

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

Land Case No. 02 of 1999

BETWEEN : MARTIN TOMOYAN
Original claimant

AND: KEVEN SHEM
Counter claimant 1

AND : FAMILY ROROMAL
Counter claimant 2

AND : RAYNOLD SAWAN
Counter claimant 3

Coram : Magistrate Edwin Macreveth
Justice Louis Mera
Justice Reuben Bakmelip
Justice Lorma David

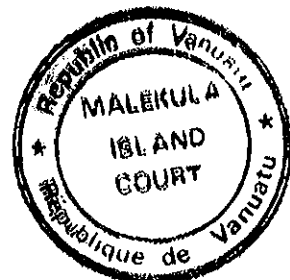
Clerk: Wendy Raptigh

Date of hearing: 13th - 14th of March, 2007

J U D G M E N T

The land in dispute is situated at Linbul on the northern part of the island of Ambrym. This customary land is registered as *Behal*. The advertisement caused by the primary claimant covers 65 hectares of land which was once purchased by The Australasian Conference Association for the Seventh Day Adventist Church. It presently contains an abandoned cattle farm and a coconut palm plantation owned by the Seventh Day Adventist Church. The disputed land is only a portion of the huge territory of Behal land.

For our context in this case, this court will specifically and only decide the ownership of 65 hectares of land in accordance with the publicity. The unadvertised parts of Behal such as Fanjewemel and others are subject to the decision of the relevant tribunal given the effect of the Land Tribunal Act of 2000. For specification purposes regarding its boundaries, refer to the advertised and sketch map filed therein by the original claimant.



There were five parties at the initial stages of the proceeding. The court has to withdraw one of the parties due to misunderstanding of maps filed at the court registry. The remaining parties are all claiming ownership of the land in issue.

THE LAW, CUSTOM AND HISTORY

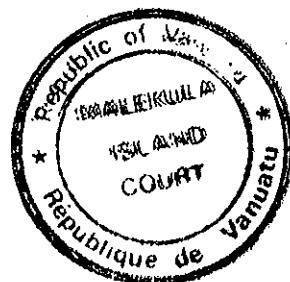
Before embarking on the subject matter and for purposes of better understanding the reasoning of this judgment; a brief discussion of the relevant laws and custom processes and usages of the concerned area are outlined below.

The area of concern does not have a land policy. In spite of such missing guidelines, there is significant information gathered from the hearing regarding land ownership. In its absence, we have also consulted the land policies adopted by the National Council of chiefs, Malvatumaori. Upon thorough reading we noted that such guiding land principles share a similar approach to those outlined below.

Briefly, the law under Article 73 of the 1980 Constitution stipulates that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. Article 74 provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu. Article 95(3) states that customary law shall continue to have effect as part of the law of this jurisdiction.

Turning to the customary practices, generally the island of Ambrym is predominantly a patrilineal society. In the concerned territory, ownership of customary land is communal or collectively owned based on common descent, residence within a nasara and participation in common activities. A tribe or bloodline is identified with the land through the nasaras. Individuals within the clan are closely tied up with their territory by affinity and consanguinity through blood and marriage. A group of persons belong to a family line and a territory is sometimes identified with a totem, such as a plant or an animal.

It is the common trend that the first person to explore, live and control a land boundary would habitually become the chief of the territory. This chief on behalf of his tribe or family would normally be referred or regarded by the public as the custom owner of the land. The members of his tribe or group jointly own undivided interests in the land. Land is shared amongst his relatives and kinship. The tribe which forms the land owning unit is normally based on blood relationship, that is, they are all related by blood, having descended from a common or original ancestor.



The community as a whole would have other chiefs beside the land owning chief. A chief would normally be nominated by the community based on wealth, bravery and other common characteristics. The land owning unit would also have a chief, a nakamal and a nasara. There would be other chiefs as well within his controlled land. A chief earns his chiefly title or name by way of performing a namangi (magi) or pig killing ceremony. There are different stages of status in hierarchy for a chief to acquire.

Pig killing ceremonies would normally occur at a nasara. Nasaras do not differ in terms of ranking but are displayed for similar purpose. A nasara is identified by man made features such as erected stone, natural plants such as namele palms and other identical phenomena.

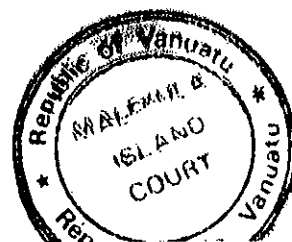
Other tribes may be allowed to settle into the land and form part of the community as a whole, depending on their circumstances. The land owning chief or headman would allocate these comers parcels of land specifically for subsistence cultivation. Everybody within a territory would normally be referred to as man or woman of that particular territory. However, in order for an individual to claim ownership he or she must prove that he or she is a descendant of the original ancestor.

