

IN THE SANTO MALO ISLAND COURT  
OF THE REPUBLIC OF VANUATU  
(Land Jurisdiction)

Land Case no. 4 of 1992

**BETWEEN:** FAMILY TAFTUMOL (Represented by Victor Moltres )  
**Original claimant**

**AND:** FAMILY TURA (Represented by Jerome Tura)  
**Counter claimant 1**

**AND:** FAMILY LOIROR (Represented by Lin Loiror)  
**Counter claimant 2**

**AND:** FAMILY MOLTAMAUTE (Represented by Jimmy Kaven)  
**Counter claimant 3**

**AND:** FAMILY WARAWARA & VARAVARA (Represented by  
Uri Warawara & Sirilo Varavara )  
**Counter claimant 4**

**Coram:** Magistrate Voghia Edwin Macreveth  
Island Court Justice Ben Rovu Kenrelrel  
Island Court Justice Kavcor Wass Nvok Rotyl Waarlehe Iyet  
Island Court Justice Kalo Sem

**Clerk:** Anthony Lessy

**Date of hearing:** 1<sup>st</sup> -12<sup>th</sup> June, 2015

**Date of decision:** 12<sup>th</sup> of June, 2015

**JUDGMENT**

The land in dispute is registered as *Tambotal*. It covers 2 other separate land territories namely, Belmol and Beleru as described and mapped by the original claimant. It is situated at the southern part of the island of Espiritu Santo between the river of Wambu and Sarakata river. The whole land boundary in contention is generally described to commence on the north west at Tafkar river to Sarakata river on the eastern side. While on the south, it is bounded by Beleru land marked by a



natapoa tree on the western side demarcated by Wambu river and runs eastwards to Silkare river.(Refer to map coloured in blue).

Beleru land begins near Taftunol's grave on the north western side extending eastwards to the nasara of chief Lesy located by the bank of Sarakata river. It then turns south following Sarakata river to the sea shore and then runs westwards to Sanaria stream leading to the sea shore. ( See, land area in red colour).

Belmol land covers land areas near Belebut marked by a place where a nabangura tree used to be by the road side, traverses the main public road to a banian tree opposite the road, runs down to Narevo tabu water , through the old road beside the American airstrip on the east down to the hill top and descends at the end of Saint Michel Catholic Mission school to the sea shore at the old wharf of Lerou. From there, it is bounded by the sea shore to Sanaria stream beside Ding Shipping. (Refer to land area coloured in yellow).

Its limit on the south is marked by the sea shoreline from Wambu river to Sarakata river.

This matter has been decided by this court twice. This is the third time it has been referred back to the court for re hearing.

Before embarking on the subject matter; a brief discussion of the relevant laws and custom processes and usages of the area in contention are outlined below.

## **THE LAW, CUSTOM AND HISTORY**

These custom practices and usages are gathered after having heard every party throughout the trial with visitation to the land site.

### **The Law**

Briefly, 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 75 states only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure will have perpetual ownership of their land. Article 95(3) states that customary law would continue to have effect as part of the law of the country.

Section 10 of the Island Court Act Cap 167 stipulates that subject to the provisions of the 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.



## **The findings on custom practices in relation to land ownership.**

Turning to the customary practices, generally ownership of customary land is communal or collectively owned based on common descent, residence within a nasara and participation in common activities. A group of persons belong to a family line and a territory is sometimes identified with a totem such as a plant, a stone, an animal or others. It is common knowledge that the first person and his tribe or family to explore, live, control and builds a *navota* (nasara) on a land territory would be designated as the custom owners.

Land is traditionally transferred or inherited patrilineally from the chief or original ancestor to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings, relatives and kinships. This is a male predominated system which is twinned with the land tenure system handed down from generations to generation.

The only exceptional condition to the general principle of land ownership is that in circumstances where there are no more surviving male heirs to the land from the patrilineal line then, ownership will pass on to the matrilineal offspring. Claimants from the matrilineal bloodline could only claim a right of land use. By custom, a woman upon marriage is not entitled to claim land ownership after the bride price is paid by the husband's family. Her sons or descendants would find land at the father's tribal land.

A man earns his chiefly title or name by way of performing a *mele* or pig killing ceremony at a *navota*. The common chiefly title is known as *Moli* which would procedurally be received by a man at an ordination during a pig killing feast. A *navota* is usually identified by man made features like erected stones natural plants such as namele palms and other identical phenomena.

