

IN THE SENIOR MAGISTRATE'S COURT
OF THE REPUBLIC OF VANUATU

Land Case No. 003 of 1994

10/08/05

HELD AT RANON - AMBRYM.
(Civil Jurisdiction)

Sitting as Land Court with 3 Assessors at Ranon North Am Ambrym.

From : 18/09/96 to 19/09/96

BETWEEN : PETER MANSOP

Original Claimant

AND : ISAAC WORWORKON & FAMILY

First Claimant

Coram : Bruce Kalotiti Kalotrip - Magistrate

Assessors : Talimban August (West Ambrym)

Luc Johnny (East Ambrym)

John Job (East Ambrym)

Land case - Ranon in the Northern part of Ambrym.

- Chapter 12. The Constitution of Vanuatu namely Article 5 7 3 ; 74 ; 75 and 78 (2)

- Section 10. Island Courts Act CAP 167.

Inheritance and ownership of customary Land between the supposedly original people of Ranon demarcated between two natural creeks adjoining the sea Talawel Vanto (or) the western part and Loptaviu on the Eastern Part. The Constitution of Vanuatu Chapter 12 by article 73 stipulates that :

" All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants"

Article 74 expressly states that :

" The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu". While article 78 (2) says that :

" The Government shall arrange for appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom."

Also section 10 of Island Courts Act made it mandatory that application of customary law must be within the Territorial Jurisdiction of the Court

[it must be seen as acceptable standard of practice within the prevailing environment]

Finally the Island Court (Power of Magistrates Order No. 1 of 1990) duties of Magistrates subject to matters before the Island Court as to the ownership of Land. In order to determine any land matters on Vanuatu, a Magistrate must first be duly appointed by the Chief Justice pursuant to section 2 A (1), of the above order. It is from the above provision that a warrant has been granted upon myself by the Chief Justice of the Republic of Vanuatu to preside over Land matters in the northern region of Ambrym Island.

(A) The background information of the Land on Ranon which includes the Government legal property of both the secondary and primary schools also Institute part of the disputed areas

Claimant One representing

- i) Family Worworkon
- i) Family Thomas Gemgem
- i) Family Magelili and
- iv) Family Jimmy Sack sought to

have their respective customary boundaries re-confirmed from the traditional Court or village court decisions. Although there would seem to be a conflict of interests between boundaries of the registered lease and the non registered areas the blanket claim is insisted by the above families that these areas were automatically reverted back to the original custom owners. Whereas the original claimant not Mr Peter Mansop contested his birthright over the whole area of Ranon part of which is the subject matter of the claim by claimant one. It was also brought to court's attention that never had there be a dispute among each of the members of the claim. They worked within their respective boundaries just until recently when the issue of a compensation claim was raised by the original claimant over lease properties in the vicinity of the claimed areas namely : Title . 868 ; 508 Title. 786 and Title. 786 Tittle 510 and Title 509 of a certain George Mitchel who left the Island soon after the National independence day fearing the imposed threat upon his family.

Peter Mansop

Being the Original claimant Peter Mansop contested his right of claim over the whole area of Ranon. He related his own history traced from the past eleven generations while during that time there was no one on Ranon except his first ancestor the only true man Ranon known by his name Meer or small man Peter alleged, to be the only offspring surviving him while other people today on Ranon today are just visitors simply because they have their own roots elsewhere. He pointed out that such people have their history for they fled the threat befallen upon them by a certain legendary Lizard. They sought refuge in Banghul from Ralitor (an area further north) before they returned to Ranon and had lived thereafter since Peter claim to be the 3rd generation of an old man being a stranger from Ranon is called Temtotay, he was their ancestor had returned from Panghul that his great grand father Melly had given a piece of land to Aro's descendant to work on while still maintains that there was only one Nasara situated at the church yard intervillage even till today called Lonbato. His family tree tendered as in market as exhibit 1 A. He insisted that no one has ever lived on Ranon those now pretending to be called original people of Ranon emerged from other parts of Ambrym have now sought permanent residence to his ancestor's land after when they were reassured from the fate for it was a narrow shave. It was later contented for this reason that he had to reconfirm his birth right over his customary boundaries from Tolawel Vanto creek ; to Tolawel Kakere creek followed from a Nantau tree at Lonwor in the vicinity of Vansar area then from Bread Fruit tree at Fanyelyel passed Natapoa tree towards the sea then from Tolawelbaba creek at Liwaom to the corner of a Navele tree at Tolawelbaba creek. Finally again from Lonpium down to Liptaviu creek toward the sea. Peter contested the eleven generations beginning from Mete followed by Lonon ; Palle ; Orasse ; Mili ; Natin ; Mageneim ; Gulgul ; Peter Matansele to Peter Mansop. He had five children namely Asoli first born followed by Ronnie ; Roy ; Jimmy and Separ (the only daughter) and a grand son Lonon. When cross-examined by Isaac Worwor if his generations were truly from