Land is traditionally transferred or inherited patrilinealy from the chief to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings and others as mentioned earlier. This is a male predominated system which is twinned with the land tenure system. The bloodline of a tribe flows infinitely from generation to generations unless proven otherwise.

The only exceptional rule to the general principle is that in the situation where there are no more surviving male heirs to the land then, ownership will pass on to the matrilineal group. This is where a woman's children having bloodline to the extinct patrilineal line are given land acquisition.

Conversely and by custom, the matrilineal descendants cannot claim land ownership if, there are surviving male descendants. Any claim following the matrilineal lineage would be culturally limited to a claim of right to utilize the land. In essence, by custom it is the notion that such sole right does not extent to include ownership. There are conditions attached to that right as well. Such a claimant is duty bound to must perform certain customary rituals of recognition to the uncles in exchange prior to any use of the land.

In practice, land right is as well sometimes transferred or conveyed to the mother's issues upon the death of an uncle. This is normally seen whereby the



descending children of the mother having connection to the patrilineal bloodline take charge of their uncle's funeral services.

Boundaries of land in the past and present are normally indicated by natural features, such as trees, rivers, hills, man made features and other geographical phenomena.

Beside the application of law and custom principles, the court in determining the issue of ownership has reminded itself of the relevant provisions stipulated under the Island Court Act, Cap 167. For instance, in deciding the evidence before it, the court is guided by section 25 of the Island Court Act. That particular provision gives direction that in any proceeding before the Island Court, it shall not apply technical rules of evidence but shall admit and consider such information as is available.

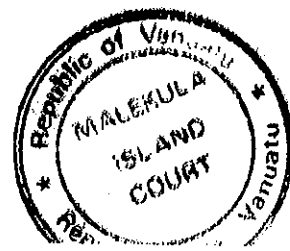
Section 10 of the Island Court Act states that subject to the provisions of this act, the Island Court shall administer the customary law prevailing within the territorial jurisdiction of the court so far as the same is not in conflict with any written law and is not contrary to written justice, morality and good order.

Given the basic understanding of the traditional processes and the law, the relevant information submitted before the tribunal is as follows.

Original Claimant

The original claimant in his presentation led evidence that Tomoyan is the first ever original native of the land of Behal. His ancestors and descendants have perpetually lived the land for 14 generations. Sawa and Makekon are cousins. A family tree is produced before the court for reference. Sawa's mother, Matahe who is originated from Behal was impregnated in Behal before one Namal from Metamli took her to Metamli. Sawa was brought up at Metamli. He pleaded that there are no other male bloodline of the land of Behal except Sawa. Given the situation, Sawa has a right in custom to inherit and have ownership of the land on behalf of his tribe.

He further submitted in support of his claim that he was a longtime claimant to the land dating back from three informal meetings which were decided in his favour. He had contributed food items such as a cattle plus monetary funds towards Saphier's funeral service. Moses Tonemehao is Matamel's son whom is the last surviving female of Behal. He has also donated food rations towards Matamel's death ceremony. Upon Walo's (Makekon's sister) wedding celebration he was given second pride price, traditionally known as *honan*.



On the 8th day of October, 1931 his ancestor Makekon sold the land for \$90 pounds to the Australasian Conference Association in favour of the Seventh Day Adventist Mission. The sale proceeds of \$90 pounds were shared between Makekon and Sawa. He reiterated that another proof of his claim is shown by the fact that the duo's name had appeared in the deed of sale of the land.

Later, in or around 1953 chief Tainmal of Fanla had advised his father to re purchase their original nasara from trader George Mitchel who had once bought the land containing the nasara. This nasara is situated a few metres away from the disputing land.

In his counter argument against the parties; he stated that Shem Hivirkon is not from Behal but originated from Lingra. He was adopted to Fanjewomel and has no nasara at the disputed area. The ancestors of Raynold Sawan have also migrated from Sanesup, West Ambrym. He is well informed of the fact that Timothy and his relatives have occupied 13 parcels of land within Behal. Edul Roromal is not Makekon's brother because Edul's grandmother, Asikon is from Nehatling whereas, Makekon's great grandmother Papalibu, is a native of Melwe. Chief Makekon Roromal of Fanla has been in the past witnessing his family tree.

