

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

**Civil Appeal
Case No. 13/04 SC/CIVL**

BETWEEN: Japhet Lekum
Appellant

AND: Johnson Fresher
Respondent

***Date of Hearing:* 31 August 2016**

***Date of Delivery:* 29 December 2020**

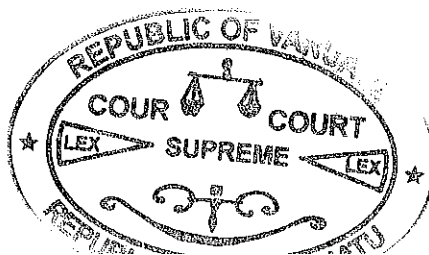
***Before:* Vincent Lunabek, Chief Justice
Pastor Jeffery Eddie – Customary Advisor
Pastor Dick Daniel – Customary Advisor**

***Counsel:* Mr Bruce Kalotiti for the Appellant
Mr Leon Malantugun for the Respondent**

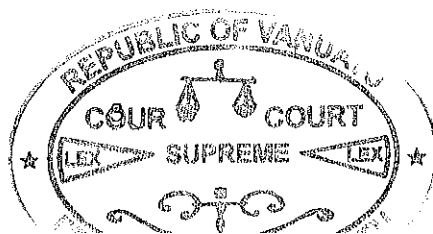
RESERVED JUDGMENT

A. Introduction

1. This appeal was filed by the Appellant on 19 April 2013 against a judgment of the Magistrate's Court sitting at Lakatoro, Malekula, delivered on 10 July 2013.
2. The decision of the Magistrate's Court of 10 July 2013 upheld, on appeal, a decision of the Malekula Island Court dated 28 March 2013, on a custom chiefly



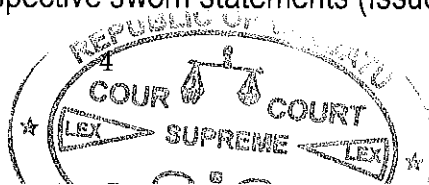
2	Magistrate Court, Civil Appeal Case No. 1 of 2012: Johnson Fraser and Japeth & 5 Ors. V Wilson Malsets & 6 Ors.	25 October 2011	Magistrate Court dismissed MIC decisions of 22/10/10 & 29/3/11 and ordered each party to pursue their claim of chiefly title in respect of their own nasara. Note: This is where Johnson Fraser pursue claim of chiefly title over Potun nasara.
3	Malekula Island Court, Civil Case No. 43 of 2011: Johnson Fraser v Aisen Jimmy and Japeth Lekum	20 December 2011 24 January 2012 28 March 2013	Island Court made interlocutory order Island Court declared Japeth Lekum as paramount chief of Potun nasara. Island Court declared Johnson Fraser as chief of Potun nasara and Japhet Lekum as small chief of Johnson Fraser.
4	Magistrate Court, Civil Appeal Case No. 1 of 2012: Johnson Fraser & 2 Ors v Japeth Lekum	23 July 2012	Magistrate quashed decisions of 20/12/11 & 24/1/12 and matter referred back to Island



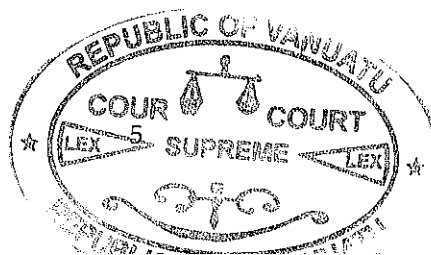
			Court with (7) specific issues to determine.
5	Magistrate Court, Civil Appeal Case No. 3 of 2013: Japeth Lekum & Ors v Johnson Fraser	10 July 2013	Magistrate Court upholds decision of Island Court dated 28 March 2013.
6	Supreme Court, Civil Appeal Case No. 4 of 2013: Japhet Lekum v Johnson Fraser.	Pending Judgment	This is the current appeal before Supreme Court.

