

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

Land Appeal Case 16/1614

BETWEEN: Ranmap Tribe
First Appellant

AND: Family Aisoh
Second Appellant

AND: Family Wortur
Third Appellant

AND: Family Nuguny
First Respondent

AND: Family Aigor
Second Respondent

AND: Family Aiusvahal
Third Respondent

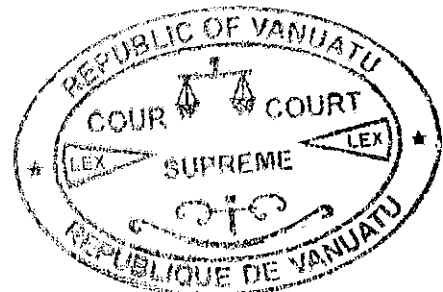
AND: Family Ambuas
Fourth Respondent

AND: Family Liver
Fifth Respondent

Coram: *Justice Aru*

Assessors: *Mr Patterson Peter*
Mr Kalangis Mele

Counsel: *Mrs. M. N. Grace for the First Appellant (Tribe Ranmap)*
Mr. L. Napuati for the Second Appellant (no appearance)
Mr. E. Molbaleh for the Third Appellant (Family Wortur)
Mrs. C. Thyna for the First Respondent (Family Nuguny)
Second Respondent (Family Aigor) no-appearance
Third Respondent (Family Aiusvahal) no-appearance
Mr. J. Mesao for the Fourth Respondent (Family Ambuas)
Fifth Respondent (Family Liver) in person



RESERVED JUDGMENT

Introduction

1. This is an appeal against a decision of the Malekula Island Court (MIC) concerning a dispute over custom ownership of *Weisser* and *Rambabap* land.
2. This matter was heard at Lakatoro and following the hearing on 3 December 2020 we announced the following orders :
 - a. That the appeals are upheld with reasons to be given.
 - b. The decision of the Malekula Island Court dated 21 May 2015 is quashed and set aside.
 - c. The parties are at liberty to pursue their dispute pursuant to the provisions of the Custom Lands Management Act No. 33 of 2013.
3. We now provide our reasons.

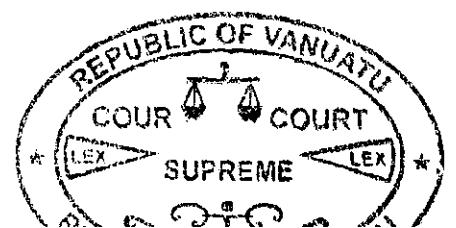
Background

4. On 2 August 2012 the Supreme Court on appeal quashed an earlier decision of the MIC concerning the dispute over custom ownership of *Weisser* and *Rambabap* land. The matter was then returned for rehearing before a differently constituted the Court.
5. The land was advertised and a number of parties joined the proceedings.
6. The hearing was held from 11th to 20th May 2015. The MIC gave its decision on 21 May 2015 and made the following declarations:

"DECLARATION

In light of the totality of the evidence gathered in this proceeding and in application of the law and custom, the court declares as follows;

1. *That family Nuguny and family Aigor and their descendants are the customary owners of the land of Weisser. Sharing of Weisser land between these two families will remain under their leaders and chiefs. It declared boundary in general lays between Wormedeng on the west and Wenerie creek on the east.*



2. That family Aiusvahal and their descendants represented by Ham Apal are the customary owners of the land of Rambabap. Its declared territory begins at Wenerie dividing Weisser land to the west up the mountain to a nakatabol tree. It then turns eastwards reaching a coconut plantation, and bounded by Woritap river on the east to a blue water tree and down to the river mouth of Worbito at the sea shore.

3. That family Ambuas and their descendants are declared customary owners of the land of Ranvat as mapped by the court below. While, family Aiusmanbongor be given the right to use the land he claims within Ranvat land as mapped.

They will have land ownership of the following land areas beginning at Vatpulul up to a oak tree (cut down), a nakatabol tree, a nadao tree up the hill where Sanny Malai's kumala plantation is today at the top of the mountain. From there, it turns eastwards down to the coconut plantation ending at the small water source at the foot of Rambi hill. It then, cut across following the mountain range to the east, covering Lentalam land areas down to Wormedeng and bounded by the sea shoreline joining up at Vatpulul at Caroline Bay.

4. That family Liver and tribe Ranmap and their descendants are pronounced customary owners of the land remaining outside the declared boundaries to the above parties.

Family Liver will have ownership of land located at the far north western side extending eastwards to the central land areas. That includes land beginning at the small stream at the bottom of Rambi hill, cutting across following the mountain range to the east and turns north wards to where the boundary meets Woritap river. It covers Lus Tamat's coconut plantation, Noibatir watercourse down to the swamp covered with wild cane to Woritap river.