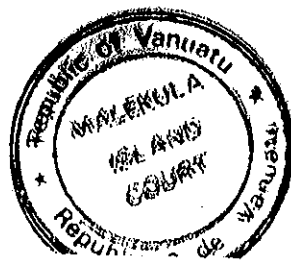
Witness Moses Tonemehau, stated that his grandmother, Matamel was the last woman from Behal who died in 1980. She had once narrated him that Martin and Barrot are the only surviving male bloodlines of the land of Behal. Martin and Barrot were asked to bury her grandmother, Matamel. That practice in custom would traditionally show that they are truly from Behal. Shem Hirvirmage is from Lingra but not Behal or Fanjewomel.

The second witness Johnny Kuku, testified that Martin Tomoyan is the true bloodline and owner of Behal land by reason that he has 13 generation. His grandfather, Tuli had once told him prior to his death, that Martin Tomoyan is from Behal. He gave a similar opposing statement regarding Shem's origins.

Both witnesses defended their statements and provided similar answers to that of the primary claimant at the course of interrogation by the parties.

Counter claimant 1

Jerety Makekon appearing on behalf of Keven Shem claims to be the bloodline of the first original native of Behal, Bera. From his genesis, Bera had came ashore the land of Behal in a form of an octopus. Bera's daughter Liwolwol (meaning pandanus tree) had married Doriri (Roriri) from Melwe. Doriri is Rungmel's son.



He claims to have 14 generations out of which seven (7) generations of the patrilineal line cannot be traced.

The stem of his case follows the matrilineal line of Liwolwol. He alleges that there are no more surviving male bloodlines of Makekon, Behal and Fanjewomel share the same territory and boundaries. He concluded that it is customary that whosoever first explore and live the land, becomes the land owners. It is his belief that he is the true custom owner.

Our observation over his demeanor on cross examination is that this claimant had encountered difficulties. He could not answer questions raised over his lost generations. He seems confused and was silent.

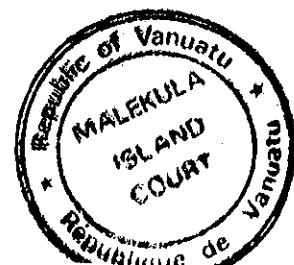
Witness Gideon Lengkon said that his grandfather is Luke whose mother's name is Masiur. Masiur and Imankon (Sibobor's mother) are cousins in relationship. He explained that Shem is claiming Behal by virtue of both patrilineal and matrilineal lineage. Patrilineal, through his grandfather, Bera and matrilineal via Sinsingyal, Imankon and Sibobor. Sawa is Martin's father. Sawa's wife Masiur who is Luke's mother is from Behal.

While, Andrew Welwel maintained that Shem Bera is the only surviving descendants of Bera. Roriri, a great grandfather had married Liwolwol. Liwolwol is Bera's daughter. Lokbarobonbon is from Fanjewomel. Bera and his families were the first to occupy and work the areas of Barvet, Fanjewomel, Behal and some other territories.

It is his question that if, there were other existing natives living there apart from Bera and his relatives; then, Roriri would have taken his wife at Behal. Instead, he came to Fanjewomel to see Bera and his family whereby he asked to marry Liwolwol. Makekon who sold Behal land is related to Roriri from the matrilineal line. Makekon's great grandmother, Babalibu and Imankon's mother are both from Melwe. People from Melwe, Behal and Fanjewomel are closely related in blood and marriage.

He explained that he has attended several hearings of Martin's case and noted some differences. Firstly, on 12th July, 1995 court sitting, Martin had 8 generations. Followed by another court held on the 3rd of August, 1995 this time having 9 generations. While during the last court on 10th June, 1997 he had 13 generations. He argues that there is ambiguity in Martin's case because there are three subsequent changes of names added to his generations.

He added that Martin is from Lonorkon, a village in Metamli. Martin Sawa went to live in Behal at Wove because Kebkeb from Behal was Sawa's friend. Martin



bought a parcel of land known as Wove from Tuli and Tonemehau. Tuli is from Melvar and Tonemehau is from Likon but their mothers are from Behal. It is his question that if Martin is from Behal, then why purchase land from Behal ?

To add more flavour to his arguments, he further expressed on that Shem has been declared customary owner of Behal in two separate court sittings on 12/7/95 and followed by another decision on 18/5/99. While, Saphier has been favoured once in 20/1/97. Turning to the sale of land instrument he commended that Sawa and Makekon Linbul were only witnesses to the signing of the deed but not owners of the land.

Despite objection from Martin, pertaining to the allegation of falsified family trees, he continuously maintained his colleague's history as correct. He went on in reply that there are coconut palms on the land planted by the forefathers of Shem to show proof of his claim.

