

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

Land Appeal Case No. 16/1567
Land Appeal Case No. 02/2015

BETWEEN: **FAMILY KALSAKAU**
Appellants

AND: **CHIEF MARAMARA MANREALIMA**
First Respondent

AND: **NAREO MARIK ATLANGI**
Second Respondent

AND: **FAMILY BAKOKOTO**
Third Respondent

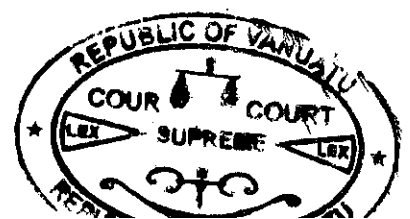
AND: **RICHARD KALTONGA**
Fourth Respondent

AND: **HENRY SAUREI on behalf of Family Saurei**
Fifth Respondent

Coram: ***Justice Aru***

Assessors: ***Mr. Felix Thomas***
Mrs. Serah Paton

In Attendance: ***Mr. S. Kalsakau for the Appellant (Family Kalsakau)***
Mr. E. Molbaleh for the First and Second Respondents (Chief Maramara
Manrealima) and (Chief Nareo Marik Atlangi
Third Respondent (Family Bakokoto) in person
Mr. D. Yawha for the Fourth Respondent (Richard Kaltonga)
Mr. J. Kilu for the Fifth Respondent (Family Saurei) no-appearance



RESERVE JUDGMENT

Introduction

1. This is an appeal by family Kalsakau against a decision of the Efate Island Court (EIC) dated 20 February 2015.

Judgment under appeal

2. The land which was the subject of the dispute before the EIC was registered with the Island Court as *Biritano* and *Sumalapa* located at Malapoa Point on Efate.
3. In its decision as to custom ownership of the disputed land, the EIC made the following declarations:-

“ DEKLERESEN

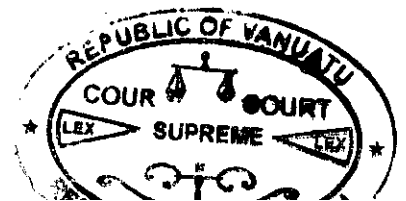
Afta we kot I kondactem ful trael long klem ia, mo harem olgeta toktok blong evri pati wetem olgeta faending, Kot is stap mekem ol deklereesen olsem:

1. *Family Narewo mo olgeta descendants blong hem I kastom ona blong kraon we I stap insaed disputed land we I pat blong olfala taetol # 57G.*
 2. *Richard Kaltonga, hemi kat raet blong yusum kraon ia subject long otority blong family Narewo.*
 3. *Family Maramara wetem ol descendant i kastom ona blong disputed kraon we I stap insaed olfala taetol # 34.*
 4. *Kot I stap dismisim klem blong klema 1, 2, mo 3.*
- Kot I atajem wan map blong spesifaem olgeta mak blong kraon blong olgeta pati we I winim kes blong olgeta.*

Kot I wantem klarifaem long olgeta pati se eni kraon we I stap aotsaed long kraon we kot I bin advetaesem bae kot ia I no mekem desisen long hem. Hemia I minim se ol interested pati I save lonjem ol klem blong olgeta I ko long respektif nakamal blong harem anda long Kastom Land Manejmen

Act.

Dekleresen ia hemi no afektem ol nara propati raet long kraon blong mekem karen mo olgeta nara existing developmen long kraon. Be olgeta



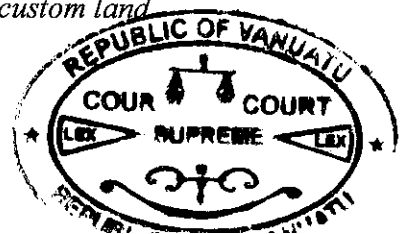
*pati mo olgeta we I laef long kraon ia I mas rememba se kastom ona blong kraon I kat raet blong jenisim o limitim olgeta raet ia. Eksesaes blong raet ia hemi limited nomo long olgeta existing prapati bifo dekleresen ia.
....”*

The appeal

4. The relief sought by the appellant in their notice of appeal is that the EIC judgment be quashed and an order be issued for a fresh hearing to be conducted under the Customary Land Management Act No 33 of 2013.

