

IN THE ISLAND COURT
REPUBLIC OF VANUATU
SITTING AT THE LUGANVILLE COURT HOUSE
VANUATU

LAND CASE 3 OF 1998⁸⁰

(Land matters)

VIPIUE LAND – SOUTH SANTO

BETWEEN: ABRAHAM BAIALOLOS

ORIGINAL CLAIMANT

AND: MELE NARAVE FAMILY

FIRST COUNTER CLAIMANT

AND: PASTOR SIMEON KELE

SECOND COUNTER CLAIMANT

CORAM:

Island Court Justices:

1. Chief WARAWARA BANIHAVO OF AVUNATARI MALO
2. Chief JEROME TURA OF BELERUE, SANTO
3. Chief BEN ROVO OF HOG HARBOUR, EAST SANTO

Acting Senior Magistrate: RITA BILL NAVITI

Island Court Clerk: ANTONY LESSY

JUDGMENT



BACKGROUND:

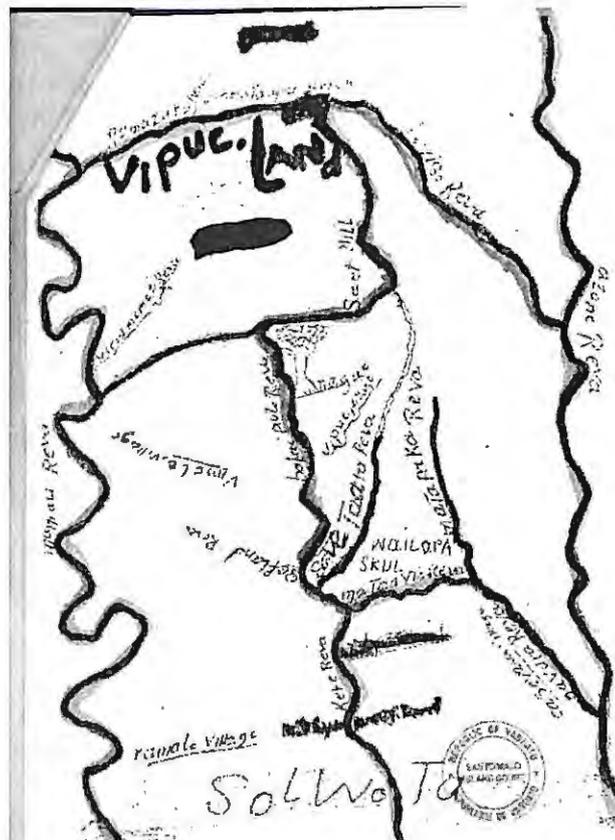
This land dispute was filed in around 1989 and publicized in around 1993.

The land:

The land is situated on the Southern part of the island of Espiritu Santo, between two large river of AZONE and MANIAU, in the province of Sanma. The original claimant calls it VIPUE.

The Boundary:

- On the North side: it starts at MANIAURU at the RUMAZURU creeks it runs in parallel with the creek to VINMATAPU creek to LOVISO river. It runs with the LOVISO river to join the AZONE river;
- In the East it starts where LOVISO river joints AZONE river and it runs with the AZONE river down to the sea;
- In the South the sand beach from AZONE river to MANIAU river; and
- In the West it starts at the mouth of MANIAU river down by the sea it runs with MANIAU river up to MANIAURU creeks.



THE LAWS:

- **Constitution of the Republic of Vanuatu,**
 - **Article 73-Land belong to custom owners-** “All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants”;
 - **Article 74-Basis of ownership and use-**“The rules of custom shall form the basis of ownership and used of land in the Republic of Vanuatu”;
 - **Article 75 -Perpetual ownership-**“Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognized system of land tenure shall have perpetual ownership of their land
 - **Article 76-National land law-** “Parliament after consultation with the National Council of Chiefs shall provide for the implementation of Articles 73, 74 and 75 in a national land law and may make different categories of lands.

- **Island Court Cap. 167,**
 - **Section 2A-Magistrate to preside in certain land matters-**“The Chief Justice shall nominate a magistrate who shall subject to the provision of this act have such powers, Functions and duties in respect of all Island Courts, as the Chief Justices may prescribes; (2) The Magistrate nominated under subject to (1) shall preside at every sitting of an Island Court, in all matters concerning disputes as to ownership of land;
 - **Section 10- application of customary law-**“Subject to the provision of this Act an 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 justice, morality and good order”.