Ranon to which he consented. Again when asked where did he get such history that Peter Mansop is different from a certain Aro Jimmy Sack he replied that it was a certain elderly Mr John Manuia and Batick who related everything to him that he is the only person survived from the original people of Ranon while others are just visitors so Aro and his family came from Ralitor escaping the threat of the Lizard's no one from Ranon would deny this truth. Sali's statement has not been typed P.S. check another prominent witness of claimant one by the name of James hang hang put forth his question again about Aro's credibility to which Peter Mansop replies that Aro's ancestors only return from Pangul to stay with his ancestor Mili who invited them to stay under his roof before they were given a place in Ranon to built their shelter todate.

Peter again insisted that there was still only that one Nasara recognised today had been the one implanted at Lonpato owing many pig killing ceremony that had taken place together with the secret ceremonial activities being an important sign for recognition. When asked why there is such inconsistency between eleven generation and that one Nasara to which he maintains his contention that there had been only one Nasara and the eleven generations had always looked up on this Nakamal (meeting Place). Again a question is raised whether Peter's family should deny the birth right of Aro Peter objected that Aro, should claim his right from Tentou for they did not have their shares in Ranon. If there ever be any shares given to Aro's family the later must come under him. Peter says he represent's Mili while Aro represents Temtotay supposedly to be a stranger from Ralitor. The question was again raised whether there were people personally in Ranon a part from Peter's ancestors to which he repudiate with "a no".

When asked why did Chief Sawan who is also chairman of the district level did not turn up for meeting when called [missing statement P.S check] intended Peter sought assistance from four different chiefs who gave him the right over his blanket claim namely :

Chief Willie Tokon from Linbal village

Chief Tofor from Fanta village

Chief Jereli Magekon from Fanjever village and

Chief Dor Robert from Fanjever village

Peter replied that an anonymous decision was taken by them because they have recognised my right over my claim also from the fact that I have more generations than others : Chief Sawan failed his duty to give a proper decision after the past meeting we met together that is the reason why I had to seek help from other district chiefs to reconfirm my birthright for no one in Ranon had denied such right I am entitled to. Chief Sawan failed because out of 13 meetings I had called 12 were unattended to my disappointment over the claim. And it is common practice that if the meetings at the village level fail then the party whose right has been infringed may seek assistance of chiefs at the district level to review the decision made by the lower courts. While to support later ; claim his other two witnesses are chief Willie Tokon and his nephew Tureng Woren first, Chief Willie when asked why did he take such important decision without Chief Sawan to which he replied that he had his decision based on that by the other there chief while he was then a chairman. He continued to say that were there while the other party members failed to attend so they had to take this decision while Peter was reminded not to collect rental payment of Ranon school and he must remain distant. He pointed out that their decision is not to chose other people out from the current settlement they are free to stay but they should not forget that the rightful ownership of the disputed and is now confirmed and Peter is the only indisputable person having such a customary right so far. When asked why did Chief Bongranli Bongranli not attending the meeting since he is the Chief of the disputed area chief Willie says that Chief Bongranli did not discuss the matter and also refused to attend the meeting. When asked if he know that his decision overrides the important roles usually played by other chiefs in Ranon since he himself is from Linbul Village he consented and simply said

because Peter went to see him although knowing that their decision is not fairly based according to proper composition of the Chiefs who were eligible into making decision to such an important matter. Second Tureng were only related what his grand mother had told him that Peter Mansop who has his uncle is the only true custom owner of Ranon. When asked about the Nasara he replied that there is only one Nasara while others have just recently known but to his knowledge there is only one true Nasara located on the church yard. When asked the difference between the words Namangi and Mal he replied that generally.

