

**IN THE MAGISTRATES COURT  
OF THE REPUBLIC OF VANUATU**  
(Other Jurisdiction)

**Civil Appeal**  
**Case No. 19/2856 MC/CIVA**

**BETWEEN: HENRY CYREL KALSURAI  
MANLAEWIA**

Appellant

Appellant's Lawyer:

Ms. Marie Noelle Patterson of HUDSON & CO  
LAWYERS

Port Vila, Efate  
Republic of Vanuatu

**AND: MATOVA TOATAU & DESCENDANTS**

First Respondent

First Respondent's Lawyer:

Mr. Andrew Bal of IDIGENE LAWYERS

Port Vila, Efate  
Republic of Vanuatu

**AND: ERNEST KALORIS & DESCENDANTS**

Second Respondent

Second Respondent's Lawyer:

Mr. Sakiusa Kalsakau of SAKS LAWYERS

Port Vila, Efate  
Republic of Vanuatu

**AND: VAMELE FAMILY**

Third Respondent

Third Respondent's Lawyer:

Mr. Jerry Boe of JERRY BOE LAWYERS

Port Vila, Efate  
Republic of Vanuatu



**Before:** *Senior Magistrate Moses Peter*  
*Assessors: Justice Felix Thomas, Justice Harry Joshua*

**In Attendance:** *All Parties*

**Copy:** *Parties*

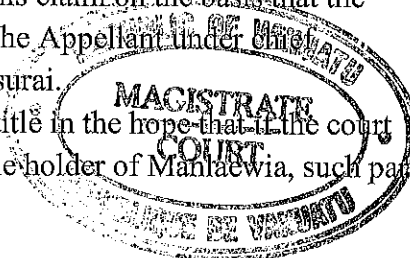
## JUDGMENT

### A. Introduction

1. This appeal concerns decision of the Efate Island Court (EIC) declaring the First Respondent (Matova Taotau) the title owner of the chiefly title name "Manlaewia".
2. Apparently, the Appellant was ordained with title chief Manlaewia in 1996 after succeeding Thomas Solomon Manlaewia on the advice of his grandfather Chief Solomon Manlaewia.

### B. Background

3. The parties have participated in series of disputes filed in the courts concerning different disputes such as Chiefly title "Maripongi", Kakula Island and "Malasa" land claim.
4. In 1996, the Appellant was ordained as chief Manlaewia succeeding his grandfather chief Solomon Manlaewia as Paramount chief of Paunangisu Village on North of Efate.
5. He has performed custom duties under that capacity within his village community and in the precinct of the Efate Vaturisu Council of chiefs assuming the role of chairperson to the council.
6. In 2018, he successfully appealed the decision of the EIC on the land dispute claim of "Malasa" land which was declared to Chief Maripongi Family and Tanmiala Family who are third respondent in this proceeding.
7. The Supreme Court in the Land Appeal Case Manlaewia v Maripongi [2018] VUSC 257 declared that Chief Manlaewia is the customary owner of Malasa customary land boundary as delineated in the record of ordination that occurred on 16 January 1968.
8. Obviously, the Respondents have pursued this claim on the basis that the declared ownership of Malasa land goes to the Appellant under Manlaewia title and not to Henry Cyrel Kalsurai.
9. They have then filed claim of 'Manlaewia' title in the hope that the court declared any of the parties as the rightful title holder of Manlaewia, such party

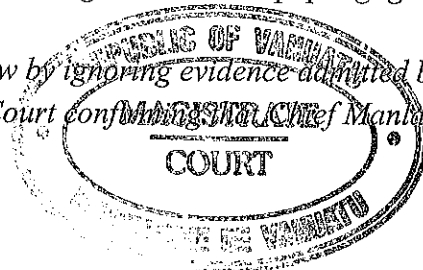


will be the customary owner of Malasa land as declared by the Supreme Court.

### C. Grounds of Appeal

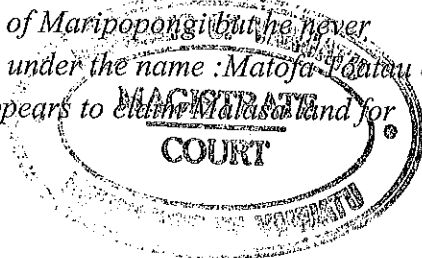
10. The grounds of appeal advanced by the Appellant are as follows:

