 2005, mo hemi claim se trifala chiefs ia we hemi Chief Napanga, Chief Malastapu mo Chief Tola nao oli ordainem hem long custom name ia “NIKARA” long year 1954. Hemi claim se olgeta defendants we hemi ol “OVA” mo “TARIPAKOA” oli nogat any “link” or right blong yusum name ia “NIKARA”.

Claimant i stap askem court ia blong orderem every defendants we hemi ol “Family TARIPAKOA mo Family OVA” blong nomo yusum name ia “NIKARA” long Sawaroa Land hemia long South West Efate. Hemi talem se hem wan nomo i gat right blong yusum name ia “NIKARA”.

Bageken, Pierre NIKARA i askem court blong orderem olgeta defendants se oli no save tek ova long Sawaroa Land from hemi right blong claimant nomo.

Claimant i gat two witness we tufala i faelem witness sworn statement blong tufala blong sapotem claim blong hem. Tufala witness ia hemi Corine SERVEUX mo Frank LOTA.

Court i servemaot claim mo sworn statements blong Pierre NIKARA i go long olgeta defendants mo allowem time blong oli save faelem defense blong olgeta. Long defense statement blong olgeta defendants, oli faelem wan application i kam long Island Court blong straekemaot claim blong Pierre NIKARA follem olgeta grounds ia:

1. Case we i stap long court ia, Supreme Court i sakemaot finis long Civil Case No. 18/1120.
2. Long Civil Case No. 18/1120, claimant i bin requestem Supreme Court blong givim direction long hem blong i faelem wan customary rightful claim long name blong NIKARA FAMILY be Supreme Court i no considerem claim blong claimant from i nogat merit mo court i straekemaot.
3. Long 12th March 2019, Supreme Court Case No. 18/1120 i orderem claimant blong pem 50'000 vatu cost i go long each wan long tufala defendants be claimant Pierre NIKARA hemi fail blong comply wetem order ia.
4. Blong sapotem moa application blong straekemaot claim blong claimant, olgeta defendants oli askem court blong considerem olgeta Annexes ia we i stap long “sworn statement blong Tafuralapa Kaltapang” we i filed long 20/07/2021: JTK1 (FAMILY NIKARA – GENERAL MEETING we hemi dated long 23/09/2018, total blong 3 pages), JTK2 (Supreme Court Claim long Civil Case No. 18/1120 we hemi total blong 4 pages), JTK3 (Judgement long SC Case No. 18/1120 we i gat 1 page nomo), JTK4 (Certificate of Recorded Interest In Land dated 29/03/2018 we i gat 1 page nomo) mo semtaem considerem “Supporting Submission of the Strikeout” we hemi filed long 21/09/2021. Long Supporting Submission blong Strikeout ia, hemi containem Appendix TK1 (NIKARA FAMILY TREE), Appendix TK2 (Judgment blong Efate Island Court Land Case No. 1 of 1993 blong Marobe Land), Appendix TK3 (The Memorandum of Agreement dated 11/01/2018 we Pierre NIKARA i mekem mo saenem), Appendix TK4 (FAMILY NIKARA – GENERAL MEETING we hemi dated long 23/09/2018), Appendix TK5 (Resignation Letter blong Pierre NIKARA mo Gaspard NIKARA) mo Appendix TK6 (Pierre NIKARA Family Tree).

TUFALA MAIN ISSUES WE I STAP LONG CASE IA BLONG COURT I DEAL WETEM HEMI:

1. Whether olgeta defendants oli gat “link” wetem name ia NIKARA?
2. Whether olgeta Defendants oli gat right blong yusum name ia NIKARA or nogat?

APPLIKESEN BLONG LOA:

KONSTITUSEN BLONG RIPABLIK BLONG VANUATU – Japta 8 - Article 52 ‘OI Vilij Kot mo Aelan Kot: Palemén bambae i mekem ol loa blong stanemap ol velej kot mo aelan kot we bambae oli gat paoa blong jajem ol keis long saed blong kastom wetem sam narafala keis tu mo bambae Palemén i mekem rod blong ol jif oli wok long ol kot ia tu.

ISLAND COURT ACT CAP [167]: Section 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.

Island Court hemi gat power blong administerem ol matter blong custom follem Section 10 blong Island Court Act Cap 167 mo Article 95(3) long Constitution blong year 1980 hemi talem se ‘Long dei we Repablik blong Vanuatu i kam independen, ol loa blong kastom bambae oli gohed blong gat paoa mo bambae oli kam pat blong loa blong Ripablik blong Vanuatu.’

