

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(CIVIL JURISDICTION)

LAND APPEAL CASE NO. 1/

BETWEEN : MALAS FAMILY
(Appellants)

AND : SONGORIKI FAMILY
(Respondents)

*MALAS
MAPP*

Coram: Mr Justice F.G. Cooke, Chief Justice

Counsel: Mr Boulekone for Appellants
Mr Hudson for Respondents

Custom Advisers: James Morrison
Jack Kalotiti

Interpreter: Mrs Christina Narun

JUDGMENT

The Appellants appealed against the decision of the Efate Island Court who in their judgment held that the Songoriki family were the custom owners of the land in dispute, i.e. the land at Mele on which the cement factory stands.

Under the Island Court Act No. 10 of 1983, the Supreme Court has the same powers as the Island Court to make orders (s. 23 (a)). It also may consider the records relevant to the decision appealed from and receive such evidence and make such enquiries as it thinks fit (s. 22 (3)).

Further, the Supreme Court being an appellate Court from the Island Court in my opinion, has the same power as the Island Court and is not obliged to apply technical rules of evidence but shall admit and consider such information as is available. This is permitted as most of the evidence in customary land cases is hearsay evidence as witnesses are relating what their fathers and grandfathers have told them. Mr Hudson, in his submissions states that in view of the difficulties involved in sifting such evidence, it is helpful to refer to any legal principles which may have been established in other cases involving similar matters. I agree with his submission.

Mr Hudson then referred to the case of Adjeibi Kojo ll -v- Bonsie (1911 W.L.R. 1223 at pp. 1226-1227, where the Judicial Committee of the Privy Council in England laid down a useful test for the resolution of conflicts between 'traditional evidence'. "Where there is a conflict of traditional, one side or the other must be mistaken, yet both may be honest in their belief. In such a case, demeanour of witnesses is little guide to the truth. The best way is to test the traditional history by reference to the facts in recent years as established by evidence and by seeing which of two competing histories is more proba

In that case, the Privy Council awarded some (disputed land to its occupant, as he had been using it for many years undisturbed, and in 1919 had successfully prosecuted someone for trespassing on it.

This test has been applied in Australia by the High Court in Administration of Papua and New Guinea V. Guba 47 Australian Law Journal Reports 621.

In the case of Havea Tu'cha'atecho V. Deputy Minister of Lands at NuKualofa, a Tongan High Court case, Mr Justice Harwood held that hearsay evidence that land belonged to the ancestors of the plaintiff is admissible in a dispute over title between the alleged owner and the Crown.

Other cases referred to were:-

Noble Kalaniuvalu -v- Minister of Lands 2 Tongan L.R. 40, and Villami Manatau -v- Motu'apuaka, 2 Tongan L.R. 86.

The evidence for the Appellants briefly, was as follows:-
The first witness for the Appellants was Káltabang Secoto Malástapu who set out his ancestry as follows:-

MALAS MATUA

MALASTAPU

NAPAGEMIALA

KELARONG MALAS

KALTOA MALAS

KALFAU

KALTAPANG

SALULA (F)
LEIPOE (F) *mother of Philip*
METO *Father of Loken*
AKUMA

KALTAUAI (Dead)

JOSUAH

KALMALAU

LEIMOLE (F)

TOUSONGO (F)

TOURNELIMA (F)

KALTAPAS

KALMALAS

TONLULU (F)

ADOPTED

KALOAS

TARAMUELA SAUWO (called MATAFAO)
who married LEIFATUE

He then stated that the grounds of MALAS MATUA are:-

1. IMERE TENUKA (Mele Island) where there is a Nasara and Nakamal (FAREA LAPA).
2. MALARIFOU - Cemetry on side of Mele road.
3. VAREA LANGA - it is up Klem's Hill.
4. LAKENA PAGATAU - the disputed ground.

There were many people living where the Mele Golf Club is - that area was called MALA WORA - where the cemetry is was called MALARIPU whose chief was Malas Matua and his son was Malastapu. He stated that Malaripu is the Nasara of Malastapu. The Tam Tam can still be seen there today.

He said that his father told him that Songoriki was not originally from Mele but came from Onevada land near the S.D.A. and Bon Marche shop. That Songoriki went to Regorago, the hill near the airport. Then he went to Ifira Tenuku and then Malawora. That at Malawora he stayed with Chief Masai who when he sold Malawora, moved to the Island (Mele Island)

Then Songoriki married Leimau at the instigation of Chief Masai who lied to him. That Songoriki had four children:-

SONGORIKI
married
LEIMAU

Children

LEIVEPUPO (married Sope)
LEITONGA (married Kaltaku)
TOLA (married Topokes)
MALOKU

Children

LEITAPONGI (F) (married Seule)
KALSUK (dead)
TOUME

One child

EDDY (Respondent)

That Leipau was the first wife of Napagamūila. She was the sister of Chief Masai. After the death of her husband, she married Malastapu. That in custom a man has to have a place to share and someone to take care of him.

He said he did not know about the adoption of Eddie by Tola but he did hear that Malastapu adopted Taramuela Sanwo and there was a big ceremony. Sanwo then took priority over my father Kalorong Malas and Uncle Kaltoa Malas.