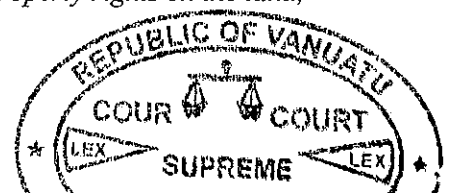
On the other side, CC2 on behalf of his tribesmen have ownership of the land areas commencing from the central areas to the far north east of the boundary bounded by Woritap river. Any disagreement over their boundary perimeters will be solve by their respective chiefs.

5. That the claim advanced by CC3 is not accepted as Wortur has its own traditional boundary.

6. The claim of family Aisoh is also dismissed. However, having noted and confirmed his immediate relation with family Aigor. He will remain under the authority of CC7. Meaning, he has right to seek permission for the right to use land for any development from CC7 if he so wishes.

A sketch map of the declared land territories to the successful parties is attached to this decision.

For ease of clarity to the parties, any claimed boundary sitting outside the description of the land visited by the court will not form part of this judgment. It is reminded that this declaration does not also affect other property rights on the land,



such as rights of claimants or other local occupants to harvest coconuts, garden, graze cattle and other existing development thereon the declared land. The losing parties must bear in mind that these rights may be waived or varied by the owners. The exercise of these rights is limited to existing properties prior to this declaration.

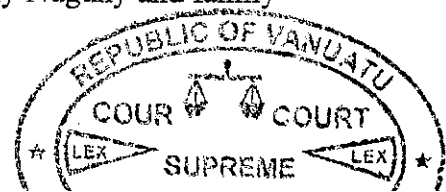
As such, it is further directed that that every person currently in use of the declared land undertake to cause appropriate arrangements with the declared owners to accommodate their continuous use of the land.

Parties are to pay their own costs necessitated by this proceeding. Claimants are duly informed of their right to appeal within 30 days period at the receipt of this written judgment.”

7. Following the declaration, three (3) parties appealed namely tribe Ranmap, family Aisoh and Family Wotur.

Grounds of Appeal

8. In summary, tribe Ranmap the first appellant contends in their grounds of appeal that:-
 - a. The Court failed to separate the two areas Weisser and Rambabap as two distinct boundaries and hear them separately. The Court dealt with the matter as one boundary then declaring them as separate boundaries with different custom owners;
 - b. The Court erred in custom by making additional declarations when it found out that the map covered other boundaries as well;
 - c. The Court failed to apply the custom of South West Malekula by allowing migrating families ownership of land contrary to custom. The evidence that these parties presented showed that they had migrated from another boundary;
 - d. The Court erred in custom by declaring Weisser and Rambabap custom boundaries when these two areas are villages housing settlement of migrant families. That these villages belong to a custom boundary under jurisdiction and authority of a particular custom group or nasara; and
 - e. The Court erred in law and fact when it walked one part of the original map and only the area of Weisser village but made declarations for several boundaries without visiting those areas.
9. Family Aisoh, the second appellant appeals as follows:
 - a. In grounds 1 and 2 that there was apprehended bias on the part of the Magistrate and justices when members of the Court stayed in family Nuguny and family



Aigor's house for two days and nights before judgment was issued .Second , after the judgement was issued, family Nuguny and family Aigor gave the Magistrate and justices a boat full of food;

- b. In ground 3, they contend that they felt threatened to tell their story and show their evidence when walking their boundary as the Court allowed members of family Nuguny and family Aigor to carry axes and knives and were damaging his boundary marks in front of the justices;
- c. Further they contend in ground 4 that the Court erred in fact and law in not giving weight to their evidence of the village Court of Wasar land decision of 9 February 1985 in their favour;
- d. In ground 5 they contend that the Court erred in fact and law in not giving weight to their evidence that the family Nuguny and family Aigor only arrived at Caroline Bay in 1965 from South West Bay during the establishment of Nagriamel movement. That they have their own nasara at South West Bay in Benehur village; and
- e. In ground 6 they contend that the Court erred in fact and law by giving too much weight to the evidence of the family Nuguny when they are not related by blood but are from Nemep.

