

IN THE MALEKULA ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Land Jurisdiction)

Land Case No.2 of 1989.

BETWEEN: MAKTON SANHABAT
Original claimant

AND : SHEDRAK SALEMUMU
Counter claimant 1

JOHNATHAN DAWI
Counter claimant 2

LEONARD BILL & GEORGE MILLER
Counter claimant 3

BELTEN JOE
Counter claimant 4

JOHN D ARANHAMBAT
Counter claimant 5

EPHRAIM, CYRUS & JERETY
Counter claimant 6

ALBERT HORAMBAT
Counter claimant 7

Coram: Magistrate Edwin Macreveth
Justice Endy Shem
Justice Philip Daley
Justice Jacob Naus

Clerk: Wendy Raptigh

JUDGMENT

The land disputed by the parties is situated on the northwest part of the island of Malekula registered as *Nerghies Land*. According to the map its boundaries commence at the Malua river mouth to the Tenmaru river mouth at the south. Its boundary follows Malua river inland easterly bordering with the land of Mawe. From there it runs in a parallel line to the border of Penevanu and to Tenmaru river inland and then runs down Tenmaru river to the sea coast.

All parties are claiming ownership of the land in question save, counter claimant 4 who disputes that the territory claimed by the original claimant has exceeded its customary boundary into his land Patarmul. There are two separate areas of land within the registered land, namely *Nerghies* and *Eldu*.

HISTORY AND CUSTOM

For ease of better understanding the reasoning of our judgment, a brief discussion of history and custom practices are outlined below.

In the northwest area of Malekula island, land is communally owned based on common descent, residence within a *nasara* and participation in common activities. A tribe or a bloodline is identified with the land through their *nasaras*. Within an original or big *nasara* there are small *nasaras* or *faea* which are associated with the original *nasara* and its paramount chief. Individuals within a tribe are closely tied up with his territory by affinity and consanguinity through blood and marriage.

High chiefs would have more than hundred stones erected for his *namangi* pig killing ceremony. While subordinate chiefs would have *namelapis* (a hip of stones piled together where pigs are slaughtered). This is where a chief would begin his promotion to climb the rank of a high chief.

In the big *nambas* area, the paramount chief has his own land boundary. A monarchy type of organization whereby the paramount chief normally governs his subordinate chiefs living within his governing land territory. Each individual subordinate chief has his own people with an allocated piece of land. All subordinate chiefs are accountable to the paramount chief in respect of every social affairs. Land is customarily transferred or inherited patrilineally from the paramount chief to the eldest son. The big chief has the responsibility for providing equal distribution of land to the lower chiefs (*smol faea*).

Where there is no more surviving bloodline of a subordinate chief or nasara the land would conventionally reverse back to the high chief. It is the usual duty of the principal chief to summon other small chiefs having interest to discuss the matter before nominating another chief to work the land. Land under the ruling and control of a paramount chief cannot be given away to another tribe outside the land without the chief's authorization.

This is a male dominated structure which is closely intertwined with the land tenure system. It could be described as an eternal culture painted with norms and values which cannot be altered nor modified but flows infinitely from generations to generation in the area concerned. By tradition, the matrilineal system would only triumph supposed it is proven before a court that there is no surviving male of the bloodline or nasara.

The second area that requires understanding focuses on the issue of adoption. It is traditional and highly recognized in this region that adoption is secondary or an exception to the general rule as regards to land ownership. In custom, having being adopted such acceptance cannot be construed to being absorbed into or part of the surviving bloodline. It is understandable that adoption is only a sign of acceptance to live under the guardianship of another family or tribe. In our case scenarios, such an acceptance or recognition would only extent to the right to use the land excluding ownership.

It must be reminded that the bloodline is an eternal culture that flows from generation to generations and must be distinguished from adoption. The point is that it is recognized that a patrilineal bloodline from nasara cannot be modified or given away to another tribe. Such bloodline remains the root of one's heritage to the land. In essence, adoption will be accepted only where the adoption is done within the chiefly blood line.

We also have consulted the policies adopted by the Malvatumaori Council of Chiefs and other regional bodies such as the Malmetenvanu Council of Chiefs in relation ownership of land. These commissions share the same principles .Section 2 of the Malvatumaori policies regarding adoption stipulates that adoption of other tribes will be accepted to have a right to claim land ownership provided they have lived in the land for about 4 to 6 generations but again in our view provided there is no surviving heir of the bloodline. While, section 3 states that adoption must only be made within the family or bloodline itself. The same section went on to state that any adoption of other tribes or family would be accepted provided the claimant can prove the custom of the area. This particular section seems to contradict itself.

However, given such ambiguity, our priority is to apply the former part of the section as such is in conformity with the practice in this area.

Turning to the issue of *will*, it is generally accepted that wills performed in accordance with the custom procedures and are valid. But, that right is confined to other custom businesses excluding land. Land is normally passed on to the next generation patrilineally by way of bloodline.