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

Given the basic understanding of the traditional processes and the law, the court now presents the relevant information as submitted.

### **Original claimant**

Chief Victor Moltres representing family Taftumol is claiming ownership of the whole land as advertised.

Ownership in relation to Tambotal and Sevua land.



In his presentation led evidence that chief Taftumol is the high chief of Tambotal land. He alleges that his ancestors as outlined in his family tree were the first person to explore, live and control the land embodying Title # 3491,3492,3493, 3494 and 3489 and other land areas since time immemorial. Taftumol had two women, Vombel originally wife of chief Molsakele of Fanafo and Votaraia daughter of chief Molmatak of Beleru. From the first woman, Andre Niditau was born. The second wife bore 3 sons and 1 daughter called, Votaretsa baptized as Anna, Mahambi Paul, Jean Ancelo and Pierre Vatu.

He explains that Tambotal is the name of the land having villages, such as Saransore, Nataliu, Lakrutsa and Sevua. Sevua land is owned by his uncle Molsus and Moltailang whose father is called Taurerua of Tambotal. Taurerua had espoused Vosagnai. Upon Taurerua's death Vosagnai re married Molmatak of Beleru and bore a daughter Votaraia.

Chief Molsus had paid 11 pigs as fine to chief Molsakele of Fanafo to save Taftumol's life after he had eloped and taken away Molsakele's wife Vombel. When, chief Taftumol could not return Molsus pigs, he then decided to give his son Andre Niditau to Molsus to adopt.

#### Ownership of Beleru and Belmol land

He states that Tauremol Tuvahou was the highest chief in rank whose chiefly name is Molmatak. He had planted a oak tree at the navota where he had performed his pig killing rite. Given his high ranking status he espoused 12 women. Out of the twelve concubines one of them was Vosagnai whose daughter is Votarai.

Due to tribal war over territories and other social problems between Tambotal, Beleru and Belmol dwellers, chief Molmatak of Beleru and chief Taftumol of Tambotal made peace with chief Tarcol of Belmol. They both exchanged two of their daughters, Votibass daughter of Molmatak and Votaretsa daughter of Taftumol to marry chief Tarcol. Chief Tarcol failed to exchange any child by way of bartering for peace to the two chiefs since he has no children. So, he then decided to adopt Vatu Pierre son of chief Taftumol. To mark such event Vatu Pierre performed a custom ceremony when he slaughtered 10 roosters and 1 pig at his nakamal marked by the planting of a namele palm.

Besides his history he has also submitted defence statements opposing the counter claimants to the case.

In his defence to family Lin Loiror, he explains that Sevua land territory is owned by Molsus and Moltailang whose father is called Taurerua of Tambotal. Chief Molsus had espoused Votove from Damdaru and bore Josephine Vorombo. Upon Molsus death Josephine was taken care of by Moltailang. Josephine entered into 3 different marriages with Varnatamol of Belvos land, Leon Pethilus of Tanbo and Totovone of



Bakas. From these unions she bore no children. As a result, she had adopted 3 infants namely, Sardone and Loiror Lin son of Totovone's brother and Rutsa.

He added that a past village court has recognised Joseph son of Andre Niditau as the rightful owner of the land of Sevua. He referred the court to a judgment attached to his defence marked as *TF3* a village court decision dated 25<sup>th</sup> of August, 1987. He further disputes that *CC2* should not be believed because he has made changes to his map on two different occasions. First in 1987 claiming a smaller land territory and significant volume of land in 1995 as contained in his exhibit marked as *TF4*. He stresses that there are bloodline from the patrilineal line of Molsus who are still alive today descending from Andre Niditau, Pierre Vatu and other relatives listed. He argues that by custom Loiror Lin cannot claim the land because his father is originated from the land of Bakas.

In his defence statement against family Tura, he argues that *CC1* has no right to claim the land of Belmol in custom through her mother Marie Vohuve because she has been paid the pride price by the husband Uri Bernard of Loltong Pentecost. Uri Bernard had come to Santo around 1929 to the Catholic Mission at Saint Michel. He espoused Marie Vohuve daughter of Tura of Belvos land. They have no right to claim the land of Belmol but have right over Belvos.

