

(Civil Jurisdiction)

BETWEEN : THOMAS TALAKA  
Complainant

AND : KAMIA NIMAL  
1<sup>st</sup> Defendant

AND : KELPEN SILAS  
2<sup>nd</sup> Defendant

**MATTER: CLAIM CUSTOM PROPERTY - COCONUT PLANTATION**

Coram Justices - Mr. Frederick David  
Mr. Andy Sheru  
Mr. Johnsen Selwyn

Clerk: Wendy Raptigh

**JUDGMENT**

The issue before this Court is to determine the custom ownership of a coconut plantation situated at Matanyat, North West part of Malekula. The plantation in question was in the past until present occupied by the Nimal family (the 1<sup>st</sup> defendant) thru some past relationship of their great grand parents. However, the complainant claims that he is the only surviving relative left and has the right to the property through adoption.

The deceased owner of the plantation was Isik. Isik had no surviving bloodline. The complainant and defendant are related through extended families.

Given the brief background, we will now look at the parties' evidence.

**Evidence:**

Thomas Talaka (the complainant) in his claim provided that the basis for his claim is through adoption. Isik adopted Steven. In 1945 Steven took a wife - Fanny. Isik pay the pride price.

During their stay, Isik, Steven and Fanny planted the coconut plantations now in dispute. There were two coconut plantations, one in Senwuru and one in Lokedona. When the coconuts were mature, Isik started making copra. Isik used the plantation

died he gave the right of use to Steven. Steven continued until before he died gave the right to his son Nicholson.

One day Nimal (Kamia's father) came and asked Nicholson if he could use the coconut plantation for copra. Nicholson agreed on condition that after Nimal's death the plantation shall return back to him (Nicholson). Nimal was quite old that time and not strong to work, so he asked Nicholson to cut copra for him in order to pay for food, soap, kerosene and other things.

Two witnesses appeared on his behalf. Witness 1, Ps Louis Ross' stated that Steven and Isik allowed them to live and use the place. Isik adopted Steven and pay pride price for Fanny to become Steven's wife. Nicholson is Steven and Fanny's only child. The coconut he stated that Isik planted some, Steven and Fanny planted some. He further stated that Nimal (Kamia's father) is from Brailwan. He came down to Masak (Isaac's place) often to see Isaac's father. Isaac's father is a widow, and through their agreement Nimal gave one of his wives to Isik's father, since he had two wives.

On cross examination about the adoption, he admitted he knew about the adoption of James. He argued that the proof was when Isik was sick till death and burial only Steven took care of him.

Witness 2, Fani Steven stated that Isik came for her, paid pride price for her to become Steven's wife. To add she mentions how Isik had anointed Nicholson to be the next kin to take over Isaac's property.

On cross examination, she re-emphasized that Isik adopted Steven. Steven was the only person caring for Isik until death.

The defendant, Kelpen Silas spoke on behalf of the two defendants. He stated that Kamia is his brother. Nimal, Kamia's father adopted him. The basis upon which he claims the plantation is through Nimal and Isik's friendship. Nimal is from the Matanvat island, Nemeiwan. Isik is from Malsak, Matanvat sea coast. In history the people of Malsak and Nemeiwan worship the same god at Nemeiwan. Kelpen stated that since they all worship the same one god at Nemeiwan, was the custom, good relationships, this is seemingly to say they are one people. For these reasons they believe they own the coconut plantation after Isik died.

Kelpen re-confirm that Steven took care of Isik until his death and burial but that does not mean he own the coconut plantations. They, the Nimals' own the coconut plantation.

Kelpen had object to the adoption of Steven. In 1941 it was cannibalism time in big nambas. Most people came for safety to Matanvat. During that period Steven came to Matanvat. Isik pay for Steven's wife (Fanny) only because Steven lives with Isik -- but that does not mean Steven should own the plantation.

Steven and Fanny after living together for some time separated due to some reasons unknown. Kelpen stated that the pride price was refunded back and they went their

separate life. Further more as stated the coconuts were planted by Isik, not Fanny neither Steven. After Isaac died Nimal was the first ever person to live and work the coconut plantation. There were no agreements of who was to take the plantation, but due to their past relationship - Nimal and Isaac, that is why the Nimals moved in.

On cross examination, it is noted that the people from Malsak are slaves to the people of Nemelwan. They worship their god together at Nemelwan but live two different boundaries. He went on to argue that Fanny and Steven planted no coconut trees.