c. The Malekula Island Court judgment dated 28th March 2013

5. The Island Court Case No. 43 of 2011 was a civil case between Johnson Frazher (original claimant) and Maklin Malbury (first counter-claimant) and Lekum Japeth (second counter-claimant). It was a custom dispute about a chiefly title of Potun Nasara on Uripiv Island, Malekula.
6. The following seven (7) custom issues were raised and determined by the Malekula Island Court:
 - (i) Whether the ancestor of the Respondent (Johnson Frazher) was adopted from Potun Nasara (Issue A)?
 - (ii) Whether the Respondent was a paramount chief pursuant to a letter of the Malvatumauri National Council of Chiefs (Issue B)?
 - (iii) Whether the Respondent can claim the pig tasks and proved them to the court as the chief of Potun without D.A.N. (Issue C)?
 - (iv) Whether a party is able to refer to events and circumstances of people mentioned in their respective sworn statements (Issue D)?



- (v) Whether counter-claimant 1 was the right person to claim the paramount chiefly title of Potun but not the Respondent (Issue E)?
 - (vi) Whether a paramount chief can move from his original nasara to another (Issue F)?
 - (vii) Whether under the customary law, a paramount chief can claim chiefly title without performing any "Namangi" ceremony or custom performances to attain status and rank as a custom chief (Issue G)?
7. The parties filed sworn statements, gave oral evidence and were cross - examined on these seven issues before the Malekula island Court.
8. The Malekula Island Court, properly constituted of three (3) justices, heard the disputing parties, considered their evidence and found that:
- (i) On issue A of adoption – Mawinjiri, the ancestor of the Respondent was not adopted into Potun Nasara. A witness of the first counter-claimant confirmed this. Family Frazher was always living and still lives in Potun Nasara. The graves of Malwinjiri and others are located at Potun Nasara.
 - (ii) On issue B of the letter of Malvatumauri, there was no complete evidence that Family Frazher was the paramount chief of Uripiv Island. The letter of the Malvatumauri just confirmed the status of the Respondent at a point in time in Potun Nasara at Uripiv Island.
 - (iii) On issue C of pig tasks – the Court found the Respondent had pig's tusks but there was no DNA test. The court accepted that the pig's tusks can be exhibited as evidence of pig killing ceremony to the status of a Custom chief as a custom practice and tradition. It is sufficient evidence in custom of the identity of accustom chief. There is no need for DNA.



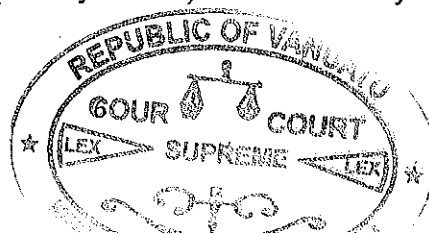
- (iv) On issue D – the Court found that Family Frazher (Respondent) had performed custom ceremonies from generations to generations at Potun Nasara. There were custom identities of Family Frazher inside Potun Nasara. Family Frazher had obtained high rank of custom ceremonies they performed at Potun Nasara.
- (v) On issue E – the Court found that the First counter-claimant (Maklin Malbury) was the child of one Jimmy. Malbury's grave was outside of Potun Nasara; did not know how many custom ceremony of Namangi were performed at Potun Nasara. The Court found that the original claimant (Respondent) did not know of all the custom identities located inside Potun Nasara and the First Counter-claimant too, was part of the custom activities performed at Potun Nasara.
- (vi) On issue F – it was found that Family Frazher (Original claimant), the Appellant, lived inside Potun Nasara but never moved out from Potun Nasara.
- (vii) On issue G – the Court found that the original claimant (Respondent) was from the bloodline of the big chief of Potun Nasara because they buried all members of Family Fasher inside Potun Nasara.

9. The Malekula Island court, assessed the versions of customs on respected above issues, determined the appropriate customs as facts the Court believed on each issue and applied them in the following way:

"Decision

Based on the evidence and findings, the Court ruled that:

1. *John Frazher (Family Frazher) is the chief of Putun Nasara only.*
2. *Family Lekum is small chief under Family Frazher inside Potun Nasara*
3. *Maklin Malbury (Family Maklin) claim... Chiefly title of Potun Nasara is struck out.*



30 days is given to any aggrieved party to lodge an appeal against the decision of the Court of 28 March 2018?"