The next area of attention is whether there are customary boundaries recognized to be in existence during the period involving the movement of tribes and the creation of nasaras. It is historical that tribes in the olden days barely moved around due to tribal wars over territorial conquest and the practice of cannibalism. Boundaries are commonly indicated by creeks, rivers, rocks or other physical phenomena. Boundaries dividing each chiefs kingdom is normally surveyed by the two high chiefs and their people. Additionally, it is accepted that a moving clan is generally allowed to perform pig killing ceremonies on others soil or nasara. But, such an event cannot entitle an individual or tribe to claim ownership over that respective land or nasara of performance.

With this brief summary of the custom practices and usages, we now present each parties claim commencing with the primary disputant.

ORIGINAL CLAIMANT

The genesis of the original claimant provides that his first ancestors were originated from two cone shells. These cone shells were once living in a cave at Pitnibek. At one time they had a row which resulted in one of the shells loosing its tail. The broken tail changed into a turtle and swam to Benenavet's passage. There it gave birth to a female baby. While his cousin changed into an eel fish and swam up the river of Malua and finally formed into a male human. The woman grew up at Utabep (Nerghies) while the man lived the land of Mawe.

These two humans after some times meet each other and became wife and husband. From their union they had 2 boys. Each male performed pig killing ceremonies and became the paramount chiefs of the two land namely Mawe and Nerghies. The elder son was ordained as high chief of Mawe and the younger became paramount chief of Nerghies. He is claiming as the blood line of the paramount chief of Nerghies.

A family tree was drawn before this court in illustration of his history. He also presented a diagram picturing the structure or network worked by the brother chiefs and their subordinate chiefs within their boundaries. He has several nasaras at Nerghies and Eldu.

He submitted that since there are no life blood of the paramount chief of Mawe, as such he has the right to govern the boundaries of the land of Mawe and Nerghies.

Beside his statement of claim also presented other documents. These documents consisted of village and Area courts decisions attached to his claim regarding his chiefly title. Statements numbered 1.1-1.8 & 3.1-3.5 do not seem to mention any useful evidence.

On cross examination, it was noted that he could not name his original paramount chiefs and their immediate descendants. He could only trace his ancestors back to Nibaltiv as the fifth generation. He had no knowledge as to which nasaras his fifth to the third ancestors have performed their namangi except Betnibell who performed his pig killing at the nasara of Kivkiv. When questioned about his place of origin, he answered 'middle nambas'. He concluded that Nerghies and Eldu are lands belonging to the middle nambas.

Roy Lamblili chairperson of the Mawe council of chiefs gave confirmation that the claimant's history and map are correct. Part of his statement targeted counter claimant 4. He argued that Belden Joe has no right in custom to claim the boundaries or part of the land of Nerghies on customary grounds that they are traditionally regarded as servant of the Paramount chief of Mawe and Nerghies. On cross examination, he stated that Eldu and Nerghies are part of big nambas. Chief Edwin Sechal of Partarmul presented a similar statement as witness 1. During interrogation, he contradicted his colleagues statements by saying that Eldu and Nerghies are part of the smol nambas but are practicing big nambas custom usages.

Maxim Lambi explained that there are life blood of chief Nite bill of the land of Eldu. He explained that the first male and female humans of Eldu originated from a liane called Tahumel. They had three boys who formed 3 namelapis at Eldu and are soldiers to the high chief of Nerghies. Family Lambi is the surviving ancestor of chief Makanamen. A family tree was also presented in illustration of those facts. At the course of questioning, he had no knowledge of the locations of the nasaras of Nite bill at Eldu. He told this Court that Eldu and Nerghies are part of the smol nambas but practice big nambas custom.

Only 2 parties namely the original claimant and counter claimant 1 formed part of the visit at Nerghies. He identified three namelapi stones claiming them as belonging to Makanamen at Eldu. While his other nasaras at the area of Nerghies were disputed by counter claimant 1. He told the Court that the nasara of Kivkiv is a nasara belonging to the big nambas.

COUNTER CLAIMANT 1

This contestant is only claiming the land of Nerghies as a smol faea remaining under his authority being the paramount chief of Malua, smol nambas area. The land claimed begins at the Malua river to Sikeri creek excluding Eldu.

He provided that his 2 first male ancestors evolved from a wild plant called *Nesif revat*. The older is called Leleomu while the later is called Leletah. Both lived at the area of Botmesmes (now Leghan). At one occasion they noticed fire smoke from a far mountain. Upon their curiosity, they discovered two women whom became their wives. Leleomu married Witermano while Leletah wedded Witermah. Leleomu was made big chief of Nerghies while Leletah was advisory to his counsel. His chiefly ancestors have performed their namangi and namelapi at the area of Nerghies. He owns 10 nasaras as outlined by his family tree.

