IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Land Appeal
Case No. 15/05 SC/LNDA

BETWEEN: FAMILY MOLTAMAUTE
First Appellant

FAMILY ATIN
Second Appellant

FAMILY TURA
Third Appellant

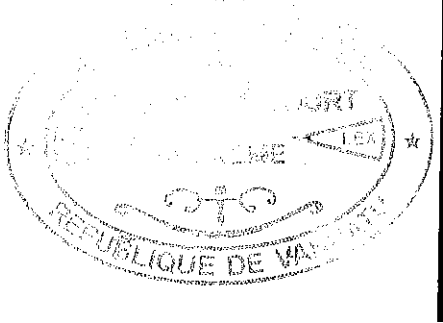
AND: FAMILY TAFTUMOL
First Respondent

FAMILY LOIROR
Second Respondent

FAMILY WARAWARA & VARAVARA
Third Respondent

Date of Hearing: ***23 to 25 September 2019***
Date of Judgment: ***29th June 2020***
Before: ***Justice Stephen Dorrick FELIX***
Assessors: ***Chief Havo Liu Tamata***
Chief Tom Valele Moliaulu

Appearances: ***Counsel Edmond TOKA for the First Appellant***
Counsel Mary Grace NGARI for the Second Appellant
Counsel Justin NGWELE for the Third Appellant
Counsel Avock GODDEN for the First Respondent
Counsel Eric MOLBALEH for the Second Respondent
Counsel Daniel YAWAH for the Third Respondent



RESERVED JUDGMENT

INTRODUCTION

1. The three appellants challenging the decision of the Santo Malo Island Court dated June 12th 2015 are Family Moltamaute represented by Mr Edmond Toka, Family Atin represented Mrs Mary Grace Ngari and Family Tura represented by Mr Justin Ngwele.

2. It must be noted that the claims of customary interests over this same piece of land made by the parties in this appeal have been heard, considered and decided firstly by the Santo Malo Island Court on the 14th of June 1995.

3. That decision was then appealed against to the Supreme Court and on the 12th of December 2007, upon the consent of the parties, the matter was sent back to the Island Court for a re hearing.

4. On the 26th of August 2011 the Santo Malo Island Court entered another judgment which was again appealed against and the Supreme Court after hearing the appeal ordered a re-hearing before a differently constituted Santo Malo Island Court and the Court also ordered that no new parties be added to the proceedings.

5. As mentioned earlier, this proceeding deals with appeals against the latest decision of the Santo Malo Island Court dated 12th June 2015 in relation to declarations of customary ownership of this same piece of land referred to as 'Tambotal' which covers land areas also described as ' Belmol' and 'Beleru' in the south- eastern part of the island of Santo.

6. These appeals, including this present one, were made, pursuant to section 22 of the Island Courts Act which provides

22. Appeals

(1) Any person aggrieved by an order or decision of an island court may within 30 days from the date of such order or decision appeal from it to the Magistrates' Court.

(2) The court hearing an appeal against a decision of an island court shall appoint two or more assessors knowledgeable in custom to sit with the court.

(3) The court hearing the appeal shall consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it thinks fit.

(4) An appeal made to the Supreme Court under subsection (1) (a) shall be final and no appeal shall lie therefrom to the Court of Appeal.

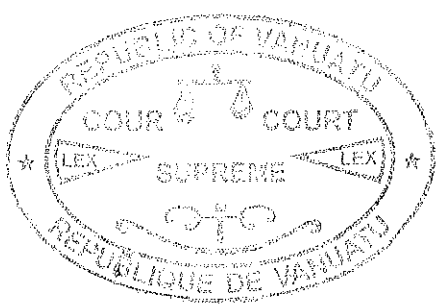
(5) Notwithstanding the 30 day period specified in subsection (1) the Supreme Court or the Magistrates' Court, as the case may be, may on application by an appellant grant an extension of such period provided the application therefore is made within 60 days from the date of the order or decision appealed against.