He opposes *CC3*'s claim contending that the court should not accept their claim because it is unfounded and baseless. First that family Moltamaute is an indogenous native of South Santo. They have also claim land at Suranda, Vunaus and gain in this case. They have used the same deed of sale of 1887 to claim land at Belmol and Suranda. Such land transaction on record is not only made for Belmol land alone but other land territories as well.

He also produced a list of documents annexed as *TF1 -TF12* to defend his case added with a list of natural and customary identities in support of his claim.

On cross examination, he continued to maintain and well defended his claim despite disagreement over his claimed boundaries by the rest of the claimants.

Jean Batist Andikar led evidence that in 1987, the Nambauk village court issued a declaration of ownership of Sevua land in favour of Andre Joseph. He acknowledges that Josephine Vorombe entered into 3 separate marriages. Her bride price was paid to Andre Niditau, son of chief Taftumol. Although she did adopt Loiror Lin however, in custom Lin should claim land from the adoptive father's land of Bakas. He argues that such adoption was also done in isolation of any consultation with family Taftumol.

He confirms that chief Taftumol could not return chief Molsus pigs paid to chief Molsakele over his marital affair with Vombel. Given the circumstances, he had allowed his son Andre Niditau to be adopted by chief Molsus of Sevua.



Chief James Tura of Tutuba island says that family Tura was also a party to the Suranda and Palikolo land dispute. In that case, the Land Tribunal could not accept their claim because in custom they cannot claim through the matrilineal bloodline. Similarly, by custom family Tura could only claim ownership of land from the father's land situated at Loltong, Pentecost island.

Chief Paul Sope Tavui, re confirms that CC3 was also a party to the land claim of Suranda to Matevulu river, in 2010. Family Moltamaute claim was based on a deed of sale dated 1<sup>st</sup> September, 1883. The same history and family tree is again used at the present case. He submits that the court should not rely on their history because it is fabricated because history shows that they are natives of South Santo.

### Counter claimant 1

Family Tura claims the land of Belmol disputing it as land belonging to chief Rutja father of Tura Karae Davohi. Rutja had sold the land of Belmol to John Higginson on the 23<sup>rd</sup> of July, 1890. Tura's daughter Marie Vohuve was the last survivor of Belmol land. A family tree was produced tracing his early generations to the present.

He referred the court to a number of events documented in support of his claim marked as annexure 1 to 18. Besides, he also listed a number of customary identities or places having customary names and meanings some of them viewed by the court.

During examination, this disputant faced heavy arguments regarding his standing in this case based on the custom rule that land ownership is passed on through the father's line and not the matrilineal lineage. There was also a lot of question as to why claiming the land of Belvos while, his brother Etienne Tura and others knew that they are natives of Pentecost and could only claim a right of use over the land of Belvos being their mother's land of origin.

Rolland Tura testifies that Marie Vohuve is the last surviving descendant of Rutja and Belmol land. He agrees with the claimant's disputed boundary as land owned by his mother. On interrogation, he argues that there are 3 different land boundaries namely, Belmol, Tambotal and Beleru and a single family cannot own everyone.

Marie Elisabeth Aham a family member of Taftumol states that the original claimant is from Turboia and Tambotal. He claims that the boundary claimed by family Tura is correct. This witness was challenged by Victor Moltres raising questions into her intention to team up with the opposing parties against her family's proper claim. It was told that she has decided to sideline herself in support of CC1's claim due to family internal differences within Taftumol family. This witness was hesitant made no explanation to rebut the allegation put to her.



## Counter claimant 2

Loiror Lin told the court that he is claiming the land of Sevua as land traditionally owned by Josephine Vorombo. The basis of his claim is founded on his adoption by Josephine Vorombo. He explains that his father comes from Bakas an independent land from Sevua but believes that in custom he has right to claim land belonging to his adoptive mother who is the last bloodline survivor. He was looked after from his childhood to his maturity. Josephine Vorombo had shown him the land boundaries of the land of Sevua which he is claiming.

In support of his claim, he tendered a court adoptive order dated 9<sup>th</sup> February, 1983. It shows that such adoption was performed in 1962 by Tom Dah, Viandy Mule (natural parents), Totovone and Josephine Vorombo.