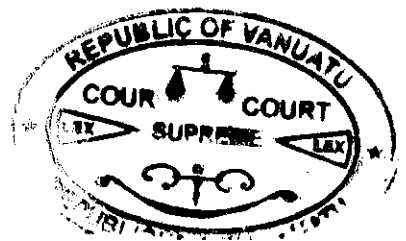
Grounds

5. Family Kalsakau appeals the judgement on the basis that the EIC misdirected itself before arriving at its decision. In summary the appeal grounds are as follows:-
 - *By determining that the only land that was the subject to the dispute was Biritano, Sumalapa and Tegarua without reference to portions of Kaweriki land;*
 - *By accepting that Bakokoto, Maramara and Nareo Atlangi were chiefs;*
 - *By not permitting the final two witnesses of family Kalsakau to be cross examined particularly when one of the witnesses was the chief of Ifira knowledgeable in custom;*
 - *By failing to find or make a distinction between a chief and a custom owner;*
 - *By finding that a lot of the claimant's family's ancestors were working on the disputed land since around 1930 to date;*
 - *By finding that the influence of a cash economy and the building of houses contributed to the dispute that has come before this Court;*
 - *By incorrectly determining that not only one had to prove that they originated from a chief but also to prove the existence of a marae or nasara on the disputed land to establish customary ownership;*
 - *By a) giving effect to the validity of the deeds of sale without making a proper enquiry about the capacity of natives to enter into such transactions and the motives of those intent on upon securing custom land*



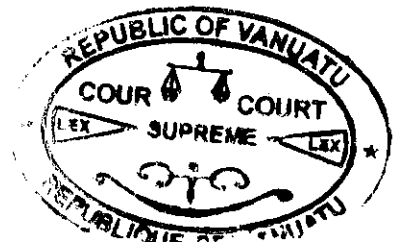
during those times; b) identifying that the presence of deeds in other areas could give support to the presence of a chiefly structure or relationship

- *By determining that the land in dispute was part of a bigger customary boundary without proper enquiry about the extent of that boundary how situated and upon which rule of custom and whether the land in question did in fact form part of the bigger boundary;*
- *By finding that people only moved to the disputed area in the 1930s;*
- *By maintaining because of a deed purportedly executed by a jif Nareo Marik Atlangi on 4/9/1874 and not having entertained whether there was a connection with the Nareo claimant before the Court at first instance that that itself could be direct evidence against the claim by Kalsakau Makaurei family to customary ownership of the land in question;*
- *By misrepresenting George Kalsakau's book on "The Three Flags" about the manner upon which Tarimata Kalsakau ascended to chieftainship and the part that ordination served in that ascension;*
- *By inaccurately determining that it was George K S Kalsakau who had been elected by the missionaries and the people of Ifira as paramount chief and improperly relying upon the evidence of the parties without making proper enquiry as to its authenticity;*
- *By improperly determining that only custom chief under Ifira custom could own all land and share it with his people with respect the land in question;*
- *By giving negligible or no consideration and or weight to a dated 4 November 1964 signed by Chief Graham Kalsakau II and his Council comprising senior esteemed educated leaders Ifira Tenuku protesting yet still over the sale of their lands by "Narewa" or "Nareo" and of which a bounty was set on his head and the fact that as early as that time Ifira did not recognise that Nareo was custom owner of Ifira lands he had entered into deeds with early traders and planters;*
- *By placing improper reliance in isolation upon a previous judgement on a previous land about George Kalsakau saying in that Court that his father was Makaurei who had married a woman named Kaitaemama who was a descendant of Nareo and not properly directing itself upon the context upon which that appeared in a said previous Court;*



