

SITTING AS A LAND COURT

BETWEEN: **FAMILY SOPE, FAMILY TORO AND FAMILY
KALTABANG**

Original Land Claimant

AND: **FAMILY KALULU OF PANGO VILLAGE**

First Land Claimant

AND: **FAMILY TOUTAK NARU KALPEAU KALSAKAU**

Second Land Claimant

Coram: Mary Grace NARI

Assessors: E. Manapanga
H. Tavoia
E. Mesau

JUDGEMENT

History of the Original Land Claimant

FAMILY SOPE

According to this family Sope was born on Ifira Island. He was taken to Pango with his mother Leikalo and father Safi because of some concern for his safety as there were fears that the boy's life was in danger.

Leikalo and Safi then separated and Safi went back to Ifira Island. Sope lived at Pango with his mother and step father Karielol. As a young man, he was trained as a lay preacher and was sent to the inland villages of Efate. After sometime, he was brought back to Pango and worked around the Vila district with Reverend McKenzie, during which time he underwent more religious training.

Sope then married his first wife Touruk, a woman from Pango. They were sent to Ambrym to do some mission work. While they were there his wife passed away, Sope then returned to Efate and took his

second wife from Ifira Island. They had a son called Kalorongoa. Sope and his family again left for Malekula to continue mission work for five years. Sadly he lost his second wife so his son was looked after by Australian Missionaries.

After about 5 years on Malekula, Sope and his son returned to Efate and Sope continued his work around Efate. During this time, he then married his third wife who was a woman from Imere Village. It was also around this time that Sope became the first Presbyterian Pastor of South-West Efate.

Pastor Sope and Toutak who was also the sister of Elder Kalsrap had very strong family ties because Sope's first wife Touruk was the sister of Toutak and Elder Kalsrap. Because of this and after a meeting with the chief and people of Pango Village, Pastor Sope and Elder Kalsrap decided to divide the land between Albert and Edward Toro, and Kalorongoa Sope. This was agreed and witnessed by the Chief and Elders of Pango and all the parties concerned.

Sope and Kalsrap proceeded to divide the land in question between the parties to the dispute with the assistance and presence of the Chief and Elders of Pango Village. Some of the people present during that time included Chief Riman Siel, Elder Kaluat, Elder Kalkoa, Elder Kalmermer and many more. Tapangkai Sope was also present at that time.

Up until now the descendants of Sope have been working on the land of "Matalau" and "Watarua". There has never been any dispute with the people of Pango Village until Terry Hannam came up with his project at Paradise Cove.

Mr Barak Sope was spokesperson of this family. The land in question is shared by three families. A map of the land was tendered in marked Exhibit 1 A. Mr Hannam did not see the chieives at Pango. He was given a project for Tourism by the Lands Department. That was not given with the chieives consent that is why all the families are there.

Albert Sablan is with the Original Claimants representing his mother Dorothy's right to that land as Toutak's grandchild. We are only claiming that land marked on the map not any other land at Pango.

When questioned about the birth place of Pastor Sope he replied Sope was born on Vila Island. The Court in 1993 accepted the Sope history.

He stated that Kalsrap and Toutak belong to one family and have land at Pango but this land was divided by the chieives and given to the other families. The land does not belong to Kalsrap. The land at Pango was already divided but this land in dispute was given to us. That land was respected until last year. The other family are now trying to remove what was done and respected by the people of Pango for generations.

The Sopes have family relations at Pango. Sope's mother is from Pango. Sope was born out of wedlock but that does not take away his right to land if he has blood rights. He said rights to land follow naflak system.

Tapangkai Sope said he was there when the land was divided. The elders and chief gave land to the people. Kalsrap was there when land was divided and given and he did not dispute it. We cut the boundaries as soon as the land was divided and distributed.

Simeon Kaltongga Sope said their fathers worked on that land for many years and they have a right to that land. That land was given by the elders and people of Pango.

He was questioned about Sope's birth place and replied that Sope was born on Vila Island. He said he knew that George Kalsakau wrote a book about Sope and it said Sope was born in Pango but that is because Mr Kalsakau wanted it to be like that.