- *The EIC erred in law and facts in ignoring the relevant findings of the Judgment in the Supreme Court Land Appeal case no 01 of 2010 (Malasa Customary Land) hereinafter called the Appeal Judgment which is preponderant to the Island Court decision when referring to the land case of Malasa in the Island Court decision as being linked to the Chiefly title and facts of which are used as a basis to the Claim of Chiefly title. If these types of findings in the Island Court are contrary to the findings of the Appeal Court, then the findings in the Island Court should be found invalid.*
- *The EIC erred in fact and law in declaring in its decision that Manlaewia is a Chiefly title of a small chief.*
- *The EIC erred in fact and law in declaring that the Custom ownership goes by blood to Matova Toatau Manlaewia, the 3<sup>rd</sup> Defendants in accordance with the bloodline following the rules of Custom of Efate.*
- *The EIC erred in law (custom) and fact that when not taking into consideration the admission by the Family Manavilalu/Lakeleowia that Chief Cyril Kalsurai was Chief Manlaewia as they supported his ordination in 1996, agreed for him to walk around the boundary of Malasa and changed their mind and say that Chief Henry Kalsurai was not the chief anymore after his ordination as Paramount Chief.*
- *The EIC erred in fact and law in not considering that Edward Kaloris was an inconsistent witness: In Land Case no 1 of 1990 (p5) Edward Kaloris had rejected the claims of his own group and had claimed that Manlaewia was Lakelowia's brother and now strangely changed his support for the Matova Toatau group to claim that Kalfaul Johnson is Manlaewia's brother through Mini who has no blood connections to both Manavilalu and Laelowia. In Land Appeal case for Kakula, Mini is Tukurau according to Peter Maripongi group.*
- *The EIC erred in fact and in law by ignoring evidence admitted by Family Vamele in the Appeal Court confirming that Chief Manlaewia was a high chief*

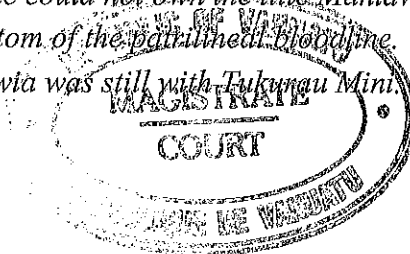


Paragraph 53- “..... mo olgeta kraon we istap long baondri blong chief Manlaewia we hemi high chief blong Paunangisu tedei (handwritten statement of K. Kalorong dated 6 September 1987).

- The EIC erred in fact and law by finding that Chief Henry Kalsurai's bloodline was defective or that like Henry Tuapuletari could not have the title Manlaewia (finding 8) because Henry Cyrel “hemi stret bloodline blong Mintho Mc Coy” when in fact Henry Cyrel is also stret (sic) blood line (unbroken) patrilineal bloodline: finding of the Appeal Judgment)) to the original Chief Manlaewia Matua 1. His adoption and the decision of his grandfather to choose him as his successor was made in accordance with the custom law (see Japta 5 of the Efate Vaturisu Kastomari Land Loa).
- The EIC erred in fact and law by finding that the bloodline of the original Manlaewia went to Matova Toatau and that Chief Henry had no bloodline with him as the IEC1 of 1990 and the Appeal Court found that Chief Henry was clearly identified: an unbroken patrilineal bloodline to the original Chief Manlaewia Matua 1. (See paragraph 50 of the Appeal Judgment). If the bloodline is the major determining element in this case, Henry Kalsurai is entitled to the title Manlaewia (see para.3 of the EIC: First Respondent evidence).
- The EIC erred in fact and law by ignoring most of the evidence of the Appellant and in particular important documents of the Appellant that would have assisted them like they did in the Appeal Judgment made it clear the (sic) “after referring to trifala documents we hemi important tumas concluded that Jif Manlawia I bin exist long taem bifo ikam long baontri blong Malasa”.
- The EIC erred in law and fact in considering and accepting the evidence and in accepting the version of facts of MATOFA TOATAU represented by Kennedy Kalfau and not considering the numerous discrepancies and contradiction of their position.
- The EIC erred in not considering that even though Matofa Toatau & Descendants linked and based their chiefly title claim under the Malasa and their rights on Malasa land, they were never a party to the EIC Malasa case and the Land Appeal Case No 01 of 2010. The representative of Matofa Toatau and Descendants, Kennedy Kalfau, only appeared as a spokesperson of Maripongi but he never claimed the ownership of Malasa under the name :Matofa Toatau & Descendants” and in this case appears to claim Malasa land for himself.