- *By being inaccurate about Kakaurei's relationship with his only wife, Leisingi and his concubines , Pakenu and Kaitaemama;*
- *By determining by way of generalised and inaccurate summation that Makaurei could not have been Kalsakau's father to improperly determine that family Kasakau were not even sure of their family line;*
- *By determining in error that it was necessary for the Kalsaka family to identify nameless, stones and other structures to establish the existence of a nasara fact that the land in question without appreciating the fact that there had been subsequent developments on the land and without also enquiring under Ifira custom how customary ownership could be identified in addition to earliest occupation;*
- *By erroneously connecting the evidence of Kalpeau Kalsakau's account of occupation as early as 1940 to the return of land in 1930 without properly enquiring as to the manner upon which the native reserve was established and the fact that it had not predated customary occupation thereby erroneously concluding that Kalsakau family occupation on the land in question could only have been attributed to a Joint Court declaration in 1930;*
- *By erroneously making a connection between the Nareo family in this case and the Nareo family in Land Case No 1 of 1993 and by so doing applying the decision in appeal case No 1 of 3 in error;*
- *By improperly interpreting the relationship between Grube of Germany and Nareo Marik Atlang to find there to be no connection in order for counter claimant 5 to have locus standi to claim on behalf of Nareo Marik Atlang;*
- *By not properly directing itself upon the withdrawal of witnesses from the purported family Nareo and family Maramara from cross examination; and*
- *By failing to properly account for the land visitation in its judgment and properly enquire into the boundaries of the lands claimed by the parties .*

Application for fresh evidence



6. Before the hearing the appellant filed an application to adduce fresh evidence supported by a sworn statement of Kaltak Kalsakau. On hearing the parties, it became obvious that there was no intention to call Mr Kalsakau to give fresh evidence. The intention was to provide the Court and parties with copies of documents referred to by the parties before the EIC. We did not see that as new evidence or that any party would be prejudiced by their production. The documents we accept for consideration are extracts from the "History of The Three Flags" by G K Kalsakau (**Annexure KK2**), "Live Book 5" by J Graham Miller (**Annexure KK3**) and documents relating to the Deed of Sale of Anabrou or Laknaporo land (**Annexure KK4**).

The law

7. We refer to the following provisions of the Island Courts Act [CAP 167] (the Act) and Island Court Rules Order No 28 of 2005 (the Rules) which are relevant for consideration. First is s 10 which states:-

"10. Application of customary law

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. "

8. And s 22 (3) states:-

"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. "

9. And s 23 (b) states:-

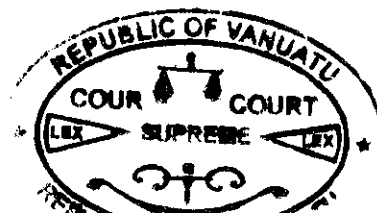
"23. Power of court on appeal

The court in the exercise of appellate jurisdiction in any cause or matter under section 22 of this Act may –

....

- (b) *order that any such cause or matter be reheard before the same court or before any other island court. "*

10. Under the Rules, all land claims must be advertised (Rule 1 (7) . More relevantly Rule 6 (10) states:-



“(10) Land to be visited

If a claim is in respect of ownership or boundary of customary land, the court must visit the land and inspect the boundaries before making judgment. ”

11. And Rule 7 (3) and (4) states:-

“

(3) Judgment must be based upon evidence

The judgment of a court must always be based upon the evidence that has been given to the court, but should not be based upon information that has come to the knowledge of the justices from outside the courtroom.

(4) Judgment must be given in favour of party whose evidence is more convincing

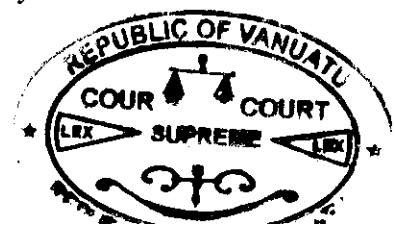
The judgment of the court should be given in favour of the party whose evidence is, in the opinion of the justices, more convincing.

....”

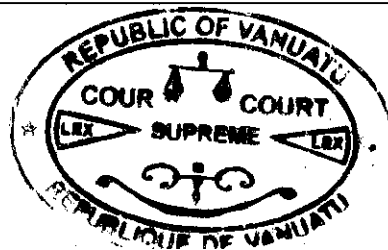
Submissions

12. Family Kalsakau filed lengthy written submissions in support of their appeal. Grounds 13 and 25 of their notice of appeal were abandoned. Family Bakokoto also spoke in favour of these submissions. In summary the appellant submitted that:-

