

IN THE SUPREME COURT OF THE
REPUBLIC OF VANUATU

LAND APPEAL CASE N° L2/86

BETWEEN : DANIEL LOY (APPELLANT)

AND : TIMOTHY MULBARAV
PAUL LIVO
TANGIS SISI

CORAM : BEFORE MR JUSTICE F.G. COOKE - CHIEF JUSTICE

CUSTOM ADVISERS : CHIEF ADEVER - (SOUTH SANTO)
CHIEF KAVIOR WASS - (EAST SANTO)

ASSISTANT REGISTRAR : RITA BILL

INTERPRETER - CHRISTINA NARUN

JUDGMENT

This is an appeal by DANIEL LOY against the decision of the Island Court given on the 12th December 1984 which gave the disputed land part of Title N° 479 called SARAUTU which is set out on the plan attached to this Judgment to the respondents.

I have read the Judgment of the Island Court and am satisfied that the Justices did not give proper consideration to the claim of Daniel Loy or did they make any effort to research the evidence given by TIMOTHY MULBARAV and other claimants. I reject the Judgment of the Island Court and quash the decision made by them.

DANIEL LOY gave evidence before me setting out the history of his claim to the land:

- That his great-grand-father was TUGRA

TUGRA
├── TAGOB SERIWO (were sons)
│
│ SAUL (father)
│
│ DANIEL LOY - Brother Joseph (dead)
│
│ SAUL & SERAH - PHILEMON.

† He stated the land descended through the male line.
(M. custom advisers state this is correct).

- In the past people lived on Sarautu but when the white man came the people moved out of there.

- He said the custom name was SARAMBU.

- That there was a place by the sea for custom ceremonies i.e. killing pigs down by the sea.

Exhibit I in
Bislama
Exhibit II in
English

- He stated he sent his submission to the Court which were accepted and marked as Exhibit I.

I have attached the said submissions to my Judgment which sets out why he urges the Court to accept as the true custom owner of Sarautu.

DANIEL LOY was cross examined by each of the three Respondents. First by TIMOTHY MULBARAV whom he informed that Mr PHILIBERT made a declaration that his father, (Timothy) was a French policeman named, WATCHALLEY from Maré, in New Caledonia.

The declaration is Exhibit 3 and was later confirmed by Mr PHILIBERT, himself, who was adamant beyond all doubt that TIMOTHY MULBARAV was the son of a French Policeman named, WATCHALLEY and Timothy's mother, VOBEL. It is clear to me from the appearance of Timothy that he is not what can be called 'Man Santo'.

Exhibit 3

DANIEL LOY stated his ancestors left Sarautu and went to the upper area because of the fear of being taken to Queensland to work in the Sugar Cane Mills.

- Daniel said he never heard of a man called MULFASI at Sarautu.

- He said he planted coconuts for Mr Leroux for one year and then went to Sharks Bay.

- He said Chief Mulsakel who was the big Chief of the area adopted him (a fact which was never questioned by anyone in the appeal and I accepted it as the truth) and who gave him the land. Rachael his wife who later gave evidence told him this.

Daniel was also cross-examined by PAUL LIVO who put it to him that a TOM WRIGHT bought the land from his father and Timothy's father for a small sum of money. He said he got this information from his grand-father but was unable to tell the Court why his father did not tell him.

Records have been checked but no proof found.

TANGIS SISI asked Daniel about his ancestors and in my opinion he answered all the questions to the satisfaction of the Court, Tangis Sisi then stated, since his second grandfather was dead he represented the custom owners of Sarautu.

Daniel stated there were two languages of the area, Etoro and Farafi.

Daniel ended his evidence stating that he was from Sarautu being the adopted son of MULSAKEL and that he was trying to get the land back which was given to people of other islands by political influence. This I understood to mean the Nagamal movement headed by family Stevens.

I carefully watched DANIEL LOY when giving evidence and he impressed me in the manner he answered questions. If he did not know he said so, I was impressed and accepted him as a witness of the truth.

DANIEL LOY was supported strongly by THOMAS REUBEN SERU who firstly stated that he endorsed the statement of Exhibit I and II by Daniel as the truth to his knowledge.