Long matter blong Section 10 blong Island Court ACT [CAP 167] mo hemi matter blong kastom custom name ia “NIKARA” blong Imere, Mele Village, South-Efaté, Shefa Province.

Court i conductem hearing blong matter ia follem Rule 6 blong Island Court Civil Procedure Rule blong 2005 mo callem case ia. Every parties oli appeared long court olsem we i stap long summons. Before proceedings blong matter ia, trifala justices we i composem court ia oli mekem declaration blong olgeta se oli nogat interest long matter ia mo oli no related long any parties long case ia. Court i allowem times long tufala parties sapos tufala i opposem any justice long composition blong court ia be together parties i agree se oli oraet wetem panel we i stap nao court ia i proceed.

After we court i READIM, HAREM mo CONSIDEREM applications mo olgeta sworn statements blong tufala parties, wetem olgeta witnesses,

Mo bageken after we court i CROSS-EXAMINEM tufala parties mo olgeta witnesses, findings blong Court hemi olsem:

Findings blong Court long Claimant wetem tufala witnesses blong hem; Corine SERVEUX mo Frank LOTA:

1. Court i faenemaot se claimant i no save pruvumaot hemwan long court se name ia NIKARA hemi wan custom name taem court i questionem hem.
2. Court i faenemaot se custom process blong claimant we hemi follem blong karem custom name ia NIKARA hemi no follem custom process blong Mele mo Efate.
3. Long “Annex B” blong sworn statement blong Claimant Pierre NIKARA, court i faenemaot se document ia hemi quotem words ia “FAMILY NIKARA” olsem Land Claimant No. 5 long Efate Island Land Case No. 1 of 1993 blong Marobe Land.
4. Court i faenemaot se claimant i save good se who ia oli ol family mo descendants blong FAMILY NIKARA be hemi stap dinaem family ia taem court i questionem hem.
5. Court i faenemaot se claimant i createm mo faelem i kam long court ia two family trees we tufala i no semak. Wan family tree hemi faelem i kam wetem sworn statement blong hem blong sapotem claim, mo narafala wan, hemi faelem long date ia 16/11/2021 wetem response blong hem long strike-out application blong olgeta defendants.
6. Court i faenemaot se during long cross-examination blong claimant wetem witness Corine SERVEUX, tufala together i agree long family tree we oli faelem i kam long 16/11/2021 se hemi stret wan.
7. Court i faenemaot se Corine SERVEUX i gat 50 years old mo hemi gat good knowledge long every issues concernem tufala parties from we hemi live under long wan roof wetem claimant we hemi papa blong hem since we hemi pikinini kasem today.
8. Court i faenemaot se Corine i born mo karem family name ia NIKARA be taem hemi mared out nao hemi karem family name blong husband blong hem we hemi FAMILY SERVEUX long year 1992.

9. Court i faenemaot se claimant wetem witness blong hem Corine SERVEUX we hemi only daughter blong hem, tufala i save good se tufala i gat bloodline link wetem every defendants but tufala i dinaem every defendants ia long court taem court i questionem tufala.
10. Court i faenemaot se Witness nambatu blong Claimant we hemi Frank LOTA, hem too hemi wan long olgeta descendants blong Taripakoa through long woman ia Leisara.
11. Long birth certificate blong claimant, court i faenemaot se hemi gat name ia OVA mo NIKARA too i stap.

Findings blong Court long olgeta Defendants blong case ia:

1. Court i faenemaot se olgeta defendants oli gat 7 generations through long patrilineal bloodline blong MARIK NIKARA.
2. Court i faenemaot through long ol statements blong olgeta Defendants se claimant hemi part blong Family TARIPAKOA mo OVA.
3. Court i faenemaot se Claimant Pierre NIKARA hemi born out long first born son blong Ova Kalokis NIKARA we name blong hem Peter Andli Ova mo Peter Andli Ova hemi gat 3 narafala brothers we hemi Baromu Ova, Wedly Ova mo Saimon Kalmalau Ova.
4. Court i faenemaot se Claimant Pierre NIKARA, Defendant Tafuralapa Kaltabang, Defendant Kaltavaga Kitu Ova, Defendant Kaloraewia Kaltanik Ova, Defendant Kalrongo Ova, Defendant Kerry Nikara, Defendant Samuel Ova, Defendant Gabriel Kalomata, Defendant Jareth Ova mo Defendant Michel Ova Taripakoa Mautamate, olgeta everywan oli kamaot long Kalokis Ova Nikara folem bloodline blong man.
5. Court i faenemaot se Supreme Court Case no. 18/1120 hemi concernem more about *Certificate of Recorded Interest In Land* blong Sawareo Land but hemi nothing to do wetem name ia NIKARA long case ia.
6. Court i faenemaot long Annex JTKI long “sworn statement blong Defendant Tafuralapa Kaltapang” we i filed long 20/07/2021 se Claimant hemi attendem wan meeting wetem olgeta defendants olsem wan Family Meeting we oli namem document ia “FAMILY NIKARA – GENERAL MEETING”, place hemi Waone Station, Mele Village mo time hemi 4:30 pm to 6:30 pm long Sunday 23/09/2018.
7. Long “Supporting Submission of the Strikeout” we olgeta defendants oli faelem long 21/09/2021 Appendix TK3 hemi wan Memorandum of Agreement dated 11/01/2018 we Pierre NIKARA i mekem mo givim Right long Defendant Michel Ova Taripakoa Nikara blong stap olsem consultant blong Family Nikara mo Board of Director blong Nikara Trust Limited. Memorandum of Agreement ia, claimant i confirmem signature blong hem long court se hem nao i saenem taem court i askem hem.
8. Court i faenemaot through long olgeta some Annexes we i stap long ol attached sworn statements blong olgeta defendants we i pruvum long court se tufala parties i bin involve long some Family Business Activities blong name ia NIKARA.
9. Long birth certificates blong olgeta defendants, court i faenemaot se i gat name ia OVA, NIKARA mo TARIPAKOA too i stap.

After we court ia i mekem olgeta findings blong hem long tufala parties, court ia hemi convinced bigwan mo hemi stap long wan gudfala position blong mekem decisions long tufala applications we i stap before long court ia.

A- RULING BLONG COURT LONG APPLICATION BLONG CLAIMANT

Follem 1st application blong Claimant Pierre NIKARA we hemi i stap before long court ia blong orderem every defendants we hemi ol “Family TARIPAKOA mo Family OVA” blong nomo yusum name

ia “NIKARA” long Sawaroa Land hemia long South West Efate mo continue blong talem se hem wan nomo i gat right blong yusum name ia “NIKARA”,

- Claimant Pierre NIKARA wetem tufala witnesses blong hem, everywan oli no convinsem Court ia inaf, nao follem reason ia, Efate Island Court i mekem ruling blong hem long 1st Application blong Claimant Pierre NIKARA se hemi no save succeed.

Long 2nd application blong Claimant Pierre NIKARA we i stap before long court ia blong orderem olgeta defendants se oli no save tek ova long Sawaroa Land from hemi right blong claimant nomo.

- Court ia i decide blong no save deal mo determinem 2nd application blong claimant from hemi outside long Nature blong case ia (EIC Case No. 21/2244 IC/CIVL) we hemi no wan land case.

B- RULING BLONG COURT LONG APPLICATION BLONG STRAEKEMAOT CLAIM BLONG CLAIMANT PIERRE NIKARA

- Olgeta defendants oli convinsem court ia se name ia NIKARA, OVA mo TARIPAKOA, trifala i gat wan FAMILY LINK nomo, nao from reason ia, court ia i grantem application blong straekeomaot claim blong Claimant Pierre NIKARA mo acceptem se together parties i gat right blong yusum name ia NIKARA.

C- DIRECTION ORDERS BLONG COURT

1. Court ia i orderem Claimant Pierre NIKARA blong mas pem 1’000 vatu cost i go back long olgeta defendants.
2. Court i orderem together parties blong mas performem wan custom reconciliation ceremony follem custom practice blong Imere, blong mekem good face between tufala parties mo putum back PEACE mo fasin blong RESPECT inside long FAMILY NIKARA before or by 31/12/2021 mo ceremony ia i mas be witnessed by PRINCIPAL CHIEF blong Imere Village, Simeon POILAPA.
3. Follem Rule 8 blong Island Court Civil Procedure Rule blong 2005, any party i gat right blong save appealim decision ia i go long Magistrate Court, mo appeal i mas tekemples bifo 30 days afta long decision ia.

DATED at Port Vila this 18th November, 2021.

BY THE COURT

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Justice L. SAKITA
(Member)

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Justice T. FELIX
(Presiding Justice)

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Justice T. KALANGIS
(Member)