His family diagram shows that Molsus also known as Rutja is the chief of Sevua. Molsus has two brothers Dandan and Moltailang. They are not related by blood to family Taftumol. Molsus had espoused Votove of Vunaspef and bore Josephine Vorombo. Josephine is the only surviving bloodline of chief Molsus customary owner of Sevua land.

Apart from this, he argues that Andre Joseph has land known as Veliar. Joseph is not related by blood to Josephine nor his father Molsus. While Lulu Vatu cannot claim the land of Sevua because his father is from the island of Malekula.

John Trief confirms that the adoption of Loiror Lin has been reconfirmed by the court in the adoptive order dated 9<sup>th</sup> February, 1983. Harry Roy states that the 1987 decision over the claim of Sevua land was made under duress. Taftumol relatives had told his relatives to tell lies to assist his case in return for land allocation. Otherwise, they will face deportation from the land. He witnesses that the land boundary claimed was identified by Josephine. He believes such boundary is correct.

This party and his witnesses had answered very few questions in the course of trial. Their main argument was centered around the adoption, an issue for the court's determination.

## Counter claimant 3

Jimmy Kaven told us that Moltamaute and his descendants are the rightful owners of the land of Belmol situated between Wambu river and Sarakata river. He alleges that Moltano whose wife is called Veajuju was the chief of Belmol customary land. They had 3 sons namely, Toko, Moltamaute and Fouticabo. He has seven generations altogether. A family tree is provided explaining early generations to the present. He went on to add that the land areas covered by his claim are listed at page 10 of his statement of claim. He argues that according to a judgment no. 408 of the



Joint Court, Saint Michel Catholic school forms part of Belmol land. A copy of such judgment is tendered marked as JKM7.

In his effort to validate his claim, he added that the Compagnie Francaise des Nouvelle Hebrides(CFNH) had negotiated with his ancestors to purchase Belmol land by way of a deed of sale dated 1<sup>st</sup> of September, 1883 marked as JKM3. He claims that Moltamaute's nasara is located at Mango station. He listed a number of customary identities listed at page 13 and 14 of his claim most of which were visited by the court.

Witness, Petersen Sele Tamata 73 years of age testifies that the family tree advanced by the claimant is true and accurate according to history. He says that a custom will has been performed at Nakere station by Veajuju Kaven on the 24<sup>th</sup> of September 1997. A pig, a mat and some local food items were handed over to Sele and Melelivo in exchange for a transfer of right of land ownership.

This witness could not stand to answer every claimants question as he fell unconscious from the witness box. He was evacuated from the court hearing for urgent medical treatment. We noted these answers from his statement during interrogation. He has told the court that his family is disputing the land of Belmol primarily due the fact that some of their ancestors name mentioned above had appeared on a land sale transaction document.

Rockliff Mala confirms that family Tura are related to him having origins of Loltong , north of Pentecost island.

Edward Kalura Kaven in his presentation states that the history presented by family Moltamaute is factual and correct. Veajuju Kaven has been given a right by way of a will to claim ownership of the land of Belmol. He agrees that his ancestors have sold the land of Belmol witnessed by a deed of sale dated 1<sup>st</sup> of September, 1883. He concluded by emphasizing that claimants from islands other than Santo are causing confusion and disputes over the land of Belmol. He urges the court to deal with the case according to the customary land tenure system of the area in dispute.

This claimant and his witnesses found it difficult to answer questions relating to the deed of sale of 1883. Such specific instrument could not be produced before the court. They could only make reference to a recorded minute or statement dated 19<sup>th</sup> December, 1887 relating an identification process of four different land boundaries namely, Sanamaranda, Lambouea, Ponboua and Bellamoule.

#### **Counter claimant 4**

Uri Warawara is claiming the land of Belvos. In particular disputing that the land advertised and claimed by the original claimant had lapsed into Belvos land owned by the families he represents.



He explains that the Santo Malo Island Land Tribunal had declared the land of Belvos in their favour on the 23<sup>rd</sup> of October, 2005.

Their claimed land territory is described to commence at a natapoa tree at BP Burn up to a oak tree pass the eastern side of the old American airfield to Narevo tabu water to a creek and runs west to Wambu river. It then follows the river down to the sea and ending back at the same natapoa tree.

Primary evidence relied upon produced before us are as follows.

