

**IN THE SUPREME COURT**  
**OF THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

Civil Appeal Case No. 128 /2009



**BETWEEN:** CHIEF SIMEON POILAPA IV and  
TASIL MALASTAPU  
*Appellants*

**AND:** KALOKAI MASAAI  
*Respondent*

THE REPUBLIC OF VANUATU  
*Interested Party*

***Hearing:*** 25 August 2011

***Before:*** Hon. Justice RLB Spear

***Appearances:*** Mr S T Joel for Chief Kalokai Masaai (as Applicant)  
Mr J Boe for Chief Simeon POlapa IV (as Respondent)  
Ms C Thyna for the Republic of Vanuatu

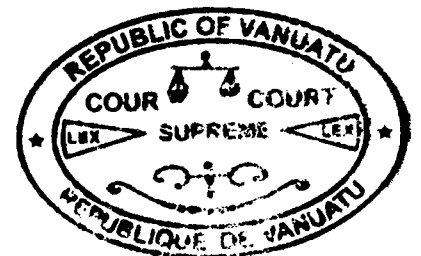
---

**JUDGMENT OF THE COURT**

**Delivered 24 August 2011**

---

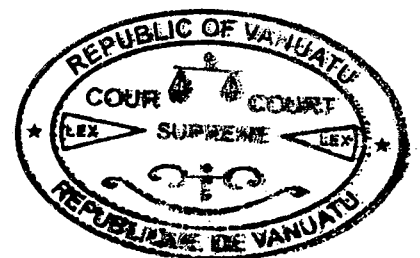
1. This is the hearing of an Urgent Application by Chief Kalokai Masaai for orders restraining the public ordination of Chief Simeon Poilapa IV as the paramount chief of Mele village.
2. This application is made pursuant to leave reserved in the decision of the Supreme Court of 6 June 2011. It is significant that this decision was appealed to the Court of Appeal but the appeal was, in due course, abandoned. The decision of the Supreme Court dated 6 June 2011 confirmed the decision of the Island Court of 16 May 2008 which, of course, was endorsed as correct by the decision of the Magistrate's Court on appeal dated 29 September 2009.



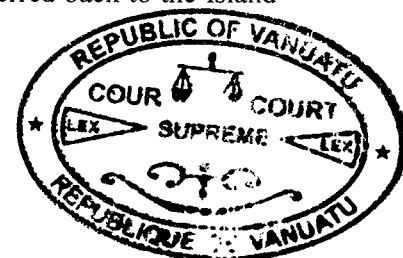
3. The case concerns the position of paramount chief of Mele village. As matters were left by the decision of this Court of 6 June 2011, the Mele village council was left to facilitate the election process according to custom and thus oversee the appointment and ordination of the paramount chief of Mele village. Furthermore the Mele village council was required to complete all those arrangements in time for the appointment and ordination of the paramount chief to take place before 31 October 2011. It is of particular significance still that the Island Court determined that,

*“only the lesser chiefs represented by each nakamal that exist in Mele village today have the ultimate authority and power according to the principals (sic) of custom rules to appoint and ordain the paramount chief of Mele village”.*

4. The ordination process is, in fact, underway with the principal ceremony to take place tomorrow. That is for the ordination of Chief Simeon Poilapa IV as paramount chief of Mele Village. The application before me is to restrain those involved in the ordination process from proceeding with it.
5. I mentioned, in my Minute of 24 August 2011, that the National Council of Chiefs were involved but, in that respect, I was mistaken. Indeed, it is the Vaturisu Council of Chiefs and the South Efate Council of Chiefs who are in fact promoting and supporting the ordination of Chief Simeon Poilapa IV. Be that as it may, it is appropriate in view of the importance of Mele village both to Port Vila and thus to Vanuatu that there is representation on behalf of the Republic of Vanuatu. In that respect, Ms Thyna’s presence today is welcome although I suspect her role will become more involved as time goes by.
6. The application, as I have mentioned, is for orders to restrain all those involved in declaring publicly that Chief Simeon Poilapa IV is the paramount chief of Mele village and today we are in the middle of that ordination process with tomorrow set for the full festivities. The challenge is to the election process that was undertaken and is really twofold.
7. First, Mr Joel challenges the body that is said to have carried out the election process which, of course, was required to be the Mele village council. There is a dispute as to who is the Mele village council and thus who was responsible for facilitating the election process. Of much greater significance, however, is the dispute as to who are the *“lesser chiefs represented by each nakamal that exist in Mele village”* because the consistent determinations by the Courts involved in this case have been that it is those lesser chiefs who are entitled to vote on who should be the paramount chief of Mele village.
8. Chief Simeon Poilapa IV, through Mr Boe claims that there are 19 such small chiefs represented by the 19 nakamals that are registered under the Charitable Institution legislation. Mr Joel takes issue with that contending, in response, that there are 13 nakamal and thus 13 lesser chiefs entitled to vote.