That land we are claiming was given through an arrangement like all the people's during the time land was distributed. No custom ceremony was performed. The land was given sometime in 1937. This is not written down because nothing in custom at that time was written down. Pastor Sope made gardens as his children have had be fed. The land belongs to Pango. Prior to the division there was dispute as to land at Pango so the chieives and elders at Pango sat down together and decided to divide the land.

This decision was respect by the people of Pango up until now. Kalsei was given land as compensation for his teaching service to the people at Pango. He and his children worked on the land in dispute to this day. The people at Pango did not dispute his presence on this land. The land in dispute had only three families working on it Family Toutak, Family Kaltabang and Family Sope. No one else from Pango was there.

The other claimants dispute the Sope claim because they say Sope was an illegitimate child and has no land rights. Sope was looked after by two man namely Karielol and Rong Kiri so he grew up in their homes.

They maintained that the Sope Family should not be claiming Emeltau as their land is at Nlaknpakur. Rogo Talo only made garden there because it was close to Ifira Island. They claim that Tom Jack ; a man from Paama Island worked at Emeltau before Rogo Talo and Kalsei Kaltabang came onto that land.

The land at Etasrik and Emeltau belongs to Rong Kiri but it was let to Toutek and Thoro to work on. It was pointed out that maybe Sope was given land to work on but he does not have rights to that land.

FAMILY TORO

Peter Toro Kaltatanu was married to Toutaka. They had 5 children, two boys and three girls. The two sons were Edward and Albert. Edward married but had no child. He adopted two sons Toro and Edwin. He performed custom ceremony to adopt Edwin only.

Albert had 4 children named Bielau, Dorothy, Mantoï and Mathew. Mantoï and Mathew died, leaving Bielau and Dorothy. Dorothy was given the right to work on the land by her father. Mr Albert Sablan is representing his mother Dorothy to claim her heritage.

The other claimants do not agree that Albert Sablan should claim anything because Dorothy his mother is now a Sablan and does not have rights to that land. On the other hand all claimants agreed that land was given to Toutek and her husband Peter Toro by her brother Rong Kiri.

FAMILY KALTABANG

Kalsei Kaltabang's mother was a woman from Pango. In 1930 Chief Kalotrib of Pango asked Chief Kalsakau to send a teacher to Pango to teach at a salary of 12 pounds per year. From 1930 to 1940 the

people at Pango did not honour that undertaking to pay his salary. Chief Kalotrib called a meeting to solve that problem and it was at that meeting that the people agreed to give him a piece of land at Pango to compensate for his 10 year teaching service. Chief Kalotrib and the people of Pango gave him the land at " Malatau".

After that agreement no one at Pango questioned that right. Kalsei Kaltabang worked on that land from 1930-1993. The Kaltabang Family worked there until 1994 there were no other persons on that land. They planted coconuts and fruit trees.

The other claimants do not agree that Kalsei Kaltabang was given that land at Malatau. He was given another piece of land but he himself chose to go to Emeltau (they say this is the correct name of that land in the Efate language) because it was closer to Ifira Island. Tom Jack was working there before Kalsei went there. When the Chief and his people cut boundaries for division of land amongst the people they did not cut any for Kalsei.

They also claim that Kalsei Kaltabang was paid 13 shillings every month and in one year he received 12 pounds. Kalfori Kaltabang however told the court that his father never got any money from the people of Pango.

Mr John Kalotiti gave independent evidence that he was working with the Counsel of Chiefs from 1960 to 1990. He said that there was no claim on that land until Terry Hannam came up with his project. There is no record as to the sharing of the land. The land was shared in 1930. It was given with the consent of the people and no one questioned it. He said Elder Kalsrap and Pastor Sope were there when the land was shared.

FIRST LAND CLAIMANTS

FAMILY KALULU

Family Kalsrap Kiri claim that their father Kalulu Kalsrap Kiri worked there from "Etasrik" to "Efarfer" to "Efataru" where he let to his sister Toutek Thoro and onto the land called "Emeltau" where he put Tom Jack to work in 1923. The land boundary of Pango ends at "Efatpaunar".