1. Notice from the Santo Malo island Court " *stat long Ouchard riva i kam kasein BP Burn*"
2. Notice from the Sanma island Land Tribunal.

Witness, Solorani Taviti confirms that the boundary mark visited by the Land Tribunal commences at a natapoa tree at BP Burn up to a oak tree pass the eastern side of the old American airfield to Narevo tabu water onto a creek and runs west to Wambu river, and turns south along the river down to the sea rounding up at the same natapoa tree. He was present during the inspection of the land boundary conducted by the Land Tribunal.

## ANALYSIS OF MATERIAL & FINDINGS

Parties to the claim are reminded of the basic rules of evidence that the primary disputant in principle has the burden of proof to substantiate his claim with relevant and clear evidence. On the other hand, every party who asserts a fact must prove it as well by way of evidence.

As part of the proceeding, the tribunal visited nasaras, nakamals and other custom related identities while inspecting the disputed land.

Belmol (Ballamoule) according to early record covers areas of Belvos extending as far as Sarakata river even beyond Wambu river.

Having made these observations and in consideration of the facts, we now present the findings below in the usual order of the parties appearances in Court.

### Original Claimant

The findings from the original claimant's case are as follows.



Despite the fact that parts of Tambotal land was disputed by CC1,CC2 and CC3, this party provided outstanding information that greatly assisted the court in reaching its decision.

In consideration of Tambotal land shaded in blue colour, the court had lean more on the evidence provided by CC2. One of the finding was that Loiror Lin's genealogy tree is not disputed but confirmed by OC. Molsus and Josephine are buried on the land and such finding would from our verification be Sevua land including the 3 undisputed nasaras as mapped. While, the remaining parts of Tambotal ground will rest in the principal claimant's ownership.

In relation of Beleru and Belmol, his position is as follows.

By way of comparison to CC1 and CC3 counter claims, his case is most trusted given the amount of evidence he has produced in court. He is a competent witness to his case and other claims. Here are some of the facts unveiled in support of his claim.

1. He has produced vital evidence disproving CC1's claim, demonstrating that his ancestor Marie Vohuve is a native from Belvos and not originated from Belmol land. Past records tendered in the form of exhibit *TF1 - TF12* are taken as admissible evidence undermining CC1's claim. The content of these exhibits will be later discussed when analysing family Tura's standing.
2. Additionally, he has produced defensive arguments backed with supporting documents marked as *TF1-TF4* against CC3's claim. Coupled with our assessment , the court has accepted Taftumol's evidence to be more reliable having some sense of accuracy and logic in nature. Detailed explanation of these exhibits will be given later in the assessment of family Moltamaute's position.
3. From the hearing, we accept the fact that there is no surviving bloodline of chief Tarcol of Belmol land. Given this fact, the question we posed is then who would succeed ownership of Belmol land?

From the evidence presented we note this information that Molmatak was a high chief of Beleru. He had planted a oak tree at the navota also visited where he had performed his pig killing rite. Given his high ranking status he espoused 12 women. Out of the twelve wives one of them was Vosognai whose daughter is Votarai also known as Marie Louise who is the great grand mother of Vatu Pierre and others. That evidence was not challenged and was therefore admitted in favour of family Taftumol claim over parts of Beleru land.

The adduced evidence provided reveals that a tribal war over territories and other social problems had occurred between locals of Tambotal, Beleru and Belmol. As a result of peace talks, chief Molmatak and chief Taftumol made peace with chief



Tarcol of Belmol by exchanging two of their daughters, Votibass daughter of Molmataak and Votaretsa daughter of Taftumol to marry chief Tarcol .

However, chief Tarcol had no children from these unions also confirmed by CC1 in his exhibit *P14 2a*. Because Tarcol could not in return exchange any child to the duo to seal such peace ceremony, he agreed to adopt Taftumol Vatu Pierre who has since then been in control of the land to date. To mark such event chief Tarcol made Vatu Pierre killed 10 roosters and 1 pig at his nakamal marked by a namele palm visited during the land visit.

4. He has proven to the court that his ancestors do have navotas some of which were inspected and are buried on the land he claims. A good example ,among others he had shown the namele palm planted by chief Dakaru and chief Tarcol to mark the adoption ceremony.

In whole, this party has substantiated his claim with relevant, consistent and reliable evidence justifying his case.

