

**BETWEEN: CHIEF MAATUIMAKATAMATA JOHN WILLIAM MARAKI
MATARIKI**
Claimant

AND: JOHN MICHAEL
First Defendant

AND: SHEM MICHAEL
Second Defendant

AND: OBED NAISALE FRED
Third Defendant

AND:

RAYMOND MANURUA
AND: Fourth Defendant

EDWARD GEORGE
AND: Fifth Defendant

MALAU MARAKI
AND: Sixth Defendant

KARIS MORSEN
AND: Seventh Defendant

SIMON FRANK
AND: Eight Defendant

KALOTETE FRANK
AND: Ninth Defendant

CHARLES KALO
AND: Tenth Defendant

SIMON GEORGE
AND: Eleventh Defendant

KEITH ABEL
Twelve Defendant

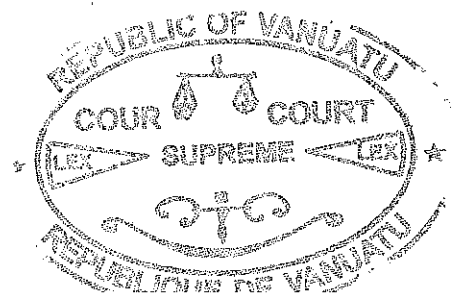
Mr John William Timakata in person

Mr John Michael in person and on representative capacity for all the Defendants

REASONS FOR ORDERS of 23 December 2004

This Supreme Court Claim arose out of a dispute over a customary paramount chiefly title name Timakatamata or Maa Tui Makata Mata at Makatea village, Emae Island.

The claimant, John William Maraki Matariki of Emae Island is the present ordained Paramount Chief Timakata. He was ordained Chief Timakata/Maa Tui Makata Mata in March 1995.



The Defendants are all from Makatea village and nearby villages on the Island of Emae. They dispute that the claimant is entitled to the title name Timakata Mata/Maa Tui Makata-Mata.

Despite the ordination of the claimant with the chiefly title name Timakata in March 1995, the defendants have been a party to the planning, organising and preparing for the installation of the same paramount chiefly title Timakata/Maa Tui Makata-Mata on a different person including installations of other title names under the Paramount chiefly title Timakata/ Maa.

The Defendants planned to ordain the first Defendant, John Michael with the Paramount chiefly title Timakata/Maa Tui Makata-Mata including installations of other titles under the paramount chiefly title Timakata/Maa Tui Makata-Mata and it was to take place on or about Friday 21st February 2003.

The First, Second and Third Defendants travelled to the Island of Emae on Friday 14th February 2003 for the purpose of performing the ordination of the First Defendant with the chiefly title name Timakata.

Sometime in February 2003, upon the claimant's application and evidence in support the Court had issued restraining orders to maintain the status quo between the two parties.

On 24 February 2003, the claimant filed the Supreme Court claim in this proceeding claiming declaration, orders and damages. The claimant in his claim seeks the Supreme Court to have regard to Article 95(3) and to apply Article 47(1) of the Constitution of the Republic of Vanuatu respectively. The claimant claims:

- a) **A DECLARATION** that the Claimant in accordance with recognized custom of the Sheperds Islands including Emae, is the true and rightful holder of the Paramount Chiefly title Timakata/Mata Tui Makata – Mata.
- b) **A DECLARATION** that in accordance with the recognized custom of the Sheperds Islands including Emae, the Claimants successive generations by inheritance in accordance with the established rules of custom shall be the true and rightful holders of the Paramount Chiefly title Timakata/Maa Tui Makata-Mata, unless excluded by [];
- c) **AN ORDER** that the Defendants have no right of claim over the Paramount Chiefly title Timakata/Maa Tui Makata-Mata including all titles under the Paramount Chiefly title Timakata/Maa Tui Makata-Mata;
- d) **AN ORDER** that the Defendant and their Agents discontinue and cease forthwith from entering upon and interfering with claimants personal and customary property situated on the Island of Emae;
- e) **AN ORDER** that the Defendants and or their Agents cease from interfering with the peaceful of the Claimants personal and customary property situated on the Island of Emae;
- f) **AN ORDER** that the Defendants pay:



A handwritten signature in black ink, consisting of a stylized, cursive script, is located to the right of the Supreme Court seal.

1. Damages
2. Special Damages []
3. Disbursements (pursuant to 15.4 (a) Civil Procedure rules 49 of 02
[Particulars to be provided late])

g) **SUCH FURTHER OR OTHER ORDERS** as the Honorable Court shall deem fit.