Two witnesses were called to present evidence in his favor. Witness 1, Edison Silas, his statement was not of great assistance as it only gives confirmation to Kelpen's statement on Nimal working the coconut plantation. Witness 2, Kenti Jockray, statement notes generally that Nicholson did not plant any coconut. Isaac planted the coconut plantation and gave the right of use to Nimal. After Nimal died Kanna came in to continue working.

On cross examination it is noted that witness 2 refused to say his age. When asked if he had seen Isik he said "yes".

#### Custom:

The custom of this Island pertaining ownership of a property is through patrilineal system. The matrilineal system would only triumph supposed there is no surviving male of the bloodline. Adoption in our case is an acceptance to live under the guardianship of another family. This acceptance extends to the right to use the property. Adoption is usually performed through a custom ceremony and being witnessed.

A further issue that raises question is whether the man caring for the sick until death, is entitled to his properties after death. Yes, when there is no surviving bloodline. It is a common practice that after burial of the deceased, any surviving blood or close tribe should come forth to perform a ceremony to show gratitude and thanks to the caretaker. Otherwise what properties left should be given to the caretaker as a payment for the good works he/she had done faithfully.

#### Findings:

The issue here is whether Nimal is the right person in custom to be working the property?

Thomas Talaka stated that basis for his claim is through adoption. Despite the fact that there was no witness, the evidences to support that are:

1. the fact that Isik paid Fanny's pride price.
2. that Steven was with Isik in good times, in times of sickness to death and did his burial.

Who can ever take that responsibility Steven took except for a very close relative to heart. On cross examination Kelpen submit when asked "Faem Isik istap sike blong dad, Nimal istap whea?" his answer was "long Matanzat". One question raised here was if they had had a good relationship, why Nimal or his son didn't go to visit Isik.

Two witnesses appeared on Thomas's behalf. They both confirm that Isik paid Fanny's bride price and that Steven was the person beside Isik during his sicknesses to death and his burial.

The defendant, Kelpen Silas claims reasoning it to the relationship the two villages had, Malsak and Nemelwan. That relationship leads to Nimal and Isaac's friendship. When cross-examination he admits the bride price payment and Steven's faithfulness to Isik until death but object against the adoption.

In the analysis of his evidence, it is obvious that the defendant neither his tribes came forth to perform a ceremony to show their gratitude to Steven for all he has done for Isik has a valid point in accordance with the custom in terms of an adoption ceremony. It is noted that on cross examination when asked "Fanny mo steven ino planem kekonas whu iluk", he answered "bae witness ikam". Witness 1 did not answer that and neither witness 2; Witness 2 was talking about Nicholson not Fanny and Steven.

Moreover, on cross-examination when asked why Isik pay bride price, he answered "from se Steven ikam wok wetem Isik mekem nao Isik ipem woman blong hem". He contradicted himself, when asked if Steven planted some coconut or worked the plantation his answer was "No".

Furthermore in analyzing, Kelpen in his statement stated that "Ino gat eni agreement blong talem se oli givim coconas long whu la, Isik givim coconas long Nimal Steven's fallen relationship blong bifo nomo be ineva gat wan agreement se coconas blong whu."

Witness 2, at the stage of examination his status was very much disputed for a while when question how old he was he refused to answer. In that case one can not be sure if he was there during Isik's time or not. He looks young and Isik's time is in the 1940s.

In consideration to the defendant's position to claim, the common practice discussed will be applied. That is to say Steven's faithfulness to Isaac during times of his sicknesses until death and the burial was not in any way appreciated by the Nimal family before taking over the property. Based on this fact his claim must fail.

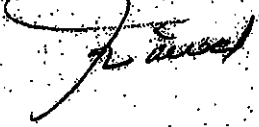
#### Conclusion:

Given the evidence place before this Court on the common practice in custom. It is hereby adjudged that;

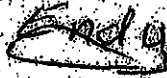
1. the defendant is ordered to return immediately to the Plaintiff the said coconut plantation.
2. the defendant is ordered to pay to the plaintiff the sum of V\$10,000 as costs and expenses on the plaintiff's claim.
3. payment should be done on or before 31<sup>st</sup> October, 2006.

Dated at Lakatoro, this 14<sup>th</sup> September, 2005.

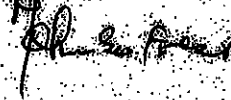
Jastis Frederick William



Jastis Endy Shem



Jastis Johnson Fraser



Dated at Lakatoro, this 14<sup>th</sup> September, 2005.