7. The Court will address these three appeals and the issues raised in them as follows:

FAMILY ATIN

While managing the case and during the pre-hearing conferences, the Court heard the parties and had ruled on an application made by the First Respondent on the question of whether or not the Appellant Family Atin should remain as a separate Appellant in this appeal proceeding;

8. The questions were raised following a decision of this Court in Land Appeal Case No 3 of 2011 on the 28th of October 2013. The appeal was against a previous decision of the Santo Malo Island Court but over the same Land as in this appeal. Saksak J. after hearing the appeal decided to allow the appeal and to refer the matter back for a re-hearing before a differently constituted Santo Malo Island Court and that there be no more new parties added but



that the proceeding be restricted only to the parties as named in the Land Appeal Case 03 of 2011.

9. In responses to the questions raised, this Court finds that :

   a. There were only five parties in the Land Appeal proceeding in 2011 namely Family Tura, Family Taftumol, Loyror Lin, Family Kaven and Family Uri Warawara & Family Vara Vara.

      In Paragraph 8.1 of the Court's decision in the Land Appeal Case 03 of 2011, the Court ordered that ***...no new parties should be allowed to file their claims and that the re-hearing should strictly be between the four parties to the appeal...***

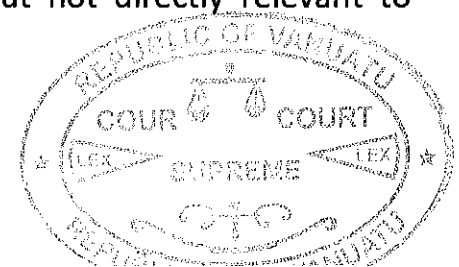
   b. The Appellants Family Atin have been given a fair opportunity over and over again to present their claim of customary interest in the previous Courts but have failed to do so.

   c. The grounds of Appeal upon which the Appellant Family Atin are relying fail to disclose or point to any errors in the Santo Malo Island Court's judgment dated 12th June 2015.

   d. Family Atin may only claim but under or through the interest of Family Tura

10. There was also a ruling made by the Supreme Court on the 15th of June 2015 on an application from Family Atin's legal counsel at that time Mr Britten Yoseph to withdraw Family Atin's Notice and Grounds of Appeal;

11. The Court finds that, in accordance with the customary practice of Santo, Family Atin may raise a claim of customary interest but only under or through Family Tura because their interest is only one of clan or tribe or what is referred to in the Santo language as ***'Vun'*** but not directly relevant to



customary ownership of customary land. In other words, unless the patrilineal blood lineage is completely extinguished, she or her descendants may raise a claim of a secondary interest not based on a personal and individual family capacity but under a tribe or ***"Vun".***

12. On these findings this Court had ruled and I again re confirm that Family Atin is not to be added as a separate party in this Appeal proceeding and their appeal is accordingly struck out.

FAMILY MOLTAMAUTE

13. Family Moltamaute relied on several grounds in their filed Notice and Grounds of Appeal and Submissions.

14. Counsel representing this appellant , however, informs the Court during the appeal hearing that they are abandoning all their grounds of Appeal but will advance their appeal based only on one ground and that is ground 10 in their notice and grounds of appeal which concerns the issue of the overall boundary of Tambotal, Belmol, Beleru, Belvos and Sevua.

15. Before addressing this boundary issue, It must be noted that this Court will only interfere with the decision of the Island Court if it is satisfied that the findings of fact and the findings of custom made by the Island Court in its decision on Family Moltamaute's claim are wrong.

16. When examining the Judgment of the Santo Malo Island Court dated 12th June 2015, we note that the whole argument about boundary is only based on a documentary evidence dated 19th December 1887 tendered in the trial court by Family Moltamaute.