- **Sanma custom laws** established in court after a voire dire before the trial, as below:
 - Customary land is inherited through **Patrilineal system**, from father to son;
 - The exceptions to the above principle rule:
 - **Last surviving bloodline**, (Woman can also inherit land where she is the only survivor);
 - **ADOPTION:** adopted child in custom can inherit land; (the adoption must be within family bloodline)



- **Land tenure in Sanma:**

The parties have not discussed the customary governance of land in the area. Although there is mention of "MOLI" meaning Paramount chiefs, there is no information on how this "MOLI" managed and controlled the lands and its affairs and customary businesses. Furthermore there is no information about its territorial Jurisdiction. The chiefs and leaders have to work on their custom governance to lead future generation.

INTRODUCTION:

This matter was filed by ABRAHAM BAIALOLO in 1989. He died in 2012. His son DEVED VARUCU carries this matter and attempts to run the trial. Counterclaimant 1 filed his family's claim on 31 March 1993 and the counterclaim 2 on 13 March 2008;

Before the commencement of the trial DEVED VARUCU informs the court that he would now joins party with the second counterclaimant and would prefer the court to substitutes the second counterclaimant as the original claimant on the ground that he was convinced that the Second Counterclaimant GELE SIMEON is the biological descendant of the indigenous custom owners of the VIPUE. It is alleged and DEVED VARUCU believes that it was GELE's ancestors who allocated the land VIPUE to BAIALOLOS' tribe.

The court accepts his request and considers Pastor SIMION GELE the second counterclaimant as the original claimant; the original claimant becomes a witness in support of the Second Counterclaimant's claim of being the bloodline or the indigenous custom owner of VIPUE LAND.

None of the parties raise any objections against the three JUSTICES.

The issues in this dispute are:

- 1. WHETHER VIPUE is the name of the land between the MANIAU and AZONE rivers**
- 2. WHAT IS THE BOUNDARY OF VIPUE**
- 3. Whether GELE SIMION is the custom owner of VIPUE?**

THE FACTS

ORIGINAL CLAIMANT- GELE SIMION



ORIGINAL CLAIMANT- GELE SIMION

The original claimant represents himself in court:

Family tree

GELE's family tree carries contradicting elements;

However his 2014 family tree shows that he claims under MALTONA. He traced his family tree as:

MALTONA has 4 brothers: VARIPOTE, RAGOU, LOGOUVUGOU, UJAA;
Only MALTONA successfully populated the area. He wedded VEVIRAILULU and fathered JAVIRAGELE;
 JAVIRAGELE wedded VESUBE and fathered PULUI KARAE;
 PULUIKARAE wedded VEBAlA and fathered SIMION;
 SIMION wedded VEAJUJU and fathered 7 children one of whom is **GELE SIMION** who is in court today

Pastor GELE SIMION claims under MALTONA. In his family tree Maltona had 4 brothers one of them was RAGOU who sold a portions of VIPUE LAND in 1885. To support that evidence he produces page one of the decision of the Joint Court over the application for registration of a number of lands in the vicinity of the land in dispute. That document shows that MALTONA, LOUGOUVOUGOU and RAGOU were party to sale of land on 25 February 1885. The names of the lands mentioned were

- ATSONNE,
- BIOSOVOK,
- LANSOULE,
- LOVO,,, AND
- TANABOUSSE; but not VIPUE.

He also said that JAVIRAGELE welcomed the gospel or Christianity in 1904 at Wailapa. JAVIRAGELE was one of the pioneers of the Gospel in Waylapa.

He did not say much over his ancestors' custom activities on the land VIPUE. He, and the witnesses he produced confirm that his ancestors never performed any pig killing ceremony on the land; thus there is no NAVOTA (custom altar) instead he told the court that he won the land case of WAILAPA and now he remains the custom owner of WAILAPA. The court was told that WAILAPA is very far from VIPUE and few big rivers separated them.