10. The appellant, Lekum Japeth, appealed against the Malekula Island Court Decision of 28 March 2013 before the Magistrate's Court.
11. The Magistrate's Court heard the appeal against the Malekula Island Court judgment of 28 March 2013 and gave its judgment on 10 July 2013.

D. **The appeal judgment of the Magistrate's Court dated 10 July 2013 appealed against.**

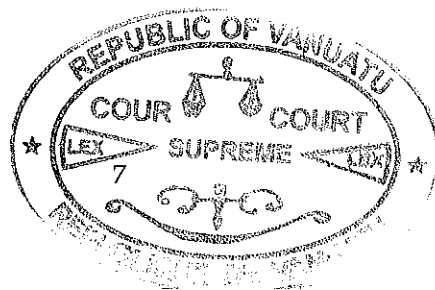
12. What follows is the relevant part of the judgment of the Magistrate's Court dated 10 July 2013:-

"[20] Now, the Appellant (sic) Court after considering all the parties submissions, the Court make its findings, on the first Appellant's ground of appeal as follows:-

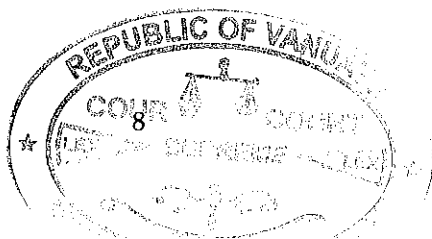
[21] This Court is satisfied that the learned justices had properly considered the Malvatumauri letter. There is no need to thoroughly scrutinize the Malvatumauri later (sic) when it is in ... to paramount chief had been dealt with the justices of the island Court had made proper findings in respect of the Malvatumauri.

"[22] ... the Malvatumauri provided this letter to the Court to assist in stating its opinion on custom and tradition.....

[23] The Malekula Island Court as a trial Court had properly made its findings upon hearing all the parties... the Respondent say a Chief title and not a right over customary land. The Court shall not interfere with the decision of the island Court.....



- [24] *The First appellant had been changing his history and had been elaborating further on his claim without leave of the Appellant (sic) Court when the matter was referred back to the Island Court for determination of some issues. The first appellant is ensuring of what he claims before the island Court by changing his history more than once.....*
- [25] *The Court is satisfied that the Island Court has sufficient evidence to state that the Respondent is a descendant of Maltarian. All parties do have their individual Masara upon the Island. The Court shall not make any finding to contradict the findings of the Island Court.*
- [26] *The Court shall not interfere with the procedure undertaken by the Island Court Justices as to how they proceed (sic) and collected their evidence during the re-hearing of the matter. The Court is satisfied that the appellant originally came from Ameligan and related Amel Taun with a man from Ambrym where he performed a custom pig killing there is evidence of pig killing but the Court is satisfied that the pig killing happened within Amel Taun which is consistent with the appellant's claim before the island Court.*
- [27] *The first appellant's claim stated that after a conflict with a man from Ambrym, his ancestor left and arrived at Potunbar within the area of Potun where some people told his ancestors to stay overnight because it was not safe. In custom the first appellant's ancestors were provided shelter. The Island Court has made its proper findings and this Court shall not interfere with...*
- [28] *The Court is satisfied that the respondent is not the bloodline of the first appellant. The respondent's ancestor Nialman was killed and his son and widow were taken to Wulosij's care when the widow becomes the Willosij's second wife. The ancestor is the son of the deceased Nialman.*
- [29] *The Court shall not interfere with the procedure undertaken by the Island Court Justices as to how they proceed (sic) and collected their evidence during the re-hearing of the matter. The Court is satisfied that the appellant originally came from Ameligan and related Amel Taun with a man from Ambrym where he performed a custom pig killing there is evidence of pig killing but the Court is satisfied that the pig killing happened within Amel Taun which is consistent with the appellant's claim before the island Court.*



[30] The first appellant's claim stated that after a conflict with a man from Ambrym, his ancestor left and arrived at Potunbar within the area of Potun where some people told his ancestors to stay overnight because it was not safe. In custom the first appellant's ancestors were provided shelter. The Island Court has made its proper findings and this Court shall not interfere with...