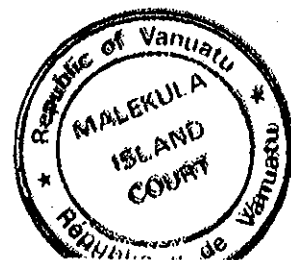
Counter claimant 2

The foundation of Roromal's claim is in two fold. The first claim surrounds this woman by the name of Matamel Behal a native of the land of Behal. The other side of the claim is attached onto a funeral promise.

In his words, concerning the matrilineal line of Matamel; he traced on that Roromal's grandfather, Wanmelbu had espoused Matamel of Behal. This bloodline connection is continuously retained when two other descendants of Roromal family also married two (2) ladies from Behal. One of Roromal's son had espoused Malita Behal while, Worwormal Roromal wedded Lilon Behal. A family chart is provided showing a total of 12 descending generations to date.

Makekon who had sold the land in contest is the last male line of the land of Behal. Makekon is a cousin to chief Tofor and Edul Roromal. Makekon had vended the land mainly because the locals have been unlawfully collecting dried nuts from his plantation.

Moving on to the custom promise, he detailed that after the sale of land, Makekon went to live at Olal. After some years went by, Makekon got ill and then moved to Tainmal's nasara at Fanla. He could not recover and so decided to seek further medical treatment at Port Vila. Prior to his departure he verbally made a customary will or promise before Tainmal and Natin Roromal. In his testament he declared that the duo take charge of his funeral rites towards his mother's uncle. In doing so, the executors will have customary rights over the land of Behal. And so upon Makekon's death the agreed ceremonies were performed accordingly.



Lency Sawan witnessed that the claimed death ceremony performed by Roromal family is true since his father had also taken part in it. Such burial ceremony was given or dedicated to Makekon's uncles residing at Metamli Bonsirakon. While, the rest of the witnesses such as Etul Roromal, Makekon Roromal and Hanhankon Roromal, also gave very like statements to the claimant's history.

From observation at the course of examination, these supporters have maintained their proper statements. Besides, attention is paid to Lindency and Hanhankon who told the court from the witness box that the original nasara at Behal is owned by Family Tomoyan.

Counter claimant 3

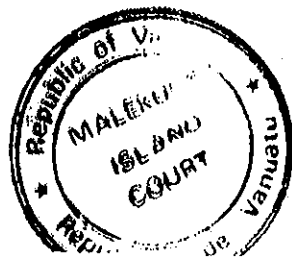
Sawan Raynold contended to represent one Marie Saphier alleging her to be the grand daughter of Makekon. He is also claiming some rights of interests and ownership over a parcel of land so called Falibo creek alleged to have been purchased by his ancestors.

Around 1923, through negotiations Makekon Linbul had been intending to station the SDA mission at the area of Fanbangnermar, at Linbul. Makekon upon learning of this plan offered to sell the area to the church. The reasoning for such sale of land was due to the fact that the villagers of Metamli were stealing nuts from his farm. The land of Behal was firstly sold to early missionaries such as Packer and Ratly in the amount of \$90 pounds.

Martin Sawa had informed him that Saphier shares the likeness of Makekon Behal. The only difference in appearance is that Makekon Behal is fair while Saphier is a bit darker in skin. One, Atata of Metamli has also informed him that Saphier is Makekon's son. A family tree is produced showing Tanmonong Bariu as the last known person flowing down to the only surviving descendant Marie Saphier's daughter.

He had attended an occasion, which involved the Minister of land and the other disputants to the land. It was decided during that particular gathering that Saphier be the rightful owner while, Martin was proposed as second owner and be subjected to Saphier's authority. On the other side of his claim, he undisputedly agreed on cross examination, that the original nasara of Behal belongs to family Tomoyan.

Aram Sam witnessed that Marie is Saphier's daughter. His father had told him that the persons appearing on the family from Tanmonong Miriu down to Saphier, are the true descendants of Behal. Marie Saphier is the only living



bloodline of Makekon Behal. He donated a cattle and took part in the funeral ceremony of Saphier. Family Sawa and Hewirmage were not involved.

Witness Esra Bong had heard his father and Sawan's father, Worwor Sali telling them that Saphier and his father, Makekon are the only surviving tribesmen from Behal. Makekon Behal is the person who sold Behal land to the SDA mission.

Laan Worwor made a similar statement saying that Marie who currently reside in New Caledonia is the only existing bloodline of Behal.

ANALYSIS OF THE EVIDENCE & FINDINGS

Given consideration of the presented facts and in application of the customary practices or usages of the district and the law; the findings are discussed below following the order of presentation commencing.