Sopi Kalsrap represents Family Kalulu as its spokesperson. He is the first child in this family. In his affidavit (that went before the Supreme Court) he attaches a family tree of Kalulu Kalsrap marked "Annexure 2". He also includes a family tree of Sope Kalmetalau marked "Annexure 1" and a Certificate of registered Negotiator signed by the Minister of Lands on the 28th of September 1993 marked "Annexure 3". He said when the Minister of Lands issued the certificate the Pango Land Committee and the Pango Council of Chiefs had three meetings to look at claims concerning this land. The chiefs gave notice to the chiefs and the people at Ifira but no one from Ifira came forward to make a claim.

There was only one claim and that claim came from Touliu, Kalulu Kalsrap's sister. The chiefs looked at the claim but decided that land went to the man and not woman. So if she got married then she should go out to her husband's land.

After all the meetings and the certificate from the Minister and the negotiations Family Kalulu had with Terry Hannam there was no complain or claim from people from Ifira. These families do not have valid grounds to claim now.

His evidence showed that Sope was born in 1800 at Epangtuei. His mother was Leikalo from Pango. He's father was not known so Rong and Touliu took Sope and looked after him. When the people moved out of Epangtuei to Valevale beach as advised by the missionaries an old man by the name of Karielol asked Rong and Touliu to adopt Sope. Sope became his son Kalmer Barak's brother. Barak did not like Sope so he lived between the houses of Rong, Touliu and Karielol until he became a big boy attending mission school and going onto TTI.

After TTI Training Sope went back to Pango. He started his first mission work and took Touruk to be his wife. They did not have any children. He then took a second wife Linmas from Ifira and she conceived a son named Kalorongo. The second wife passed away at Malekula. His third wife was from Mele named Toufabub who gave birth to a lot of children.

He went on to say that his family are custom owners because that land belonged to Kalsrap. The land comes from bloodline and not Naflak. Toutak was given land following her birth right so her land can not be taken away. He said the land in dispute was given to Toutak not to Sope and Kalsei.

He said it was not true that the Chief and the elders of Pango divided the land in dispute. Having said that he however went on to say Kalsrap was at Malekula when the land was divided.

Kalsei was paid his salary. He contradicted his evidence when he was asked if he saw Kalsei coming back to collect his salary by replying "no". The land was not compensation he chose to go there himself. He planted coconuts but that is different from when someone makes gardens.

On the other hand he said Sope was only given land to work on. He said an illegitimate and an adopted child have no rights to land. His family wants to take back the land that Sope and Kalsei are on.

Kalsong Kalsrap supported their claim saying their grandfather had rights to that land. He did not know how that right came about. Kalsrap gave the land in dispute to his sister to work on. Toutak and her children have been working there for generations. He said something contrary to what the spokesman said which is father's gift to his daughter can be taken away if no custom ceremony was performed.

He admitted Kalsei was working on that land as well. He and his family have been there up until now. He said Kalsei was not removed because Toutak children were there. That land where Kalsei is claiming Tom Jack worked on. He was a friend of Kalsrap's. Kalsrap allowed him to work there.

Sope was not given land there Kalorongoa (his son asked to work there). He should not have planted coconuts as he was suppose to have made gardens only. He did not perform any custom ceremony to take that land so we want his family removed from there.

Daniel Kalsrap gave evidence supporting their claim. He said the other parties have no right to be claiming that land. It belongs to Rong. We are just being informed that the land was given to those people. There was dispute between the families concerning this land even before the project. He had an argument with Barak once over some Chinese presence on the land. He removed Barak's iron sheets.

When asked about the land given to Toutak he said it was not given as a "bumas". Kalulu family have the right to remove that land because there was no pig killing ceremony. On the other hand if land was give as a bumasi, it can not be removed.