To reinforce his statement, he submitted that several village and area courts including a formal Court have recognized him as the paramount chief of Malua having right and control over his claimed boundary. He referred the Court to a decision of the Area Land Committee dated 16th June 1987 deciding that the land of Nerghies is under his control. Two previous village courts held in or about 1975 & 1979 have handed down similar judgments. The Native Court in 1952 has recognized him as the customary owner of Nerghies. A copy of this document is attached to his statement filed herein.

When examined, he clarified that he does not claim Eldu because he has given that land to John Bill as representative of the big chief of Tenmaru. Most question asked targeted his tendered document concerning the Native Court judgment.

Japeth Kalep confirmed that Salemumu's claim is truthful. From there he went on to say that other claimants should not claim the land in question since their representatives have signed the decision of the Native Court, in 1952. His statement was greatly challenged by other claimants remarking that it is false since it had no signatures or stamp.

Elison Elija led evidence that the original claimant's history is false. He explained that his father chief Elija and William (father of the primary claimer) were involved in creating this history on the 8th of December, 1974. After William's returned from Malo in 1975, he has been living with his father. At one occasion he was personally sent to consult a custom clever to cast a spell on other claimants to believe and accept his history. On cross examination he maintained that no one should accept this history labeling it as fake. The original claimant argued that this is an hearsay statement and should not be accepted.

At the field trip, this party showed this Court certain nasaras including a nasara belonging to a paramount chief at Nerghies. He explained that such nasara is structured in accordance to the smol nambas namangi practice. The original claimant has also disputed ownership of the visited sites.

COUNTER CLAIMANT 2

This defendant addressed the Court that the basis of his claim is by way of customary rights given by paramount chief Tellie of Eldu prior to his death. He provided that chief Tellie's brother was killed in tribal war that had occurred between the native of Nerghies and Eldu. As a result of this incident and in fear of his safety, he escaped to Maek at Blavanu (inside Tenamet) to seek refuge. While living at Maek he showed the chief of Maek all the land marks including the passage to the sea coast at Hanandem. From his map, the land claimed begins from Sasel running north westwards to Dadarna inland to Wornap and down to Pinapo.

Upon surveying the land chief Tellie then duly declared that his custom chair *Naplahmao* will root at Maek. A pig called *Lusep* was handed over to chief Haridavaon of Tiris towards Tellie's funeral. It was explained that by custom as a *smol faea* his ancestors cannot bury a paramount chief. In addition, at the ceremony commemorating his 10th day of death, 3 more pigs were killed for the two high chiefs of Tenamet and Tiris. There is no family tree of this chieftom ship but one produced in favour of witness, John Terry of Maek.

At the stage of interrogation, he explained that there are relics of *namelapis* and a nasara of paramount chief Tellie of Eldu, big nambas area. There is no surviving issue of this chiefly line. He emphasized that according to the custom of big nambas such event signify that the right to the land of Eldu would rest in his hands. He further clarified that he does not claim Nerghies land since it belongs to chief Salemumu.

John Terry outlined that chief Elija had asked him permission to log a *tamtam* at Eldu. People of Maek have damaged and destroyed gardens belonging to the Tenmaru people. Chief Marcila Aranhabat of Makanawei had sought permission from him to have access to the sea during his circumcision. He concluded that these factors are evidence in support of his claim as owner of Eldu. Most questions posed during examination have been answered by the claimant.

Iven Josiah assistant chief of Brao, Tenamet gave a confirmation statement that Jonathan Dawi's history is correct.

At the course of the visit, this claimant showed this Court namelapis and interestingly a nasara alleging it to being built by paramount chief Tellie. The remaining parties had no knowledge of this stone.

COUNTER CLAIMANT 3

The two claimants, Leonard Bill and George Miller from Tenmaru are jointly claiming the land of Eldu. They claimed that their duo male ancestors had originated from a liana called *Tahumel*. Melkamul is the eldest and Melkatak is the youngest. Melkatak migrated to Tenmaru while Melkamul became the chief of Vakas.

In detailing his claim, he clarified that he is claiming the land of Eldu whose customarily owner is chief Aklin. Chief Aklin and some of his people had sought refuge at the hands of chief Tuptek of Tenmaru. Chief Tuptek is the great grand father of Leonard Bill. As chief Aklin was living at Epnawei, he adopted a boy known as Anmat son of Asmat since he has no male issue. He then called all the chiefs and leaders of Tenmaru to witness the adoption of Anmat as his son. Having made such declaration, by way of his last will and testament he handed over his land Eldu to Anmat.

In support of his statement he went on to provide several documents marked as document no.1 - Doc no.6. On interrogation, he has agreed that in his situation, traditionally the right should rest in the authority of the paramount chief who governs the whole boundary. He went on to confirm that Salemumu is the custom owner of Nerghies.

John George presented a family tree showing the ancestors of George Miller to the present generation. The large part of his statement was re confirming his claimant's history. Upon questioning, he maintained that this custom will or birth right given by Chief Aklin is done in conformity with the custom of big nambas. He went on to emphasize that the Native Court had given this land to John Bill. He argued that if custom does allow his right to prevail, he believes that such claim is guaranteed by the Constitution.