He did/^{not}hear that Songoriki has a name, Siele or that Leimau was married to Siele.

He knew Malasikoto and that Chief Malastapu gave him $\frac{1}{2}$ of his chiefly rights because he stayed and worked with him and that when Malastapu died he got the full chiefly rights in preference to Kalorong and Kaltoa, his sons.

He said that Lakenapagatau is his family ground because Malastapu took his pipe and put it in the ground at black sands beach and told the white people that it was their ground to take out the pipe - no one dig

That French missionaries came and wanted to establish a mission and chased his people away. That his grandfather and the people had their gardens on the disputed land.

That President Sokomanu was supposed to be present on one occasion and said the spirit of the ground touched these two brothers Kalmalas and Meo because they are really the custom owners.

That his grandfather cut a canoe and took bamboo from the disputed area

In answer to Mr Hudson, Counsel for the Respondents, he said the nakam of Malastapu was Varealapa in the middle of Mele island.

He said the chiefs of Mele were:-

Malas Matua
Malastapu
Malasikoto
Nepange
Kalsautu Poilepa
Peter Poilepa Chief of twenty years ago.

He admitted that he did not know where Malas Matua came from.

He was asked whether he knew Marek Melo Songoriki but said in Mele you cannot find a name like that. He said Eddie's, the respondent's, father is related to the Malas family because Eddie's grandfather, Totau or Penglulu was from the Malas family. That when the witness's father was a preacher Sauwo, the adopted son looked after his father's ground. That Malastapu did not give chiefly rights to his adopted son but to Malasikoto. He said Malastapu got the disputed area from Malas Matua but did not know how Malas Matua got it.

He gave names of areas in the disputed land but said he got all the information from his father when he was small.

He stated that Mele Council of Chiefs gave him information about the land sold by the Malas family. A record book, Exhibit 3, was shown to him. He disputed the words "Date 1902 Tola Songoriki history" as they seemed to have been added later and not made with the same pen. It is clear to me that the writing is not the same nor indeed is the ink the same.

He said two members of the Malas family, Timothy and Vanvatato were present at the meeting; both are still alive, but are not being called as witnesses.

He said Malastapu was a big Chief of Mele before Malasikoto. Mr Hudson put it to him that the first big Chief of Mele was Malasikoto and that he was elected, but he said this was not true.

He said he was never present at the Mele meeting on November 4, 1964.

He said he had never heard of Maringmelo Songoriki. He said he had never seen a copy of the Joint Court decision (Exhibit 2(e)) dated the 28th August 1931. It verified a sale by Maringmelo and native Cielle of 500 hectares of land to a french company. It refers to deed of 5 January 1885, which states: 'Maringmelo, Chief of the tribe of Mele of land known as Tegueré'. He was also referred to sale of land item 29 in same Judgment to Bernier representing french company of land known as Tegueré in 1885.

He said his father never told him about these sales.
He was not prepared to commit himself that a sale of 500 hectares of land, would be well known by all Mele.

He did not know where Malas Matua got the land from. He said that the land passes to the first born male in custom.

He said that Marapong Malas is the custom owner of the disputed land. That he is a son of Sauwo Tarimlala.

That custom ownership in Mele means he has all the rights but does not have to share them. He said the father who is the custom owner divides the land between the children.

He never heard the Songorikis were the real custom owners of the land.

When it was put to him that at a meeting between the Malas family and the Songoriki family in March 1983 at the Mele Nakamal, the Malas family

stated that they knew that the Songoriki family were the custom owners of the land, he denied such a statement by the Malas family. He said at the meeting we asked the Songoriki family to share the money but they did not want to do so, that is why we came to Court. They did not want to share but were afraid of the Songoriki's who wanted to kill them; all the people ran away.

He said he was unable to give the name of the disputed area at the Island Court, as he did not have the plan with the names on it but that since the Island Court, he got a plan with the names on it.

He said he and others were under the power of custom owner Malapongi.

Mr Boulekone asked him why in the deed of sale the name Songoriki was not inserted after Maringmelo. The witness did answer, but I found it difficult to understand why such a question was asked as the witness could not possibly know why Songoriki was not inserted or indeed omitted.

Again he was asked by Mr Boulekone if Cielle was a relative of Songoriki why was the name Songoriki not added. I failed to follow the reasoning of such a question to an event which happened in 1885. The witness could not possibly answer the question, he might guess an answer but that is not acceptable to the Court.

He did not know whether Songoriki was called Johny.

He said the name Lakenapagatau was the custom name of an area including the disputed area. He said the first time he ever heard of Maringmelo was when he heard it in Court.

Later he stated he was not at the meeting in Mele on 4 November 1964, but was in the audience. If there was a meeting it must surely have included all those present. Twice he said he was not at the meeting and then when pressed he said he was in the audience. This evidence did not convince me of being the truth.

He said in reply to Mr Boulekone that "our private property area" is next to the disputed property. This was a strange remark to make when his clan claimed the disputed area.

Again it may have been the truth and that he was not too sure of the custom ownership of the disputed land.

He ended by saying that in the Condominium time there was no one who said he was the custom owner, but after Independence there were people at Mele Maat who asked the Malas family to make gardens.

