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**IN THE MAGISTRATES COURT  
OF THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Chiefly Title Appeal  
Case No. 2281/19**

**BETWEEN: TONY DANRUM LONGA & FAMILY**  
**First Appellant**

**LENCY CHARLIE KAUN for FAMILY KAUN  
TAVINMAL**  
**Second Appellant**

**AND: ROBERT JOSEPH  
GRAHAM JAMES & ORS**  
**Respondents**

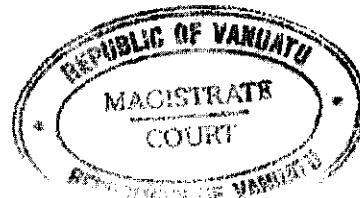
***Date of Judgment:*** ***22<sup>nd</sup> July 2020***  
***Before:*** ***Supervising Magistrate Trevor NAIEU***  
***Justice Robert NEPTICK***  
***Justice Lorna BONGVIVI***

***Appearances:*** ***Tony Longa as First Appellant***  
***Counsel Kapalu W for Second Appellant***  
***Respondents in Person***

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**JUDGEMENT**

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## Introduction

1. This is a Chiefly Title appeal filed against the decision of the Malekula Island Court dated 5 August 2019 by Tony Danrum Longa as the first Appellant and Lency Charlie Kaun as the Second Appellant.

## Background

2. The Applicant in the Court below Lency Charlie Kaun on behalf of Family Kaun Tavinmal filed an application for custom rights of Chiefly Title over a custom nasara namely *Bongamel* situated inside the bigger land boundary of *Louni* in Malekula to the Malekula Island Court on the 11 December 2017. The primary intention for the application was to preserve and protect the custom identity and Chiefly title of *Bongamel* nasara.
3. After a full hearing lawfully composed and presided over by three (3) Justices of the Malekula Island Court, a decision was delivered as follows;

### **“...COURT ORDERS”**

- “ 1. Lency Charlie Kaun emi paramon Jif blong Nasara blong em we emi pruvum long Kot be ino long nem ia Bongamel mo;
2. Bongamel ino wan existing nasara
3. Tony Longa emi paramon Jif blong nasara blong Arbotan
4. Amelto tok nasara ol parties oli gat raet blong filem kes I ko long eni kot we oli wandem blong finem paramon jif blong hem
5. Jifly taetol case dispute case 3470 of 2017 emi situated insaed Metavun I
6. Sapos any long ol parties I no agri long Kot decision ia I gat raet blong apil I ko long Magistrates kot beifo 30 dei”...

## The present Appeal

4. The First Appellant submitted eleven (11) grounds of appeal and summarily seeking orders of this Court to review and dismiss “...Court Order paragraph 1...” of the Judgment of the Court below.



5. The Second Appellant through Counsel submitted eight (8) grounds of appeal against the Orders made by the Court below seeking the following Orders;

“... ”

1. *That the Appeal be allowed*
2. *That the Appellant be declared the paramount chief of Bongamel nasara*
3. *An order that Bongamel is an existing nasara*
4. *An order setting aside the order that Tony Longa is the paramount chief of Arbotan*
5. *An order setting aside orders 4 and 5*
6. *An order for costs for the Court below and this Court*
7. *Any other orders deemed fit by the Court... ”*

#### Discussions

6. We see proper to first observe and discuss the findings and ruling of Judge Fatiaki in *Civil Case No. 80 of 2012* that dealt with a land Lease Title situated inside the bigger boundary of *Louni* whereby the disputed nasara of *Bongamel* and *Arbodan* in this current appeal are also situated inside that bigger boundary of *Louni*.
7. *Civil Case No.80 of 2012* is a Supreme Court case known to all the parties in this appeal since it involves the same parties concerning Lease Title No. 09/0744/001. As stated by Fatiaki Judge in paragraph 9;

“... ”

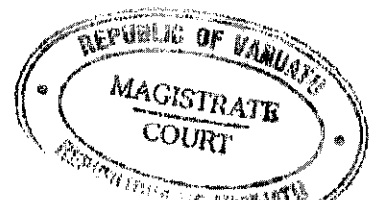
9. *The present claim concerns a Lease Title No. 09/0744/001 registered on the 12 March 2010 and entered between the First and Second Defendants on the 22 September 2009 over a piece of land containing an area of 124ha 85a 00ca which comprises:*

*“...the disputed custom land referred to variously as 'Arbotan', Lamunu' or 'Bushman's Bay Plantation 'on the Island of Malekula' (see: para 3 of the Claim)... ”*

