

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

Land Appeal Case 17/375

BETWEEN: Romin Sorinmal
First Appellant

AND: Enson Nalekon
Second Appellant

AND: Alexis Naror
First Respondent

AND: Daniel Tamat
Second Respondent

Coram: *Justice Aru*

Assessors: *Josis Lingi*
Ken Massing

Counsel: *Mr. E. Molbaleh for the First Appellant (Romain Sovrinmal)*
Mr. D. Yahwa for the Second Appellant (Enson Nalekon)
Mr. R. Tevi for the First Respondent (Alexis Naror)
Mrs. C. Thyna for the Second Respondent (Daniel Tamat)

RESERVED JUDGMENT

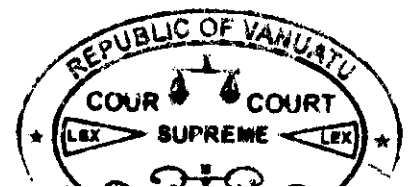
Introduction

1. This is an appeal by Romain Sovrinmal and Enson Nalekon against a decision of the Malekula Island Court (MIC) dated 20 August 2006. The disputed custom land is called *Botvalim*.

MIC judgment

2. Following the hearing of the dispute the MIC made the following declarations:-

“1. That Enson Nalekon is formally declared as custom owner and bloodline of the land of Botvalim. This decision is by no means be construed as a



declaration of the paramount chief's title. Such subject matter is outstanding and rests with the relevant tribunal for its determination.

2. That Alexis Naror is declared as a smol faea of Melembaur and owner of the land containing the nasaras of Lovovoand Surnau.

3. That Daniel Tamat is given the right of use of the land of Botvalim.

4. That the parcels of land claimed by Roy Samuel and Nale Massing are hereby referred back to the relevant land tribunal.

5. Claims from remaining parties are dismissed.

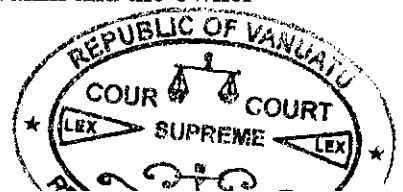
6. All costs necessitated by this proceeding will fall as found.

7. Any party wishing to appeal this decision must do so within a period of 30 days from today. ”

Grounds of Appeal

3. Romain Sovrinmal appeals the decision on five (5) main grounds, namely that:-
 - a) The Island Court justices who sat on the case as assessors were not part of the decision making of the Island Court;
 - b) The Island Court justices were not in Court when the supervising Magistrate read out the judgment in open Court;
 - c) The Island Court justices did not sign the judgment delivered by the Island Court on 10 August 2006;
 - d) The supervising Magistrate ordered three (3) of the appellant's witnesses namely Gerald Malessy (Rano mainland) Jeremy Seftilei (Wala island) and family Bahor (Wala mainland) not to give evidence in Court;
 - e) The supervising Magistrate during the hearing had been residing at Orap village on Malekula with parties who succeeded in this matter.
4. Enson Nalekon only appeals part of the judgement and not the whole judgement. Mr Yahwa informed the Court that his grounds of appeal are the ones filed on 18 August 2008 containing two grounds namely that:-

~~a) The Island Court misdirected itself in evidence by declaring that Alexis Naror is the smol faea of Melembaur the big capital nasara of Botvalim and the owner~~

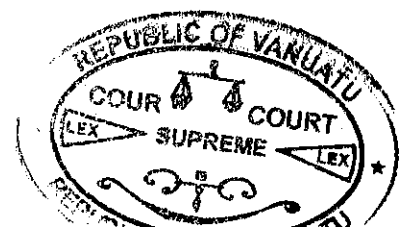


of land which the nasara of Lovovo and Surnau are situated. He was declared the land owner of a nasara within the appellant's boundary and this is wrong according to custom as there should only be one owner which is the paramount chief of Botvalim;

- b) The Island Court misdirected itself in evidence by giving the use of right of Botvalim to Daniel Tamat. Mr Tamat was claiming the right of use to certain parts of the land of Botvalim, not the whole land. The Court gave him the right of use of Botvalim land in error.