17. The island court had carefully considered that documentary evidence and made the following findings:

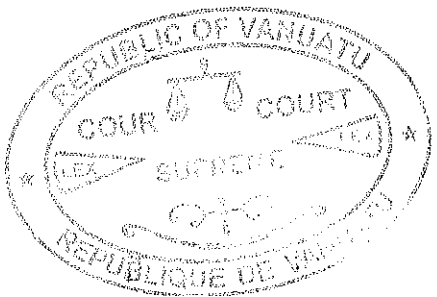
Jimmy Kaven is disputing the land of Belmol including Belvos claiming it as land originally owned by his ancestor Moltamaute. The court upon perusal of the entire information assembled beforeit, founds the following evidence:

Firstly, this defendant and his witness are ot familiar with the land he claims. He has drawn a sketch map which does not correspond with the identified boundary he had shown on the land. Our observation of his conduct dictates that he was being led by simply following the same sketch map produced by Family Tura.

Secondly, he could not prove to the court that Moltamaute had any navota on the land. The site identified at Mango station is not a nasara in our view, If so it would been well known to other chiefs and people of the area. Every party do not agree with his story. Neither was Moltamaute or any of his descendants buried on the land as sign of assurance that he probably belongs to the land he disputes.

Thirdly, this party had been on other occasions part of several land ownership claim namely over the land of Vunausi at south Santo, Suranda land on the east coast and again in this claim over Belmol land. He could not justify with any reasonable explanation over his given position. We note during examination, he and some of his witnesses have admitted with confession that they are simply claiming because the 1887 note for identification of the four referred land boundaries has mentioned some of their ancestors Moltamaute, Toko and Fouticabo. Such information alone cannot persuade this court to credit him on a conclusive basis but demands corroboration with further evidence.

It is obvious that this party has heavily relied on a documented minute or notes whereby chiefs and representatives of land areas have placed their



signatures to show proof of the identification process of the four land boundaries mentioned above.

On the other hand, such record of deal dated 19th December 1887 is misconceived by this claimant. It cannot be construed to be a deed of sale given the absence of survey map and other required information habitually appearing in a deed of sale such as the purchasing price and so on. Furthermore, it does not expressly tell us from the front page to the rest that it is a deed of sale. But, we note that it has been referring to a land purchase transaction of 1st September 1883. This claimant has failed to provide such specific document except other land transaction records also considered.

Added to the above points, this court could not decide on the information alone in isolation with absence of production of the specified deed of sale document of 1883. The Court must be able to verify and test such document to check on a number of formalities such as, who signed it and for which land and so on. Those questions had remained unanswered on the part of damily Moltamaute.

Our conclusion in regard to his origin is to pronounce that Moltamaute is a native of south Santo supported by the following outlined facts:

a. *In a piece of extract authored by early missionaries produced by CC3 shows that Kazuuzu and Vekauzu, an Araki couple, got married on the 15th of August 1902. This couple is the same couple husband and wife referred to his genealogy chart Ajuju and Veajuju.*
b. *Moltamaute's involvement with Toko and Fouticabo into the four land boundaries identification process was surely done in relation to the southern boundaries of Belmol as described by the document touching the land of Segnoniarou, situated at Peter Morris' farm South of Santo.*
c. *Equally, it must be noted that the language or dialect used in naming his daughters in in the South Santo dialect. Had Moltamaute been a real native of Belmol, he would have inevitably used the dialect of the area*

in dispute by naming his daughter beginning with Vo and not Ve as used when naming his daughter Veajuju for instance. This is a very important piece of information explaining his rightful origin.

Another piece of evidence exhibit TF6 that brought the question over their claim saw chief Kevin, father of the claimant, on the 3rd and 11th of March 1989, under the South East Santo Council of Chiefs in his capacity as a court member had declared Pio Varavara and Etienne Tura as custom owners of Belvos. It is doubtful as why would chief Kevin be part of such decision if the land of Belvos is part of Belmol as his claim suggest. That fact has mounted further doubt to his present claim.