The performance of pig killings ceremony is Namangi while Mal refers to big man (highest honour of chief) after going through the process of Namangi. He emphasis that neither of the two give right to ownership of the Land. You do not possess or have the right to process the land by going through such a ritual ceremonies. He continues to say that another significant part of Namagi is to protect the name but does give right to own land. Tureng had all version of his story based on what his grand mother has said to him.

Claimant

Family Worworkon

Family Thomas Gemgem

Family Magelili

Family Jimmy

Isaac Worwor who represents the interests of the above joint claimants says we have no intention contesting the matter before the Land court. But he insisted that it was Peter Mansop who first raised with him the issue of Leases on certain business activities in Ranon namely : Cooperative mini retail shops etc.... there was a lease document for him to see among other things when Peter had made a blanket claim and he did not want to elaborate

in discussing the matter as he then reminded him that they have already lodged their claim and based upon their specific boundaries of their ancestors. They have their respective subdivisions and it is the duty of each family's witness to further elaborate the version of their stories. He then briefly demonstrates proof of his contention. Given boundaries of Politaviv, Towelbaba.

From : Varabtaviu - Aro

- Alili

- Willie Walter until the area market Lanbato. From Lanbato to Fanyeyel Vansar then spit the big house of (George Mitchell to be under the name of.

Magilili and family and Gemgem and family then halt of the said house to the creek is awarded to family Worworkon (still on Vansar). From that creek Tolawelbehe on ward it is then divided between Gemgem ; Magilili and Jimmy Sak to Tolawel Kakree creek.

About the Nasara

Isaac pointed out that each family has his own Nasara and three separate Land Title in the disputed and namely : P 508

P 509

P 510

When cross examination by Peter Mansop where he was at that time when the meeting had been called the cost time to which he replied, since he was working in Vila he had no knowledge of that meeting but recently learn from his father. Isaac had insisted that if Peter claims to be from Ranon when Peter asks for elaboration over the statement Isaac reminded him that Peter Mansop should have made his claim through Jimmy Sak. He pointed out that Peter and Aro come from the same Nakamal and while Peter claim to be

originated from Ranon. Undoubtedly he must have his claim made under Jimmy Sak Nasara. Peter then asked Isaac why is it that during the sharing of the subdivisions of land his name was not mentioned Isaac made it plain that the process of sharing was not that one man one plot. They had to go back to their ancestors history for the sharing to be done equitably according to their birthright namely :

- Peter Mansop and Aro
- Mekalili and Gemgem

The process of sharing was done in such a manner where ie ; Makelili alone has his portion divided it might have been too big for himself alone or too small to live on or perhaps too crowded. The question is then asked about the rental payments, it was then said that the Ministry of Education made the rental payment. For the base payment, Isaac continues to say that such rental payment should be made directly to Aro and Magekon. And if Peter Mansop had not made a claim the rental lease should also be paid to him as well. Peter he should not have been making his claim without Aro. Other three Nasara are well founded whereas that of Jimmy Sak is unknown. The court then asked if there were similar disputes during the days of Georges Mitchel to which a reply came that never had a dispute or quarrel because worked their respective boundaries and they have such a respect towards each step.

Sali Atel a witness reconfirmed the practice of their activities by saying that Ranon 1 - belong to Gemgem Ranon 2 & 3 - given to Aro and Peter Mansop.

Rantalion - being for Aro and Magekon

It is understood that the land has been sold way back in 1889 to Frano Rossi a certain Eugen settler by an old man named Sowau here are 5 pieces of land or subdivided namely :

Ranon 1; 2; 3; 4 and 5. And no one disputed it until the land referee came in after Independence to reconfirm the 4 custom owner together with the loose holder which make fine in all in although 30 days were given after such declaration for appeal yet no one contested it at that time.

First price of land to Gemgem and Worworkon 2 pieces of land. Ranon 1; 2 and 3 given to Aro

Rantanliu - Given to Aro and Magelili. I was on these pieces of land that the birthrights of each individuals have been recognised and preserved to date. Atel insisted that all these have reasons because they were all originated from Ranon.