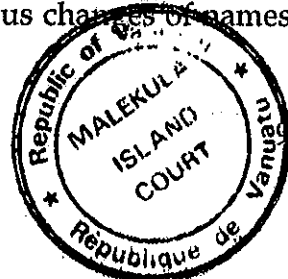
Principal claimant

Martin Sawa is claiming as a descendant of the patrilineal lineage of Tomoyan. In general, his basis of claim is acceptable in custom since he is claiming as a surviving bloodline of Tomoyan original ancestor of Behal.

The only irregularity found in his claim is that relating to the ceremony paid to one Tuli whose mother is a native from Behal. The court is well aware of the usual practice in this respect, that it is instead the mother's line who is under customary obligations to provide some genre of custom gifts or payment of recognition to the patrilineal line. Such sort of ritual would in return allow and guarantee the children of the mother having blood connection to the patrilineal line to secure some rights of use of the land of their male heirs.

Yet, this malpractice is not a substantive issue in nature that would completely undermine his overall claim in this respect. The appropriate approach, in this situation is that this court cannot decide the case solely on a fault basis. One ought to bear in mind that the court's foremost duty and interest is to identify the real customary owners of the land in light of all relevant forwarded information. On the other hand, the court found no other out weighing evidence discrediting his whole claim.

Other opposition statements confronting this party have been cautiously perused and considered. For instance, Andrew Welwel has challenged the credibility of Martin's family tree labeling it as fabricated given the various changes of names



and particulars witnessed in every informal court sittings. Nonetheless, such argument could not be sustained with further supporting evidence from other parties. Had this witness tendered any minutes or filed family trees from these past sittings to the notice of the court, the result, would have proportionately make a difference in weight to his argument. Also, there was also no supporting information elicited from the other parties for re enforcement of his assertion that Martin had bought land from Behal.

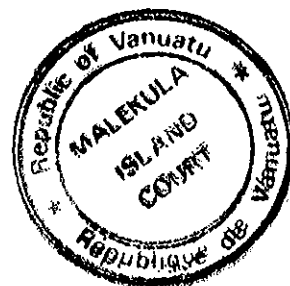
The court also heard a critic query raised as to why would Sawa of Behal marry Masiur of the same land. The basic answer to this issue is logical in the sense that, such relationship do occur in every society today. A male or female may be called as man or woman Behal. Reasonableness would apply because it would not simply mean that a couple is formed from the same tribe or bloodline. There was no evidence advanced to that effect. It is evidenced that none of the disputants has substantiated any material evidence suggesting that Sawa and his wife are related in blood. Thus, in the absence of such evidence, the answer would dictate that Masiur is not a tribe or booldline of Sawa's family.

Leading on in search of the true land owners, the court is satisfied that there are finding facts in support of the Martin's case in consideration of the totality of the gathered evidence dispensed in this proceeding.

Firstly, considering Sawa's status and origin. It is evidenced that Makekon Behal is a cousin to Martin according to the family diagram. Martin's family tree has been reconfirmed by Raynold's family tree. For instance, Martin had listed Saphier as son of Makekon and so as Raynold Sawan. Counter claimant 1 also agreed that Tomoyan is from Behal. All disputants have positively acknowledged the existence of Makekon as a native of Behal and the person who sold the land in contention.

Overwhelmingly, the majority of the parties have also acknowledged the fact that Martin had re purchased the land containing his original nasara from Mr George Mitchel with an amount of 50 pounds way back in 1953. No person disputed in the past and at present that the original nasara does not belong to family Tomoyan. Affirmation of this fact is communicated by chief Sawan Raynold, Hanhankon and Lindency Roromal of counter claimant 2.

Lindency's responses on examination are very useful since they provide the following particulars. Firstly, pointing out that there are 3 nasaras on the land belonging to Tomoyan. Secondly, saying that Tomoyan is a native of Behal. He also stressed that his co claimant Timothy Roromal is not correct to say that there are no surviving bloodlines of Behal.



Following the site visit, it was further noted that some of the claimants have identified the original nasara as owned by chief Makekon Behal. The scenery is truly a nasara marked by a huge namele palm with a growing elevation estimated around 10-15 metres. It is our analysis that those statements have in one way or another re enforced the claim that the subject nasara is indeed owned by Tomoyan and his descendant chief Makekon down to the present generation.

Another outstanding evidence noted is that, Makekon (Magi-kon) and Sawa are named in the instrument of sale as owners of Behal. The whole drafted instrument of sale is in the following words.