He never heard of Pandoue as part of the disputed area.

Marapongi Malas, a witness said his father was Sauwo Taramiala Malas and grandfather was Lakeleo Langai and grandmother Leimoro. That Sauwo married Leipatuli. That Sauwo was adopted by Malas Tapu. This information was given to him by his father. There was an adoption feast. That his father had ground at Mele village and where the Cement factory is situated. He said it was his ground because his father told him. He gave the names of various areas in the disputed land but had never heard of the name Pandoue.

That there was no Nasara or Nakamal on the land. That the disputed area is his place and indeed he always went there, even when the

missionaries were there. That in 1980 he went there and made a canoe for himself..

That all the people who made gardens in that area are from the Malas family. That this happened for a long time.

He never saw Songoriki but he knew his wife Leimau as she took a piece of wood out of his eye. He never heard of Songoriki being called Johny or Cielle.

That Songoriki and his family were living close together on Mele Island.

That he knew Tola, son of Songoriki. That he heard that the place Ione included the disputed area. There is a big stone called Ione once in the disputed area and another stone on the top of the hill called Teweler which is still there.

He said his father was the true custom owner and he passed it to me and my four brothers and six sisters.

As the first born in the family is dead, he is representing the elder brothers as he was a better speaker. He said he made an agreement with his family that he should have the power to divide the land.

He said Taramiala was the first person on the land and stayed with his family and that is how he became owner.

He agreed that his father was adopted by the Malas family and that now he is a member of the Malas family.

That he is from both families. He said in custom an adopted son has still the original rights of his father. The custom advisers do not agree with this. This seems grossly unfair to the other members of the original family.

He was unable to say whether his sisters had sons. He was able to give the names of the Chiefs of Mele. He said Malastapu was a Chief of Mele and gave chiefly rights to Masikot. He did not include Malastapu in the Chiefs of Mele who he said were :-

PETER POILAPA
KALSAUTO POILAPA
NGANGA
MASIKOT
MALASKOTO

This witness was confused from time to time with the various names. Once he said Malastapu gave chiefly rights to Masikot then he said Malasikoto gave chiefly rights. Then he went on to say Malasikoto is a brother of Malastapu.

He then stated that Malastapu called his brother, Malasikoto, from Noumea and told him he wanted him to be chief but he did not want to be chief so he gave it to Masikot.

He said that he was not present at the land meeting at Mele in 1964 when the chiefs talked about pieces of ground. That Timothy, Vanvatoto and Kalsunak, all members of the Malas family were present.

He never heard of Maringmelo or never heard of the sale of 500 hectares of land by Maringmelo and Cielle.

He never heard of Rongoina Songoriki but he knew Tola - his daughter was Leitapua. That Leitapua married Seule and had Eddy but he never heard that Tola adopted Eddy after Tola's only son died.

That the farea of Malastapu family was MALASEI. That the Malas family's Nakamal on the mainland is Maleripu i.e. where the cemetery is now. That the chief who had the Nakamal there was Malastapu. That there is also a Tam Tam there.

His story about the pipe in the ground was that there was a French warship at anchor opposite the disputed area. French soldiers came ashore and went to the gardens of the disputed area and took yams and other crops but word of this was conveyed to the Malas chief whom he did not know. He was the chief of Mele and came and put his pipe in the ground and said 'if this is your land, take out the pipe' but no one did so. The chief removed the pipe and went home.

He said there was a demonstration in 1977 near the disputed land area and the President of the Republic who was present was alleged to have said 'Malastapu you are dead now but today we are pulling up the pipe from the ground' and held it up.

He then said he knew a man, Malopa Anatu Maringmelo but that was in 1925. But the Maringmelo who sold the land, he never knew.

Taramuela's son was Sauwo who was also called Taramuela. That his grandfather was Lakelo Langia whose father was Taramuela. His grandmother was Leimoru. His father was Sauwo who married Leipatuli.

That the disputed land in custom is Taramuela's. That his father told him this and that his father was adopted by Malastapu. That is why has got rights to two families' lines - Malas and Taramuela.

Mr Hudson put to him that Sauwo took the name of Taramuela because it was his father's name and he was then asked whether it was true that sometime a mother in Mele custom could give her name to the family. He did not agree with this and said only the family name is followed but with Timothy Malastapu it was his mother who was Asele Malastapu while his father's name was Taripakoa. Timothy was given the name Malastapu by his mother. He agreed this was true.

Kalmalau then gave evidence. and He was the son of Kalfau/whose grandfather was Napagamiata.

He said he knew Leimau the wife of Songoriki but he was her second husband. They had four children - Leivapupu, Leitonga, Tola and Maluku.

He said Malastapu was custom owner of the disputed land. That when he was young, he went to the disputed area when the Mission was already established i.e. where the cement factory is now. He never saw any sign of a Nasara there.

He said Tola Songoriki did not tell him he was the custom owner of the disputed land.

He said that Malastapu had a farea on Mele island called Malasei but Songoriki did not have one there. Various names of areas on Mele island were put to him but he said he never heard of them.

