

(Appellate Jurisdiction)

BETWEEN: CHIEF EDDIE KALOWIA
Appellant

AND: CHIEF MASONGO MAPULA
Respondent

Coram: Steve R. Bani

*Assessors: Mr. Francis Aru
Mr. Thompson Andrew*

*Counsels: Mr. Daniel Yawah for the Appellant
Mr. John William Timakata for the Respondent*

JUDGMENT

This is an appeal from a judgment of the Efate Island Court dated 20th June 2005. This appeal was filed 22nd July 2005. The Respondent claimed that the Appellant was out of time. However the appeal was permitted proceed following certain circumstances that ensued immediately after the judgment was delivered. The Grounds of Appeal which was dated 10th August 2006 is styled in this manner;

TAKE NOTICE that the Appellant further to the Notice of Appeal filed herein, appeals against the entire decision of the Efate Island Court dated 20th June 2005 which ordered in summary as follows:

1. That the Claimant is the right bloodline of the title Tariipoamata.
2. That Defendant must hand over the said title to the claimant within 3 months.

3. That both parties must perform a reconciliation ceremony between each other before ordination of the new chief Taripoamata
4. No order as to cost.

UPON THE GROUNDS

1. The Judges of the Island Court manifestly erred in law and fact to consider claimant as the bloodline of the title Taripoamata when there was ample evidence to the contrary that the Defendant is the true blood line of Taripoamata by virtue of family tree History and Ordination ceremony of the claimant.
2. The Judges of the Island Court manifestly erred in law to restrict the Defendant to only 3 witnesses on the proceedings when the Defendant is entitled to produce more than 3 witnesses to support his case.
3. The Judges of the Island Court manifestly erred in law to deliberate matter in a manner which is deemed to be perceived bias in favor of the claimant when the hearing was conducted in the claimants shed and all lunch for the Judges were prepared and served by the Claimant's relatives and all ate together on the Claimants shade together right through the proceedings. There was also evidence of Judges drinking kava together with Claimant's relatives after court cases in the afternoon.
4. The Judges of the Island Court manifestly erred in law when the verbal delivery of the Judgment, the clerk confirm verbally that the Claimant is not entitled to Taripoamata, however, the actual writtrn decision appeared contrary to the statement made publicly by the court clerk.
5. That the entire file of the court below was lost in the court registry and cannot afford the Appellant the right to properly appeal wherefore makes the entire case frivolous and vexatious.

WHEREFORE APPELLANT SEEKS ORDERS AS FOLLOWS:

1. *Appeal be allowed.*
2. *An order that the Island Court Judgment dated 20th June 2005 be quashed.*
3. *An order that the matter be retried in the Island Court with differently composed Judges.*
4. *An order for cost.*

When the Notice of Appeal was filed, the court file in the court below was found to have been lost. In that regard the direction orders for the Appellant to file an Appeal Book was not able to be complied with. That order was frustrated by the missing file. The Appellant sought by application to introduce new evidence. This application was granted. The Appellant and Respondent introduced new evidence in this appeal.

The Appeal will be dealt with as set out in the Grounds of Appeal.

Ground 1

The evidence adduced in support of this ground is such that the Court below issued an oral judgment in court and a written judgment was published soon after that. In the oral Judgment, which was read out by the clerk of the Efate Island Court, the findings of the court read out were in favour of the Appellant. However, the decision and/or declaration read out by one of the justices was contrary to the findings made thereof. The Appellant's evidence in this regard was not rebutted by the defence to this appeal. That evidence is accepted as the truth of what transpired then in the court below. Accordingly this ground of appeal is allowed.

Ground 2

No evidence was adduced with regard to this ground of appeal. It requires no comment in that regard.



Ground 3

The Appellant's evidence as regards this ground of appeal is such that the Efate Island Court justices were having meals together with the Respondent during the course of the court hearing of the matter, the subject of this appeal. There was no denial that the justices of the court below were eating together with one of the parties (i.e. the Respondent) to that proceeding. In the matter of *Maasai Family & Or. -v- Lulu & Or.* [2005] VUSC 125. Land Appeal Case 57 of 2004, the Supreme Court stated that no party should have contact with the Court during the course of a hearing in the absence of the other parties because this could readily give rise to allegations of bias. It was further stated that

That principle applies because should not only be done but must be seen to be done, and should circumstances arise where, for example, lunch is to be taken by members of the Court and by any or all of the parties at the same time and in the same area the members of the Court should separate themselves from the litigants to take their break. They should certainly never, as in this case, take lunch with one of the parties in the absence of the others....The Court should physically separate itself from the litigants.

The appeal in that matter was allowed on the ground of the apprehension of bias alleged thereof. It is clear that members of the Efate Island Court fell into that error in the matter presently appealed. To that extent this ground of appeal must be allowed.

Ground 4

This ground of appeal is similar to ground 1 so that it requires no further comment. It must be allowed.

Ground 5

It was accepted that the case file in the Court below was lost and/or by reasons unknown it could not be located. This appeal was properly instituted. There is no evidence before this Court to suggest that the matter was filed frivolously and vexatiously in the Court below.



Conclusion

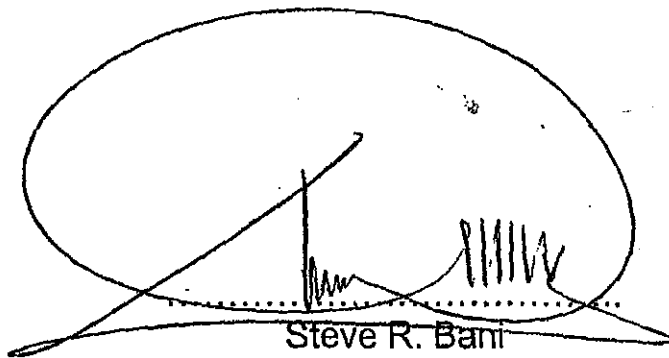
This appeal must succeed for two reasons. Firstly it became obvious that the Court below failed to make a decision on the evidence properly adduced before it and secondly, the Court had acted so imprudently, having regard to the manner in which members of the Court conducted themselves.

Order

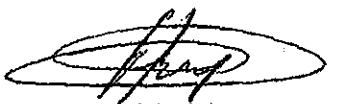
1. The appeal is allowed.
2. The Judgment of the Efate Island Court dated 20th June 2005 is quashed.
3. This matter is remitted to the Efate Island Court to be tried afresh by a differently constituted Court.
4. The Respondent shall bear the costs of this appeal to be fixed by the court failing agreement.

Dated at Port Vila this 4th day January 2008

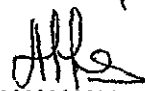
BY THE COURT



Steve R. Bani
Magistrate



Francis Aru
Assessor



Thompson Andrew
Assessor