[31] The Court is satisfied that the respondent is not the bloodline of the first appellant. The respondent's ancestor Nialman was killed and his son and widow were taken to Wullosij's care when the widow becomes the Willosij's second wife. The ancestor is the son of the deceased Nialman. The Court is satisfied that Wullosij had no upbringing with Nialman's widow. The Court shall uphold the findings for the trial Court.

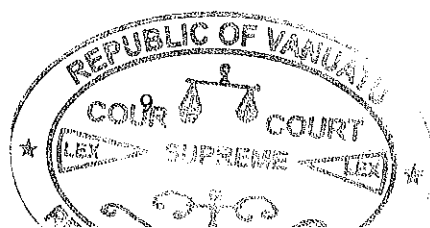
[34] ... To revoke the Island Court decision to strike out the second appellant as a party and order that the Respondent must recognise the Second Respondent being of same blood line.

[36] Concerning the issues dealt with by the Court in its re-hearing of the matter, the Court is satisfied:-

- ❖ The Island Court had properly dealt with the issue of adoption,
- ❖ That the Island Court had properly dealt with the letter of Malvatumauri Council of Chiefs,
- ❖ That the Island Court had properly dealt with the pig tusk,
- ❖ That the island Court had properly dealt with each parties (sic) history, family tree and all the witnesses available before he Court,
- ❖ That the Island Court had properly dealt with rights of each party,
- ❖ That island Court had properly dealt with the movements of party and applied customary law and traditions to their best knowledge,
- ❖ That the Island Court had properly dealt with how a chief could be ranked by way of pig killing,

[37] Upon these findings, this Court orders that:

- (1) The Respondent as a chief of Potun nasara is in accordance with the findings of the Island Court dated 28 March 2013.
- (2) The First Appellant is the small chief of Potun nasara.



- (3) *The Second Appellant has no chiefly right but, must be recognised by the Respondent as being of the same bloodline as the Respondent.*
- (4) *First and second appellant shall pay re-imbusement to the Respondent in the sum of VT 15.000 for filing fee and transport."*

E. Grounds of appeal

13. The appellant made this appeal upon four main grounds, namely:-

- (a) That the Magistrate's Court failed to uphold and apply the established customary laws of Malekula Island regarding chiefly disputes and land disputes and that such customary laws strictly exist together, that is one cannot become a Chief unless he owns land and/or blood related as in the case of a paramount Chief. The one who first explore land and build a nasara owns the land and have chiefly control over that land.
- (b) That the summary of evidence of the appellant which was advanced before the lower court and accepted by the Island Court but the Magistrate's Court failed to apply the customary law.
- (c) The other two grounds of appeal raised similar sort of issue. They will be dealt with and considered together with the first two grounds.

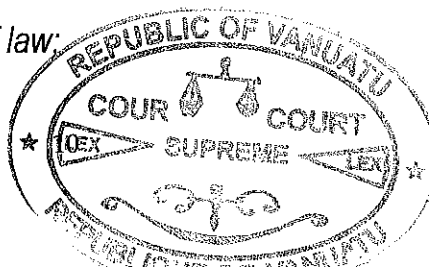
F. Discussion

14. The appellant submits that the Supreme Court has power to hear and determine this appeal pursuant to section 30 of the Judicial Services and Courts Act [CAP. 270] ("the Act"). The relevant parts of that section provides:

"30. *Appeals from Magistrates' Court*

(1) *Subject to the provisions of any other Act, the Supreme Court has jurisdiction to hear and determine appeals from judgments of the Magistrates' Court on all or any of the following:*

(a) *a question of law;*



- (b) a question of fact;
- (c) a question of mixed law and fact.