This sale and transfer made this eighth day of October 1931 between Magi-kon of Fonmur, North Ambrym, New Hebrides on the one part and Australasian Conference Association herein called the purchaser of the other part. It is hereby witnessed that in consideration of the sum of ninety pounds (90 pounds Australia) paid by the said purchaser to the said Magi-kon on the signing of these presents he the said Magi-kon sells and transfers to the purchasers

All of his land situated at Linbul, North Ambrym, consisting of about sixty five (65) across, and called 'Beahal' which is bounded as follows:

On the north by the land belonging to Ban Ban, Toron and Stephen

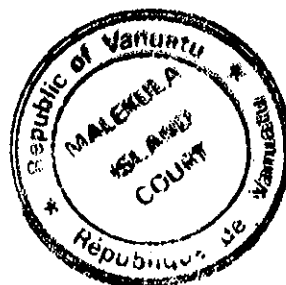
On the east by the land belonging to Stephen and Namimlifu

On the south by the land belonging to Magi-kon(Linbul) Magi-kon (Beahal) and Sawa on the west by the ocean.

Our understanding of this deed is that the land in dispute exclusively belongs to chief Makekon and his descendants. There is no other reason as to why Makekon's name had appeared in this legal instrument referred as the vendor. There is also a subsequent piece of data illustrating that Sawa and Makekon are close related natives of Behal. This could be seen where it states that the land on sale is bounded on the south by the land belonging to Magi-kon (Linbul) Magi-kon (Beahal) and Sawa on the west by the ocean.

Another mitigating feature of his case, is that it is historical that this party has been a longtime defendant of the land. He has been involved in a number of meetings at which he was declared owner of the land in 3 of the occasions.

In summation of his standing in this case, we are persuaded that he has adduced sufficient information establishing his claim.



Counter claimant 1

This defendant's root of claim is by way of the patrilineal lineage of one Bera. He alleges that Bera is the first ever human to live the land of Behal. However, it is unfortunate for the court to find it uneasy to follow his claim. It was observed that upon realizing the looming complication over his claim he has loosely switched to hang himself on the matrilineal line.

His immediate difficulty surrounds the truthfulness of his drawn generations. There remains at large uncertainty over his family trees. For instance, claiming to have 14 generations of the male heirs but lost 7 of them. There was no clear explanation to the where about of the 7 lost generations. One cannot assert a fact to the court if there is no existence of such fact. More over, he also produced two other family trees having the same particulars of name. These materials have placed more confusion to the court.

In addition, his parental status and origin has also been widely opposed by all parties and their witnesses arguing that Shem's ancestors have migrated from Lingra, West Ambrym. Some claimants have gone deeply detailing that Shem's ancestor had inter-married a female from the land of Metamli Lonorkon. This is the birth place of Shem and he has no customary right over the parcel of the subject land. It was pointed out that he could only exercise his customary rights and interests by launching a claim on the land of Metamli through the mother's bloodline. Shem has not challenged these facts and thus, they are accepted as evidence.

A further piece of evidence is brought to light in the testimony of his own witness, Andrew Welwel on oral examination. He has explained that the first person to come ashore to the ground was in a form of an octopus which later transformed into an human being. He subsequently reconfirmed the same in the summary statement under point 1. In addition, on questioning this claimant himself has correctly stated that Bera is from Fanjewomel a part of Behal land. These facts are self explanatory.

Turning the field trip, our verification of the coconut palms alleged to have planted by his ancestor Sibobor is unreliable. These palms present no difference in height alongside other palms instead they appear young and seem to have been cultivated around the same period of time. The remaining defendants have contentiously replied that the palms have been planted by them after the purchase of the land to the Seventh Day Adventist Church.

Another unfounded information concerns the specific area claimed to be a grave of chief Sinsinyal. All disputants have refuted his assertion and clarified that the



grave belongs to one Bongmasing from west Ambrym. The court is also in doubt of Andrew's account on the ground that it is a common practice of the area that chiefs are normally buried within the compound of their nasara. We noted at the tour that such purported grave is located beside a bulldozed road some 100 metres or so out of the main nasara. Secondly, the court found no trace of grave after careful search.

Given these remarks, we have directed our mind in favour of the side story told by the rest of the parties. In the alternative, if he is a chief, then with some sense of value to his rank, his grave would not have been bulldozed to construct the road respectively.

Moreover, it transpires thereon that Bera and his descendants have no nasara in the disputed area. Shem and his witness Andrew Welwel have agreed that all visited nasaras belonged to chief Makekon. Therefore, common sense would dictate that a man claiming a land without a nasara would inevitably indicate that he is a migrant and or not an indigenous bloodline to the land owning unit.

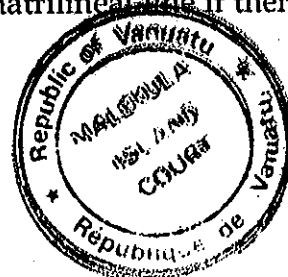
It is our emphasis to the disputants to note that every individual within a bloodline is normally identified with the land through their nasaras. This is a very crucial relationship which ties up the people and the land itself. It is the social fabric of the society which has long developed from the past centuries creating the land tenure system. In our case, such a connection has not been established.