He did not know the areas on the disputed land. He said he was one of the custom owners of the land but did not seem to know why he was the custom owner. In my opinion, he was not a very helpful witness or a convincing one.

His version of the pipe in the ground was merely that French people took .../8

yams whereas a prior witness said they were French sailors from a warship in the bay.

Again, when relating what President Sokomanu was alleged to have said he conflicts with other witnesses for the Appellant. He said the President said 'Malas, today we are lifting the pipe from the ground and we hold it up'.

He said that at the time of the meeting of the Mele Council on 4th November 1984, which he did not attend, Kalsunak was head of the Malas family. He was the brother of his father Kalfau, otherwise known as Kaltoa.

He then repeated the names of the chiefs of Mele as:-

Peter Poilapa

Kalsautu Poilapa

Nganga

Masikoto (Malastapu gave him full chiefly rights when he died)

He said the Malas family claimed a large area of land starting at Mele and going up to Snake Hill and along the road to the Mitride property.

He said he never heard of a sale of land by Maringmelo of 500 hectares including the disputed area. In fact, he said he never heard of Maringmelo in 1884 or of a Cielle Songoriki in 1884 and 1910.

He said his family became custom owners of the disputed land because of Malastapu but he did not know how he became the custom owner.

He said his father was Kalfau and grandfather, Napagamiala who, in turn, was a brother of Malastapu. That when Napagamiala died, his wife, Leipau married Malastapu and took her child Kalfau (his father) into the marriage with Malastapu. He did not know whether he was adopted by Malastapu.

He did say that the father of Malastapu was Masikoto. Lastly he said he did not know Rongoana. In my opinion, he was not a confident witness.

Kaloas Malas, the son of Kalarong and whose grandfather was Malastapu was the last witness for the Appellant. He said his father told him the land was theirs.

He did not know anything about the meeting of the Council of Mele in 1964, that he was only involved since Independence when helping the custom owners to get back their land.

He did say the name of the land was Lakenapagatau but he did have difficulty in pronouncing the name which did not seem familiar to him.

He was asked who were the true custom owners of the land - the Malas or Taramuela family? To this he replied that his father told him that the eldest one, Sauwo owned the land. He was adopted by Malastapu. That Sauwo was the boss of the disputed land as he was considered to be the first born of Malastapu. He then said his father told him Taramuela has full rights to the disputed area and that Taramuela is the custom owner of the area.

He also said that the area between the road and the disputed area was the land also.

He said he was the last son of Kalarong.

He said Taramuela was adopted as a first born by Malastapu and that is why

he had power in the area but other witnesses said that Sauwo, the son of Taramuela, was adopted by Malastapu. He did not know the father of Sauwo

In cross examination by Mr. Hudson he admitted that he did say that his father Kalarong told him that the land was theirs through the adoption of Sauwo Taramuela. He said his father did not tell him how the Malas family had rights to the ground.

He did not hear that Songoriki had rights to the land. He admitted that the land which his father alleged was his had been leased to the white man by the Mele Community and the rent went to the Mele Community.

He did not hear that Tola adopted Eddie the Respondent.

He admitted that when his father died he was fifteen years of age and that he was about 12 or 13 years when his father told him all about the place i.e. some thirty three years ago which must make me hesitate to place too much reliance on the evidence of what his father was supposed to have told him. In my opinion, a boy of twelve or thirteen would not be able to remember in detail what his father told him thirty three years ago. Again, I must hesitate to rely on such evidence because there just did not seem any reason why Kalarong should pass such information to his son at such an early age.

That was the evidence which the Appellants wished me to accept and alter the decision of the Island Court.

~~The evidence for the Respondents, the reply.~~
The Respondent, Eddie Kalpole then gave evidence. He made a signed statement which was Exhibit 2 and attached to the statement annexures marked 2 (a) to (q). He stated the contents of the statement and the annexures are true and correct. The annexures were as follows:-

- 2(a) Family History.
- 2(b) Family Tree.
- 2(c) Land sold to French Company which includes pandoue.
- 2(d) Description of the land.
- 2(e) Judgment of Joint Court which includes Pandoue.
- 2(f) Taramuela Family.
- 2(g) Family land use.
- 2(h) Statement of Tola Songoriki who at a meeting of Elders with Professor Guert said the disputed land was his. It was denied by Kalsunak Malas, then head of the Malas family who was present
- 2(i) Chief of Mele - does not include Malastapu.
- 2(j) Shows real names of the land which Malas family were unable to produce.
- 2(k) Name of 12 Nakamals on Mele Island.
- 2(l) Statement of Touamo to show Songoriki came from Paloa Wako to Catholic Mission (disputed land).
- 2(m) Statement of Philip Sarapira - that he was told land belonged to Tola and sisters.
- 2(D)(P)(Q) Statements of Kaltarup Sope, Rongoana Sope and Edwin Ngang confirming land belongs to Songoriki.

He said that Tola, the son of Songoriki and Leimau adopted him when his mother Leitapua who was married to Seule died. Leitapua was a daughter of Tola. That there was a proper adoption ceremony which was held on Mele Island about 1946 or 1947. At the ceremony was Tuamo (an aunt), Rongoana, Sope and Tanau, Leitong and Leivapupu (sisters of Tola). The reason he was adopted was because Tola had two daughters and one son who died so Tola decided to adopt him to replace his dead son.