- *The EIC erred in not considering that initially in 2003 Kennedy Kalfau also known as Kennedy Kalfau Kala and his families, claimed the chiefly title Maripopongi, however, the Court found that they had no right to that chiefly title- see Case Maripopong v Kala [2005] VUIC 1-judgment dated 06.05.05;*
- *The EIC erred in not considering when Kennedy and his families lost that case, he then became spokesperson of Family Maripopongi in different cases (i.e: Family Maripopong v Kaltong [2003] VUIC 4. Manavilalu v Manlaewia [2010] VUICB 4, and Manlaewia v Maripongi [2018] VUSC 257; Land Appeal Case 01 of 2010.*
- *That the EIC erred in law and in fact not to consider the fact that the Appellant was ordained under the rules of custom in 1996 to become the Paramount Chief Manlaewia over Malasa Land, which is associated to the chiefly title Manlaewia.*
- *That the EIC erred in not considering the fact that Matova Toatau Manlaewia” is a new name that only appears recently during the hearing of the EIC chiefly title case 19/412 and appears to be taken from Emua history.*
- *The EIC erred in not considering the fact that Matova Toatau has a different family tree and that he is from Emua, part of Malu clan. He is not from Malasa or Tanmiala. He is the descendant of Chief Albert Manlaesinu paramount chief of Emua Village. Matova Toatau is part of clan of Malu and not smol yam.*
- *The Court erred in finding of fact and law not to consider that the 3<sup>rd</sup> defendant was abusing the court process to get another bite at the Malasa Boundary that he had lost on behalf on (sic) Maripopongi Family and therefore created a new group to get a “second bite at the cherry”. By taking a fraudulent back door he hoped that by claiming the chiefly title on the same bloodlines that he lost before he might possess the boundary of Malasa.*
- *Other Miscellaneous errors of fact and law of the EIC*
  - *That Henry Cyrel was only a caretaker of the chiefly title Manlawia and that he could not own the title Manlawia according to the custom of the partitioned bloodline.*
  - *That the title Manlawia was still with Tukunau Mini.*



- *That all ordinations as paramount chiefs and a (sic) custom owners or (sic) Malasa are nul (sic) and void from Solomon Kalsurai, Thomas Kalsurai and Henry Kalsurai as all these men were only Oiloli (sic), acting contrary to the rules of custom as a Paramount chief cannot be an oiloli (sic) any more.*
- *That in finding that the 1<sup>st</sup> Manlaewia name was Motova (sic) Toatau Manlawia (sic).*
- *In accepting the family tree of the Third Defendants and ignoring the family tree of the Appellant.*
- *That the EIC erred in fact and law to make a public oral decision on 31.05.19, declaring two different title holders of the chiefly title Manlaewia:*

*Henry Cyrel Kalsurai Manlaewia over the boundary of Malasa; and  
Matofa Toatau Manlaewia & Descendant over the boundary of Tanomiala*

*And later on in the final judgment gave another decision.*

- *That the EIC erred in law and in fact to change the hearing of the Chiefly Title Case 19/412, formerly registered as Chiefly Title Case No 15 of 2006 in order to link it with the Malasa custom land to fit the claim of Matova Toatau.*
- *The EIC made an oral decision of the Case 19/412 on 31.05.19, however, the written decision was only out on 11.10.19 (5 months later).*

#### **D. Judgment under Appeal**

11. The EIC in its decision states as follows:

##### *DECLARATION BLONG COURT*

- 1) *Court I declarem se chiefly title Manlaewia hemi title blong wan smol chief nomo mo hemi originally blong Malasaliu Custom Governance inside long bigfala custom governance blong Tanomiala, North Efate.*
- 2) *Court hemi declarem custom ownership blong chiefly title ia Manlaewia I go long olgeta descendant blong Matova Toatau Manlaewia, 3<sup>rd</sup> Defendants long case ia folem bloodline, rules mo custom practices blong Custom blong Efate.*

##### *DIRECTION ORDERS BLONG COURT*

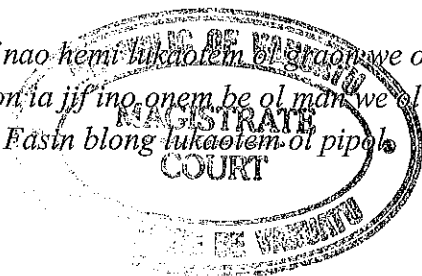


- 1) *Efate Island Court I orderem Henry Cyrel Kalsurai, first defendant blong hemi performem wan bigfala custom reconciliation ceremony between every parties long date ia 4<sup>th</sup> September 2019 mo givim back chiefly title ia Manlaewia igo long Descendants blong Matova Toatau Manlaewia, 3<sup>rd</sup> defendants long case ia.*
- 2) *Efate Island Court I orderem ol descendants blong Matova Toatau Manlaewia olsem successful custom ownership blong Chiefly Title Manlaewia blong oli must jusum wan descendant blong Matova Toatau Manlaewia wei hemi permanently reside long Paunangisu blong ordain long Chiefly Title ia Manlaewia long date ia 30<sup>th</sup> September 2019.*
- 3) *Efate Island Court I orderem every parties mo evey people blong olgeta blong oli must stap quiet mo continue blong maintenem peace mo order long community blong Paunangisu.*
- 4) *Parties I kat right blong appealim decisions ia sapos hemi no happy wetem I go long Magistrates Court within 30 days.*
- 5) *Sapos successful party long case ia hemi lukim se ol narafala party oli no comply long ol orders long case ia, successful party I kat full raet blong save mekem wan application blong enforcement I go long Supervising Magistrate blong Efate Island Court blong hemi Enforcem olgeta orders ia.*
- 6) *Inogat order blong cost.*