For the reasons discussed, his claim cannot be sustained but fall as found.

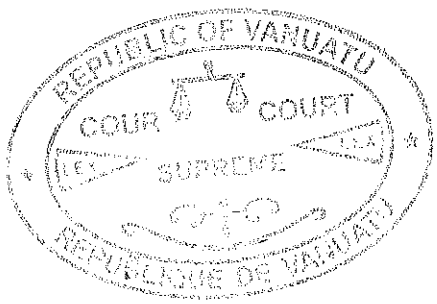
18. In our opinion, the Island Court had properly and fairly tried the facts and was rightfully entitled to make the findings and conclusions stated in relation to the credibility of evidence adduced by family Moltamaute.

19. We therefore are not satisfied that there was an error of facts or custom made by the trial court and we do not see any reason why we should interfere with those above-cited findings.

20. Ground 10 of family Moltamaute's appeal, filed on the 25th of September 2019, also cannot stand and is hereby dismissed

FAMILY TURA

21. Family Tura has based their appeal on several grounds which may be reduced to basically three issues:



a. Whether the Island Court erred in not considering all of their evidence and not giving enough weight to their evidence in relation to the right of a woman named Marie Vohuve whom they claim was the last surviving bloodline and heir of the chief and owner of Belmol land;

b. Whether the Island Court erred in not placing enough weight and consideration on the deed of sale by Rutja to John Higginson on the 23rd July 1890; and

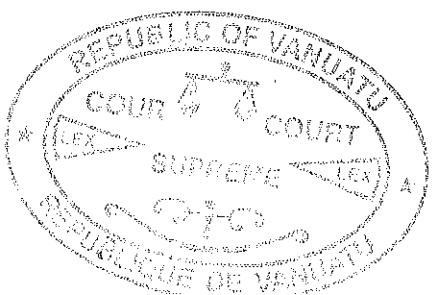
c. Whether the Island Court erred in expanding the boundary of the First Respondent to also cover Belmol and Beleru while their claim only referred to the land of Tambotal and Sevua.

22. Before addressing these issues, again It must be noted that this Court will only interfere with the decision of the Island Court if it is satisfied that the findings of fact and the findings of custom made by the Island Court in its decision on Family Tura's claim are wrong

23. The Island Court found that Family Tura is only claiming the land of Belmol through a woman by the name of Marie Vohuve, daughter of Tura Karae Davohi;

24. The Island Court also found that there are no surviving descendants of Belmol land. However the court accepted that Marie Vohuve and Pio Varavara are related and originate from the land of Belvos;

25. The trial court also confirmed that there was a declaration signed by Marie Vohuve and Pio Varavara (TF5 in their evidence) giving some right to Family Tura over some portion of the Belvos land . And ever since Family Tura has been actively involved in the land dealings over Belvos;



26. Based on these findings, we agree with the Appellant that the Island Court was wrong in not recognizing the customary rights of family Tura over Belvos Land as well as over Belmol Land;

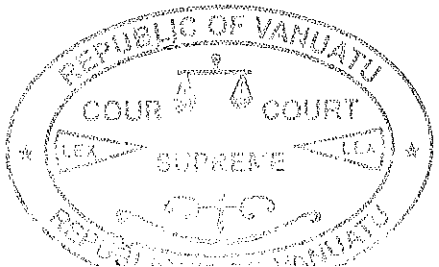
27. However we confirm that Marie Vohuve's interests and rights over the lands of Belvos and Belmol are secondary to Family Warawara and Varavara and family Taftumol

28. The findings of custom made by the Island Court that ***...family Tura has no right to claim the land of Belmol in custom through her mother Marie Vohuve because she has been paid the bride price by the husband Uri Bernard of Loltong Pentecost ....and that they have no right to claim the land of Belmol but have some right over Belvos land....*** is not totally correct.