- He said the land at Sarautu belongs through custom to DANIEL LOY.
 - That he had these rights through his great-grand-father TUGRA who had two sons TAGOB and SERIWO.
 - That TAGOB had GAUCEL KAREL SAUL who had in turn DANIEL LOY and his adoption by Chief MULSAKEL.
 - That all the family of SERIWO stayed at Erakor Village in Efate and that in 1962 he was a teacher at Erakor Village and stayed with the family.
 - That they talked about SARAMBU, now SARAUTU and the family past, that TAGOB and SERIWO being from SARAUTU Plantation.
 - That the customary boundry line is South, Blue River, North is the Namele tree close to the sea going up the hill until the coconut tree which TAGOB the grand-father of Daniel planted.
- West, there is the road to Fanafo.
- East, there is the sea.

Third point referred to declaration and evidence by Mr PHILIBERT.

- That Timothy Mulbarav is half-caste as his father is WATCHALLEY from Maré in New Caledonia and:
- That following the custom of East Santo, Timothy Mulbarav has no right to the land through his father.

On his mothers side, VOBEL, she had land on Ais Island and Timothy has signed leases there.

- That he got the information from the Santo Land Council.

THOMAS REUBEN SERU also stated that TANGIS SISI in custom has no ground in Sarautu Plantation. At the land Court, 12th December, 1984, Tangis said he claimed Sarautu through one grand-father ROR, whereas his straight grand-father is TANGIS although later it transpired in evidence he also had grand-father, SAHE.

He then recited various leases entered into by TANGIS SISI. Fanafo Land, My Plantation, Matevulu College, Coffee and Cocoa Research on road to Fanafo.

In answer to Timothy Mulbarav he told him that he sold land at Sarakata in Luganville and was convicted by the District Court in 1979 and sent to prison for eight months and ordered to pay fine of 23,000 francs.

- That in the Court record it stated his father was BOTARA of Mavea Island and now he changes his father's name to Mulfasi.
- That Mulfasi is the name of the custom tree which in Hog Harbour is called Venpas. Thomas Reuben said he asked the old people of the area and was told there was no such name of a person called Mulfas. In reply to further questions by Timothy, Thomas Reuben was adamant that Timothy's father was Watchalley.

In reply to Tangis Sisi, Thomas Reuben said that Tangis Sisi straight father is Tangis and that his ground is now occupied by Lecoute. Further that, Rors land is the same as grandfather Tangis, i.e; - land leased to Lecoute.

THOMAS REUBEN stated he got all his information from his uncle, RICRI, and during such time DANIEL LOY was working on the plantation with Chief MEL ALICK and an old man, RIGE, aged 69. That he confirmed such information when he was Minister of Land he went to his uncle at Blacksand who confirmed such.

RACHEL, wife of big Chief MULSAKEL who thought she was 70 years of age. She used to live at Fanafo, she used to catch crabs on Sarautu.

- That TAGOB was staying there, grandfather of DANIEL LOY and his father, SAUL.
- That a lot of her fathers people were staying there.
- That Chief MULSAKEL was the big Chief of the area and that They lived a long time in Sarautu before the American came,

planting coconuts by the sea and they also planted cocoa.

- That she never heard of TIMOTHY MULBARAV. They were living on the land when the white man came and as a result they had to move to Fanafo.
- That TIMOTHY moved to our land around Independence, that is the time of the rebel trouble.
- That TIMOTHY sold some of our land.
- That MULFASI was the name of a tree there (no one at Sarautu by that name).
- That since Independence PAUL LIVO started coming to Sarautu. He has no Nakamal on Sarautu or Nasara.
- That her Nasara is close to the sea near the Namele tree.

This old lady was subjected to much cross examination but was adamant that only her husband, big Chief MULSAKEL was the true custom owner of Sarautu. She did say that PAUL LIVO is claiming land at Sarautu but she did not know it was his or not but she was certain that TIMOTHY MULBARAV and TANGIS SISI did not own any part of Sarautu.