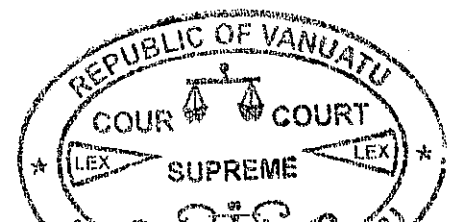
10. The third appellant Family Wotur appeals on the following grounds:-

- a. In ground 1 they contend that the Court erred in fact custom and law by declaring family Ambuas and family Liver custom owners of Wotur custom land when they are not related by blood to Wotur family custom land and they have no nasara or evidence of custom;
- b. In grounds 2, 3 and 4 they contend that the Court did not consider their submissions and evidence and did not visit or walk the Wotur custom boundary and lastly the Court accepted the evidence of family Ambuas and family Liver which were not true as they did not tell the truth in Court.

Discussions

11. The Second Appellant did not pursue their grounds of appeal. Mr. Napuati did not appear for the hearing but instead informed Mrs Nari they will support her submissions. There was also no evidence of bias as contended therefore the second appellant's grounds of appeal are dismissed.

12. We deal with the first and third appellants' grounds of appeal together.



Publicity of land

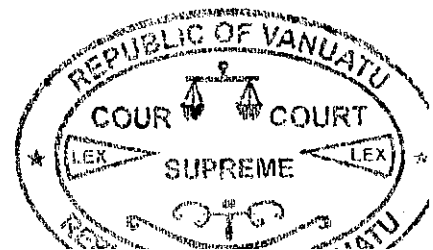
13. The first appellant tribe Ranmap submitted that Weisser and Rambabap lands are two separate custom land boundaries and should have been heard separately as the result of the hearing led to separate declarations. The first respondent family Nuguny in response submitted that both lands are nasaras with Rambabap being the subordinate nasara to Weisser. The fourth respondent family Ambuas submitted that throughout the earlier proceedings, tribe Ranmap did not raise the issue that the two lands are separate boundaries.
14. The Island Court (Civil Procedure) Rules (the Rules) require that where a dispute concerns ownership of custom land, the claim must be advertised (rule 1(7)). The original claimant family Aisoh claimed the whole area as Weisser and Rambabap land.
15. The Court in its findings in relation to the original claimant said:

“Firstly, this claimant has publicized a boundary with no clear specification of limits. That is noted from the advertisement notice dated 12 September, 2014. Upon direction from the court for clarification of his claimed land he then reduced it to the present land limits described above visited by the court. Such, action on his part among other findings proved to the court that he has no certainty over the land in dispute. and

Secondly, it is obvious that the claimed land covers a number of separate or independent customary land territories. That is witnessed by the vastness of the area of land which covers a significant land mass containing hundreds of hectares of land thereon.

....”

16. The land as advertised initially had no boundary limits. Second, upon enquiry by the Court, family Aisoh reduced the size of the land they claimed. These new boundaries were not advertised. Third, within this new boundary the Court observed that there were ‘*a number of separate or independent customary land territories*’. It was quite obvious that the advertised land overlapped other lands. Despite this observation, the Court proceeded to hear the claimants in the one claim for Weisser and Rambabap land.
17. As a result in addition to declaring Weisser and Rambabap, the Court went further to declare custom ownership of lands which were never advertised as part of the claim namely; Ranvat land and lands outside the declared areas which are not named.
18. We agree with tribe Ranmap that the Court was not required to consider any claims outside the original claim. To do so would be to deny the interests of other interested parties. In **Kaltapau v Kolou** [2020] VUSC 60 this Court considered an appeal where the Efate Island Court considered other custom boundaries other than the areas claimed and said:



11. *"We agree and cannot over-emphasize the importance of an Island Court confining itself strictly to the advertised claim and **not** entertaining land areas outside the advertised area. This is because the public advertisement of a land ownership claim calls for competing claims to the advertised land, and, if the advertised land area is later allowed to be expanded to include other lands and/or questions, it is very likely that the original claimant will have **no** interest in the expanded areas but, even more disconcerting, is that other persons with genuine competing claims to the expanded land areas, might well be denied the opportunity to lodge their competing claims because of a lack of any advertisement of the expanded areas calling for competing claims.*

12. As was said by the Court of Appeal in Raupepe v Raupepe [2000] VUCA 6 in setting aside the registration of a transfer of a lease:

"It is a fundamental procedural requirement in Court proceedings concerning the ownership of land that all people who claim an interest in the land or are likely to claim an interest in the land be before the Court. There are two reasons for that. The first, is the natural justice reason to ensure that those whose rights might be affected have the opportunity to be heard ... and to put whatever information they want to put to support their position or against somebody else's position. The second reason is, because the judgment of the Court ... determines for the world at large who owns the land, (it) must be one that binds all those people who might have an interest in the land. A judgment would not bind those people unless they are before the Court as parties".