9. An attempt was made today to see whether a vote could be held to resolve the position as to who should be the paramount chief. Unfortunately, that has not been achievable. The difference between the parties as to who is entitled to vote is unresolved. I cannot see any option but for a return to the Island Court to have that central issue clarified according to custom; that is, who are today the *“lesser chiefs represented by each nakamal that exist in Mele village”*.
10. Certainly, I am not in a position to be able to make directions or determinations in that respect as it relates to matters of custom. That is unfortunate because it simply prolongs the uncertainty that exists as to the proper governance of Mele village and it will continue to see divisions in that vital community. Be that as it may, I am not prepared today to make orders that effectively stop the ordination of Chief Simeon Poilapa IV as paramount chief of Mele village based on the material that has been presented to me. The position is simply too uncertain and it has come to the court very much at the last minute. I notice that the public notification of the ordination bears date the 5<sup>th</sup> August 2011 and it was responded to almost immediately by a letter on behalf of Mr Joel’s client taking issue with the election process.
11. If, eventually, it is determined that Chief Simeon Poilapa IV should not be the paramount chief or that his election was not validly held then obviously there will significant consequences as to costs and there may well be an accounting as to his performance as paramount chief. That he has been publicly declared to be the paramount chief will not affect the issue as to whether his election was valid or not. So, the matter is capable of being resolved in time and probably by reference back to the Island Court for determination as to who are indeed the small chiefs of each nakamal in Mele village; although I do not make that referral at this time.
12. On the basis of the material before me, I do not consider that it has been satisfactorily established that the election process was necessarily flawed. Certainly, that is not established to the point that I consider that such dramatic relief should be given at this time especially given the fact that the formal public ceremony is to take place tomorrow, this has been planned, known, and publicly notified for at least 3 weeks, a great deal of money will have been spent on it, and it confers no status beyond the election process. That is, if the election process was flawed, it does not matter if there has been a public ordination or conferring of title.
13. I appreciate that my decision will not bring comfort to many here today who support Chief Kalokai Masaai. I simply appeal for calm to prevail on the basis that at least Chief Simeon Poilapa can operate as interim paramount chief until matters are finally resolved if, indeed, there are good grounds to do so. This will provide some leadership in the village.
14. This is an appointment that should be determined according to custom and that custom I thought, as did the courts below, had been well identified. It now appears that there is continuing uncertainty. If that continues, leave is reserved to the parties to apply for the issue to be referred back to the Island



Court so the issue of who is entitled to vote can be determined according to custom.

15. I reserve costs until there is greater certainty about the election issue..
16. Finally, Mr Boe seeks an order that no-one should attempt to interfere with the ceremony tomorrow. I am not prepared to make such an order although I am tempted to do so. The reason for that is simply that the Constitution of the Republic of Vanuatu preserves freedom of expression as a right and so people have the right to make what is often called a peaceable protest. I emphasize that any protest must be peaceable, it must not disturb the peace and of course it will contravene the criminal law if it does so.
17. Furthermore, I simply add that it is obvious that there are deep divisions in this community because of this uncertainty as to who should be the paramount chief. Vigorous or strident protests tomorrow will do nothing to help the health of the Mele village community and could indeed create greater divisions that will take far longer to resolve. So, I certainly appeal to those here today who can hear me to be moderate in their conduct tomorrow if they are not supportive of the appointment of Chief Simeon Poilapa. If that appointment is not valid according to custom, there is a process by which that can be examined with care and in time and the fact that there is a public ceremony that has declared Chief Simeon Poilapa as the paramount chief does not make it any harder to unscramble that appointment.

**BY THE COURT**