He stayed with Tola all his life and was made to go to school by Tola and eventually Tola arranged a marriage and when he had his own house Tola lived with him. The custom being that as he was adopted by Tola, he succeeds him.

He said Tola told him the history of the ground in dispute many times when he was about 20 years of age so he remembers the story clearly. He said he wrote it down in about 1961/1962. It is written in the Mele language and was admitted as Exhibit 8. He said he based his statement on what is written in the book.

He said that Tola told him that when Rongoana came down from Paloa Wako to Teworamasau (i.e. where Mr Seagoe lives) Rongoana was the great grandfather of his grandfather of the Songoriki family.

Tola was his grandfather. Tola's father was Seule. Seule's father was Maringmelo and Maringmelo's father was Rongoana.

That Rongoana moved down because of tribal wars in the bush of Efate. Then his daughter, Leiploso died so Rongoana moved to the ex Catholic Mission, the disputed land. He moved from Teworamasau because there were people living at the village. They moved to the disputed ground because there was no one living there.

That Rongoana gave the land the name Pandoue. That he occupied a large area than the disputed ground as they had gardens everywhere. That la

other people joined them there because of tribal fighting in the hills. The other people who joined them were:-

Family of Faitonu
Pangalulu
Tari Pakoa
Malasikoto and Sope.

He said the Malas family did not stay in this area.

That a custom system was introduced called Sautonga - which was the use of the ground in return for produce from their garden.

That under Mele custom Rongoana was the land owner of the area. As Rongoana was the head of the family, he was the chief and had the right to ownership of the land as head of the family. That the rights descended to the first son. Eddie then stated he was now the person entitled to the disputed land. That he gets those rights through his mother, Leitapua who was the first born of Tola and he was the first born son of Leitapua.

He said if Tola had not adopted him the land rights would not have passed to him. He was given the name Kaltopele on adoption.

That Tola's family name was Songoriki. That his full name is Eddie Kaltopele. That his father's name was Seule Kalaoni. That Seule's father was Kaloas Tangeli,

That Siele Songoriki was married to Leimau. That Leimau came from the Taramuela family. That Leimau's father is Taramuela and her mother is Leilango. He then explained the family of Taramuela and Leilango.

They had five children - four girls and one boy.

1. Leimau who married Siele Songoriki.
2. Leikareka married into the family of Taripakoa.
3. Leimoru married Lakeleolangi.
4. Leinnaika married Masoipisengo.
5. Son Malioku who was retarded.

Leimoru and Lakeleolangi had one son, Sauwo. Sauwo married Lebatuli. They had many children including Marapongi who gave evidence.

He said he did hear the Malas family say that Sauwo was adopted by the Malas family. He said if Sauwo was adopted by the Malas family his rights as a Taramuela would not pass to the Malas family.

When Sauwo was adopted, the land his father was using went back to the owner. That the owner was Rongoana Songoriki. That after Rongoana, Maringmelo took over as his son.

He said he made a research in the land office when the dispute arose as to the land and saw a Joint Court judgment of the 15th December 1884 referring to sale of land by Maringmelo, chief of Mele and Johnny Siele of 500 hectares to a French Company.

He could not find the actual deed as he believed it was destroyed - a copy of the deed was later obtained from the French Company in Santo. That part of the land sold included that which the Catholic Mission had and the disputed land. He refers this to the plan, Exhibit 2 (c), plan of land No. 84 and 2860. He tried Noumea for a copy of the deed without success.

He said Maringmelo stayed and lived with his father, Rongoana on the Catholic Mission land and when living there he made a Nasara there but he was afraid to stay there because of the tribal wars so he moved to Mele Island.

He set out in Exhibit 2 (j) the fareas on Mele Island. He said there were 12 meeting places on Mele Island. Fareselo was the Nakamal of the Songoriki family. He said he had seen a book written by four authors including John Guia in which it sets out names of fareas on Mele island similar to his - at page 278 and 279 of the book, Exhibit 10.

He said Masai was the chief of Malawora and that Malastapu was never a chief of Mele. He then stated who the chiefs of Mele were, ie.:-

Peter Poilapa
Kalsautu Poilapa
Nganga
Malasikoto

He then described what was written on the tombstone of Malasikoto at Malaripu.

He said he was a big chief of Mele and died on 22nd February 1920. He said he inquired about a paper at the land office about the Native Reserve but the papers were missing. He obtained the names of people who signed on behalf of Mele and document is Exhibit 12. The Mele reserve was created in 1910.

He said there was a big chief called Ngos before Malasikoto on Mele island.

- That the name of the disputed land was Panodue. Tola told him the great grandfather, Rongoana gave that name to the land. That it included other areas as well as the disputed area. That when he was small he stayed with Tola and went with him to the disputed area. When looking for coconut crabs they passed the place where the Nasara was situated. He saw fruit trees, mango, breadfruit and asked Tola why all the fruit trees grew in one place and Tola informed him it was the Nasara of the greatgrandfather, Rongoana. He saw some stones put in a line to block off an area. That the stones cannot be seen today because the Condominium Government took the coral from the area.
- He said that the Appellants in the Island Court intimated they did not want to give their story until they had heard his.