TIMOTHY SETHY, an old man of 75 years, then gave evidence. He was a witness that impressed me and I was convinced he was telling the truth.

- He said he knew big Chief MULSAKEL. He knew that Sarautu belongs to big Chief MULSAKEL.
- That Daniel's mother lived with Mulsakel and that Daniel was adopted by Mulsakel.
- He said he was in the British Police in Vila when Mulsakel brought his wife to Vila (not Rachel). He said he was at the British Hospital on Iririki Island guarding the mental patients.
- He said he knew Timothy whose father was Philibert's uncle called Watchalley. He knew Watchalley who was in the French Police, they were always fighting.
- Philibert told him that Watchalley was living with them at Ais Island near Mavea. He heard that Watchalley was a boyfriend of Timothy's mother, VOBEL.
- He said he did not know anyone named MULFASI or did know that Mulsakel's Nasara or Nakamal at Sarautu.
- He was unable to say where PUAL LIVO got his name.
- He said Mulsakel was the Chief of Sarautu and that everyone talked about him and that he was the only big Chief at Sarautu.

- He said that Mulsakel never spoke to him about TANGIS SISI.

TOR SEPRE, another old man of 74 years said MULSAKEL was big Chief of Sarautu.

- That he knew TAGOB, the grandfather of Daniel.
 - That Mulsakel adopted Daniel.
 - He said that he worked with the Americans and sometimes went to Sarautu.
 - That Mulsakel was the big Chief of the area and traded in pigs.
 - That he has his house close to the sea where a coconut tree was growing. Many people came to him to see him for pig ceremony.
 - He said he knew Timothy but did not think he had any rights to Sarautu.
 - That his (Timothy's) father was Watchalley.
 - That Mulfas was the name of a tree, not a man.
 - That in custom, Daniel has the rights to the ground of his grand-fathers and Mulsakel and his brother, PEHUR, the name given to Daniel gives him the rights to all of them.
 - He said that he met SERIWO in 1951 in Vila after he came back from Queensland. He was staying at Erakor, a fact which confirm evidence of Thomas Reuben Seru.
 - That Seriuwo asked him whether his brothers TANGAROO and TAGOB were still alive. He came to Hog Harbour and talked to Daniel and Joel, a son of Tangaroo. Then Seriuwo showed them their custom ground at Sarautu and told them to stay on there.
 - That he was present when Seriuwo showed them the ground.
 - That it was exactly the same ground now in dispute.
 - He showed them the land from the ship as he was an old man.
- In answer to PAUL LIVO he said Seriuwo said his house was near to Leroux and that Tagob was close to the sea.

Then PHILIBERT de MONTGREMIER stated that he came to the New Hebrides in 1927 and came in contact with three policeman from Maré. They were Ake, Simion and Watchalley, uncle of his.

- That he met Timothy in 1950 when working for Bouchard.
- That his uncle Watchalley told him he had a son and later at Erakor when talking with the family of Ake, Simion and Watchalley, he found out that Timothy was the son of

Watchalley.

- Exhibit 3
- He admitted that the declaration that Timothy was the son of Watchalley was correct. (Exhibit 3) Further that when he was at Tutuba, Timothy used to stay at the French barracks and that was ONCE a week.
 - That he continued to follow the way given to him by his father.

Finally he answered Timothy and said, 'I say Watchalley was your father because he told me'.

TIJRAEL further confirmed that the Chief of Sarautu was big Chief Mulsakel and the present custom owner is Daniel whose grand-father Seriwó and great-grand-father Tagob.

- That he never saw Timothy in the land before Independence.
- He admitted that he did not know whether Paul Livo had land at Sarautu but that Tangis Sisi's ground is at Matevulu.
- That the Nakamal of big Chief Mulsakel was at Iswal near the old American landing stage and that the house of Mulsakel was at the same place.

The last witness for the appellant was PEREL, who stated Daniel was the custom owner of Sarautu.

- That he cleaned cocoa for the French half-caste Emile, who managed the estate.
- That he knew Mulsakel as he was married to his fathers sister, FELLIE.
- That he was the big Chief of Sarautu.
- Later I heard he married Rachael, also he heard he had adopted Daniel.