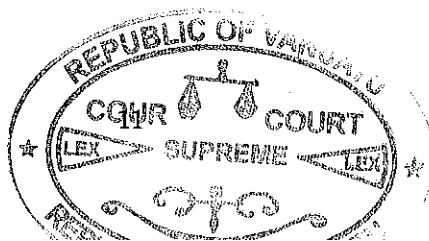
(2) *The Supreme Court in hearing an appeal:*

- (a) *is to proceed on the face of the record of the Magistrates' Court; and*
- (b) *may exercise such powers as may be prescribed by or under this Act or any other law; and*
- (c) *has the powers and jurisdiction of the Magistrates' Court; and*
- (d) *may review the procedures and the findings (whether of fact or law) of the Magistrates' Court; and*
- (e) *(e) may substitute its own judgment for the judgment of the Magistrates' Court; and*
- (f) *may receive evidence.*

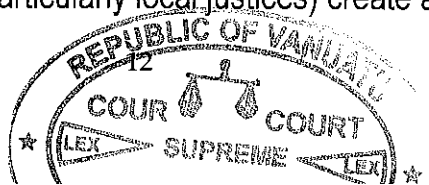
(3) *(Repealed)*

(4) *The Supreme Court is the final court of appeal for the determination of questions of fact. However, an appeal lies to the Court of Appeal from the Supreme Court on a question of law if the Court of Appeal grants leave."*

15. The court agrees with the Appellant's Counsel on the jurisdiction of this court on this sort of appeal case. The power of this Court to deal with this kind of appeal is clarified and set out under Section 30(1), (2) and (4) of the Act (Cap. 270). This court proceeded with this appeal on the face of the records of the Magistrate's court (s. 30 (2) (a) and that no evidence was received by this Court (s. 30 (2)(f)).
16. The following statutory and constitutional provisions assist the Courts in this sort of case presently under appeal, namely, section 10 of the Island Courts Act [Cap 167] and Article 47 (1) of the Constitution. They respectfully provide as follows:-



- (i) Section 10 of the Island Courts Act provides:- *“Subject to the provisions of this Act, an Island Court shall administer the customary law prevailing within the territorial jurisdiction of the Court so far as the same is not in conflict with any written law and is not contrary to Justice, morality and good order.”*
- (ii) Article 47 (1): *“The administration of justice is vested in the Judiciary, who are subject only to the Constitution and the law. The function of the Judiciary is to resolve proceedings according to law. If there is no rule of law applicable to a matter before it, a Court shall determine the matter according to substantial justice and whenever possible in conformity with custom”*
17. It has to be noted that the Supreme Court does not administer custom. Neither does any subordinate law court.
18. When there is a dispute involving a custom matter, such as a custom chiefly title, then, an island court ***“shall administer the customary law prevailing within the territorial jurisdiction of the court so far as the same is not in conflict with any written law and is not contrary to justice, morality and good order.*** (Section 10). Likewise, land tribunals administer the customary land law prevailing in each area or island within the territorial jurisdiction of each tribunal on the basis of the accepted rules of custom (see also Article 74 Constitution). [My own emphasis].
19. Thus, custom is not a law but it is a fact. So, custom, as a fact, has to be first proved, through judicial discovery and fact finding processes in the cases before the courts or tribunals by evidence of custom [fact and expert] (through most commonly conflicting evidence of custom). Second, the custom has to be found, accepted as applicable custom (not inconsistent with any written law, justice, and morality and good order). Third, it has to be declared and applied (enforced) as law by these courts or tribunals. This is where article 47 (1) of the Constitution has its significance in the application of custom when there is no rule of law or substantial justice applicable in such given cases. This results in establishing the customary law applicable in a given case.
20. This brief reflection is important to understand what the Constitution says and means in Article 95 (3) that: ***“Customary law shall continue to have effect as part of the laws of Vanuatu.”*** It is in that sense that the recognition of customary law as part of the laws of Vanuatu, is proclaimed under the Constitution (Art, 95 (3)). Judges (including particularly local justices) create and refine this customary



law through interpretation and application of declared custom as applicable custom in such given cases. The decisions of the courts (and tribunals) thus establish precedent for future interpretation of the customary law by judges in the same or lower courts within the same jurisdiction. Judges (and local justices) then refine this interpretation in future cases by extending it to different facts and circumstances. It will be a matter of good sense and time in the development of customary law. That is the statement of the principle.