8. Fatiaki Judge stated in paragraph 1, 2 ,3, 7 that we see proper to include in this discussion that;

“... ”

1. *“This case is the latest in a series of cases concerning valuable customary land variously described as: "Arbotan"; "Lannunu"; "Metabon 1 & 2"; "Louni" or "Bushmans Bay Plantation" on the island of Malekula.*



2. The customary owner of the land(s) is yet to be determined despite a claim having been lodged in the Malekula Island Court in Land Case No. 2 of 1992 by "Charley Hambi" aka Charlie Kaun in which the "Longa Family" who was represented by Philip Rea and Numa Fed is named as a counter claimant.

3. With the enactment of the Customary Land Tribunals Act [CAP. 271] in December 2001, Land Case No. 2 of 1992 was withdrawn by the parties. The claimant then filed a fresh claim before the Louni Uripiv, Vinamavis, Potindir and Litzlitz Village Joint Land Tribunal...

7. For completeness, I make a brief reference to Judicial Review Case No. 29 of 2013 between "Tonny Longa" against "the Limap Lingarak Joint Village Customary Land Tribunal" and Chief Lesly Malsungavul and the Department of Lands (unreported) where the Supreme Court in an oral judgment on 13 June 2014 quashed the decision of the tribunal on the State's concession that it was "improperly constituted" and ordered that the dispute be

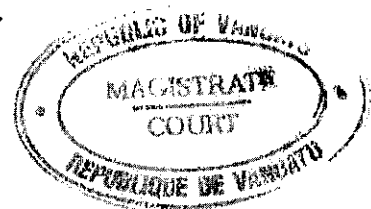
"... redetermined by a differently constituted land tribunal in accordance with (the Customary Land Management Act No. 33 of 2013)" ... "

9. Fatiaki Judge in paragraph 27 finally stated that;

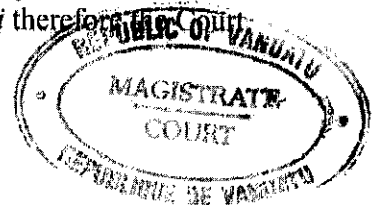
"...27. As and when there has been a final determination of the ownership of the customary land(s) on which Lease Title No. 09/0744/001 is situated, then a claim for rectification may be instituted..."

#### **Findings in this Appeal**

10. A Paramount Chief of a nasara in the Island of Malekula has authority over his nasara, its custom rituals including his people and owns a custom land boundary.
11. The customary land ownership of the custom land of Louni boundary as a whole or custom rights to pieces/parcel of land within the bigger Louni boundary is yet to be determined and declared by a competent Court or a tribunal legally established by Law.
12. Louni is the name of the bigger boundary that includes Bushmans Bay plantation and the claimed nasara of Bongamel and Arbodan.
13. The nasara claimed by the Second Appellant to be Bongamel including Arbodan nasara are within the bigger boundary of Louni so as Lease Title No.09/0744/001 whereby a customary land owner(s) is yet to be determined.



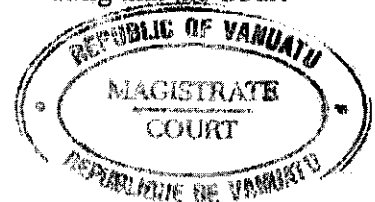
14. *Arbodan* nasara was not properly claimed according to the proper legal procedure to be dealt with by the Court below to issue orders of declaration as to who is the Paramount Chief of that nasara.
15. The nasara Claimed by the Second Appellant to be *Bongamel* does have convincing crucial customary identities or remains such as buried stones and heap of stones whom each tell a story of crucial importance and meaning in custom and their purposes dated back many many years ago during the time of their ancestors.
16. The nasara Claimed by the First Appellant to be *Arbodan* also have crucial customary identities or remains such as heap of stones whom each tell a story of crucial importance and meaning in custom and their purposes dated back many many years ago during the time of their ancestors.
17. The area claimed by the Second Appellant to be *Arbodan* close to the coastal area explained to be the "*meeting area blong putum peace*" does have convincing crucial custom identities or remains such as heap of stone of which each heap of stone symbolizes or tell a story of crucial custom importance during the "*meeting blong putum peace*" many many years ago during the time of their ancestors.
18. Need we remind ourself that the nasara properly claimed for in the Court below is *Bongamel* and not *Arbodan* or any other nasara therefore the primary focus of this appeal is to determine whether or not *Bongamel* is an existing nasara dated back to the time of the ancestors according to custom.
19. There is dispute with the correct name(s) of each nasara and custom areas visited by the Court.
20. The ninth (9<sup>th</sup>) Defendant in the Court below Ruben Joseph did not Appeal the decision of the Court below but has filed a response to both the appeals merely supporting the decision of the Court below that *Bongamel* is not an existing nasara and that *Arbodan* narasa was not an issue before the Court below to make such declaration.
21. The fifth Defendant in the Court below Graham James representing 5 other parties (unclear which parties) filed a "Notice of cross Appeal" on the 20 September 2019 some 46 days after the written Judgment of the Court below. Neither grounds of appeal nor an appeal book was ever filed rendering the notice incomplete for hearing.
22. Other Defendants in the Court below who file no appeal nor a response but was allowed to say something during the site visitation by the Court in this appeal contributed little to no knowledge of *Bongamel* and *Arbodan* nasara provided they have their own nasara outside the bigger boundary of *Louni* therefore what they say was considered relevant but with very little weight of reliance put to it by the Court.
23. Nothing was mentioned by both Appellants nor the other Respondents as to which nasara was the overall supreme (paramount) nasara of *Louni* therefore