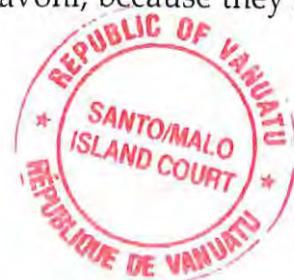
#### **Counter claimant 1**

This party is disputing the land of Belmol, through Marie Vohuve daughter of Tura Karae Davohi claiming to be a native of Belmol land. The first issue for the court to dwell on is to make findings on whether there are surviving descendants of Belmol land. The evidence placed before the court provides the following facts.

Late Pio Varavara having an uncle relationship to this defendant has confirmed in court during the 1995 hearing stating that there are no surviving descendants of Belmol land. That information annexed as *TF7* is further supported when Jerome Tura expressed in court that the population of the land had gone into total extinction due to water poisoning of local inhabitants by early traders. Exhibit *P14 2a* provided by CC1 also explains that Tarcol who had married Votaretsa daughter of Taftumol had no child. This confirmed history would conclude that there are no surviving descendants of the land of Belmol.

Then, the next question we posed is who will succeed by right and custom the ownership of Belmol. Will it be Marie Vohuve or some others as claimed by the opposing parties? The court having looked into the matter arrived with these findings.

Traditionally, family Tura has no right to claim the land of Belmol in custom through her mother Marie Vohuve because she has been paid the pride price by the husband Uri Bernard of Loltong Pentecost island. They have no right to claim the land of Belmol but have some right over Belvos land. Neither could they claim through the patrilineal line of chief Rutja or Tura Karae Davohi, because they are all natives of the land of Belvos.



In custom, Marie Vohuve's descendants could only claim land ownership from the father's land in our case, it would be land from Lolong, north of Pentecost island.

It follows that the ensuing issue for determination is to find Marie Vohuve's land of origin. From the totality of the evidence considered, the only link of CC1 to the land of Belmol was their early connection to Belebut land areas as related by family Taftumol. In that trader Henry Russet after having purchased the land of Belvos vacated Molvarvar and Tura from their village. It was Molivaivai of Belmol who decided to allocate them land at Belebut which they had since occupied to date. Following such ownership, on the 18<sup>th</sup> of September, 1966, Marie Vohuve sold part of the land to Paul Haulul as illustrated by exhibit TF4.

Another piece of evidence exhibit TF5 indicates that in light of past relationships on historically being descendants of Belvos, a customary right handing over declaration was issued and signed by Marie Vohuve and Pio Varavara. In that ceremony they granted rights to the Tura family including the claimant in this case to represent their families in any dispute over the land of Belvos and not others. If so, both ancestors would have clearly expressed it with record on paper. That recorded ceremony was not denied by CC1.

Following that declaration or power of attorney, Etienne Tura the eldest brother of Jerome Tura together with CC4 were the primary disputants of the land of Belvos filed before the Santo Malo Island Court and later withdrawn to the Island Land Tribunal in 2002. In 2005, such Land Tribunal formally declared family Varavara, family Warawara and family Tura as rightful owners of Belvos Land.

By way of notice by the Island Land Tribunal issued a public notice advising the public that family Tura, Warawara and Varavara are the customary owners of Belvos land. Its boundary limits on the coast commence at BP Burn station to Wambu river. On the north it lays after the old American airstrip.

Also noted, a letter addressed to chief Justice Cooke dated 12<sup>th</sup> of April, 1989 suggest that a village court that occurred at the Youth Centre did declared family Tura and Pio Varavara as the rightful owners of Belvos land. Refer to exhibit TF6.

Family Tura has also received proceeds of logging royalties from Melcoffee Saw Mill on the 18<sup>th</sup> June, 2003 annexed as TF9 and on the 16<sup>th</sup> of January, 2008 family Tura signed a deed of release in respect of lease rental payments in the amount of VT 22,922,305 as referred to in annexure TF10.

None of the above mentioned tendered exhibits was denied by CC1.

The foregoing evidence have persuaded the court with no doubt that CC1 is not a native by blood nor descendant of Belmol land and hence, have no right to claim it.



## Counter claimant 2

Loiror Lin's claim is founded on his adoption by Josephine Vorombo, daughter of chief Molsus of Sevua land. He claims that since there are no surviving descendants of chief Molsus and Josephine of Sevua land, he will by customary right be entitled to claim land ownership of Sevua.