Ps Gele simion produced a Santo/Malo island's court judgment showing that he was declared custom owner of MARUA. MARUA is not WAILAPA. Wailapa is the name of the River and the coastal village; whereas MARUA is a custom land that is situated further up the hill on the plateau...



When the Court visited the Land, Pastor GELE SIMION showed a NAVOTA about 2 to 300 meters from ASSEVAIA village (Counterclaimant 1 village) and says it belongs to his ancestors MALTONA.

Apart from the evidence that RAGOUE sold the land, none of his ancestors neither showed him the boundaries nor told him of the custom history of how they originally acquired or moved into the land; instead it was one BULURAVE who showed the boundaries and passed on the custom story to him. BULURAVE was DEVED VARUCU BAIALOLOS grandfather,

In Pastor GELE SIMION's evidence BULURAVE was instrumental to many customary activities in the area including the control and management of VIPUE LAND, not MALTONA or any of his MALTONA's descendants.

Further within the trial, the court heard that GELE SIMION was closer to BULURAVE because BULURAVE considered BULUKARAE as his cousin being born of both sisters. BULUKARAE is the grandfather of SIMION GELE. When BULUKARAE died BULURAVE controlled and managed VIPUE LAND.

Pastor GELE SIMION omitted to tell the court that his mother remarried BULURAVE's brother VUTIMEREI when his father SIMION died. That VUTIMEREI is still alive but he was not called to give evidence. That recent relationship seems to facilitate Pastor GELE SIMION's collection of custom history of VIPUE LAND from BULURAVE.

This piece of evidence raises some unanswered questions such as:

- why would BULURAVE show and give custom boundaries and the custom history of VIPUE to SIMION GELE but not DEVED VARUCU BAIALOLOS?
- Beside BULURAVE had a first born brother VARUCU; why not sharing the history and boundary marks to VARUCU?
- Furthermore VUTIMERE is the living brother of VARUCU and BULURAVE would not it rather proper for him to give evidence in this trial?

Mounting an history over the land on BULURAVE places great doubt over the original claimant's claim.

On the other hand DEVED VARUCU BAIALOLOS whose father was the original claimant, seems to be confused and blindly maintains that GELE SIMION is "bloodline" of the indigenous custom owner of the VIPUE, although he admits that none of Pastor GELE SIMION's ancestors had control and management over VIPUE. He confirms that the original claimant's relatives never perform any custom ceremony on the land.



Pastor SAEMON gave evidence in support of DEVED VARUCU BAIALOLOS claim. Originally this witness was spokesperson for BAIALOLOS senior, he assisted BAIALOLOS senior to bring this case. Today he comes before court to say that GELE SIMION is the true custom owner of VIPUE but again he did not explain why he holds that view. He confirms that none of GELE SIMION's ancestors had ever performed any custom ceremony in VIPUE and its' surrounding areas.

He explains that there are 2 lands within the disputed area: NAMALO and VIPUE. When question about custom ceremonies in general he replies that he does not know the purpose of pig killing ceremony. He does not value the customary activities and does not consider pig killing ceremony as an important custom practice.

It transpires from Pastor SAEMON's oral evidence that GELE SIMION the original claimant has strong relationship with DEVED VARUCU BAIALOLOS. That relationship started in the times of two sisters VESUBE and VEHABUVOKE. VESUBE married JAVIRAGELE grandfather of GELE SIMION and VEHABUVOKE married BAIALOLOS senior, grandfather of DEVED VARUCU BAIALOLOS. In custom GELE SIMION and DEVED VARUCU BAIALOLOS would be considered brothers.

That relationship continued when GELE SIMION's father died and his mother re-married VUTIMEREI who was the brother of VARUCU, the great grandfather of DEVED VARUCU BAIALOLOS. Pastor GELE SIMION was raised by VUTIMEREI last born brother of VARUCU and BULURAVE. That information was not included in the recent family tree drawn by DEVED VARUCU BAIALOLOS and GELE SIMION. It was only included in the 2008 family tree prepared by BAIALOLOS senior.

Lastly 14 October 2014 GELE SIMION and DEVED VARUCU BAIALOLOS filed new pleadings with major contradicting elements to the original pleadings:

- In the 2008 history the land was said to be given by GELE's ancestors to VARUCU; and in the 2014 the land was said to be given to BAIALOLOS.