He then referred to notes about the Land Council meeting at Mele on 4th November 1964. That three of the Malas family, Kalsunak, Vanvatoto and Timothy, were present. That the disputed land, Lakenapagatau was mentioned. He was then asked if he heard that the Malas family claimed it as their land by virtue of being descendants of Malastapu. He said that this claim was made for the first time when the cement factory project started.

That in the notes of Professor Guia, Exhibit 13, reference was made to land Lapanatau which the Malas family said it claimed by Taramuela.

There is therefore two claims by the Malas family to the land:-

1. By virtue of being descendants of Malastapu and
2. Because of relationship with Taramuela.

In the notes there was an arrow pointing to Rongoana from Taramuela.

He was asked whether he found any information why the notes said land originally belonged to Taramuela. He replied saying that his history was that Rongoana was the first man who came to the ground. After that other people came and there was a marriage between Songoriki and Taramuela family - Siele married Leimau, daughter of Taramuela. Taripakoa married Leikareka, daughter of Taramuela. Lakeleolangi married Leimoru, daughter of Taramuela. This shows that Taramuela entered the Songoriki family by marriage.

Regarding the demonstration, he stated the Malas family did not claim the land nor did they say or do anything about the disputed land. That he did not hear President Sokomanu say anything about the pipe the Chief of Mele put in the ground although all the Appellant witnesses said he did. He did hear the President say the land belongs to the family of his wife's mother.

That President Sokomanu's father was George Kaltasake. His mother was Napora Leitamate. Leitamate is the daughter of Leivapupu and Leivapupu is the sister of Tola.

He said he heard of the adoption of Sauwo by the Malas family in evidence

He heard that Malaspongi say that he got rights in his new family and retained the rights in his own family. He said this is not the custom and indeed my custom advisers confirm this is not so. He merely gets the rights to his adopted father and loses all rights to his original family. This I know to be a fact throughout most parts of Vanuatu and is confirmed by the custom advisers.

In cross-examination he said Marikinsanga was the father of Rongoana. Rongoana was the father of Maringmelo and Maringmelo was the father of Siele. Siele married Leimau. That he was the same as Songoriki who married Leimau. That Siele is the name of the father of Tola but the family name is Songoriki.

He said he heard the Malas family say they knew Leimau and lived close to her but his information was that Rongoana and Tanau lived with Leimau

He categorically stated Leimau married Siele and no one else.

He said the name Songoriki did not appear in the books and deeds because the chiefs did not always give the family name.

That the Malas family and Songoriki family are not related. He said Taramuela had a piece of ground in or close to the disputed ground. That they are only related by marriage and they used the Sautonga custom with great grandfather Rongoana.

He then gave the names of the family who were using the Sautonga custom which is using the land and giving yearly some of the produce of the land.

He was asked whether because Maringmelo sold 500 hectares of land he was the custom owner and agreed this was so. He also said of the deed of sale of the area mentioned and map attached showing ex-Catholic Mission land, he would accept that the people mentioned as having sold it, to be the custom owners of that area.

He said pandoue is an area in Mele which Rongoana came and occupied and gave it that name. Afterwards other people came/^{gave} names to other places. He was then referred to the title which he put on Exhibit 2 (

land described as from the sea up to the hill Metabong then a line across passing the area called Palausoa and Jaho.

Then President Sokomanu gave evidence

He said he carried out a study of the custom owners of land in the Mele area from 1957 to 1959 and looked at different titles by alienators especially Efate. That he came across notes by Professor Guia. He himself had knowledge of custom ownership which he received mainly from old people in the village including his father. That although there was a family name Songoriki most titles merely used first names.

He said from the knowledge he obtained from the older people in Mele he ascertained that the disputed land belonged to the Songoriki family.

That when the disputed land was discussed by the old people Kalsunak, Chief poilapa and several others, none of them present disputed the ownership of the disputed piece of land by Tola and his two sisters.

He said the meeting of 4th November 1964 at which he was present was to discuss various pieces of land in Mele. The study was to find the rightful owners of the alienated land from Tukutuku to S.I.P. plantation i.e. Malawora.

The story was that, referring to the disputed land, Tola and his two sisters and several others were chased by agents of SFNH threatening them with guns and destroying their crops so they came to the beach to look for help. The story was chief Malas got in his canoe with others and came to where Tola and his sisters were and then the pipe story. He said when the story was told at the meeting there was no dispute as to the ownership of the land by Tola and his two sisters.

In custom he said the rightful owners of any land belonging to Napagamia would be Kalmalau, Kaltapas and Tousuru, the mother of his wife.

He then referred again to the notes of Professor Guia that at page 24 there was reference to the disputed land called Lapagatau owned, it said by Taramuela then an arrow to Rongoana and then to Tola.

That Tola adopted Eddie (Respondent). That Tola had three children - two girls and one boy. The boy died and so did Eddie's mother, who was one of the girls, so the other daughter, Tuamo, looked after Eddie who was then adopted by Tola. He heard that Eddie was adopted from his uncle's who were witnesses at the adoption.