The Defendants file a defence and a counter-claim on 24 April 2003. They deny that the claimant was ordained according to custom law relating to Paramount chiefly title of Emae. They say the claimant is not entitled to that chiefly title. They deny also that the chiefly title Timakata/Maa Tui Makata-Mata was inherited through descending successive generations.

The Defendants counter-claimed that Chief Obed Sasamakimata (3rd Defendant) is the Paramount chief who under Emae Island and Makatea village custom is the owner of the title "Timakata" or "Maa-Tui Makatamata" and he has the sole right to appoint or ordain a person with that chiefly title and can remove it in the event that the title holder does not perform the expected duties and/or breaches custom.

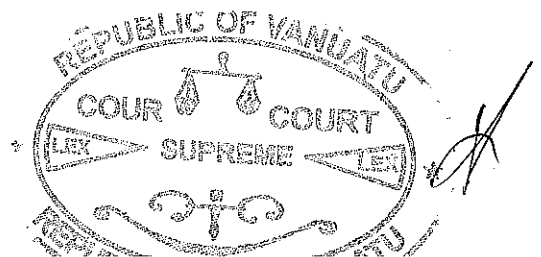
They say that on 17 November, 1991 pursuant to Makatea custom, Obed Sasamakimata withdrew and removed the title "Maa-Tui-Makatamata" from Fred Kalomuana Timakata (the claimant's father).

They say that the First Defendant, John Michael is the descendant of Sasamaki and in Makatea custom is eligible to be ordained Timakata/Maa Tui Makatamata.

They say that the ordination of the claimant in 1995, was defective in custom. The claimant does not have any right in custom or otherwise to the name Timakata/Maa Tui Makatamata. They counter-claim:

- (a) The claimant's claim be dismissed in its entirety.
- (b) A declaration that in accordance with Emae and Makatea custom, chief Obed Sasamaki is the true and rightful holder of the chiefly title Timakata/Maa Tui Makamata.
- (c) A declaration that in accordance with custom, chief Obed Sasamakimata can ordain and/or appoint any eligible person with the name Timakata/Maa Tui Makatamata.
- (d) Costs
- (e) Such further or other orders as the Court shall deem fit.

The claimant and the Defendants filed and served sworn statements in support to the claim and counter-claim accordingly.



The claimant and the First Defendant (John Michael as representative for and on behalf of all Defendants) have also signed and filed a document entitled: "General Declaration of Agreement/Joint Statement of Agreed Principles of Custom".

The Court assumed jurisdiction to hear this claim based on Article 47(1), 49(1) and 95(3) of the Constitution and section 65(1) (2) and (3) of the Judicial Services and Courts Act [Cap 270]. I was assisted in the hearing of this claim by the following three (3) custom chiefs as assessors, namely chief N. Titongamata of Tongoa, chief Sakei of Mataso Island and chief Joseph Noel.

The parties raise different custom issues for determination. However, **the Court considered that there was only one main issue warranting for consideration. That main issue is this: Is there any right in custom in Makatea village to depose a current sitting chief?**

Upon considering and assessing the sworn statements and oral testimonies of witnesses of the claimant and those of the defendants on this main issue, the court accepts the evidence of the claimant and his witnesses as creditworthy and reliable. This finding is supported by the general declaration of agreement or joint statement of agreed principles of custom between the claimant and the First Defendant for himself and on behalf of all the Defendants dated 3rd October 2003 where it is agreed (at page 3).

(f) As to deposing of a chiefly title:

(a) In the case of a Nasiliu:

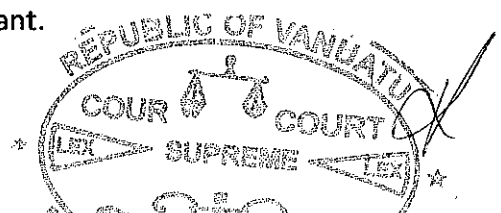
- Custom does not give any right for the deposing of a Nasiliu.

(b) In the case of chiefly titles held of the Nasiliu title:

- Such titles can only be deposed by the higher ranking chiefly title held under a Nasiliu title, but only in circumstances of serious and continuous failure to perform duties of the respective titles held.