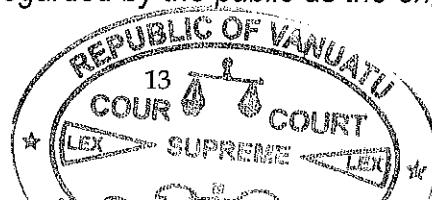
21. Returning now to the facts of this case, the Appellant and the Respondent come from the same custom area, island and under the same customary law, the law applicable to their case should be their customary law. The Malekula Island Court has made these findings and came to its conclusion on 23 March 2013. The Magistrate's Court by detailed analyses of the Malekula Island Court's judgment, reasoning, findings and applicable customs, has accepted them as the application of the proper custom in the case under appeal. There is nothing wrong with what the Magistrate's court did, found as applicable custom (as a matter of fact). That must put at rest the challenge to factual findings made by the Malekula Island Court in its judgment of 23 March which were confirmed by the Magistrate's Court in its judgment of 10 July 2013.
22. The only legal issue on this appeal giving rise to the jurisdiction of this Court is whether or not the Magistrate's Court had failed to apply the Malekula established customary law regarding chiefly title disputes as applied in the following cases:-

- a) **Manie .v. Kilman (1988); [1980-1994] Van LR 343-** The then Chief Justice Frederick Cook states:

"It is clear to me that the custom of Malekula is that the persons who first arrived on the land and built a Nasara there, even though they moved later, for some reason or somewhere else, they are true customary owners of the land."

- b) **Awop .v. Lapenmal [2007] VUIC 2:** Magistrate Edwin Macreveth states that:

"It is the common trend that the first person to explore, live and control a land boundary would eventually become the original chief of the territory. This chief on behalf of his tribe or family would normally be referred or regarded by the public as the original custom owner of the

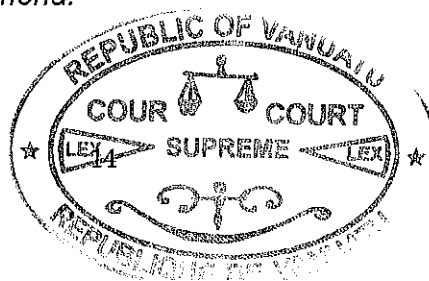


land. He would become the paramount chief or sometimes referred to as big faea of the land boundary. The members of his tribe or group communally own undivided interests in the land.

The tribe which forms the land owning unit is normally based on blood relationship, meaning, they are all related by blood, having descended from a common or original ancestor. This family unit would be regarded as the big faea having a single bloodline. In practice, the first person and his family to arrive at the disputed land and built a nasara there, are the custom owners of the land. It makes no difference whether they left again for some other reasons, they would be designated as the custom owners.

The paramount chief has control and authority over his land boundary. It is a political monarchy type of organization whereby the supreme chief normally exercises authority over his subordinate chiefs residing within his land territory. Any incoming tribes accepted into the area would remain under the control and authority of the principal chief. After exchange of custom processes, such a clan may be allocated a parcel of land specifically for subsistence use only. He would be allowed to take part in namangi ceremonies and other custom processes in the land. But, such event cannot entitle such individual chief to claim ownership over the place of performance. All subordinate chiefs also referred to as smol faeas are accountable to the head chief in respect of every social affair.

Chiefs are usually nominated on the basis of custom values, wealth, bravery and other common characteristics. The land owning chief and his subordinates would all have nakamals and nasaras. A man earns his chiefly title or name by way of performing a namangi (magi) or pig killing ceremony. The common chiefly name is Mal, Mel or Mulon a naming word that would procedurally be received by a man at an ordination during a magi feast. There are different stages of status in hierarchy for a chief to acquire. Pig killing ceremonies would normally occur at a nasara. The first ever built nasara of a tribe becomes the original nasara. A nasara is usually identified by man-made features such as erected stones, natural plants such as namele palms and other identical phenomena."