29. As mentioned in paragraph 12 of this judgment, the Court finds that, according to the customary practice of Santo, a surviving member of the tribe may raise a claim of customary interest but only under or through a clan, a tribe or what is referred to in the Santo language as '*Vun*' but not directly relevant to customary and primary ownership of customary land. In other words, unless the patrilineal blood lineage is completely extinguished, the only surviving woman and her descendants may raise a claim of a secondary interest not based on her personal and individual family capacity but under the tribe or *"Vun"*.

30. This Court has also considered that if the Appellant's claim is correct that Marie Vohuve was the last surviving bloodline and heir of the rightful descendants of Belmol then there would not be any opposition by any other life blood descent when her descendants tried to occupy the Belmol land.

31. But the fact also that Marie Vohuve's husband had paid some bride price to her wife's surviving family on Belmol, clearly shows that there is a surviving life blood through the Varavara family on Belvos and the Taftumol family on Belmol;



That is the basis of custom for declaring that the rights of Marie Vohuve and her descendants through Family Tura is only a secondary right.

32. With regards to the description of the different lands, their respective boundaries and their names, we do not intend to interfere with the island Court's judgment on those issues but agree with the description and findings made as attached in the judgment of 12th June 2015.

33. We also agree that the names Belmol and Beleru refer to the same custom land as shown in the map attached to the judgment of the island court.

CONCLUSION

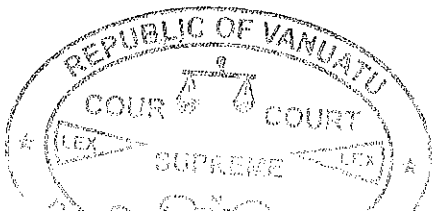
34. Therefore, the Findings of facts, customs and declarations of customary ownership and interests of the lands which are the subjects of this dispute made on the 12th of June 2015 by the Santo Malo Island Court are confirmed except for the following corrections and amendments:

a. Family Taftumol and their descendants are declared custom owners with primary interests over the land of Tambotal, Belmol and Beleru;

b. Family Loiror Lin and Family Taftumol and their descendants are declared custom owners both with primary and equal rights over the land of Sevua;

c. Family Warawara and Varavara and their descendants are declared custom owners with primary rights and interests over the land of Belvos;

d. Family Tura and their descendants are declared custom owners with only secondary rights and interests over the land of Belvos and Belmol.



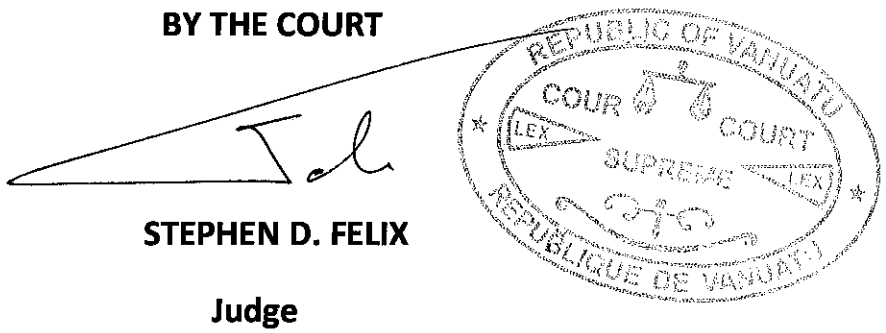
This means that their rights are not equal but subject to the rights and interests of family Vavara on Belvos;
And for the land of Belmol and Beleru, it is for Family Taftumol to decide which part of the Belmol land to allocate to Family Tura for their use in recognition of their secondary right.

35. The respondents are entitled to their full costs against all the appellants except for the appellant Family Tura who will only pay half of the Respondents costs.

36. These costs are to be agreed or taxed failing agreement.

Dated at Port Vila this 29th Day of June 2020

BY THE COURT



STEPHEN D. FELIX

Judge