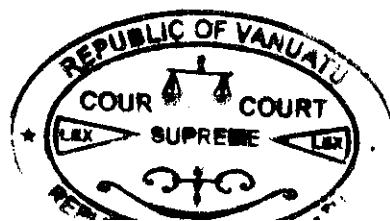
- There was evidence of a dispute concerning the custom name of the disputed land and its boundary. There was also evidence of an overlap between two custom land boundaries of kaveriki and Matantopua. There was a dispute whether Sumalapa was part of Kaveriki. There was also a dispute as to whether Biritano was within the boundaries of the disputed land. It was submitted that none of these disputes were resolved. The EIC did not determine these disputes and simply accepted the names given by the original claimant.
- Maramara and Nareo could not show their chiefly structure rather than claiming loosely that they were chiefs.
- The EIC accepted evidence from Nareo and Maramara without considering whether the evidence was reliable. It did not allow the Chief of Ifira to be cross examined on behalf of family Kalsakau when his evidence would have been reliable.



- An individual does not need to prove that he comes from a line of chiefs to prove that he is custom owner of a land. It was submitted that one can be a custom owner of land without being a chief.
- The EIC misinterpreted family Kalsakau's claim and evidence. The land in dispute had been their ancestral lands since time immemorial notwithstanding the judgment of the Joint Court in 1930. The judgement did not determine custom ownership of land but dealt with registration of the deeds of sale.
- The Court was wrong to find that the influence of the cash economy has led to the dispute that is before the EIC. The dispute was over custom ownership of land not trespass as the Court appeared to have found.
- The EIC was wrong to find and hold that the deeds of sale were the sole proof of custom ownership of land.
- The map of the disputed land was not a custom boundary. There were no land marks to prove it is so. The evidence was that the disputed land was part of a bigger custom boundary Kaveriki. Sumalapa and Tegarau were small parts of the big boundary whereas Biritano was outside the disputed land.
- The EIC relied solely on the deeds of sale to declare Nareo and Maramara as custom owners of the disputed land. It was submitted that the map used to support the deed of sale was tampered with to show that Anabrou or Lacknaporo land sold to James Row covered the land in dispute.
- The EIC relied on the Marope judgement in Land Case No 1 of 1993 without making its own enquiry .Tarimata Kalsakau was the son of chief Makaurei and he became chief of Ifira through the people of Ifira. He was not chosen or selected by the Missionary. This is confirmed in the book "History of the Three Flags" by George K Kalsakau and Graham Miller in his book "Live Book 3".
- The EIC did not consider the letter of 4 November 1964 signed by chief Graham Kalsakau and his Council protesting over the deed of sale of land by Nareo who was not recognised by the people of Ifira as custom owner of Ifira lands.



- The Courts reading and reliance on the Marope judgement was out of context concerning family Kalsakau's lineage although evidence was presented of family Kalsakau's family tree.
- The EIC wrongly held against family Kalsakau that they could not show their customary land marks when the Court itself noted in its visit to the land that the area was densely populated and no nasara, namele or stone could be identified to prove that a nasara once existed there. Family Kalsakau was able to show by their evidence custom stories of their movements within the disputed land, its custom name and boundary and its spirits. The EIC failed to take these into account. Richard Kaltonga only occupied the land in 1977 whilst Nareo and Maramara relied on the deed of sale as evidence of custom ownership of the disputed land.
- The creation of the native reserve under title 57G could not disentitle a custom owner from his land. Kalpeau Kalsakau's evidence is that he frequented the disputed land to make gardens since 1940 and it was a practice carried on from what his father did with his father (Makaurei) before that.
- The giving of rights of use of the land to Richard Kaltonga was wrong as his claims for custom ownership of the disputed land contradicts the rules of custom. And the EIC was wrong to say that family Sope's family tree was linked to jif Nareo. The Marope land case found that there was no connection between them.
- During the land visit family Kalsakau was able to identify their land boundaries with family Saurei but the EIC failed to take this into account and did not decide the boundaries of the two custom lands namely Matantopua and Kaveriki.
- No enquiry was made by the EIC to support its finding that Maramara was a small chief under Chief Nareo other than relying on the deeds of sale . It was submitted that both family trees of Nareo and Maramara presented before the EIC were fabricated and contrary to the findings made in *Kalsakau v Lauru* [1995] VUMC 8.
- The EIC was misled by evidence fabricated by Nareo and Maramara to find that the deed of sale of lacknaporo land to James Row covered Biritano and Sumalapa when in fact the deed of sale only covered



Anabrou land which is today known as Namburu area. It was submitted that the judgment of the EIC was obtained by fraud.