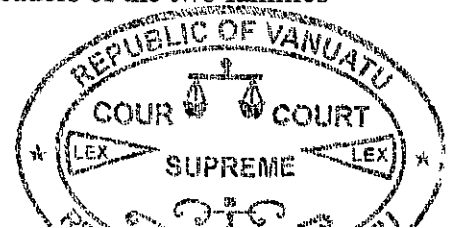
19. The declaration of custom owners of Ranvat land and custom owners of the areas outside the declared lands without any advertisement meant that persons with genuine claims to those lands were denied the opportunity to lodge their competing claims.

Custom practices

20. There was no dispute as to the applicable custom practices of the area. The appeals in general dispute how these practices were applied by the Court. First it was submitted that the dispute over Weisser and Rambabap lands should have been separated and be heard as two separate land disputes. This would have been consistent with the declarations made. By proceeding with the advertised claim as one land area then declaring different custom owners for each area is wrong. We accept that submission.

21. Next it was acknowledged by the Court that *"...it is common ground that the first person and his tribe or family to explore, live, control and build a nasara on a land territory would be designated as the custom owners"*.

22. Contrary to such practice family Nuguny and family Aigor were both declared custom owners of Weisser. The Court then left it to their chiefs and leaders of the two families



to share the land between them. During the hearing these two parties made separate claims as counterclaimants of Weisser land.

23. Family Nuguny's evidence accepted by the Court indicates that they were the first people on the land. Nuguny was one of 12 sons of Batinovor of Evunture at Nemep who moved to Weisser and created the nasara of Bulbar. Manhur who was the younger brother of Aigor (family Aigor) moved to Weisser from Toman Island to seek refuge at Nuguny's nasara following a famine on Toman Island. Later relatives of Manhur were accepted to live on land at Weisser at nakamal Vuraitavat created by Aigor.
24. Family Aigor in their evidence told the Court that they were claiming ownership of Weisser through their "*great grandparents Aigor and Manhur*". It is therefore quite evident that Aigor (family Aigor) and Manhur were both from Toman Island. In accordance with the custom practice both claimants could not have been declared custom owners of Weisser as Nuguny was first on the land. Leaving it to their chiefs to share the land between the families does not resolve their dispute which is why both made separate claims as counterclaimants before the Court.
25. Rambabap was declared to family Aiushvahal and the Court appeared to contradict its first declaration in relation to Weisser by stating that its "*declared territory begins at Wenerie dividing Weisser land to the west up the mountain...*" The declaration in favour of family Nuguny and family Aigor does not state that part of Weisser will be divided by Rambabap land.

Land Visit

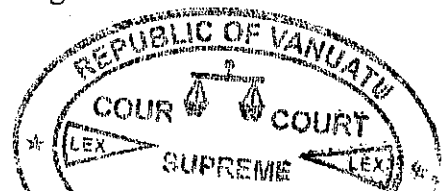
26. Tribe Ranmap submitted that the Court was required to visit the boundary of the land claimed. Despite the number of declarations made, it was submitted that the Court did not visit the boundaries of the land in dispute and lands which were declared but were not part of the claim. This is not disputed by the respondents. Family Nuguny, family Wotur and other respondents accept that the MIC only visited Weisser.
27. Rule 6 (10) of the Rules provides:-

“(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.”

(Emphasis added)

28. This is a mandatory requirement. The Court simply cannot declare custom ownership of lands it has not visited to inspect their boundaries. In this case the Court only visited Weisser which it then accepted to be a separate boundary. Thus Rambabap was never visited by the Court to inspect its boundary before declaring its custom owner. And in



the same manner, all other lands outside the claim which were declared were never visited or inspected contrary to the rule 6 (10) and the custom practices of the area that *“boundaries of land in the past and present are normally indicated by natural environment, such as trees, rivers, mountains, man-made features and other geographical features ”*.

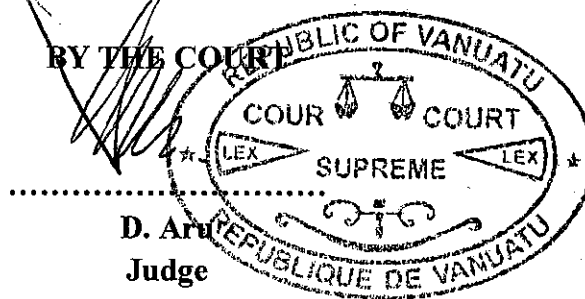
29. Given the absence of any visits outside Weisser land, the findings as to the boundaries of these lands is without basis.

Result

30. These are our reasons for the orders issued on 3 December 2020.

Dated at Port Vila this 22nd February 2022

BY THE COURT



**D. Aru
Judge**