- c) **Ourinmal V Ourinmal [2008] VUIC 1:** The Malekula Island Court stated clearly the custom principal that:

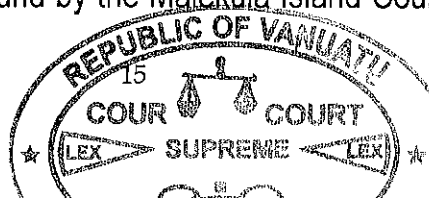
"The common practice and custom inside a Nasara, in the past and until this day was that the eldest son shall inherit the title of chief. No other eldest son, but the eldest son according to bloodline. If a mother has already being pregnant with a son and move in with her son to live with a chiefly father, that son must be submissive to the chiefly authority of the real eldest son of the chief."

- d) **Joselito v Nioenmal [2008] VUICB 1:** The Malekula Island Court stated that:

"Another custom practice is that, a person that has moved in from another place or island shall not remove the title to become a chief of the people. He shall always be submissive towards the original people of the area. If ever, the bloodline of the paramount chief is no longer in existence, and then the small faea or small chief shall be the next person in line to be bestowed with such title."

23. In respect of each of these above cases, the following observations could be made:-

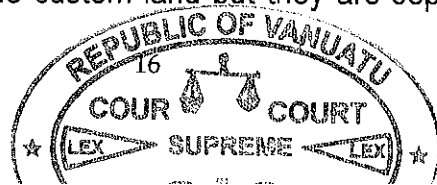
- a) **Manie v Kilman [1988]** case is not a custom chiefly title dispute case. It is a custom ownership land dispute case. It is about how custom land ownership is established in that region of Malekula and how authority over the said land is managed.
- b) **Awop v Lapenmal [2007]** case is not a custom chiefly dispute case. It is also a custom land ownership dispute case and how authority over the said land is managed by the paramount chief within the custom tribe or family unit and other people. On the facts as found by the Malekula Island Court on 23 March 2013 and upheld by the judgment of the Magistrate's court of 10 July 2013, this case cannot assist the case of the Appellant. But it assists the case of the Respondent.
- c) **Ourinmal v Ourinmal [2008]** case is a custom chief title dispute between sons; inheritance goes to the eldest son of the chief. On the facts of this case under appeal as found by the Malekula Island Court of 23 March 2013 and



confirmed by the Magistrate's court judgment of 10 July 2013, the Appellant and the Respondent are not of the same bloodline. The Ourinmal case is not applicable to the current case under appeal.

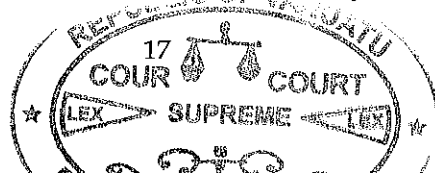
- d) Joselito v Nionmal [2008] case is also a case of custom chiefly title, its ratio (decidendi) is the same as Ourinmal case. Another principle is that a person who moved from another place or island to a new place or island cannot remove the title of the custom chief to become the chief of the people. He shall be submissive to the chiefly original authority. On the facts of this case under appeal as found by the Malekula Island Court on 23 March 2013 and confirmed by the Magistrate's Court judgment of 10 July 2013, the respondent and his ancestors are always there at Potun Nasara. They were buried there with others; their custom identities and evidence of their custom performances are at Potun Nasara which includes the pigs' tasks.
- e) A further comment is that it was found by the Malekula Island Court in its decision of 23 March 2013 and confirmed by the Magistrate's court's decision of 10 July 2013 that the Appellant changed his versions of facts more than once and this made it difficult for the courts to believe his evidence of custom. The reasons for the Appellant to change his evidence without leave of the court and without justification must be only known to the Appellant.