Kalsei did not have any outstanding debts from the people at Pango. He was given land at Pango for reasons this witness had no knowledge of. However he was not given land at this particular place. He did contradict himself when he responded negatively to a question asking whether Kalsei came back to collect his money.

Chief Andy Riman of Pango village gave evidence that he and the chiefs at Pango called a meeting at Pango three times to listen to claims from people who had an interest in that land which is now in dispute. Only two claimants, Kalulu family and Toulin (Kalulu Kalsrap's sister) attended the meeting but no one from Ifira Island came.

After the third meeting the Council of Chiefs upon hearing the claimants pronounced Kalulu Kalsrap and his family the rightful custom owners of that land. We did not hear any word from Ifira Island or from their chiefs so why should they claim now.

There is no record of the sharing of the land as claimed by other parties. On the other hand he agreed that the other parties are from Pango. He said Kalsei was given a piece of land because he was not paid his salary. He has never gone back to claim his money. He was however not given that land where the dispute is but he chose to go there because it is close to Ifira Island.

According to Chief Riman, land rights passes through the bloodline. The land in dispute belongs to Rong Kiri where he let to his son, Kalsrap Kiri. Kalsrap put his sister Toutek and her husband Thoro to work at "Efataru". He put Tom Jack from Paama Island to work at "Emeltau".

Steven Thoro gave evidence to support the Kalulu family claim. He is Edward Thoro's adopted son. His natural mother was Gladys (Edward Thoro's sister). Edward Thoro and Gladys are Toutek's children.

When Edward Thoro adopted him, he performed a pig killing ceremony. He also gave yams taro and mats. He agreed that Dorothy and her husband, Sablon worked on Efataru, the Sope family and Kaltabang family were there too. There were no other families there apart from these three families.

Kalmet, the second witness of this claimant supported that the land belonged to Rong Kiri. Pastor Sope had another land. Kalsrap did not give the land at Efataru to Sope. Sope's son Kalrongoa worked there through the permission of Kalsrap.

Kalsei was given another land but he asked to work at Emeltau as it was closer to Ifira Island. Where the land is given as a gift or "bumas" and a ceremony is performed you cannot take it away. With regards to Toutak's land you cannot take it out as she is Kalsrap's sister even if no ceremony was performed. An adopted child or an illegitimate child does not have rights to land.

The Kalulu family took the Court to the land in dispute to view the boundaries. They did not say where the Sope family worked but they showed where Toutak and Kalsei worked and also the end of the boundary of Pango land.

SECOND LAND CLAIMANT

TOUTAK NARU KALPEAU KALSAKAU

This family are the descendants of Toutak Toro. Toutak has one brother Kalsrap Kalulu and a sister Touruk who was Pastor Sope's first wife. Touruk died without a child. A family tree was tendered in as exhibit "3A". They were the children of Rong Kiri and Touliu.

Toutak was given land following her birth right as the first born child. Her brother Kalsrap was also given land while their sister's was given back to the family after her death.

Toutak and her husband (Pita Toro, from Ifira) worked on that land. That land is in the boundary of Pango village. This family claim that they have been working on this land for generations now and are still working here. The coconuts on that land (Efataru) were planted by Kaltove Korikalo who was married to Gladys (Toutak's daughter).

Mr Kaltek Kalsakau who took his father's place as spokesman informed the court that Toutak's rights to the land can not be taken away. Toutak left her land to all her children not to any one in particular.

Other families at Pango had their own land to work on and no one went to Efataru. The land they are claiming is just the part that belongs to Toutak.

The first witness, Mr Taumoepeau Kalsakau went on to say that Toutak was given land as a good will gift. Toutak got married to Chief Tarimata Kalsakau I's big brother, Pita Toro Kaltatanu. Their daughter, Saumanga gave birth to his mother, Leisila Kalsakau.

Since 1950 when he was 6 years old, their family worked at Efataru until today. There has never been any dispute concerning this land with people from Pango.

He went on to say that land follows blood line not Naflak. The land could be given for someone to keep or lended to someone to work on. Where land is given and there is a custom ceremony such as pig killing that land can not be taken back by the person who gave it.