The court also rejects the evidence of the Defendants and their witnesses on this issue as not credible and not reliable witnesses because of their own behaviours and conducts during the hearing of this claim which resulting in various court warnings to the defendants' witnesses. [Although the court file and records have been destroyed by the fire in June 2007, the court record of evidence contained these warnings. The court ordered the claimant's and defendants' witnesses to stay outside the court hearing place (room) and to remain there until called to give evidence. The court explained to the claimant's and the defendants' witnesses the rational for doing so. At the hearing of this case at Makatea village and particularly during the hearing of the claimant's case and witnesses' testimonies, defendants' witnesses stood by the windows, listened, took and exchanged notes].

The Court answered the main issue posed in the negative. In the present case, there was no evidence of circumstances of serious and continuous failure by the claimant to perform the duties of the respective title held by the claimant.



On 23rd December 2004, the Court issued the following Orders:

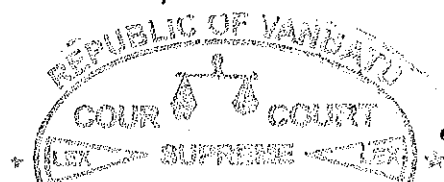
UPON hearing the Claimant, the Defendants, **UPON** considering the evidence and submissions, the Court makes the following ORDERS and DECLARATIONS:

1. A Declaration that the Claimant in accordance with the recognized custom of the Sheperds Islands including Emae, is the true rightful holder of the Paramount Chiefly Title Timakata/Maa Tui Makata- Mata, is granted.
2. A Declaration that in accordance with the recognized custom of the Sheperds Islands including Emae, the Claimants successive generations by inheritance in accordance with the establishment rules of custom shall be the true and rightful holders of the Paramount Chiefly Title Timakata/Maa Tui Makata-Mata, is refused.
3. An Order the Defendants are not entitled to the Paramount Chiefly Title Timakata/Maa Tui Makata-Mata subject to custom within customs structure under the Paramount Chiefly Title Timakata/Maa Tui Makata-Mata, is granted.
4. An Order that the Defendants and their Agents discontinue and cease from entering and interfering with the Claimant's personal and customary property situated on the Island of Emae, is refused.
5. An Order the Defendants and or their Agents cease from interfering with peaceful enjoyment of the Claimant's personal and customary property situated on the Island of Emae, is refused.
6. An Order that the Defendants pay:-
 - Damages, is refused;
 - Special damages, is refused
7. The costs are for the Claimant and costs to be agreed if not determined.
8. Full written reasons to be provided in due course.

The Court granted the First declaration sought by the claimant based on the claimant's ordination in March 1995 and evidence in support and the general declaration of agreement or joint statement of agreed principles of custom between the claimant and the First Defendant for himself and on behalf of all the defendants dated 3 October 2003.

The court refused to grant the second Declaration sought in the relief to the claim as this raises the issue of whether the person who is entitled to hold the chiefly title Timakata/Maa Tui Makata-Mata has to pass it on by inheritance to his successive generations or whether acceding to the chiefly title in Makatea custom is by way of appointment or election. There is insufficient evidence on this point before the court.

The Court also granted the order sought in paragraph 3 of the relief sought that the Defendants are not entitled to the Paramount chiefly title Timakata/Maa Tui Makata-



Mata but that their entitlement to the chiefly title (if any) is subject to Makatea's custom and the related custom to the said chiefly title.

The other orders (at paragraphs 4, 5 and 6) sought in the relief of the claim are refused. They are either too general or they was no evidence in support.

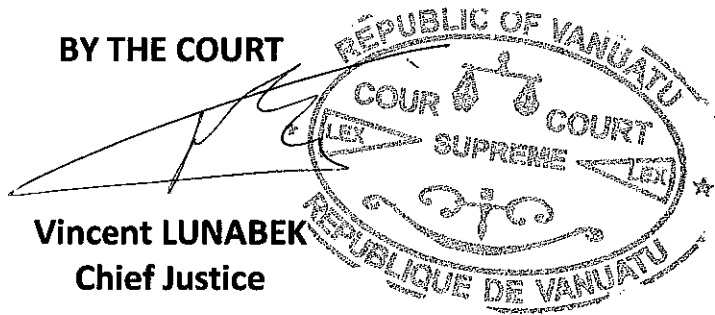
The counter-claim and relief sought there under are dismissed. There was no evidence in support. They are rejected.

The other custom issues raised have to be properly put before the relevant Island Court or Tribunal for resolution.

These are the reasons of the order issued on 23rd December 2004.

DATED at Port Vila this 6th day of August 2015

BY THE COURT



Vincent LUNABEK
Chief Justice