Alick Luhabath's witness statement is re affirming the contestants claim and provided that Leonard Bill is a member of the chiefly blood line of the paramount chief of Tenmaru. While questioned by the Court, he agreed with the claimant's statement that adoption cannot override inheritance by virtue of the chiefly blood line principle.

At the visit to the site they showed us 3 namelapi stones claiming them to be owned by chief Aklin of Eldu.

COUNTER CLAIMANT 4

Belden Joe is claiming that the land claimed by the complainant covers land belonging to Batarmul. This includes land extending south westwards to Selevon before Nerghies and Eldu. He stressed that there is a custom boundary surveyed in 1977 by a panel of chiefs from Batarmul, Tenamet, Malua and Baternalem. He agreed that the land of Nerghies is traditionally owned by Paramount chief Sethdrak Salemomo of Malua. A family tree was drawn highlighting the different nakamals of Batarmul.

On oral examination, he strongly disagreed with the original claimant's map. He commented that the main disputant has produced a false map disturbing all custom boundaries marked and respected by chiefs within the land in contest. He reiterated that he only had knowledge that the land of Nerghies is under the ruling of Salemumu. He told the Court that he has no identity on the land disputed except on the other side of Malua river.

His first witness, Japeth Vane led evidence that the land of Patarmul borders with the land of Mawe, Malua and Penevanu. He added that his great grand parents one Tile and Vane had assassinated a man from Penevanu at Rombel due to his trespass into their land. A song was composed in remembrance of this killing. There was no fresh evidence adduced during examination. Eric Kenda made a similar statement to that of Belden Joe.

It was noted during the field trip that the claimer seems to be uncertain about the limit of Batarmul. He has prior to the trip, cut crosses (x) on coconut palms and several fruit trees near a nasara deep into Eldu. He has not identified any of his identity throughout the walk.

COUNTER CLAIMANT 5

Chief John Gorden led evidence that his first male ancestor originated from a crawling plant known as *Tahunmel*. This boy was named Tahunmel. He married a woman and had a family of two male offspring. The older child is called Amlekamu and the later born called Amlekatah. A kinkin (devil) has identified them the land boundaries. Amlekamu became paramount chief of Vakas while was high chief of Tenmaru. He is claiming land from the mouth of Tenmaru river to Wornap at Malua. Other part of his statement consisted of counter arguments defending his claim against other parties to the case. A family tree is drawn to the attention of the court tracing his chiefly ancestors.

Notes collected during examination discussing the issue of chiefly title of Tenmaru will not be considered in our judgment. This is a separate issue which will be dealt with by the relevant court. He maintained his proper statement and explained that Eldu is part of Tenmaru. He expressed that Eldu is governed by a lower chief, Aklin and is under the control and ruling of the great chief of Tenmaru while Nerghies is governed by chief Salemumu. He said there are namelapis constructed for this chief at the land concerned.

Johnlyn Aranhabat informed the Court that sometimes in 1976 he overheard one Juda mentioning that the land of Nerghies does not belong to William (original claimant) on the reason that he is from another boundary Mawe. A decision was ruled in favour of chief Salemumu. He further explained that the claimant has just migrated to Alpalak in the late 1970's. He provided on cross examination that Belden Joe is wrong to claim land belonging to others.

John Peter Aranhabat, 85 years old provided that he had followed his father in 1943 during the last season of circumcision surveying Tenmaru's land limits. The walk started at Wornap, Abal Daraf Barbar, Navat Yut, to Nawi Alel. These boundaries mark the frontiers of Tenmaru land. He is also questioning Salemumu's action for selling land. During questioning, he objected Belten Joe's claim and explained that chief Aklin of Eldu was buried at Tenmaru.

Maxwell Rehambat counter argued that counter claimants 3 & 6 have no right in custom to claim land other than the high chief who has authority over them as subordinate chiefs. Chief Jean Mark said that some lower chiefs of smol nambas regions had sought permission from Tenmaru's chief for access to the sea at Pektel. The chief of Navamb has performed a peace ceremony with the chief of Tenmaru at Abal Daraf Barbar. There was no fresh question posed to him.

During the site visit, he identified us some namelapi stone claiming them to being for chief Aklin. There are other stones beside the above and one belonging to a paramount chief.

COUNTER CLAIMANT 6

John Ephraim representing his other colleagues told this court that he is claiming Eldu. Its boundaries commence from Tenmaru river to Bektel. He emphasized that this boundary was a longtime border discovered by two explorer of Tenmaru. Chief Aklin was the last surviving blood of the nasara of Eldu.