24. What it is in dispute before the Malekula Island Court is a custom chiefly title dispute over Potun Nasara but it is not a custom land dispute. The resolution of the dispute is to apply the customary law prevailing on custom chief title on the area or region of the dispute within the territorial jurisdiction of the court (here, Malekula Island Court). The Malekula Island Court did so by applying the applicable custom on custom chief title dispute (as found by the court) prevailing in the area or region of the dispute on Malekula, namely, Uripiv Island. The Magistrate's Court confirmed this by refusing to accept the submission of the Appellant's Counsel to apply the customary law as applied in custom land dispute cases. In the circumstance of this case, the Magistrate's Court was right in its decision of 10 July 2013 on this point.
25. It is a matter of sense and principle not to confuse between those two subject matters of custom (custom chiefly title and custom land) before the courts or tribunals. There may be situations of inter-actions or inter-connections between the custom chief and the custom land but they are separate matters of custom



facing or coming into contact with the law. The dispute over the custom chief title is about the process of how in custom a chiefly title is acquired, in what circumstances and by whom in custom. That is, because, in essence, it involves the custom power entrusted via a custom title (on perceived legitimacy) bestowed a custom authority on a single individual (as power is for the authority) whilst the second is about right(s) declared in and/or over custom land to persons, or a family, or groups or tribes or descendants of traditional owners and users of custom land. [My own emphasis]. Power and right are fundamentally not the same thing. **Power**, here, is individual's capability of the custom chief to control or direct by using his custom authority to influence others while **right** is that which complies with justice, law or reason once declared and enforced in this category of rights in Article 74 under Chapter 12, Constitution.

26. It will be a serious mistake to treat power and right as the same thing. Such a mistake reflects a serious misunderstanding of the difference between rights and power. That is a dangerous concept to get wrong. Treating power as a right can easily be used to justify any abuse. In our society based on the rule of law, power is not inherent, as are rights, and in particular rights enshrined and protected under Chapter 5 of the Constitution whilst other rights under the Constitution (here, Article 74 rights under Chapter 12) are not inherent but they are protected once declared and enforced. Power is not inherent but it is granted under the Constitution and the statutes. The power of custom chiefs is not granted by the Constitution or any statutory law but it is only recognized to protect custom, custom practices and traditions that are not inconsistent with any written law, not contrary to justice and morality or good order. Individuals have rights; groups (including governments) have power. For the purposes of the judgment of this court, on the notion of power, custom chiefs are included in the groups that have power.
27. The courts and tribunals confronted with this amalgamation issue have to be aware of this confusion and avoid it for the sake of clarity and justice in the proper development of the customary law as part of the laws of Vanuatu.
28. Based on the above considerations, I conclude that there is no error made by the Magistrate's Court in its analyses of the Malekula Island Court judgment of 23 March 2013 on its discovery, findings and application of applicable custom relating to this chiefly title dispute in that region of Malekula.
29. This conclusion is consistent with the custom advice I have received from the two custom advisors before the judgment is written. I commend these judgments of the Malekula Island court on these custom chiefly titles disputes on that specific



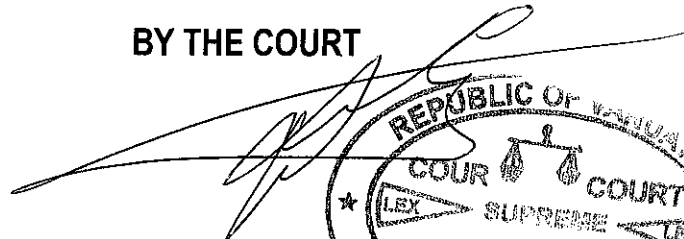
area or region of Malekula Island. I only regret that it has taken more than expected and I accept full responsibility for the time it has taken.

G. **Disposition**

30. The appeal is dismissed.
31. The Appellant shall pay the respondent's costs of and incidentals to that appeal on the standard basis; and such costs shall be determined failing agreement.

Dated at Port Vila, this 29th December 2020

BY THE COURT



**Vincent Lunabek
Chief Justice**