#### **E. Discussion**

12. The parties have took part in series of land and chiefly title disputes (Malasa, Maripopongi, Kakula Island) and have presented relatively the same history with the intention of achieving different results.
13. What appears in the most recent case concerning the chiefly title dispute of 'Manlaewia' before the Island Court is that the EIC failed to acknowledge that the declaration of customary owner of Malasa land by EIC in Land Case no. 1 of 1990 had been overturned by the Supreme Court on appeal and declared in favour of Henry Cyrel Kalsurai Manlaewia who is currently the title holder of 'Manlaewia'.
14. While the subject matter in relation to Malasa land case is land dispute, it must not be overlooked that in Efate Custom, land and chiefly title are bound together and cannot be isolated from each other for any other reasons.
15. As emphasized in the Supreme Court in the case *Manlaewia v Maripopongi* [2010] at paragraph 37 when his Lordship quoted EIC statement in Land Case No.10 of 1984 that:

*“Long saed blong kastom blong Efate jif nao hemi lukaotem ol graon we ol man blong hem oli stap insaed be ol graon ia jif ino onem be ol man we oli wok long graon ia nao oli ona long hem. Fasin blong lukaotem ol pipol*



*olsem iminim se wan wan jif oli gat baontri blong olgeta we oli lukaotem mo wan jif long narafala baondri ino save kam insaet long baondri blong wan narafala jif...*"

16. At paragraph 49 it states:

*That distinction as the EIC explained in its judgment was drawn because:*

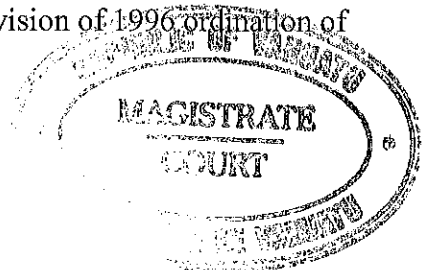
*"kastom loa ino save discusseem issue long land without chiefly title or visa-versa, kot ia hemi no must loosum track long issue we I stap long foret blong hem which is 'determination of custom ownership of lands...'"*

17. Chapter 4.1 of the Efate Vaturisu Council of Chiefs Publication of 'Kastomari Lan Loa' also state under the heading: STRET FASIN BLONG ONEM WAN KASTOMARI GRAON:

*"Folem stret fasin blong ol kastom jif blong Efate mo ol offshore aelan, Bigfala Jif we hem nao hemi gat ful kastomari kastodial raets ova ol graon insaed wan vilej baondri, hem nomo hemi save aloketem graon igo long wanwan Kastom Ona".*

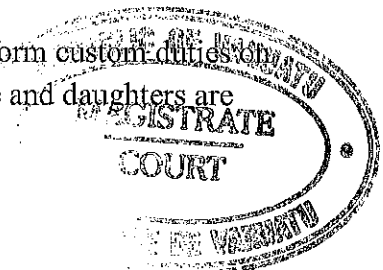
18. There are overwhelming evidence supporting the claim of the Appellant, which had been ignored by the EIC when dealing with the Malasa land claim and the Manlaewia chiefly title dispute.
19. While the decisions and the ceremonies, which occurred in these years may not have a binding effect on the Island Court, they are relevant evidence that could have assisted the court is adjudicating the matter fairly.
20. I reiterate the chronology of the custom activities in relation to Malasa land and Manlaewia chiefly title as such:

- 1900 ordination of Charly Lusui as Masoe Manukona Chief of Kakula Island.
- 1922 ordination of Yoba Manlaewia bringing back the name Manlaewia.
- 1968 ordination of Chief Solomon Manlaewia
- 1987 North East Efate Area Council of Chiefs on Malasa Land Ownership.
- 1987 Chiefs signing of Malasa Land Custom Owner Form.
- 1988 ordination of Chief Thomas Manlaewia.
- 1996 Vaturisu Commission of Chiefs on Chiefly title of Manlaewia
- 1996 Vaturisu Council of Chiefs on Chiefly title of Manlaewia.
- 1996 Vaturisu Council of Chiefs supervision of 1996 ordination of Chief Henry Manlaewia.