- The EIC was wrong to accept that because Chief Nareo had a nasara at Malpakoa he was custom owner of the disputed land. The Malpakoa nasara was at Erangorango outside the disputed area.
- The EIC failed to give consideration to the effect of Nareo and Maramara's withdrawal of their witnesses from cross examination.
- The EIC failed to give a proper account of its visit to the disputed land as Nareo and Maramara lacked any knowledge of custom, custom practices, nakamals, stones, namele trees relating to the disputed land other relying solely on the deed of sale.

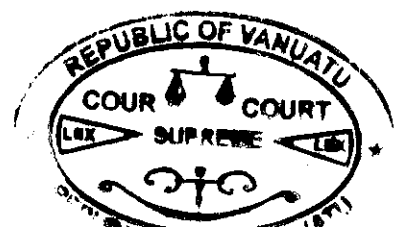
13. Richard Kaltonga on the other hand in oral submissions submitted that:-

- Family Kalsakau is not of a custom chiefly line as found by the Island Court in Land Case No 1 of 1993 which was upheld on appeal;
- Family Kalsakau is not connected to Makaurei;
- Family Kalsakau cannot prove the presence of their descendants on the land as they only settled on the land after 1930 with the creation of the native reserve;
- No records of evidence were produced in the appeal book as required by s 22 (3) of the Act;
- Fresh evidence was being produced by family Kalsakau and cannot be used to discredit the judgement;

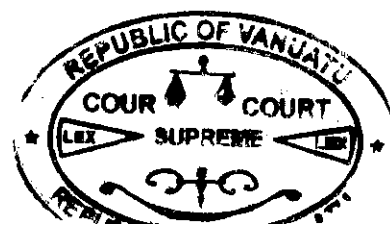
14. Their final submission is that the island Court judgment must be upheld or alternatively the matter be referred to be dealt with under the Custom Land Management Act.

15. Chief Maramara and Nareo supported the submissions made by Mr Kaltonga. Mr Molbaleh on behalf of Chief Maramara and Nareo submitted that:-

- The EIC visited the land in dispute as mapped and advertised and no other land before giving judgement in their favour.



- Whether the disputed land was part of a bigger custom boundary the EIC was only required to deal with the area advertised to find out who is the custom owner of that particular area.
- Family Kalsakau did not dispute their family tree before the EIC therefore there can no challenge to that on appeal.
- It was submitted that Maramara and Nareo were chiefs and that is confirmed by the deed of sale.
- This is also confirmed in Live Book 3 by Graham Miller and George K Kalsakau in his book History of The Three Flags.
- The EIC accepted that they were the custom chiefs and under the land tenure system of Ifira, the chief owns the land on behalf of his family.
- It was submitted that Tarimata Kalsakau was not a custom chief. He was born on Eratap in 1880 and attended school at TTI before returning to teach at Erakor from 1902 to 1908 when he moved to Ifira to teach and was installed as the chief.
- Maramara and Nareo were already chiefs before Tarimata Kalsakau arrived. In 1872 Nareo sold the land in dispute to William Basset. Tarimata Kasakau was not there yet as he would have been two years old at that time and living at Eratap.
- Tarimata Kalsakau was installed as chief of Ifira by Missionaries of the Presbyterian Church not by custom chiefs.
- That Tarimata Kalsakau's father is Bong Tugon from Ambrym and his mother Touskau is from Eratap.
- Tarimata Kalsakau was not acknowledged in any Deed of Sale which confirmed he was not from Ifira.
- The Deeds of Sale were acknowledged by the Joint Court and Courts after independence. It was finally submitted that Maramara and Nareo were chiefs in the 1800's as evidenced by the Deeds of Sale therefore the EIC judgment must be upheld.



Discussion

16. The appeal is brought on the basis that the EIC misdirected itself in its consideration of the submissions and the evidence adduced by the parties or the lack thereof which led to Nareo and Maramara being declared custom owners of different parts of the disputed land.