It was not necessary for a pig killing ceremony in Toutak's case because she is Rong's daughter and even though she got married out of Pango, the land is her birth right inheritance. Rong Kiri is custom owner because he worked on that land and therefore it belongs to him.

George Kaltoi Singari Kalsakau gave evidence that when a father gives land to his daughter she may keep it. But she and her husband must respect custom. If she did not respect that right then it will be taken away.

The daughter may make gardens, plant coconuts or build a house but she must respect her right. Other families worked near. There was Sope, Kalsei and Kalsrap. Toutak told us about the land at " Watarua" but she did not show us the boundaries. Sope showed us the boundaries. The other families are there because their mothers are from Pango.

The chief holds the land rights with his council. The land is given to the people to work on. When there is a dispute to land it is settled at the nakamal.

Miss Leisola Kalsakau supported this family's claim that Toutak left her hand to all the children and not to anyone in particular. Toutak's birth right to that land can not be taken away by anyone.

The last witness Mr James Kalmet (a grandson of Kalulu Kalsrap) stated that he was there at Pango and saw what Chief Kalotrib did with the land in the village. The land that belonged to Toutak is Watarua to Engmeltaulep. This land was given to her by her father Rong. The other boundaries belong to other families such as Family Kalulu Kalsrap.

He went further to say that when the subdivision of land took place Kalsei was a teacher at Pango. Chief Kalotrib made him a secretary. The subdivision took place from South Efate up to hill called Eslel. It included all people from Pango and half casts.

Epkpakle was given to Kalsei and his brothers. Everyone worked on the land that was given. Sope came back and took Kalsei's position as teacher. Kalsei went to Ifira. But he came back and asked for a land close to Ifira.

His father was secretary to the Chief by then and when Kalsei went to ask for the land near Ifira there was no meeting. It was given to him by the Chief without the people's consent. Pastor Sope and Kalsrap were not there when the subdivision took place. Kalsrap asked the Chief for his heritage.

He admitted though that Sope always worked beside Kalsrap. That Kalsei taught for 10 years at Pango and did not go back to claim his salary. He did not know whether land was given to Kalsei as compensation or not. The court visited the land Toutak worked on and were shown the coconuts that were planted and the boundary mark that separated her land from the other families.

COURT FINDINGS :

1. There is no individual ownership of land according to Pango custom. Land rights are held by the chief and their council. Land is owned communally.
2. There was no evidence that someone actually had ownership of the land in dispute.
3. Toutak was given a portion of the land in dispute. She acquired that heritage as her birth right and therefore it should not be questioned now as that has always been respected.
4. The land in dispute was divided by the Chiefs and elders of Pango and given to the families there. That is how Family Sope are on this land.
5. Kalsei Kaltabang was never paid his salary and was given a piece of land at Pango instead. He and his family have been on the land in dispute for generations. No one questioned their presence there.
6. For generations Family Toutak, family Sope and family Kaltabang worked on this land.
7. No other families at Pango work on that land.

8. All the claimants are from Pango or have family relations extended to Pango.
9. The Constitution Article 73 gives the right of land to indigenous custom owner. The rules of custom shall form the basis of ownership and use of land in Vanuatu. The Constitution under Article 7 also sets out fundamental duties to every citizen and their descendants to respect and act in the spirit of the constitution. We are to respect the rights and freedoms of others. Where custom decisions have been respected for generations, the Constitution protects that right. That being the case I make the following Declarations:
 - (a) that Family Toutak, Family Toro, Family Sope and Family Kaltabang are co - owners of the land at "Watarua" and "Emeltau".
 - (b) The Court is satisfied and declares Family Toutak, Family Toro, Family Sope and Family Kaltabang perpetual custom owners of the land at "Watarua" and "Emeltau".
 - (c) Their rights include right to grow crops, make gardens, build houses and live on the land.
10. That all co - owners shall meet the cost of publication of all service messages incurred and all other costs to the value of VT 44, 300.
11. Parties have 30 days to appeal.

DATED this *5th* day of *September* 1995.