- 2007 Efate Vatusiru Customary Land Loa in Japta 7 under “seremoni blong kam wan Jif” recognizing land boundaries of a paramount chief marked at time of ordination and presided by Vaturisu.
  - 30 November 2018 Supreme Court decision for Chief Henry Manlaewia as custom owner of Malasa land.
21. All the parties or their representatives have appeared or have witnessed many of the events that actually happened and all appeared to be in support of it until the recent years when the Respondents on reason that they are not satisfied with his leadership have thrown attacks against the Appellant. None was able to give a detailed account of the Appellant’s incompetence in leading his community except Mr.Silas Frank Wallance who said in his witness statement supporting Family Manavilalu and Lakeleowia that they are concerned by the way, Mr. Henry Cyrel and his wife have sold a land given by their elders to Manua School in year 1974.
  22. The First Respondent Matova Toatau who is the declared title owner of Manlaewia by the EIC produces a family tree tracing his ancestry to one Matova Toatau.
  23. In the early writings of the Presbyterian Missionary, namely Peter Milne, Matova Toatau Manlae, Marsaria and Naisapiri were among the first group of twenty (20) people that left the mainland and went to Kakula.
  24. Matova Toatau Manlae, Marsaria and Naras’saipiri were from Malasa and Matova Toatau had reigned as chief from 1884 to 1900.
  25. Subsequently more people left their villages for Kakula Island with Chief Maripongi of Tammiala being one of the last persons to move to Kakula Island. Matova Toatau Manlae died and was buried on Kakula. His wife Marsaria then remarries George Nabuk and Naras’saipiri who is the surviving daughter of Matova Toatau was Tukurao (custodian of the chiefly title).
  26. George Nabuk reigned from 1906 to 1922.
  27. Naras’saipiri married Sakona from Malo Island and they had a surviving daughter namely Mini who became Tukurao again.
  28. Mini was married to Yoba Kalsurai who again reigned as chief from 1922 to 1927. Mini had Varlet who was Tukurao from 1968 to date.
  29. The Second Respondent submitted that from 1968 to date, Solomon Manlaewia, Thomas Manlaewia and Henry Cyrel Manlaewia were only Olioli (caretaker of the title Manlaewia) on behalf of Tukurao Varlet who is married to a man from Ifira Island.
  30. The court is very concerned with the family tree produced by the First Respondent, which traces his ancestry back to year 1800 but had only less than 20 people who are mainly surviving wife and daughters of Matova Toatau Manlaewia.
  31. Their husbands are assigned with the duties to perform custom duties on behalf of Chief Manlaewia while the surviving wife and daughters are Tukurao Manlaewia.



32. There is no evidence showing the men performing any custom duties on behalf of Matova Toatau except that the first settlers on Paungangisu after returning from Kakula Island saw George Nabuk assuming that responsibility of a chief and has sold several pieces of land to a number of outsiders.
33. I have asked Mr. Andrew Bal why it is so that they are only a few people in the family tree, he said because there are no men. I disagree. It would be very unlikely that over the last 200 years, no male was born out of the Matova Toatau bloodline to be ordained Manlaewia.
34. In the Malasa land Case of Manavilalu v Manlaewia [2010] VUIC the court stated as follows:

*“Claimant hemi presentem olketa witnesses we oli talk about claim under long Matova Toatau blong Namarakiana blong Saipiri. Hemi no prodiusum enough evidences blong provum case blong hem long bloodline blong Matova Toatau. Hemi no save succeed long bloodline blong Matova Toatau.”*

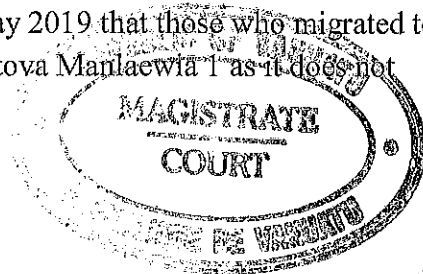
35. It appears, the story and the family tree of the First Respondent is founded on the recordings of the Missionary’s writings and lacked substantial evidence in custom processes and events to support their submissions.
36. Witness statement of Albert Manlaesinu in support of the Appellant in EIC case of Kaloris v Kalsurai [2019] VUIC 3 states:

*“Albert Manlaesinu hemi confirmem long court ia se hemi paramount chief blong Emua Village N. Efate. Hemi talem tu se hemi kam blong sapotem claim blong Chief Henry C. Solomon Kalsurai long chiefly title Manlaewia. So hemi wantem mekem I klia long honourable court ia se name ia Matova ToaTau emi name blong ancestor blong mi mo mi no wantem blong eni paty long case ia bae I iusem from ino name blong olgeta. Albert Manlaesinu hemi presentem tu wan family tree blong chief Manlaesinu mo extended family I kam long court ia blong sapotem olgeta toktok blong hem.”*

37. This could have been confirmed in the statement of Reverend Peter Milne about the first settlers of Kakula as being Matova Toatau Manlae as Manlaesinu and not Manlaewia as submitted by First Respondent.
38. I also make reference to another statement by Reverend Peter Milne who said

*“There used to be a group of four villages of Malasa (now called Emua) and three others a short distance inland. In the year 1883 the people of those villages made a Sing –Sing at the village of Tanomiela...”*

39. The Efate Island Court has been misled by the Second Respondent by stating at page 31 of its Judgment dated 31<sup>st</sup> of May 2019 that those who migrated to Kakula Island on 3 January 1884 were Matova Manlaewia 1<sup>st</sup> as it does not



represent the record of Reverend Peter Milne who said those who went from Malasa are Matova Toatau Manlae, Marsaria and Naras'saipiri.