Records of evidence

17. One of the submissions made by Mr Yahwa was that there were no records of evidence filed as part of the Appeal Book. On 10 October 2019 the appellant was directed to inspect the EIC file and to serve the parties with a draft of his appeal book by 1 December. The parties were directed to inform Mr Kalsakau beforehand of their documents that require inclusion in the Appel Book. The Appeal Book was settled and filed on 22 January 2020. It does not contain the EIC records of evidence. This Court on appeal is required to consider such records (if any) (s22 (3) of the Act).
18. The records of evidence were not available and no explanation was given as to why this was so. Section 28 of the Act provides for such records and states:-

“28. Records

(1) So far as practicable an island court shall keep a record of its proceedings in the prescribed form.

(2) Such record of proceedings shall be certified as correct by the island court clerk, and when so certified is prima facie evidence of the matters set out in it.”

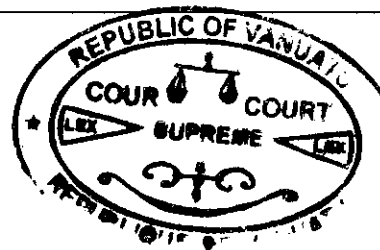
19. Pursuant to clause 1 of the Island Court (Powers of Magistrate) Order No 1 of 1990, the presiding Magistrate in the EIC has a duty:-

“ ...

(f) to keep an English record of all evidence taken and submit the same to the Supreme Court, where an appeal has been filed;

(g) to submit to the Supreme Court within one month of the hearing, a true record in English of all the proceedings before him in the particular case on appeal;

... ”



20. In this appeal we have not sighted an English record of all evidence taken or any record at all as required by law to be kept and made available.

Land visit

21. The observations of the EIC when visiting the disputed land was:-

- *“Disputed eria hemi densli populated wetem pipol blong Ifira mo nara aelan.*
- *Kot I no save lukim wan nasara o ol narafala identkol samting olsem, Namele, Stone blong pruvum se I kat wan nasara I bin stap long ples bifo.*
- *Ples we kot I wokabaot long hemi hemi no wan complete kastom bandri be hemi pat blong wan bigafala kastom bandri.*
- *Kot I faenem se, pipol I tes muv I ko long disputed eria afta long 1930.”*

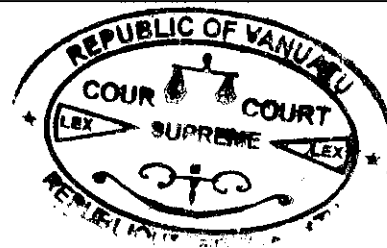
22. Where a dispute is over ownership or the boundary of a customary land, the Court must visit the land under dispute and inspect the boundaries before giving judgment. (Rule 6 (10) The boundary of the disputed land was described by the EIC to cover “some” parts of Biritano, Sumalapa and Tegarua.

23. The EIC did not inspect the full boundary. They walked part of the area and noted that the area visited was not a complete custom boundary. It was part of a bigger custom land boundary. This issue remains unresolved. The EIC instead declared Nareo custom owner of part of the land within the old title 57 G and Maramara custom owner of lands within the old title 34. The title 57 G and title 34 are not custom boundaries.

24. Furthermore, the EIC noted that there was no indication of a nasara, stone or namele in the area visited to show any custom boundary. There was no basis then for the court to make a finding that Nareo had nasaras one of which was Malpakoa. This nasara was never identified by the EIC to be located within the disputed land.

Deed of Sale

25. In its analysis of the evidence, the EIC acknowledged the existence of deeds of sale saying:-



“...Yumi lukluk long validity blong olgeta deed blong salem kraon mo olgeta lis taetol. Olgeta deed blong salem kraon we I bin hapen bifo administresen blong condominium kavman, mo hemi we I tekem ples afta indipendens. Ol instrument we I hapen bifo olsem long ol yia 1800 I kam, kot i akseptem olgeta olsem ol valid transaksen. Mo sapos, I kat objeksen I kam long olgeta oposing pati blong talem se ol land sel transaksen ia I bin obten tru long ol kruketa fasin olsem fraud, mistake, misrepresentesen mo olgeta nara irregular fasin, ale oli mas provaedem ol evidens blong pruvum ol toktok olsem.

.....”