cannot assume since this will be a crucial identification and declaration when the parties finally decided to follow the legal process to identify the custom land owner(s) of *Louni* or rights to pieces/parcel of land within the bigger boundary of *Louni*.

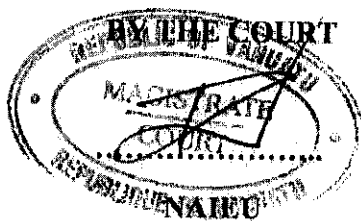
## Result

24. The First Appellant's appeal is dismissed.
25. The Second Appellant's appeal is partially allowed.
26. *Bongamel* through convincing crucial custom identities of buried and heap up stones seen by the Court and thoroughly explained by the second appellant about their custom meaning and purpose during the period of their ancestors is with no doubt an existing *nasara* that was used to perform the *Namangi* and other custom ritual businesses during the period of their ancestors.
27. *Bongamel* is a *nasara* belonging to the Second Appellant as the Chief.
28. *Bongamel* being proved to be an existing *nasara* cannot be said to be the supreme (paramount) *nasara* of *Louni* or a small *nasara* or a *nasara* by which the chief is a paramount chief or a small chief because these are declarations to be made by the competent Court or tribunal when hearing claims for custom ownership of the Land. This ruling is centered on the issue that the ownership of *Louni* custom land or rights to pieces/parcel of land within is yet to be determined and because a paramount chief owns a custom boundary of land according to the custom of Malekula.
29. For clarification, *Bongamel* is the *nasara* uphill with buried standing stones and laying stones before crossing the creek to go further inland.
30. Whether or not *Arbodan* is a *nasara* is a declaration that cannot be made by this Court therefore order number 3 of the Court below that "...*Tony Longa emi paramount Jif blong nasara ia Arbotan...*" is dismissed with ruling that the Court below made this order beyond the issue(s) before them.
31. The First Appellant may file proper papers to the relevant Court to determine whether *Arbodan* is a *nasara* belonging to him as a chief but not a paramount chief since paramount chiefs in Malekula owns a boundary of custom land therefore a declaration of a paramount chief of a *nasara* within the custom land boundary of *Louni* will contradict the reality that custom land owner(s) of *Louni* is yet to be determined.
32. Need be said that a paramount chief in the Island of Malekula cannot only be recognized as having authority over his *nasara* because the authority comes with a custom boundary of Land owned by the paramount chief of the area(s) therefore, applications for Chiefly Title filed to Court by anyone to indirectly own a piece of custom land that is yet to be determined is an abuse of the legal process to claim rights to custom land.
33. Order number 4 and 5 of the Court below is also dismissed with ruling that the Court below made these orders beyond the issue(s) before them.



34. All the parties in this appeal and the Court below should file proper papers to the legally recognize tribunal to determine the custom land owner(s) or rights to pieces/parcel of land within the custom land boundary of *Louni* because filing chiefly title matters seeking a declaration of paramount chief of a nasara to indirectly own custom land within this boundary of *Louni* although custom ownership of the land is yet to be determined is a tactic easily spotted by the Court and is not tolerated.
35. Parties to meet their own costs.

DATED at Lakatoro this 22<sup>nd</sup> day of July 2020.



Supervising Magistrate

Justice Robert NEPTICK

Justice Lorna BONGVIVI