40. Second respondent's claim invokes chief Manavilalu of Malasaliu as paramount chief.
41. The current chief Manavilalu is Silas Wallace.
42. Lesser chiefs serving under Chief Manavilalu are chief Lakelowia and chief Manlaewia, chief Manlaerana, chief Tokaimakau and chief Pakoa-maau.
43. It appears Ernest Kaloris was ordained as chief Lakelowia in 1996. The same year Henry Cyrel Kalsurai was ordained Manlaewia.
44. The Second Respondent claimed that Lakelowia was the brother of Manlaewia and they are entitled to the name Manlaewia and thus have the right in custom to retain possession of the title if the current title holder is incompetent in discharging his custom duties.
45. He said due to some custom arrangement, the title Manlaewia was given to a woman who originated from Romoso namely Leintas who shared the same nakaina of yam with chief Lakelowia. Leintas was married to Kalsurai of Tareangi the great grandfather of the Appellant.
46. The Second Respondent deposed that Chief Raymond Marongoe of Emua and Chief Silas Wallace Manavilalu ordained the Appellant in 1996 as Chief Manlaewia and Chief Silas Wallace Manavilalu allowed the Appellant to reign Malasaliu and in so doing, he and Chief Raymond Marongoe walked the boundary of Malasaliu with the Appellant.
47. The evidence of Chief Raymond Marongoe in case *Manavilalu v Manlaewia* [2010] VUIB 4, deposes such:

*"Chief Marongoe confirm se hem iordainem Henry Manlaewia. Mo talem long hem se hemi should helpem chief Manavilalu blong showem stret boundary long hem.*

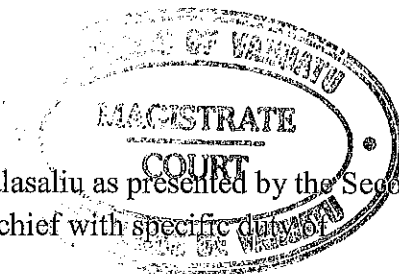
*Hemia imply se Manlaweia now bambae idecide long boundaries blong chiefly title blong Chief Manavilalu.*

*Hemia hemi wan oldfala chief, mo hemi Justice blong island kot, hemi sitdaon long plante land case. Kot ia ibelievim wanem hemi talem se land hemi wan flat land mo oli usum ol tris blong markem boundaries. Hemi confirm too se hemi iwalkbaot long boundri blong Malasa 3 times:*

1. *wetem Peter Maripopongi*
2. *wetem Johnson Kalfau, mo*
3. *wetem Manlaewia.*

*Hemi ordainem Henry Manlaewia."*

48. In the chiefly governance structure of Malasaliu as presented by the Second Respondent, Manlaewia is a subordinate chief with specific duty of



transmitting message or news to Chief Manavilalu. In the ordination of 1996, it appears that Paramount chief Manavilalu transfers his governance and authority to a lesser chief. It is unclear in the circumstances whether chief Manavilalu retains his authority as paramount chief and in the event of chief Manlaewia assuming role as chief of Malasaliu. There is no report either of another chief who assumes the previous role of Manlaewia as disseminator of news and messages to Paramount Chief Manavilalu.

49. If appropriate custom protocols are followed, then it would be proper that Chief Manlaerana who assumes role of assistant Paramount chief be given the authority to govern Malasa land instead of chief Manlaewia. (Witness statement of Kalmaire Kalmar).
50. Chief Silas Wallace Frank was ordained by Chief Tangarasilasa of Pele Island in 1975.
51. In custom chief Manavilalu established custom relations with chief Tangarasi of Pele by dispatching human flesh to him from Malasa. This transpired in the North East Efate Eria Council of Chief Court Hearing of Malasa land who sat on 2 July 1987. Group 1 consists of Solomon Manlaewia, Kalorong Kaltonga and Henry Cyrel (Appellant). Group 2 are 4 individuals 3 of whom are from Pele Island and Wallace Kalaunapapa of Paungangisu village. The court declared the Malasa land in favour of Group 1.
52. This also transpires in subsequent proceedings in the Island Court and in the recent proceeding.
53. It is noted from the findings of the EIC in the case of *Manavilalu v Manlaewia* [2010] VICB 4 and I quote:

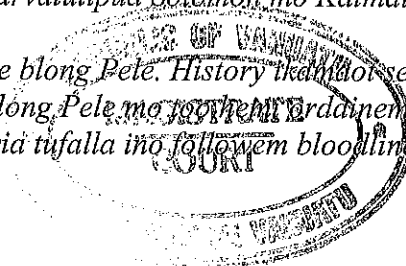
*Kot inotem se Original klemant hemi originally claim under Malu famili then hemi recently changem claim under 2 chiefly titles: Manavilalu mo Lakeleowia.*