One of the findings was that this claimant's family tree is not disputed and confirmed by OC. Dandan's name also appeared in the same document dated 19<sup>th</sup> of December, 1887 during the boundary identification process of Lambuea, Ponbua, Bellamoule and Sanamaranda. Such a record in our consideration would suggest that Dandan is a native of the land in dispute. In addition, Molsus and Josephine are buried on the land he claims. He has also identified three nasaras on his map proven to have existed not challenged by the opposing parties.

The only debate from the parties held against this claimant is solely based on the custom practice that Josephine despite having adopted Loiror Lin is culturally barred to claim ownership on the basis that she had been paid the bride price by the husband. It was told that he should claim land from the father's land of Bakas. That argument cannot be sustained upon the following grounds.

First, he would absolutely have some customary rights and interest given the adoption by Josephine as confirmed by the adoptive order of the Magistrates Court dated 9<sup>th</sup> February, 1983. It shows that such adoption was already performed in 1962 by Loiror Lin's parents on one side and the adoptive parents on the other hand. It was done according to custom of the area and accepted by both families.

Secondly, Josephine was the last surviving bloodline of chief Molsus owner of Sevua land. In custom, it is her prerogative right in granting all her land to Loiror Lin and such inheritance bestowment cannot be questioned by other non related persons.

Passing by we note on the other side, that chief Molsus has also adopted Andre Niditau son of Taftumol who in our consideration would on an equivalent basis have similar rights as Loiror Lin. Therefore, since there are no surviving descendants of chief Molsus, both Andre Niditau and Loiror Lin will enjoy equal share of the land of Sevua accordingly.

## Counter claimant 3.

Jimmy Kaven is disputing the land of Belmol including Belvos claiming it as land originally owned by his ancestor Moltamaute. The court upon perusal of the entire information assembled before it, found the following evidence.

Firstly, this defendant and his witnesses are not familiar with the land he claims. He has drawn a sketch map which does not correspond with the identified boundary he



had shown on the land. Our observation of his conduct dictates that he was being led by simply following the same sketch map produced by family Tura.

Secondly, he could not prove to the court that Moltamaute had any navota on the land. The site identified at Mango station is not a nasara in our view. If so it would have been well known to other chiefs and people of the area. Every party do not agree with his story. Neither was Moltamaute or any of his descendants buried on the land as sign of assurance that he probably belongs to the land he disputes.

Thirdly, this party had been on other occasions part of several land ownership claim namely over the land of Vunausi at south Santo, Suranda land on the east coast and again in this claim over Belmol land. He could not justify with any reasonable explanation over his given position. We note during examination, he and some of his witnesses have admitted with confession that they are simply claiming because the 1887 note for identification of the four referred land boundaries has mentioned some of their ancestors Moltamaute, Toko and Fouticabo. Such information alone cannot persuade this court to credit him on a conclusive basis but demands corroboration with further evidence.

It is obvious, that this party has heavily relied on a documented minute or notes whereby chiefs and representatives of land areas have placed their signature to show proof of the identification process of the four land boundaries mentioned above.

On the other hand, such record of deal dated 19<sup>th</sup> December, 1887 is misconceived by this claimant. It cannot be construed to be a deed of sale given absence of survey map and other required information habitually appearing in a deed of sale such as the purchasing price and so on. Furthermore, it does not expressly tell us from the front page to the rest that it is a deed of sale. But, we note that it has been referring to a land purchase transaction of 1<sup>st</sup> September, 1883. This claimant has failed to provide such specific document except other land transaction records also considered.

Added to the above points, this court could not decide on the information alone in isolation with absence of production of the specified deed of sale document of 1883. The court must be able to verify and test such document to check on a number of formalities such as, who signed it and for which land and so on. Those questions had remained unanswered on the part of family Moltamaute.

Our conclusion in regard to his origin is to pronounce that Moltamaute is a native of South Santo supported by the following outlined facts.

- a. In a piece of extract authored by early missionaries produced by CC3 shows that Kazuzu and Vekazuzu an araki couple got married on the 15<sup>th</sup> of August, 1902. This couple is the same husband and wife referred to in his genealogy chart as Ajuju and Veajuju.