26. What persuaded the EIC as the best evidence to prove custom ownership of the disputed land by Nareo was the fact that Nareo’s descendant sold the disputed land under a deed of sale to a James Row in 1872.
27. This was the main reason claims by Richard Kaltonga, Henry Saurei, family Bakokoto and family Kalsakau were defeated. The EIC acknowledged that family Kalsakau’s claim was in line with custom through the patrilineal line but was defeated by the existence of the deed of sale. The EIC said:-

“Long 04/09/ 1874 jif Narewo Marik Atlangi I salem kraon ia Laknaporo (Anamburu) i ko long James Row. Daerek evidens ia I hemi wan pruf se, Family Kalsakau I no onem kraon ia.”

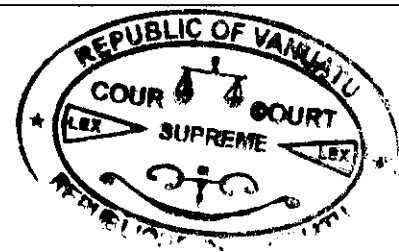
(emphasis added)

28. The EIC accepted that Nareo’s proof of custom ownership of the land is the deed of sale. It was submitted by family Kalsakau that deeds of sale cannot be proof of custom ownership of land. We accept that submission in light of what the Court of Appeal said in **Family Makono v Orah** [2020] VUCA 16 where the appellant in that case relied on a deed of sale to assert their claim of custom ownership over the disputed land and the Court said:-

“... ”

We reiterate that there is no possibility in law for the instrument of sale that the appellants have relied on to be accepted as proving customary ownership of the subject land.

... ”



29. We accept that a deed of sale cannot form the basis of ownership of custom land. Under Article 73 of the Constitution, all land in Vanuatu belongs to the indigenous custom owners and their descendants. And Article 74 states that “*the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.*”
30. The Nareo deed of sale concerned the sale of land known as Anabrou or Laknaporo land. Nareo’s submissions before the EIC included a cut and paste part of the deed of sale and a map which showed that Anabrou or Laknaporo area covered the disputed land. The appellant produced **Annexure KK4** which included a map of Anabrou or Lacknaporo land which does not cover the disputed area. It was submitted that the boundaries of Anabrou or Lacknaporo land do not cover the disputed land. It’s the area which is more generally known today as Anamburu area. The appellant submitted that Nareo’s map was perpetrated by fraud.
31. An issue remains concerning the exact boundaries of Anabrou or Laknaporo land under the deed of sale. That can only be ascertained from a valid, correct and full copy of the deed of sale. The appellant’s submissions are that the deed of sale did not cover Biritano and Sumalapa.

Rules of custom

32. In relation to ownership of land, the EIC remarked that:-

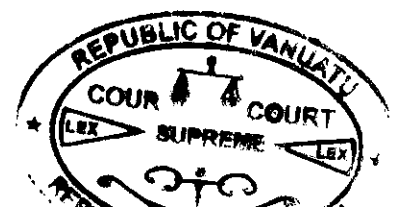
“Hemi impoten tumas se, one klema I mas pruvum long kot kastom kavening system we pipol blong Efate I yusum, bat speseli nao pipol blong Ifira we I bin stap praktisim bifo I kam mo oli rikonaesem olsem tradisenol land tenua system.

Hemia I minim se wan klema I mas pruvum long kot ia se hemi orijinet long wan laen blong jif we hemi onem kraon wetem pipol blong hem. Hemi mas explenem long kot wetem evidens, se orijinal ancesta blong hem i fes man we I explorem, kontrolem, liv mo kat nasara o marae long kraon ia bifo ol nara traeb o family I joen blong setel.

Kot I faenemaot tu se I kat plante infomesen we ol pati I tekemaot long olgeta kot blong kraon we I pas finis. Kot bae I save admitim ol kaen infomesen olsem nomo sapos kes we oli refea long hem I no stap long apil.

.....”

33. In its findings in relation to Narco at paragraph 5 on page 18 of the judgement, the EIC stated that:-



“Family tri blong klema ia I bin presented mo konfem finis long kes blong Marope land kes no. 1 blong 1993. I bin kat tri klema long kes ia olsem family Sope, Nunu Naperik Mala, mo Naflak Teufi I bin klem tru long family laen ia blong jif Narewo Marik Atlangi. Storian ia I no jenis from apil kot I bin aholdem long apil kes no.1 blong 1994, mekem se hemi wan ricod we I laef tudei”

34. And further confirmed that:-

“Kot hemi satisfae se kraon I blong jif Narewo Marik Atlangi. I kat toktok se klema I no kat raet blong klem from apu man blong hem Grube blong Germany. Kot ia I stap tekem aproj mo disaed se hemia i wan issue blong ol descendant blong jif Narewo I lukluk long hem.”