Taking into account the totality of his advanced evidence, he has fell short of providing clear and consistent information to prove his claim. Coupled with the finding facts as highlighted, we have no other alternatives but to refuse his entire claim accordingly.

Counter claimant 2

The basis of his case is founded on two claims. His first cause of action is rooted on a promise made between Makekon Behal and his family members. He is also claiming ownership through his ancestral grand mothers who are natives of the land of Behal.

The question posed is whether Roromal Family has any right to claim land ownership by way of the matrilineal lineage. The answer is in the negative. Our determination of his position indicates that this defendant's claim is inconsistent with the custom principles regarding land ownership. It is traditional that a person cannot claim ownership of land following the matrilineal line if there are



male surviving issues of the land owning tribe. In our case, this party himself and his witnesses have told the court that there are existing natives of Behal.

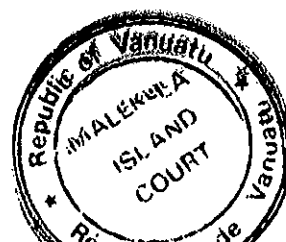
This tribunal is definitely convinced that there are living descendants of the whole land. Counter claimant 1 has stated in court that Moses Tonemehau is a bloodline of Behal. Even Moses Tonemehau witnessing the original claimant has provided reconfirmation of his status and origin. None of the remaining parties has challenged this very fact. Lency Sawan did genuinely admitted in court that there are surviving issues of Behal. Even, the burial ceremony was given or dedicated to Makekon's uncles at Metamli such as Nainsopon and others as recipients of the funeral rite. Hence, his claim purporting that there are no more surviving descendants of Behal is baseless and cannot be sustained.

Further, Matamel's originality remains unknown. For instance, it is not told whether it is the same Matamel, related to Moses is also claimed by Family Roromal. Despite such missing information though, it is immaterial to explore the question of whether it is yes or not, on the basis that this court is not furnished with any evidence proving that Matamel has bloodline bond to Makekon's tribe or family tree. Not pre emptying the fact that the court does accept that Matamel is from the land of Behal. Nevertheless, it is must be reminded that such sole accepted information alone is not sufficient to uphold his claim. It is of fundamental importance that this disputant must prove that Matamel is a bloodline of this man Makekon. He has totally failed to disclose any relationship to this subject.

Besides the above, it was confirmed that this family unit has occupied around 13 parcels of land outside the advertised land. Upon questioning, the oldest witness, Etul Roromal provided that the pieces of land were purchased from one Baklau of Behal. A question remains unanswered that if he is claiming to be a bloodline of the land of Behal then why, purchased his claimed land again.

More obviously, his own supporters, Hanhankon Roromal has told the court that the original nasara located at Behal belongs to Family Tomoyan. Chief Sawan has the same story. Contradictory to his own statement of claim, Lindency Roromal has listed 3 nasaras to be owned by Tomoyan and saying that Tomoyan is also a native of Behal. The application of these facts would explicitly illustrate that Family Roromal has no nasara in the concerned area. This finding is self explanatory in the sense that if he has no nasara then he absolutely cannot claim land ownership. A man cannot claim land in vacuum.

Perhaps, notwithstanding the exceptional situation of an individual claiming by way of the matrilineal line. Such a claimant would not have the onus of proving that he or she owns a nasara, but as long as he or she can establish the bloodline



link to the patrilineal line and their nasaras. In our context that was short of proof as next discussed below.

Quite significantly, uncertainty continue to rest in this party's family diagrams. He has failed to provide a clear linkage of his family tree to this chief Makekon whom is largely accepted by every party as the customary owner of Behal land. By way of comparison, Counter claimant 3 and witness Laan Worwor is saying stated that Tanmonog Miriu is Makekon's father. While Timothy Roromal on questioning process admitted that he does not know the name of Makekon's father. To the contrary, yet this claimant's filed statement contains another family tree towards the end this time, stating that Naimtabehal is Makekon's father. These deranged information offer no constructive assistance to the court.

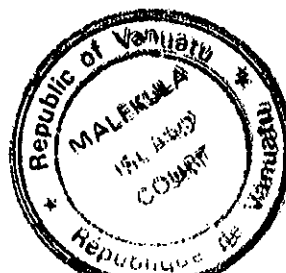
On visit to the landscape, Lindency had located the third nasara on a steeply slope. With closer observation the court found no sign of a nasara on the locality. Whether such a nasara existed or not, in practice, nasaras are usually stationed on easy accessible place otherwise, it would be impractical for the related custom rites to occur on steep area. We therefore, reject his assertion.