Due to uncontrolled tribal war at Eldu chief Aklin escaped to Tenmaru and sought safety under the protection of chief Aptigh of Apnawei, Tenmaru. Prior to his death he sent forth a message to Aptigh that the ownership of the land of Eldu will rest upon his hands. He re iterated that this transfer of land ownership

is carried out in accordance with the custom requirements. Chief Aklin died and was buried at Aplaghsu Apitaur. A pig was donated towards ceremonies of his funeral. A family tree is provided tracing chief Aptigh's adoption.

He concluded that following such custom transfer he believes that he has the right to inherit the land of Eldu. He was questioned about his history and entire claim on the fact that he has been previously acting as a witness to counter claimant 3. A copy of his confirmed statement is produced before this Court. All claimants are challenging his claim. He has confirmed that Nerghies is governed by chief Salemumu.

Jameson Cyrus gave a confirmation statement of this claimant's history. He generally stated that chief Aklin is a subordinate chief of the high chief of Tenmaru. Among other statements numbered as 'proves point 1-9 he stated under point 6 that inhabitants of Eldu have no identity stones to prove their existence at Eldu.

On cross examination he stated that chief alkin has remains of namelapi stone at Eldu. He was also question about his statement made in confirmation of counter claimant 3's claim.

Russel Jerethy held that the subject land belongs to Ephraim. His father had purchased a piece of this disputed land from Ephraim. He went on to say that the original claimant has no right to the land as he is a native of Mawe. A similar statement was put forwards with regards to Jonathan Dawi who is from Tenamet. He pointed out that the pig claimed by Jonathan concerning the land, belongs to one Thomas father of one Rivil. Rivil has not given the right or consent to the disputant in justification of his claim. Jonathan did not challenged this statement.

Gilbert Niram bath argued in his statement that Eldu is part of Tenmaru. Chief Eighabat and Daniel of Tenamet had once been imprisoned for uprooting two coconut seedlings at Navapra. One Thomas has also purchased land from his father, high chief of Tenmaru. He added that Andre son of chief Eighabath of Tenamet had also purchased the land containing Benenavet from his father. The original copy of the receipt is dated 8th December, 1960 is tendered and verified by the Court. This exhibit is marked as WE1. Such document was challenged by the last claimant.

When questioned about the legality of Ephraim's claim he genuinely pointed out that in custom the land should reverse back to the paramount chief to decide on. He submitted that lower chiefs cannot fight or claim against the high chief as they are servants to the chief.

COUNTER CLAIMANT 7

Albert Horambath claims that his first ancestor Pektel originated from shell known as *Nataf Naku Lamu*. This passage was named after him. The claimed boundary is from Sikeri creek to Tenmaru river. After sometimes Pektel moved in land in fear of tidal waves to Patnater. There is a custom road leading the way to Pektel passage whereby his ancestors have been using then to date. There are namelapis belonging to chief Aldoo whose name was given to the land in contest.

A family tree is produced in illustration of his claim. The third person from his family chart Raplili had two sons namely, Tafptahen and Aldoo. The former was made paramount chief while the former as subordinate chief. Both sons performed their pig killings at Patnater inland Tenamet. Tafptahen was ordained with a chiefly title as Tafhambat. As time passed and due to the longer distance to the sea Raplili then moved to Rupil. There are identities as coconut palms and other fruit trees in place. From this station they then moved to Pinmir where Tafhambat was buried at his death.

At Pinmir Aldoo also performed some namelapis. Aldoo had a son, Ninn who also performed 2 namelapis at Winater and Almamak. Ninn had a son Telly who performed 2 namelapis at the same stations. His father Horambath had witnessed this ceremony and shared his ceremonial pig. After such event Telly and Horambath moved back to their original place of birth right at Pektel during the era of Christianity.

In defence he argued that his ancestors have never purchased this land as claimed by Ephraim and other claimants. He refuted the tendered document contending that it is not a real receipt and there are possibilities that such document is fabricated. On questioning about the ownership of Nerghies he pointed out that it belongs to Salemumu and his people.

Pastor Raymond Axie gave a confirmation statement that Pektel is their birth place since the creation of their first ancestor. They have been utilising this coastal passage on circumcision ceremonies. Pektel had not performed any pig killing ceremonies. Most questions posed during examination have been answered by the claimant.

Billy Pita briefly reported that his father Pita Tutahen had told him that the last descendant of Aldoo is Telly who had been involved in a Native court case held at Santo in 1951. Only 3 parties had asked him old questions. Samuel Petero confirmed that the land boundary claimed by Albert is exact. He counter argued

that Belten Joe's claim is not accurate and false. Mawe and Tenamet share a custom boundary.

ANALYSIS OF EVIDENCE AND APPLICATION

Having carefully considered the overall evidence presented by each party the findings are listed below beginning with the primary disputant.

Original claimant

The foundation of his claim is based on a patrilineal chiefly blood line. It remains the question of whether he has proven his case on the balance of probabilities. The evidence will determine his position in this context. Here are the relevant findings.