Submissions

5. The submissions by Romain Sovrinmal were that the MIC decision be quashed and the matter be reheard pursuant to the provisions of the Custom Land Management Act. It was submitted that the justices did not sit with the supervising Magistrate to deliver the decision and the decision was not signed by all the justices. Next it was submitted that three of their witnesses were prevented by the Court from giving evidence which was a denial of their rights to a fair hearing. It was also submitted that the supervising Magistrate resided with the successful party during the hearing.
6. In response to the first appellant's submissions concerning their three witnesses not giving evidence, Enson Nalekon submitted that the three witnesses were disqualified from giving evidence as they used another party's sworn statements. It was submitted that the Court did allow Sovrinmal the opportunity to call other witnesses in their place and he did. On the issue of where the Magistrate resided, it was submitted that the Magistrate resided at Lakatoro. It was also submitted that the Court was properly constituted and Sovrinmal's complaint only relates to the signing of the judgment by the Magistrate. Delivery of the judgment was done in open Court in the presence of all the justices. It was submitted that there was nothing wrong with the signing of the judgement by the supervising Magistrate.
7. In relation to his grounds of appeal, as to the second ground, Enson Nalekon submitted that Daniel Tamat's claim before MIC was for usage rights of certain parts of Botvalim not the whole of Botvalim as declared by the Court. The first limb of their submission is that although Tamat gave 50 pigs to Jigonmal, he (Jigonmal) was not the declared custom owner of Botvalim and was not recognised by the judgement therefore it was submitted that Tamat could not have been entitled to any rights of use of. It was submitted that the decision regarding Tamat's rights of use be quashed.
8. The second limb of their submission is that Tamat claimed rights of use over a specific area in his claim and it was wrong for the Court to give rights of use over the whole of Botvalim land.

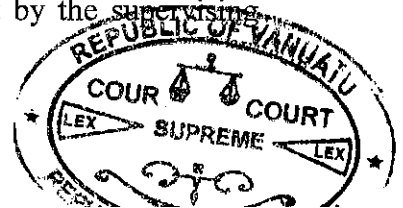


9. As to their first ground of appeal, in summary, Enson Nalekon submitted that Alexis Naror was from Ambrym and not from North East Malekula. Next it was submitted that the Court was dealing with a dispute over custom ownership of land not chiefly title dispute therefore it was wrong for MIC to declare Alexis Naror as "*smol faea*".
10. Daniel Tamat's response to Sovrinmal's appeal is that the Court was properly composed and the judgement was issued accordingly. In response to Nalekon's appeal, it was submitted that Tamat's claim was for rights of use. It was submitted that Tamat gave 50 pigs to Chief Jigonmal who gave usage rights to Tamat in return. It was submitted that the chiefly title dispute is yet to be determined but all the parties before the Court agreed that Jigonmal was a high chief.
11. Alexis Naror relied on his submissions as filed. Alexis Naror submitted that Enson Nalekon was not declared the "*big faea*" or paramount chief of Botvalim as that was a matter yet to be decided by another tribunal or Court. Therefore Enson Nalekon could not claim that he is paramount chief of Botvalim.
12. It was submitted that Enson Nalekon amongst other parties confirmed that Alexis Naror was the custom owner of Lovovo and Surnau. In response to Sovrinmal's grounds of appeal, it was submitted that the justices composed the Court hearing the dispute. At the completion of the hearing, judgement was delivered by the supervising Magistrate on behalf of the Court. Similarly it was submitted that the rules do not require justices to also sign the judgement. It was further submitted that the three (3) witnesses of Sovrinmal were disqualified from giving evidence as they were relying on sworn statements of other parties.

Discussions

Composition of the Court

13. Section 3(4) of the Island Courts Act [CAP 167] (the Act) states that "*a court is properly constituted when 3 justices nominated by the clerk are sitting*" and rule 7 (1) of the Island Court (Civil Procedure Rules) requires that following a hearing, the justices are to discuss the judgment before it is delivered. The Act does not specify that justices must also sign the judgement before delivery. Therefore a judgement is not invalidated by the fact that it is only signed by the supervising Magistrate.
14. The judgment under appeal records that the justices properly constituted the Court to hear and determine the dispute. After the hearing the decision was signed and delivered in open Court. There is no evidence to suggest that the decision was not discussed by the justices before delivery.
15. The roles and expertise of the justices are that they are knowledgeable in custom and are required to sit with the Court. The signing of the judgment by the supervising



Magistrate himself does not offend against any provisions of the Act. In any event, once the hearing is completed and the decision has been discussed by the justices, if the justices are absent for whatever reasons when the supervising magistrate delivers the decision, their absence in such circumstances cannot invalidate the decision.

Bias

16. The issue of bias was raised by Romain Sovrinmal that the judgement was tainted by the fact that the supervising Magistrate resided with the winning party. Enson Nalekon denied that and submitted that the supervising Magistrate resided at Lakatoro. There was no evidence to sustain the allegations of bias therefore this ground of appeal is dismissed.

Disqualification of witnesses

17. It was further contended by Romain Sovrinmal that he did not have a fair hearing as three of his witnesses were disqualified by the Court. What the Court said was:-

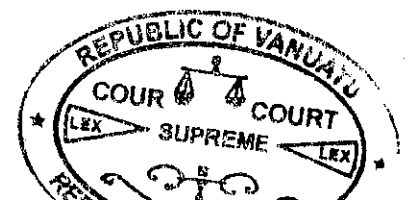
“Three of his witnesses were disqualified for using written statements made by some other families. To give him a fair chance the Court had asked him to call a witness, Jean Paul who only gave a confirmation statement of the claim.”