Taking into account the entire collected facts, the court is only satisfied to draw conclusion that Matamel is from the land of Behal. But she is not a bloodline of Makekon as pictured by the foregoing facts.

Turning to the issue of promise, it is our consideration that such a custom process is typical of the territory and do occur during funeral ceremonies. However, if there are male surviving lines of the land and its nasaras as pronounced by this court, then such custom promise or will cannot take effect.

The immediate point of custom and law in support of the conclusion is that the surviving patrilineal line must be given priority for the restitution of their land. As over mentioned, a person cannot claim ownership of land following the matrilineal line if there are male surviving issues of the land owning tribe. Article 73 of the 1980 Constitution stipulates that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. That provision applies across the board including alienated lands respectively. Article 74 provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu.

Having discussed the circumstances of his case and in application of the law and custom the court is hesitant to grant this defendant's claim as sought.



Counter claimant 3

Chief Sawan's claim is shaped on two sides, first claiming some rights of interests and ownership over a parcel of land so called Falibo creek alleged to have been purchased by his ancestors. The information derived from the hearing is that such area comprises of around three (3) hectares of land.

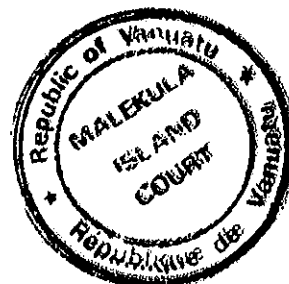
The assembled evidence provides no sign of payment transaction at all. No witness is called for confirmation. It was noted that Jack Belden and Lenkon Tensley having written statements on file before the court were not even called to witness the said story. In addition all parties have disputed that they have no knowledge of the alleged payment of Falibo creek.

On the other hand, all contestants to the case have strongly objected to his involvement in the dispute. They have all pointed out that Sawan's ancestors have migrated from Sanesup, West Ambrym and are not native of Behal. The claimant himself has honestly conceded to the fact as correct at the course of interrogation.

In application the custom practice to the facts, the land of Behal does not belong to his descendants. By custom such land cannot be given away to Sawan's family who has no blood connection to the land of Behal. Legally, all alienated or sold land must return to the indigenous customary owners of the land as guaranteed by the words of the Constitution under Article 73 and 74. There is no customary basis for this party to rely upon for the establishment of his case. Neither in account of the gathered evidence, there is any relationship or right arising in custom for Raynold Sawan to claim ownership of the territory.

Turning to his claim for representing one Marie Saphier as the grand daughter of Makekon Behal. It is obvious from the proceeding that the court found no letter nor any document for representation to validate his say. There is neither any power of Attorney from the said lady allowing the disputant to claim on her behalf. Maries has not launched any statement of claim at all to this court. The claim and other related documents filed herein belong to Sawan. Marie has nothing to do with his case.

The assessment of his position is that this party has no legal and customary standing in this claim. He has entirely failed to provide any material facts over the said purchase of land. Given the findings, we decline to honour his claim. Our concluding remark is that chief Raynold Sawan could have been best used by the parties as a witness. Fortuitously, it is somewhat a privilege for the tribunal for the reason that his presence in this case is complementary and resourceful towards the findings of the court.



DECLARATION

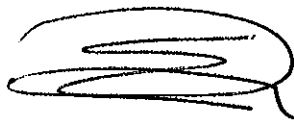
In light of the foregoing deliberations, the court could only satisfy itself with the case of the original claimant. Given the findings of the case, it is hereby this day adjudged that Martin Tomoyan representative of Tomoyan Family be the custom owner of the land of Behal as advertised therein.

Claims from the remaining parties are entirely dismissed. All costs necessitated by this proceeding will fall as found.

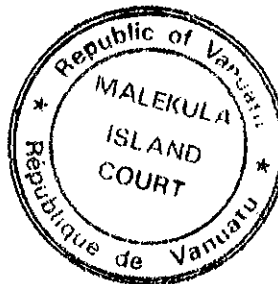
Any aggrieved party wishing to appeal this decision must do so within a period of 30 days from date.

Dated at Magam, North Ambrym this 25th day of May, 2007

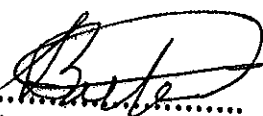
BY ORDER OF THE COURT



.....
Magistrate Edwin Macreveth



.....
Justice Louis Mera



.....
Justice Reuben Bakmelip



.....
Justice Lorma David