Firstly, there is overwhelming agreement from all other parties arguing that the original claimant is a native of Mawe and not Nerghies. It follows that throughout the course of the trial there was confirmation and sufficient evidence from every party pointing and emphasizing that the land of Nerghies is originally regarded as custom land governed by paramount chief Salemumu of Malua. He hardly challenged these given facts.

Secondly, it is traditionally recognized that a single paramount chief from a different boundary has no right over an independent land ruled by another high chief. That right would only stand suppose there are no other surviving bloodline of such high chief, his assistant or subordinate chiefs. It is obvious from the statements of this case that there are surviving descendants of Nerghies whom are party in this dispute.

Thirdly, it was argued that the map introduced has exceeded into other recognized customary boundaries. It is noticeable that the claimant has no clear knowledge and is uncertain of his boundary limits. This developed confusion over his identity as to whether he is originated from the smol or big nambas. His recorded talk says that he is from the middle nambas. His witness, Maxim Lambi and Edwin Sachal instead stated that Eldu and Nerghies are part of the smol nambas but practice big nambas custom. Whereas, Roy Lambili provided that Nerghies is part of big nambas and its natives practice big nambas custom. These statements have created doubts in our mind as they seem to contradict each other's statement. There are only two tribes in this region, known as *Big Nambas* and *Smol Nambas*.

It is judicially noted that it is a common practice because it happens at times in the area where indigenous of smol nambas are allowed to performed pig killing

ceremonies based on the big nambas custom pig killing ceremonies . However, such an approval must strictly come with some form of a custom payment. In our case, there is no information at all to that effect. In that circumstance, his statement would sound irregular to the normal custom processes.

It follows that during the visit, his other nasaras at Nerghies were largely disputed by counter claimant 1. He has told the court that the nasara of Kivkiv is a nasara built in accordance to the big nambas stone laying. We do not share his version. In our examination regarding the size and patterning of stones, such nasara is absolutely built according to the smol nambas style.

On the other hand, he cannot claim the 9 namelapis and the nasara of a paramount chief. This high chief stones is patterned similarly to the visited stone at Kivkiv built according to the smol nambas structuring of stones. In the absence of further explanation pertaining this important fact, it is our view that such stone may have been erected by a foreign chief or a native chief of the area concerned. Additionally, it is impossible for a single chief to perform 10 confirmed nasaras at the same place. These other stones belonged to some unknown chiefs.

It is apparent that the said weaknesses or discrepancies in his evidence may have links to Elijah's statement above concerning the reliability of his claim. That statement was not substantially challenged except a mere denial of it without any advance argument.

In application of the custom to the highlighted findings, this claimant has failed to establish his claim before this Court. As such, his claim cannot stand.

Counter claimant 1

In the analysis of his claim it is clear that he is claiming the blood line of the paramount chief of Malua. The finding facts are in the following words.

Firstly, there was common understanding and accord among all other claimants that Nerghies is recognized as a traditional land of paramount chief Salemumu and his people.

Secondly, there are decisions concerning the land of Nerghies made in his favour. For example, a judgment of the Area Land Committee dated 16th June 1987 including two previous village court decisions in 1975 & 1979 whereby the original claimant was a party to cases.

Additionally, the Native Court in 1952 so far still recognize him as the customary owner of Nerghies. Page 3 of such decision providing the results of conciliation numbered 2 reads " *All land claimed by the Malua Bay to the north of the river Sikeri and running right to the lands traditionally owned by the Espigles Bay are with no doubt owned by the Malua*".

Despite the fact that such formal court decision was widely disputed by other claimants as false since it was seal and signature; however, having verified this document it is evidential that the subject Joint Court did make a decision. This order is marked by primary evidence such as a block of cement at Sikeri creek. For that fact, it is admissible.

He has also shown the court his nasaras at Kivkiv including other identities with reasonable explanation with a clear boundary. For instance, that the pig killing ceremony at Kivkiv was performed according to the smol nambas style. We totally agree with his explanation.

He has maintained his proper statements. Given the nature of his case, we found no inconsistency in his overall claim. He is a credible witness to his case.

Counter claimant 2

This party's basis of claim is by way of customary rights given by paramount chief Tellie of Eldu. The question for determination is whether such will and its associated ceremonies be considered sufficient in custom to justify the claim.

To answer this question, custom must speak for itself. It is acknowledged that such a customary will would be generally accepted provided it is arranged in conformity with the custom procedures. The answer is in the affirmative having considered the ceremonies undertaken by the claimant's grand parents.

However, such *will* not be conclusive as there are facts that cry out for more explanation. In essence, the claimed right cannot override the fact that land ownership only transfers through the chiefly blood line. The claimant is not part of this relationship. We are not persuaded that there are no other surviving blood line of the nasara of Eldu given other parties evidence.

Next is whether it is possible for such a paramount chief entering another high chief's land without notification. Historically, the paramount chief of Tenamet must know about the new comer. Considering Tellie's status of seniority, in our opinion the claimant's assertion would sound irregular because big chiefs would always seek shelter under their counterparts.