Indeed the claimants have changed not only their history but also their family trees.

- In 2008 the original claimant alleged that his great great grandfather was MALTONA. RAGOU and LOUGOUVOUGOU were 2 women associated with MALTONA; but in 2014 RAGOU and LOUGOUVOUGOU were 2 men and claimed to be the brothers of MALTONA.

Before the trial they again made major changes in the appellation of this case, where DEVED BAIALOLOS changes his father's position from Original claimant to a simple witness and substitute GELE SIMION has the original claimant.



COUNTER CLAIMANT 1- FAMILY MELENARAVE

This counterclaimant appears in court as a tribe and a clan made up of the descendants of MELENARAVE by his 6 sons. They show by their presence that they collaborate to mount this defense to counter the Original Claim.

Their Defense was that the disputed area belongs to their ancestors who have sold it in around late 1800s and have move out and away to attend Mission schools on the advices of the first Missionaries pioneering the gospel within the vicinity of the AZONE and WAILAPA rivers.

Family MELENARAVE claims that the land in dispute was and is not VIPUE LAND but NAMALO and NAONE. Those lands were under the control and management of chief MOLITORA. MOLITORA is the name of a grade obtained through pig killing ceremony. That title is currently held by one of the descendant of MELENARAVE, one IANAVARI (he stood up in Court). The name "MALTONA" used by GELE SIMION would be the mispronunciation of the chiefly title "MOLITORA" by those who heard that name in 1885. The real name behind that title was LANGI and that tile is currently held by VANUA, son of IANAVARI.

They claim under MOLITORA and TOAVARI (brother of RONGOU) down to VEHAVO and further down to MELENARAVE

Family tree

TOAVARI of Namalo wedded VERAVELETOLU of Ajone land (sister of chief MOLITORA) and fathered VEHAVO (of Namalo)

VEHAVO of Namalo Land wedded HOE of Ajone Land and mothered MELENARAVE of Ajone
MELENARAVE of Ajone wedded VEPAlAUSI of VUNAPU Santo bush and fathered LOVE,
VEHAVO, VEHEJA, VARITALO, VEVUI, VEVATU, IANAVARI, TINESI, HOE and TOAVARI

He traces his generation back to 3 generations to TOAVARI, MOLITORA and RONGOU

Family MELENARAVE claims that the land in dispute is not VIPUE, but NAMALO and NAONE. VIPUE signifies bamboos for there are many bamboos on that land. Before cross examination, the spokesman PATUI LUI introduces as he said "the living seeds" of MELENARAVE MOLI GOSO TAMATA, calling each by name and have them stood up for court to see.

He alleges that a Dr. Joseph Annand first Presbyterian missionaries to be stationed at South Santo had met with MELENARAVE and advised him to sale all his lands and sent his children to school. At that time the Mission was situated at Tangoa. So



his father did exactly as told and they all left the land to go to the Mission at Tangoa. The last to leave was MELENARAVE himself taking with him the remaining couple VUTINASUBE and VELUI, VESALE and VEMELE his cousin-sisters, being of SOCOBOY.

He further informs the court that the custom boundaries of the lands exceed the sketch map presented by the Original Claimant. The court told him that the decision will be limited to the sketch map filed.

In his opening remarks he also said that the disputes over the same Land had dragged their forefathers and themselves for a very long period of times. Melenarave started the claim in 1952 and died in 1958. In 1955 Moli Oso Tamata travelled to Vila to meet with the FRENCH authorities to discuss this land issues and get permission to re-enter their forefathers' customary land which had been titled and registered and placed as a leasehold title owned by the French companies. The current generation continued with the claim by hiring a French lawyer in 1967 and they were recognized as natives of the land. They were given authorization to return to the land which their forefathers had sold.

He told the court that the original claimant and his friends arrived after the land was sold. They found that the land was vacant so they established themselves on the leasehold title while the sellers or original owners were in Mission on Malo, Araki and Tangoa.

The Counterclaim claims that there are about 10 Navota or custom altars in the land, but the court has managed to visit only 1, which was shown to the court by GELE SIMION. GELE SIMION claims that it was MALTONA's NAVOTA. This statement is highly disputed by FAMILY MELENARAVE who replies that MOLI OSO TAMATA to the last to obtain his grade in Custom on that NAVOTA. It was after independence in early 1980 and that it was witnessed by the First Prime Minister WALTER HADY LINI. He continues to lead the court further to the grave of MOLI GOSO TAMATA where everyone can appreciate from the color and the texture of the stone that they dated from the same year not further older than 1980.