**Chief Manavilalu:** *Kot ifollowem bloodline blong Original claimant mo findem se last chief Manavilalu hemi inheritem title ia followem Talieta naflac Nawi, igo down long Leinasei we hemi marretem Rolland Maseitonga, then Flora we imaretem Morris, down to Erina we imaretem Wallace then Silas.*

**Chief Lakeleowia:** *Kot ifollowem bloodline blong Original claimant mo findem se last chief Lakeleowia hemi inheritem title ia long brother blong Talieta we hemi Toarasariamata naflac Nawi, igo down long Toumanu we imaretem Dick Vakao (Dick Tinapua), then Leisau we imaretem Solomon Manlaewia, then igo long Edward we marretem Winnie mo lastly long Ernest.*

*Tufalla original chiefly titles ia tufalla ibin sleep over 4 generations. Oli just leftemap bakeken long 5<sup>th</sup> generation igo long Silas Wallas mo Ernest Kaloris. Famili tri we tufalla chieves ia ipresentem ishowem se blood blong Leitatie wetem Lakeleowia istap tudei wetem Marvatutipua Solomon mo Kalmaire.*

*Igat probability se Manavilalu hemi title blong Pele. History ikamdot se hemi stap providem human flesh long chief blong Pele mo igo them ordainem chief Tagarasilasa. Manavilalu mo Lakeleowia tufalla ino followem bloodline*



*blong man; but naflac MALU blong original Chief Manavilalu mo Lakeleowia.*

54. The Vamele family (Third Respondent) are prevented by the Supreme Court from using the title Maripopongi.
55. The chiefly title Maripopongi is pending determination in the Supreme Court. However, what appears at the crux of their claim is the Supreme authority Tanmiala has over the smaller boundaries including Malasa.
56. The court is reluctant to accept that assertion because several courts have convened foremost by Vaturisu Council of Chiefs who ruled "*Jif Maripopongi I wan Jif blong Tanmial mo Ino save gat custom rule over Paungagisu village except Jif Manlaewia*"
57. This was further upheld by the Supreme Court in the case of *Manlaewia v Maripopongi* [2015] VUSC 119 where the learned Judge expressed at paragraph 33 that:

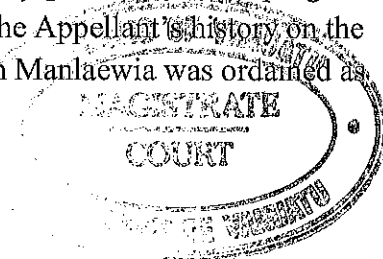
*"In our view the bislama expression "insaed" and "Istap insaet" are not references to ownership, rather, they are a description of physical location and proximity. It has the meaning of encircling or surrounding or having some common borders but, the enclosed land is, nevertheless, a recognized land "baontri". The above extracts makes it abundantly clear that "Malasa" like "Suasu", is a separate and distinct land "baontri" from "Tanmiala" land boundary and whatsmore for a long time it has been under the control of Chief Manlaewia."*

## F. Conclusion

58. After discussing the custom facts and evidences in relation to the cases for each of the parties, I have to make a decision in favour of the parties whose ancestral lineage and history is more probable and consistent.
59. In *Adjeibi Kojo v Bosnie* (1957) 1 WLR 1223 at pp 1226-1227, the court noted that:

*"Traditional evidence, where there is a conflict of tradition, one side or the other must be mistaken, yet both may be honest in their belief".*

60. We are of the view that the most probable and consistent history and ancestral lineage is that of the Appellant.
61. As discussed above, he has substantiated his claim on the series of custom meetings and ceremonies up to the Supreme Court who finds his history and family tree appealing.
62. Consequently, the Appellant was successfully granted ownership rights over Malasa land based on the confirmation of the Appellant's history on the ordination of 1968 whereby Chief Solomon Manlaewia was ordained as Paramount chief of Paungagisu Village.



63. As stated in the Malasa land case of *Manlaewia v Maripopongi* [2015] VUSC 119 at paragraph 58:

*"...we are satisfied that the appropriate order is a declaration that Jif Manlaewia is the customary owner of Malasa customary land boundary as delineated in the record of ordination that occurred on 16<sup>th</sup> January 1968 and we so declare."* (My underlining).