When asked order George Mitchel cost his rights over his leases. Atel applied on cross examination claimed why his right is being denied by Aro to which Atel says Aro was the offspring from the first marriage which Peter only came second therefore Peter should have known better to work closely with Aro. From the genealogy Aro and Peter emerged from the same source beginning from Maleum whose first marriage with Lonsel conceived Torere Manwo who fathered Jimmy Sak who was Aro's father. Jimmy Sak the second marriage with Litan then gave birth to Peter Metansele who was the father Peter Mansop. When Atel replied on question about the 11 generation; he said that Chief Sowau had postponed a meeting to see other contenders who should also produce their family. There while at the same the western region of Ambrym is to reconfirm his knowledge of Peter's generation as the whether the family produced is correct and it was because of all important information awaiting before hands that refused to a delay which also mean that Chief Sowau as a chairman of the district must be arias his role fairly without partiality. He needs close information for his proper assessment. But while he was yet waiting without information him Peter went straight to Linbul and sought assistance from chief only token who proceed with the declaration without property consulting the relevant chiefs who have gone half way true ^{through}

with their matter subject further investigation to be undertaken. Both Peter and Chief Willie were partly to be blamed for this. Atel continued to say that from Peter's genealogy he had tried to first the name of Mawovileun to brass and the eleven generation is unfounded. While Peter Mansop's family from the second marriage used two different names namely either Peter Metansa or Peter Weyee and the point of origin. Should be Weyee Metan instead of Meer (the small man). When asked to clarify if Aro and Peter came from the same Nasara then who's Nasara is Lonbato the reply came to clarify that Lonbato is not a Nasara it only connotes a shellier or paraphrase it as entering a shelter which has no connection with a Nakara. The second James hang hand nephew of Worworkon beginners hold repeated the same story when asked says Peter has his portion of land. That previously every body live peacefully no ill feelings because then were all happy together each working within his own boundaries. Peter work closely with Aro they have their own Nasara. The first Nasara at the church yard is called Vara Welsi now changed its name to Arleon meaning Tabu could not be approached by a woman ie : the ritual activities of Namangi took place as they got promoted from rank to rank.

The second Nasara ie called Lon Wolau for the custom dancing known as Yell Bata Willanepom. While Lonpeta is down the sea constituted with coconut leaves during certain aduities and woman are not allowed to approach the permitter it is said that family of Aro ; Peter and stew people were repressible for looking after such activities while family Magalili Gemgem and Worworkon were responsible of their Nasara up the Hill while the other Nasara Arkon was held secretly for those performing their namangi had passed certain stages of tests. When question why Aro and Peter should not be waiting closely together James replied in saying all these happenings were due money problems. Witness 3 by Lewakon Berry a very old man estimated to be closed to 100 years old had difficulty answering straight from the question asked but rather a fresh memory of recollection of the past ei : Peter Metansale a brother of Meleon Toreer from the second marriage. Peter

Metensale had held discussion with Lewakon that they all cause from the same genealogy that Manwo Meleun his father was named with his first wife Lonsal who concerned Meleu Torere who failure Jimmy Sak being father of Aro. While he Peter Melensale whose mother Litan was from Ranteiu and he has a son name Peter Mansop, Hamea and Lonwokan. When asked if Peter Mansop being the only true man Ranon he replied to that effect that not only Peter but others were also from Ranon. Lewakon resisted by saying the only celetes was Peter Metansale had told him that land belongs to everyone when each person has had his lot subdivide to serve their purpose. He says he was with his elder brother wingie they both took hold of a big gave it to Jimmy Sack to help him cleared his mother's face in order to be well accepted in the Ranon community. When asked can someone who just arrive on the land can just take over from the one that has been there originally to which he reply is : For such situation performance of Namoi is very important because it will give them right to possess land and other treasure. When the old man Peter Makensale died Jimmy Sack ; Sawan ; Libe Samuel killed 2 pigs with tusks for funeral preparation with other food. They had placed each pig and some row food on a canoe then have them dispatched to Arrival which was received by Bong koko and the other portion sent to Fanto which was well received by Bongnebu. He continued to his version that old Peter died close to the mission school and his wife had also killed pig at that time for a ceremonial feast for everybody who attended the funeral. Lastly Chief Sawan the last witness says he had a reason to believe to have the matter past one subject to further investigation at that time when he was trying to get chief Oulemat because Peter had said he got his story from chief Oulemat Sawau over the creek because chief still denied given Peter his family tree that the 11 generation claimed by Peter Mansop was a someone has exaggerating and he should some sharing of land with family Jimmy Sak ; family Gemgem and family Magelili. He continue to reconfirm what other witness as have that the eleven generation with need to be looked into move closely and that it is this their role as chief to avoid wherever possible any confusion especially dealing with land matters. That the 4 chiefs including Chief Willie Tokon have