Tola's father was Songoriki and Rongoana would be Tola's great grandfather

That the name of the land title is registered in the name of Maringmel whose family was Songoriki.

He said if Sauwo was adopted by Malastapu he would lose all claims to the land of the Taramuela family. That he meant this to be the case when he said, Eddie does not use land of his proper family because he was adopted by Tola.

He said the Malas family only made a claim to the disputed land at the setting up of the cement factory.

He denied that at the demonstration he said "Malastapu, today we lift the pipe."

He was asked whether there was any doubt as to the custom ownership of

Lakenapagatau and he replied that the land belongs to the Tola family Eddie and his two sisters.

In reply to Mr Boulekone he said Malasikoto was the first chief of Mele at the time of Christianity. That he never heard he was called Masiko.

He replied that Pandoue was included in the disputed land. That the Malas family had large piece of land between the Mitride plantation up to the Watt plantation.

He stated that only in the case of an agreement between a family can a boy who has been adopted claim land of his original parents. No agreement was produced to the Court. If there was only one son and he was adopted the rights to the land would go to the daughter and to her sons in custom.

He said that Rongoana built his Nasara on the disputed land called Malalaso. His grandfather told him he made a Nasara there and gardens.

He said Tola never told him anyone sold the land but in the dispute between the families he did some research and found that Maringmelo and Cielle from the Songoriki family sold the land.

He said that Tola never told him the pipe story. He said the white people at the time of the pipe story thought they had bought the land and that is why they chased people away.

~~Tuamo Takutuku~~ daughter of Tola who said she had a sister Leitapau who was the mother of Eddie but who died shortly after his birth, ~~was the~~ evidence. After Eddie's mother's death Tola looked after him and adopted him by a ceremony at Fatasau on Mele island and that Tola gave Eddie the name Kalopele.

She said Tola, her father, told ^{her} Songoriki was the custom owner of Lakenapagatau.

That the father of Siele was Maringmelo and Maringmelo's father was Rongoana and that he had a father, Marikinsago.

She said the Songorikis lived and had gardens at Malalaso and that she saw signs of a Nasara there with a breadfruit tree growing there. That she was about 15 years old at the time.

Finally she ended by saying that the Songoriki family is the custom owner of the disputed land.

~~Chief Peter Poilapa stated he was chief of Mele since 1963.~~ That he knew Lakenapagatau. That he was at the Nakamal for over twenty years and he knows all that time that the Songorikis are the custom owners of the disputed land.

That in 1964 he and all the old councillors talked about this area and agreed it was Songoriki's ground. That the present person, on behalf of Songorikis, who can use the disputed land is the Respondent. That Eddie is the head of the Songorikis because Tola adopted him as his first born.

He said in the Nakamal the Malas family claimed the ground through Chief Malas. That no mention was made of Sauwo Taramuela.

That at the Council meeting Lakenapagatau was said to be the area now

dispute.

~~Finally an old man from Mele~~ said he married the daughter of Leitamate who was a daughter of Leivapupu. That his mother, Tonatman, told him the history of Lakenapagatau. That she stayed with her father, Patanu. That the disputed area, Lakenapagatau, started at the beach near the passage where canoes landed and went up to the bottom of the hill where the cement factory is today.

She said that the family of Fatanu came to the area when old man Songoriki was living there already and joined in the custom Sautonga. That her mother and father were chased off the land.

He said that he knew the name of the Nasara of Songoriki called Malals. That the name of the disputed land is Pandoue.

He said he did not know of any claim to the land by the Malas family.

That was the evidence submitted to the Court by the parties together with many exhibits.

The Malas family initially submitted their claim to the disputed land by virtue of the fact that it had always been Malas land and that their family were the first family to occupy it. Later in their evidence it was conceded by their lawyer, Mr Boulekone, that his clients the Malas family were basing their claim to be custom owners to the land through the Taramuela family. It is therefore only necessary to ascertain whether their claim via the Taramuela family is valid.

LAW
In view of the fact that Sauwo Taramuela was adopted by the Malas family on their own admission and as an adopted child in custom forfeits the rights to his own family (I have been so advised by my custom advisers unless there was some agreement to the contrary. I have no evidence of any agreement then I must hold that all rights to the Taramuela family have been lost by the Malas family.

The Songoriki family (the respondents) have throughout their evidence submitted that the disputed land has always been theirs and that the Malas family never contested their customary ownership until the project of the cement factory was being considered and they wanted some of the income obtained by the Songoriki family which was refused.

Chief Poilapa, the chief of Mele for the past twenty years confirmed at the time that the disputed land belongs to the Songorikis and that in 1964 all the old councillors talked about the area and agreed it was the Songorikis' ground. That the Respondent is head of the Songoriki family and custom owner of the disputed land because of his adoption by Tola. That the Songoriki family told him this a long time ago.

Edwin Nganga Fatano confirms the Songoriki family as being the custom owners of the disputed land and that they had a Nasara "Malaltoa" there and when he was 20 years he saw a breadfruit tree on the land close to where the Nasara was.