- b. Moltamaute's involvement with Toko and Fouticabo into the four land boundaries identification process was surely done in relation to the southern boundaries of Belmol as described by the document touching the land of Segnoniarou, situated at Peter Morris farm, South of Santo.
- c. Equally, it must be noted that the language or dialect used in naming his daughters is in the South Santo dialect. Had Moltamaute been a real native of Belmol, he would have inevitably used the dialect of the area in dispute by naming his daughter beginning with *Vo* and not *Ve* as used when naming his daughter Veajuju for instance. This is a very important piece of information explaining his rightful origin.

Another piece of evidence exhibit *TF6* that brought question over their claim saw chief Kaven father of the claimant on the 3<sup>rd</sup> and 11<sup>th</sup> of March 1989, under the South East Santo Council of Chiefs in his capacity as a court member had declared Pio Varavara and Etienne Tura as custom owners of Belvos. It is doubtful as why would chief Kaven be part of such decision if the land of Belvos is part of Belmol as his claim suggests. That fact has mounted further doubt to his present claim.

For the reasons discussed, his claim cannot be sustained but fall as found.

#### Counter Claimant 4

The court in its determination of this party's case found the following findings favourable to this family.

This party had been vacated in the last hearing for reasons that the land of Belvos has already been declared and is situated outside the claimed land filed by the OC. However, this court had pick up this claimant to remain as a party due to dispute over boundary limits caused by the original claimant's claimed land as sketched.

The issue therefore is what boundary limit was declared by the Island Land Tribunal in 2005. The court's determination outcome noted the following facts.

1. There is an existing judgment obtained from the Santo Malo Island Land tribunal issued on the 23<sup>rd</sup> of October, 2005 declaring the land of Belvos to family Varavara and others. That decision was not appealed to date by parties disputing parts of Belvos land. It is very much alive and is accepted by this court recognizing it as a binding decision on the parties.
2. The boundary claimed in that tribunal as argued is described to commence at a natapoa tree at BP Burn up to a oak tree passes on the eastern side of the old American airstrip to Narevo tabu water to a creek and runs west to Wambu river, down to the sea and back to the natapoa tree.



That piece of evidence has been reconfirmed by witness Solorani Taviti, stating that that before reaching its decision the tribunal visited the land declared to CC4. He took part in the identification and inspection process of Belvos land boundaries. He is therefore an eye witness to the fact. That evidence is further supported by the Island court notice describing the disputed land boundary " *stat long Ouchard riva i kam kasem BP Burn*". There is no doubt about this original notice specifying the boundaries of the land on the southern part as well.

Given, the mentioned documents and in our consideration, the land declared by the 2005 Land tribunal would be that witnessed and described above re confirmed during visitation to the land site.

## DECLARATION

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

1. That family Taftumol and their descendants are the customary owners of the land of Tambotal and Belmol.
2. That Family Loiror Lin and Taftumol be given ownership over the land of Sevua as mapped by CC2. Any proceed of rental leases and other development thereon shall be on an equal sharing basis.
3. In respect to CC4's claim, this court re confirms that family Warawara and Varavara and their descendants are the customary owners of the land of Belvos as originally declared by the Santo Malo Island Land Tribunal on the 23<sup>rd</sup> of October, 2005.

Its declared territory on the south begins at Wambu river to a natapoa tree standing by the seashore at BP Burn. It then turns northwards up to the eastern side of the American Airfield to Narevo tabu water, to the identified creek and turns westwards till it meets Wambu river on the north. Its boundary limit on the west is marked by Wambu river flowing down to the sea at Ouchard farm.

4. That the claims of family Moltamaute and family Tura are entirely dismissed.

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

For ease of clarity to the parties, this declaration does not also affect other property rights on the land, such as rights of claimants or other local occupants to harvest coconuts, garden, graze cattle and other existing development thereon the declared land. The losing parties must bear in mind that these rights may be waived or varied



by the owners. The exercise of these rights is limited to existing properties prior to this declaration.

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

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



Dated at Luganville this 12<sup>th</sup> day of June, 2015

BY THE COURT

  
Justice Kalo Sem

  
Justice Kavcor Wass Nvok Rotyl Waarlehe Iyet

  
Justice Ben Rovu Kenrelrel

  
Magistrate Edwin A Macreveth