Furthermore standing from the grave and looking back to the same NAVOTA, PATU LUI, for the Claimant explains that, in the time of the ceremony, people would clear the bush so that standing on the altar the chief would look clearly and directly to the door of his Nakamal situated at about 400 meters from the altar. Indeed the entrance of the NAVOTA points directly to the entrance of the Nakamal.

The claimant also produces overwhelming documentary evidences in this case to support his claim:



- Deed of sale dated 1885 by MALTONA (MOLITORA) and RONGAU over NAMALO and ATJONE;
- Deed of sale dated 1891 by TOVARI, and others over NAMALO and NAONE
- Letter dated 15 March 1955 from Philippe Comte the French Judge authorised the claimants and their relatives to enter and garden into the lease closer to ATZOENE river;
- Letter dated 10 September 1979 written to chief MOLI HISU SORO of Wailapa Village advising him to restrain his people from entering the land at CASEVAIA village unless they obtain prior permission from MOLI GOSOTAMATA;
- Decision of Village Land Tribunal dated 13 March 2009 over the said dispute confirming that there is within the land a big Nasara or Navota on which chief MOLI GOSOTAMATA last performed pig killing ceremony;

RESPONSES TO THE ISSUES ROSE:

After considering all the evidences and reading the pleadings the court finds that:

- 1. WHETHER VIPUE is the name of the land between the MANIAU and AZONE rivers? the answer is NON. VIPUE is a small portion of land situated between both rivers, from the creeks down to NASULESULE at the namele tree evidence of the sacrifice of a full tusked pig brought by the people of the bush (Baialolos relatives) in exchange of rights to stay on the land. Court finds that there are 2 mains land within the two rivers. NAMALO and NAONE. VIPUE is the upper portion of NAONE**
- 2. WHAT IS THE BOUNDARY OF THE LAND IN DISPUTE: It is probable that the boundaries of VIPUE starts from A it runs South East to B, then run East to C and runs up with MATAPAKA river straight line to D and follow the foot of the hill to A (see map attached**
- 3. Whether GELE SIMION is the custom owner of VIPUE? NON. GELE SIMION was declared earlier as been the custom owner of MARUA. MARUA is further up WAILAPA LAND (see Judgment 3 OF 1993).**

DECLARATION:

- 1. There are 2 lands neighboring to each other between ATZON/ASONE and MANIAU rivers. They are NAMALO and NAONE. NAMALO was controlled and managed by TOAVARI and NAONE (referred in the past as ADJONE) was controlled and managed by MOLIRA;**



2. VIPUE is situated on the upper part of ADJONE or NAONE. (SEE THE SKETCH MAP)
3. The custom owners of NAMALO and ADJONE/NAONE are the descendants of MELENARAVE the only surviving bloodline of MOLITORA through his sister VERAVELETOLU of Adjone and TOAVARI of Namalo.
4. For good order, these court orders that the declared custom owners must not evict the claimants from the portion of land VIPUE. HOWEVER they must perform custom reconciliation and settle the boundaries for the claimants to work and continue to enjoy their lives on the land.

At Luganville, this 28 February 2015

Island Court Justices:

Justice WARAWAR BANIHAVO


.....

Justice JEROME TURA


.....

Justice BEN ROVO


.....

Senior Magistrate
RITA BILL NAVITI


.....



RUMAZUTU ^{Kirik} VIMMATAAPU ^{Kirik}

VIPUE. LAND



SACT HILL

Vipue memegi Reva

Lo Visia Reva

Lone Reva

Mamau Reva

Vimc Le Village

Somalo Village



Setland Reva

baban'pulo Reva

Vinaga'e

Vipue Village

Vimmi

Taata Reva

MATA PA KA Reva

Mumele

Yuna V.V.

WAILAPA SKUL

maTaa Via Reva C

Vuslolo Village

Kere Reva B



ramalo Village

CaS Seva Reva

baVura Reva

SOLTWA TA