64. While land claim and chiefly title claim are two separate customary issues and are being dealt with by separate courts, it has to be understood in the context of Efate custom that both are inter-connected.
65. This was emphasized by the EIC on Malasa land claim and confirmed by the Supreme Court in *Manlaewia v Maripopongi* [2015] VUSC 119 at paragraph 49, 50:

*"kastom loa ino save discusse issue long land without chiefly title or visa-versa, kot ia hemi no must loosum track lo issue we stap long foret blong hem which is 'determination of custom ownership of lands...'"*

*"By drawing that distinction however, the EIC ignored the maternal bloodline of the chiefly title namely, Chief Solomon Manlaewia III and through him in an unbroken patrilineal bloodline to the original Chief Manlaewia Matua I."*

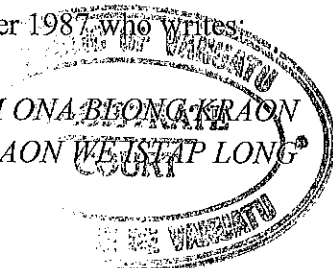
66. The Supreme Court also referred to case of *Maseiman v Natongrau* [2009] VUICB 2 Land Kes 03 of 1995 where it stated that:

*"the EIC whilst declaring the primary land tenure principle that: "...katomeri land onaship hem based generally long patrilineal system (ie. Land hemi pass followem bladlaen blong man)", nevertheless accepted, that there are well-known "exceptions" to the principle including:*

- "(a) Last surviving bladlaen: land I save pass igo long woman, sapos ino gat surviving male long famli laen;*
- (b) Napumas or Pumas (will): man or woman isave ownem land through long gift or present;*
- (c) Naflac or Klan: Jif blong naflac isave ownem land; and*
- (d) Adoption: Kastom ona isave passem raet blong hem long wan pikinini we hemi adoptem. But...hemi must kamaot long bladlaen blong kastom ona ia..."*

67. The Supreme Court further held at paragraph 53 the self-evident admissible ancestral declaration of K. Kalrong dated 6 September 1987 who writes:

*" MI BILIF SE CHIEF MANLAEWIA EMI KASTOM ONA BLONG KRAON  
BLONG MALASA MO KAKULA...MO OLGETA KRAON WE ISTAP LONG*



*BAONDRI BLONG CHIEF MANLAEWIA WE HEMI HIGH CHIEF BLONG PAUNGAGIS TEDE”.*

68. At paragraph 34:

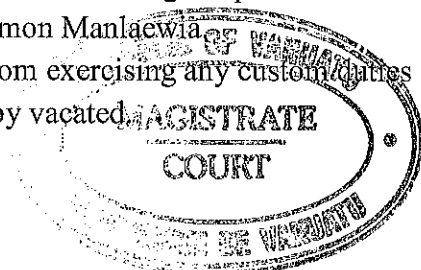
*“Of greater significance in the present case is the evidence of Chief Raymond Marango who testified on behalf of the original claimant (Family Maalu) and whom the EIC accepted as a witness of truth. In his evidence reproduced in the decision (at page 10) the witness after confirming that he had walked the Malasa land boundary on 3 separate ceremonial occasions involving relatives of all the claimants said:*

*“Long taem ia oli identifiaem boundary blong Malasaliu mo Tanomiala. Long taem ia ino been gat dispute. Tanomiala mo Malasaliu tufala different lands. Long kastom 1 namarakian igat 1 mualal nomo”.*

**G. Orders**

69. Having so explained that the evidence of the Appellant in relation to his history and unbroken ancestral lineage with Manlaewia Matua 1 is more probable and consistent, giving the court the impression to believe that his claim for ownership of the title Manlaewia should succeed we hereby do so and orders to the following effect:

1. The decision of the Efate Island Court dated 31 May 2019 is set aside.
2. The Appellant Henry Cyrel Kalsurai is the rightful person in custom history and ancestral lineage with original Manlaewia Matua 1 to be bestowed the title ‘Manlaewia’.
3. The Appellant namely Henry Cyrel is declared the Paramount Chief of Paungangisu Village/Malasaliu Land boundary as declared by the Supreme Court in the case *Manlaewia v Maripongi* [2015] VUSC 119.
4. The Respondents are to perform a reconciliation with the Appellant in order to restore respect, peace and harmony with the Appellant. Such reconciliation ceremony shall happen no later than 30 November 2020.
5. While the patrilineal inheritance of the title Manlaewia was broken when Solomon Manlaewia gave the title to Henry Cyrel Kalsurai, we are of the view that the Appellant (Henry Cyrel Kalsurai) should only enjoy the right given in custom as Napumas by Solomon Kalsurai Manlaewia but cannot transfer the title to his sons. Therefore, at his passing (Henry Cyrel Manlaewia), the title Manlaewia must revert to the original patrilineal lineage through the sons of Thomas Solomon Manlaewia.
6. The orders issued to restrain all parties from exercising any custom duties under the chiefly title Manlaewia is hereby vacated.



7. The Paramount Chief Henry Cyrel Manlaewia is to exercise his custom authority and to perform his custom duties forthwith.
8. Cost in favour of the Appellant to be taxed failing agreement.

**DATED at Port Vila this 9<sup>th</sup> day of October 2020**

**BY THE COURT**

.....  
**MOSES PETER**  
**Senior Magistrate**