On the other hand, his statement regarding access to the sea at Hanandem is also questionable because his paramount chief Albert has mentioned Pektel instead. It is not also possible for a smol chief to show a paramount chief the sea.

Further, he cannot claim the 9 namelapis and the nasara he had identified us as belonging to a paramount chief. This high chief stones is patterned similarly to the visited stone at Kivkiv. In our consideration, this nasara is built according to the smol nambas structuring of stones. In the absence of further explanation pertaining this important fact, it is our view that such stone may have been erected by a foreign chief or a native chief of the area concerned. Additionally, it is impossible for a single chief to perform the 10 confirmed stones. It is likely than probable that these other stones are set by some unknown chiefs.

Additionally, the boundary claimed seemed to fall into strong confirmation support from other claimants placed before this Court that Malua or Nerghies is traditional land belonging to chief Salemumu and his people. He has agreed to this support, yet on the contrary he is also claiming Nerghies. His history seemed new to other claimants as he has not at anytime in the past disputing this area.

Moreover, the claimed nasaras at Eldu would seem to fall outside his claimed area in light of his tendered sketch map. He has failed to clarify this confusion.

Counter claimant 3

These claimants are also claiming a customary will made by chief Aklin of Eldu a subordinate chief under the control and supervision of the paramount chief of Tenmaru. Given this facts, the issue for determination is whether, such custom will qualify the claimants claim to prevail. As emphasized earlier in this judgment, it is commonly recognized in the big nambas area that any smol faea or chief's land having no surviving issue must reverse or referred back to the paramount chief as governor of the full boundary for his consideration. It is a role of the big chief to decide amongst any other disputants as to who would occupy the land. The claimant, Leonard himself and witness Alick Luhambath have confirmed and supported this practice during examination.

The visit of the land reveals that there are 10 namelapi stones including a nasara belonging to a high chief. These stones cannot be staged by chief Aklin alone on the same area given the fact that he has escaped war to Tenmaru as evidenced. He has no knowledge and explanation concerning this discovery.

His occupation and selling of land to other people can only confirm the fact that he was given this land following the decision of the Native Court in 1952. It was ultimately unclear whether his claimed adoption was the influencing factor

eventually giving birth to his possession of Eldu. Our interpretation of the specific finding of that Court is that the land was only given to him given his personal status of seniority. He is to take care of the land in favour of the Tenamets as beneficiaries.

In conclusion, we have noted that his statement has mentioned that one of Aklin's daughter is married to one Perol of Amok. In application of the custom rules regarding ownership of land, any surviving descendants of Aklin's daughter would automatically inherit the right to own the land other than this claimant if, there are no other issues of the above chief or nasara.

Counter claimant 4

Belden Joe is claiming certain parcel of land claiming them as part of the land of Batarmul. In light of his evidence presented before this Court, we have noted the following facts.

Firstly, he has no nasara and other identities inside the area claimed. He is not certain about limits of Batarmul. It is noted for instance, that he has cut crosses (x) on coconut palms and fruit trees prior to our walk near a nasara deep into Eldu. Even, he was not part of the party which visited the boundary and other identities at Nerghies. All other claimants have refuted his claimed territories.

It is obvious that the claimant has placed heavy reliance on his assertion that such boundary was surveyed in 1977 by a panel of chiefs from Batarmul, Tenamet, Malua and Baternalem. We have doubted this survey because it was made in the absence of a meeting.

On the other hand, he has agreed that the land of Nerghies is traditionally owned by chief Sethdrak Salemu of Malua. At the same time he is also claiming part of Nerghies as part of Batarmul. It is our opinion that his claim would be oppressive in this respect. He has entirely failed to furnish this Court with sufficient evidence in support of his case.

Counter claimant 5

Our immediate consideration focused on the vastness of the area claimed from Tenmaru river to Wornap. It would be impossible for a paramount chief to govern such a huge land. We are referring to the full undisputed boundary of Tenmaru from Vakas to Tenmaru river plus the disputed area to Wornap.

Secondly, it is conceivable that natives of Tenmaru would find difficulty in moving easily into Eldu given geographical characteristic of Tenmaru river bank.

It is historical that tribes in the olden days barely moved around due to tribal wars over territorial conquest and the practice of cannibalism. Boundaries are usually indicated by creeks, rivers, rocks or other physical phenomena. A contestant to the paramount chief's title chief Gilbert Aranhabat who is a witness disagreed with his named boundaries. Other claimants from Tenmaru are also disputing his boundary marks. It is viewed that Tenmaru's boundary limit would stop at Tenmaru river.

Secondly, his claim has included land governed by chief Salemumu. He himself admitted in Court that Nerghies belongs to Salemumu. This is followed by the fact that he was not part of the team which visited the nasaras and boundary at Nerghies. Upon questioning, he stated that he does not dispute Nerghies except Eldu. Then why claim Nerghies as contained in his sketch map? His irregular steps would give an indication that he is not well acquainted with the claimed boundaries.