18. The Court gave reasons for the disqualification of the three witnesses then gave Romain Sovrinmal the opportunity to call another witness and he called Jean Paul. Therefore there is no basis for Sovrinmal’s assertions that his rights to a fair hearing were denied.

Declaration of Alexis Naror as smol faea

19. The custom practices of the area under dispute are that the paramount chief is the head chief or *big faea* and his assistant chief is the *smol faea*. Enson Nalekon submitted that the Court misdirected itself in declaring Alexis Naror *smol faea* and owner of Lovovo and Surnau when there should only be one owner who is the paramount chief. The Court in its analysis of the evidence, accepted that Alexis Naror was the custom owner of Lovovo and Surnau based on confirmation by the other parties namely “*Enson Nalekon, Angelme Lelecteir, Steve Maltungtung and Daniel Tamat have all confirmed that the nasara of Surnau Lovovo belongs to Alexis Naror and his family. This court has accepted this evidence and ruled on its basis.*”

20. Aside from declaring Enson Nalekon custom owner of Botvalim, no declaration were made in respect of the paramount chief’s title. As part of its first declaration, the Court went on to say that “*this decision is by no means be construed as a declaration of the paramount chief’s title. Such subject matter is outstanding and rests with the relevant tribunal for its determination*”.



21. The dispute regarding the paramount chief's title remains pending for the appropriate tribunal or Court to determine as a chiefly title dispute. Having accepted that the paramount chief's title was for another tribunal to determine, there was also no basis for the Court to continue to declare Alexis Naror as *smol faea*. As a matter of custom, both matters should be determined together as to who is the paramount chief *big faea* and who is the *smol faea*.

Rights of use

22. The issue of rights of use concern Daniel Tamat's claim before the island Court. His claim was for rights of use of a specific area identified in his claim. This was confirmed by his representative John Kitten in Court when giving evidence identifying the area claimed as :-

"..the boundaries start at Fork river to Botoulouxbe, Nemreyut river. It follows on Pokamel's hill and ends at 7 metres rock and runs down back to Botdravorax Sibror."

23. It was submitted by Enson Nalekon that the Court misdirected itself by granting rights of use over the whole of Botvalim to Daniel Tamat contrary to his claim. The basis of Tamat's claim was that his ancestor contributed 50 pigs to chief Jingonmal's namangi and Jingonmal allowed them to use part of the land for their subsistence farming. In its findings the Court found that *"in consideration of the payment of 50 pigs to chief Jingonmal, a right of use is a guarantee for Daniel Tamat and his concerned relatives."*
24. We agree that Daniel Tamat's claim for rights of use is limited to the specific area claimed and identified in his claim. Therefore there was no basis for the Court to grant Daniel Tamat rights of use over the whole of Botvalim. The general declaration of rights of use to Daniel Tamat is without basis.

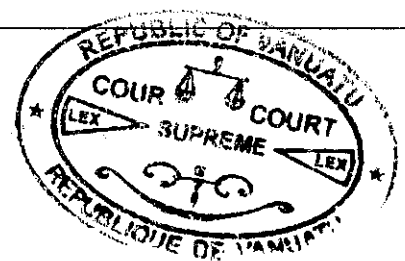
Result

25. The following orders are now issued:-

(1).Romin Sovrinmal's appeal is dismissed.

(2).Enson Nalekon's appeal:-

- a). against the declaration of Alexis Naror as custom owner of Lovovo and Surnau is dismissed.

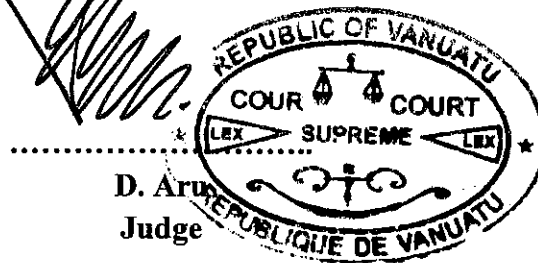


- b). against the declaration of Alexis Naror as *smol faea* is allowed. The chiefly title of *smol faea* shall be determined by another tribunal or Court when determining the chiefly title of paramount chief or *big faea* of Botvalim.
- c). against the declaration of rights of use of Botvalim to Daniel Tamat is allowed. The rights of use of Daniel Tamat are restricted to the area described as “*Fork river to Botoulouxbe, Nemreyut river. It follows on Pokamel’s hill and ends at 7 metres rock and runs down back to Botdravorax Sibror.*”

26. Each party to bear their own costs.

DATED at Port Vila this 16th day of February 2022

BY THE COURT



D. Aru
Judge