The evidence by the various witness were certain on many points:

1. That Mulsakel was the big Chief of Sarautu.
2. That he adopted Daniel.
3. That Daniel was now the custom owner of Sarautu.

4. That Timothy was the son of Watchalley, a French policeman from Maré.
5. That Timothy was imprisoned for eight months for selling land at Sarakata, belonging to Perronet.
6. That Tangis Sisi had no rights to Sarautu. His lands being elsewhere.
7. That the boundary of the land of Sarautu was shown to Daniel and Joel by Seriwo on his return from Queensland, a grandfather of Daniel.
8. That both Timothy and Tangis Sisi had leased at least four parcels of land elsewhere in Santo (Documents marked 6,7,8, 9,10,11, 12, are on file).
9. That Timothy's father Watchalley is a half-caste and in custom not entitled to custom ownership of land. (Advised by the Custom Advisers).
10. That the Nagriemel Movement gave land in the area to the from the Islands.

I then heard evidence from the Respondents and their witnesses:-

- TIMOTHY said he was living at Mavea but now living at Sarautu.
 - That Mulfasi was his father.
 - In the record of the proceeding in the District Court when he was convicted of selling land and sent to prison, his father's name was stated to be POLERA ABRAHAM.
 - He claims his father was Chief of Sarautu.
 - He said he went to Sarautu in 1967 when the French were there.
 - He said Mulfasi was the first person who sold land to the whiteman, TOM WRIGHT, title 479.
- I have checked the records in the land office and have been unable to find any with the name, Mulfasi.
- He said his grandfather, RAT and Paul Livo's father Willie took his father to Mavea when he became too old and he was buried there.

The Respondents other witnesses said Mulfasi was a strong and healthy man when he went to Mavea.

Exhibit 13.

On evidence before the District Court he said his father was chased out by a white man and went to Mavea and that his father died at Fanafo in 1976.

Again he said at the District Court that his brothers and sisters knew he was selling the land.

When SOLOMON, his brother gave evidence he said that he heard he sold land and was sent to prison.

- That he sold the land of BOTARA.
- That it was his ground too.

Timothy said he acquired the land through Mulfasi who died in Fanafo in 1976.

Exhibit 6,
7,8 & 9.

Again in the records of the District Court, POTARD ABRAHAM was stated to be the father of Timothy not Mulfasi. He denies anything about Watchalley yet Mr Philibert was adamant that Watchalley, the French policeman was Timothy's father and I believed his evidence. I put it to him that when Thomas Reuben Seru gave evidence he stated he had many leases around Santo. I asked him, was that true and he categorically denied such. I again put the question to him but again he denied he had few leases. Exhibits 6,7, 8 and 9 put to him.

- He then admitted he had the leases.
- He told Daniel that they could not bring Mulfasi back to Sarautu to bury him there as there was no member of his family there.

Considering he already said his father died at Mavea and at Fanafo, it was difficult for me to believe his evidence.

This witness was so evasive and lied so many times that I could not possibly accept him as a witness of the truth.

MORRIS, cousin brother of Timothy gave evidence to support Timothy but he merely substantiated the lies of Timothy and I did not accept his evidence as the truth.

Another witness for Timothy, WILLIE MOLTORUA also gave evidence to support the lies of Timothy.

I had to ask two members of the public to leave the Court as they continued laughing at this person's evidence. His evidence was so obviously tainted and rehearsed. He was hesitant and to me, he did not know what he was meant to say other than Timothy was from Sarautu.

I did not believe the evidence of this man.

Two further witnesses gave evidence for Timothy but their evidence also was not reliable and I did not accept it. The witness SOLOMON who said he was Timothy's brother was so different in features and appearance that it was clear to me, they were not of the same father.

After the evidence of Timothy and his witnesses. I rejected their total evidence as I did not believe it was the truth and Timothy, himself lied on a number of occasions. I therefore reject Timothy's claim to any land in Sarautu.

I then heard the evidence of Tangis Sisi and his witnesses.

Tangis Sisi said he owned half of the ground of Sarautu as he represented his grandfather ROR who was the custom owner. His evidence is what his family is alleged to have told him.