Thirdly, procedurally boundaries dividing each paramount chiefs are normally surveyed by 2 paramount chiefs and their people normally after some form of meeting. As such, we do not accept John Peter's statement as proper. We also doubted his statement concerning the nasaras at Eldu. He has no knowledge and explanation of the discovered high chief stone and other namelapis. The same explanation is applicable likewise as above.

Most importantly, the issue of paramount chief is still hanging. We have been cautious in this case not to create confusion over the chiefly title which is twined with the land tenure system. In the big nambas area, the paramount chief normally govern the whole boundary. Therefore, any decision to that effect would in one way or another be arguable that this Court is confirming that he is the paramount chief of Tenmaru. In that circumstance, any declared boundary would be under the subject control of the concerned party. Such a decision would inevitably caused further hostility and injustice in the dispute over the paramount chief's title. That in a sense is one of the reasons for not deciding in his favour.

Counter claimant 6

John Ephraim is claiming the land of Eldu by way of a customary will given by chief Aklin the last surviving blood of the nasara of Eldu. The question posed for consideration is whether such will be considered sufficient in custom in justification of the claim. Was there any ceremony undertaken in recognition and support of this *will*.

It is commonly recognized in big nambas area that any smol faea or chief's land having no surviving issue; the subject of ownership must be referred back to the paramount chief as governor of the full boundary for his consideration. It is the function of the big chief to decide amongst other disputants as to who should own the land. This practice was confirmed by his two paramount chiefs Gorden Aranhabat and Gilbert Nirambat who is a witness to his own case.

In the alternative, claiming adoption cannot override the patrilineal system. A claim on the basis of adoption will be accepted only where the adoption is done within the chiefly blood line or where there is no surviving descendants of the paramount chief, the whole tribe or nasara.

He has no side story given the discovery of the 10 stones at Eldu. Again, the same explanation as mentioned would come into effect. We acknowledged the fact that he has been selling land. Again this transaction cannot be inferred that he is the custom owner.

His history is questionable as he was once a witness to counter claimant 3 history. The fundamental question would remain unanswered behind the scene as to why the same chief be adopted in two separate histories. There is room for implication to suggest that his claim may have been recently formulated.

Counter claimant 7

Chief Albert is claiming a patrilineal chiefly blood line. The relevant findings are listed below.

Firstly, there is ample information showing that his ancestors have been using a custom road marked with narara trees leading to the sea coast at Pektel.

With reference to the issue pertaining exhibit WE1, we are satisfied with this original document as accurate made in account of the said sale of the land containing Benenavet. Conversely, such purchase cannot be construed that such land belonged to the paramount chief of Tenmaru given other supporting documents. One must be reminded of the Native Court judgment ordering that the land to be disposed in favour of the Tenamets in 1952. At page 3 numbered 1 states " *All lands claimed by the Malua Bay to the south of the river Sikeri are bequeathed or given by the Malua Bay to John bill of Tenmaru, chief of the region who will have every right to dispose off in favour of Tenamit as his intention would be.*"

This party was able to trace the movements of his ancestor's early settlements from their evolution to the time of Christianity when they re settled at Pektel to date. It would also prove impossible for natives of Tenmaru moving easily into

Eldu given geographical characteristic of Tenmaru river bank. People hardly moved around to other boundaries in fear of war and cannibalism. There was indeed evidence of war in the concerned area.

He has also identified us namelapi stones belonging to his 3 ancestors at Eldu. Aldoo performed his namelapi at Pinmir. Aldoo's son, Ninn performed 2 namelapis, one at Winater the other at Almamak. Ninn had a son Telly who performed 2 namelapis at the same stations. Nonetheless, the mystery remains unveiled as to who erected the discovered stones of a paramount chief.

Other arguments such as to why he does not have a *tabu* place at Pektel. It is experienced that today many *tabu* places have been destroyed or used on other developments.

His only weakness rests with the discovery of the high chief stones. It is noted that almost every claimants have no knowledge of the discovery. That constraint has not materially undermine his overall evidence placed before this Court.

CONCLUSION

In light of the foregoing discussions and in application of the custom and the evidence, it is hereby this day adjudged;

1. That the ownership of Nerghies land is declared as *smol faea* belonging to paramount chief Salemumu and his people.
2. That High chief Albert Horambat is declared custom owner of Eldu as claimed accordingly.
3. That any claimants and other personal working the subject lands must undertake appropriate arrangements with the declared owners for their continuous use of the lands.
4. All parties pay their own expenses incurred from this proceeding

Any appeal must be undertaken within a period of 60 days at the receipt of this judgment.

Dated at Lakatoro this 1st day of April, 2005

BY ORDER OF THE COURT

.....
Magistrate EDWIN MACREVETH

.....
Justice ENDY SHEM

.....
Justice PHILIP DALEY

.....
Justice JACOB NAUS