taken their decisions without any consultation and what Chief Sawan claims to have done was for the best interests of the community and although Peter had paid 500 vatu fine for his apology he says that he could not call for a meeting earlier until he is satisfied to have receive on time what he had been asking from chief Oulemat and other claimants.

The court visited the boundaries of each party to claim upon completion of their case separately.

Court Findings :

1. That not anyone from Ranon would deny the phenomenal story of the lizard.
2. There has never been a dispute over the land in dispute for each family worked on their respective land boundaries
3. The original claimant made a blanket claim of the registered and the non-registered land.
4. Other claimants insisted on working with their ancestors were entitled to and also from the fact each family were from the past generation worked on their respective lots at the time of the subdivision. No one has gone nowhere but to still work on their land respectively.
5. Peter claims from the past eleven generation according to his genealogy whereas other parties have their claims reverted from the last 5 to 6 generation.
6. The registered lots are not the subject matter of discussion. It is not within the jurisdiction of this Court.

7. The insisting boundaries and some of the material evidence shown have made no differences. They all come up with the same version of names.

8. Some how all the claimants seem to be related and one should not deny that the last fifth generation having no right other than the land in an area of claim.

9. Throughout the full hearing Aro's name is mentioned more than anyone else. Peter and Aro emanate from the same family tree.

10. The last eleven generation of Peter Mansop will need to be further looked into there is an overbearing of names given to the some person ie : Brass and Meleun.

11. A fresh recollection from a very old person Lewakon who had survived during Torere Meleum and Peter Metanseli days. He is the last old man from that age still alive to reconfirm what has been discussed with old Peter Metansele.

12. The previous sub-divisions should remain unchange todate and every family members have been given their portion of land respectively.

13. 95 % of the land in dispute are inhabited.

14. All the Nasara cannot be proved physically white their names is of some significant.

15. All the claimants have made their permanent residences in Ranon.

16. The subdivisions transact with the registered leases to each custom owner or family as the case may be.

17. Since other family members have enjoyed their subdivisonal right so far it has to be made clear that Peter Mansop was from the second marriage whereas Aro derived from first marriage ; they are both drawn from the same source of genealogy namely Manwo Meleum. During his first marriage he had a son named Torere Meleum who father Jimmy Sak while the later being the father of Aro. The second marriage of Manwo Meleum had a son named Peter Matansele who is the father of Peter Mansop.

18. All the claimants are from Ranon or have family relations directly extended to some nearby villages on North Ambrym.

19. Where custom decisions have been respected for generations the constitution protects that right. This is not prepared to make any relevant orders as to any proceeds from any business activities on the and in question for a separate course of action will need to be undertaken accordingly. That being the case the court make the followings declarations :

Declarations :

- (a) That the first piece of land presently occupied by family Gemgem and family Worworkon are deemed to be theirs and their generations.
- (b) That Ranon 1, 2, and 3 given to Aro is also deemed to be of Peter Mansop as well.
- (c) Rantanliu given to Aro and Magekon is also deemed to be of Peter Mansop as well.
- (d) The court is satisfied that family Jimmy Sak (including Aro and Peter Mansop) ; family Worworkon ; family Thomas Gemgem and family

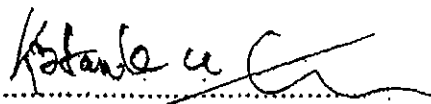
Magalili are perpetual custom owners of the land between Tolawelvantocreek and Liptaviu creek.

(e) Their rights included right to grow crops, making gardens ; build house and live on the land.

20. That all co-owners shall meet the cost of publication of all service messages incurred and all order costs to the value of Vatu 54.900.

21. Parties have 30 days to appeal.

Dated at Port Vila this 4th day of November 1996


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BRUCE KALOTITI KALOTRIP
Magistrate