- He did not know who the father of ROR was which seemed strange as that was his great-grand-father.
- He gave same story as to how he is the custom owner of Matevulu and the relationship with two sisters which just did not make logic to me.
- He said his father told him and an old man from Fanafo that Jimmy Stephen looked into the history and decided that he was the owner of the land.

I am aware of the fact that man Jimmy Stephens was head of the Nagriemal Movement in Santo, he was said to have made allocations of land in the area under dispute. Tangis Sisi did agree there was a meeting on 10 August 1975 but he said it was regarding the dark bush area without any produce. Tangis denied that he got the land through political involvement.

It was put to him that Fanafo was the place where ROR had his house but he was unable to confirm this as he said he did not know.

He agreed that he signed leases on Ais Island, Cocolaru, My My's, Lecoute and Matevulu College, Exhibit 10, 11 and 12 some of the leases.

Tangis Sisi called three witnesses, Daniel Lou, Tari Bulluck, and Timothy Wiles. I was not impressed with the evidence they gave. I came to the conclusion that their evidence was rehearsed

and that their sole aim was to state that Tangis Sisi got the land through his grandfather ROR. When a question about the Nagriemal Movement was put to them by Daniel Loy, the Appellant, they seemed to be uneasy and not sure what answer they should give. I just did not believe the evidence of Tangis Sisi or his witnesses. He has alleged claim to so many different areas of land. Supposedly by descent to him in custom from his grandfather and mother.

I reject his claim to the piece of land given to him at Sarautu by the Island Court. He has not established custom ownership of such to my satisfaction. Yes, he may be the custom owner of the My My Plantation but not that in the Northern portion of Sarautu.

Finally I came to the evidence of Paul Livo and his witnesses.

Paul Livo impressed me as a truthful witness except in so far as the relationship of Timothy's father. He is an old man and I think he could well have been told lies by Timothy and believed him. Evidence was given by his witnesses of the existence of a Nasara and Nakamal in Sarautu. Very little of both remain and indeed both could have been suitably established. I do not say they have been but from my experience of seeing Nasara's and Nakamal's throughout the country I have some doubts.

As I entertain doubts only about the evidence which Paul and his witnesses gave, I am of the opinion that I must give the benefit of such doubt to Paul Livo.

I therefore confirm the decision of the Island Court that Paul Livo is the true custom owner of the land at Sarautu given to him by the Island Court. I heard evidence from a member of the Land Committee but it was clear to me that no research was made by the Committee whatsoever before deciding who was the custom owners of the land. Indeed there may be many Ni-Vanuatuan families who have been deprived of their land rights by lack of proper research as to ownership.

I have no hesitation in finding that Daniel Loy, being the adopted son of MULSAKEL and by the record of his family as I have stated, IS THE TRUE CUSTOM OWNER OF SARAUTU PLANTATION with the exception of that portion which in my opinion belongs to Paul Livo.

IT IS ORDERED as follows:-

1. Timothy Mulbarav and Tangis Sisi remove themselves from Sarautu Plantation by the 30 September 1986.
2. If either of them or their families or relatives remain on the property after that date they will be considered to be in Contempt of this Court and dealt with by this Court.

3. All leases of Sarautu property now belonging to Daniel Loy shall be amended in any land office or registration of land by substituting the name Daniel Loy for that of Timothy Mulbarav or Tangis Sisi.
4. All rent due to either Timothy Mulbarav or Tangis Sisi in respect of Daniel Loy's land at Sarautu shall forthwith be paid to Daniel Loy.
5. The Survey's fees due to the Survey department for the Survey plan shall be two-third's paid by Daniel Loy and one-third by Paul Livo, and
6. Finally the sum of VT 50 000 in costs is awarded to Daniel Loy, VT 25 000 to be paid by Timothy Mulbarav and VT 25 000 to be paid by Tangis Sisi.

This Judgment is final under the Island Court Act N° 10 of 1983.

Frederic G. Cooke
Frederic G. Cooke
Chief Justice

28 July, 1986.

Signed: Custom Advisers.