35. First there was no finding on the evidence that under the custom of Ifira one must be a chief to own land when the EIC said *“wan klema I mas pruvum long kot ia se hemi orijinet long wan laen blong jif we hemi onem kraon”*. We agree with the appellant that the court misdirected itself in that respect.

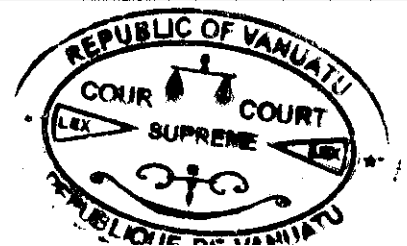
36. Furthermore the EIC relied solely on the *Marope* judgment in Land Case No 1 of 1993 to find and accept Nareo’s family tree as presented by family Sope, Nunu Naperik Mala, and Naflak Teufi. The appellant submitted that the EIC misdirected itself and wrongly construed and applied the *Marope* judgement in this case. We agree. In its findings, the Court in *Marope* said:-

“These three parties, namely Family Sope of Mele, (OLC), Nunu Naperik Mala (LC1) and Naflak Teufi Ifira (LC2), have claimed ownership of the disputed land. They also claimed that their descendant was custom chief Nareo, who sold a big part of the disputed land (coloured in blue on the map).

Family Sope and Nunu Naperik Mala kept referring to a woman, namely Leitakae.

George Kano, the leader of Naflak Teufi, also made reference to a woman by the name of Toumata Tetrau. He claimed she was the chief Nareo's eldest sister. And George Kano further claimed that he is the descendant of Toumata Tetrau whose first son was Kano (Nano).

The court must decide between the three families, the immediate relative of Chief Nareo.



The family Sope of Mele stated that Leitakae was the daughter of Toutafkal, who was one of Bausa and Sawia's four sisters (they were cousins to chief Nareo - See family Tree of the Sopes of Mele).

Nunu Naperik Mala claimed that Leitakae was the daughter of Chief Nareo.

The court finds conflicting interests about Leitakae between the Sopes of Mele and Nunu Naperik Mala.

The conflicting issue is to establish whether Leitakae was actually the daughter of chief Nareo or not.

The court does not believe both parties.

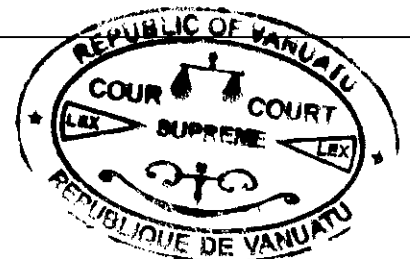
The court believes Kano Chichirua, that Chief Nareo did not have any children, neither did his brothers.

(emphasis added)

37. The specific issue the court was concerned with was whether Leitakae was actually the daughter of Chief Narewo Marik Atlangi or not and it found that neither Chief Narewo nor his brothers had any children. A confirmation that Leitakae was not the daughter of and could not have been the daughter of Chief Narewo Marik Atlangi.
38. Nareo's submissions before the EIC were that he is a descendant of Chief Narewo Marik Atlangi claiming through Leitakae. This issue was settled in *Marope* that Chief Narewo Marik Atlangi had no children. The EIC therefore misdirected itself to rely solely on the *Marope* judgement to declare Nareo custom owner of the disputed land.

Result

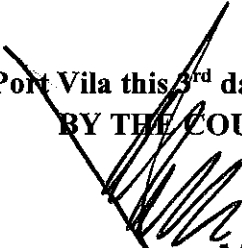
- 39 In our considered view, these are sufficient reasons to allow the appeal and we need not consider the remaining grounds. The following orders are now issued:-
- 1). Appeal allowed.
 - 2). The judgement of the Efate Island Court dated 20 February 2015 is hereby quashed.



3). The parties are at liberty to have their dispute determined pursuant to the provisions of the Custom Land Management Act.

4). Each party to bear their own costs.

DATED at Port Vila this 3rd day of February, 2022
BY THE COURT



.....
D. Aru
Judge