The Respondent's adoption by Tola was confirmed by Tuamo, the daughter of Tola who said her father Tola adopted Eddie and looked after him when his mother died when he was one year old. He gave him the name Kalope. That her father told her that Songoriki was the custom owner of the disputed land. That Tola told her that Siele Songoriki's father was Maringmelo and Maringmelo's father was Rongoana who was the first custom owner of the land having come down from Palo Wako then to Teworamasu a

then to Pandoue. That Songoriki lived and had gardens there at Malasa (the disputed land) - a Nasara which showed some signs of being there when the witness was fifteen years old. That to her the custom owner of the disputed land in Mele custom today is the family of Songoriki.

Further confirmation was given by President George Sokomanu who said he got his knowledge mainly from the old people in the village of Mele including his father George Kalsak. From the knowledge he gained the disputed land belonged to the Songoriki family. Later he mentioned that in 1964 when Professor Guia, a French anthropologist was here and in the presence of all the old people including the chief, Poilapa (father of Peter Poilapa the present chief) and old man Kalsunak and several others when the disputed land came up for discussion, none of the old people there (including three members of the Malas family) disputed the ownership of that piece of land by Tola and his two sisters.

That the story is told that Tola and his two sisters and several others were chased by the agents of SFNH threatening them with guns, destroying their crops, so they came down to the beach to look for help and Chief Malas came with others from Mele Island and put the pipe in the sand and saved the people. This story seems to confirm that land was sold to the white people because that was the reason they chased the people away.

He confirmed that Rongoana would also be a Songoriki and a great grandfather of Tola. That there was a Siele Songoriki whose father was Maringmelo which seems consistent with the deed and the sale of the property to Monsieur Bernier on behalf of the French Company.

In answer to a question regarding the notes of Professor Guia which said Taramuela owned the land and that the Songoriki family owned the land, he replied that Taramuela family and Songoriki family are first cousins and that the link is by marriage. He then said if Sauwo Taramuela was adopted into the Malas family in custom he would lose his rights to his own family and he gave as an example when he said Eddie (Respondent) did not use the land of his proper family because on adoption he inherited Tola's land.

He further stated that at the demonstration led by him in 1977, the Malas family did not make any claim to the disputed land. Again, he denied that he said, when referring to the pipe story, "Malastapu today we lift the pipe". The Appellants had stated that he said "Shout Malastapu - pipe of yours - before it was at Lakenapagatau, today we are lifting it up" and then he was alleged to have said "the spirit of the ground touched these two brothers because they are really the custom owners - Kalmalas and Metomalas".

He later said Pandoue was part of an area which included the disputed area. He also said that the ground of the Appellants is a large piece of land between Mitride plantation and Watt family plantation.

Finally the Respondent, who impressed me as a truthful witness confirmed that his grandfather often told him the story of the history of the Songoriki family and that Rongoana was the first man to occupy the disputed land and introduced the Sautonga custom whereby all those who joined him on the land and there were many, had to give part of their crop annually in exchange for the rights of being allowed to stay on the land and cultivate it. He also confirmed that Maringmelo did sell land 500 hectares in 1884 to Monsieur Bernier on behalf of a French Company and submitted the deed to certify this. I was very impressed in the manner in which this comparatively young man gave evidence. He did not attempt to exaggerate any evidence. He was careful in his answers and

if he did not know the answer to a question he frankly admitted it. The witnesses for the Appellants did not impress me and their evasiveness on many questions led me to place little reliance on their evidence.

In cases of this nature I find it difficult at times to accept evidence particularly when the knowledge available to the Court is purely hearsay evidence. Some witnesses convince me they are telling the truth or really trying to remember what their father or grandfather have told them whereas other witnesses have a tendency to exaggerate in an attempt to convince the Court their version is the correct one.

In this case in my opinion, it is clear that in 1964 Tola was the recognised custom owner of the land. President Sokomanu and Chief Poilapa stated there was never any doubt in the past as to the custom ownership of the land and that it was only in recent years the Malas family made claim to the land. Further Chief Poilapa stated that the Malas family made no claim through the Taramuela family when the dispute came before the Village Court.

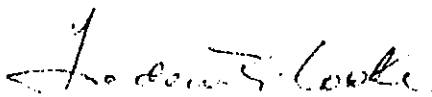
I am satisfied there was a sale in 1884. The area sold from the deeds available cannot be positively established but I am satisfied it did include the disputed land and was sold by a member of the Songoriki family. It is Mele custom that the land is held by a family and that head of that family decides who shall use it.

In my opinion, on the evidence before me I can only come to one conclusion and that is the Songoriki family is the owner in Mele custom of the disputed land. Their evidence has been more positive and their history more probable. It is more consistent as opposed to the division among the Malas witnesses (who incidentally were all members of the Malas family) as to the basis of their claim.

I therefore have no hesitation in holding that the Songoriki family are the custom owners of the disputed land and that they shall be represented by its head from time to time. At present by Eddie Kalopele, who shall have full customary powers in respect of the land. I therefore confirm the decision of the Island Court only in so far as the Songoriki family are the custom owners. The remainder of the decision of the Island Court is hereby quashed.

I order that the Malas family pay the costs and expenses of this appeal. This to include the Court hearing costs of . . .

Dated at Vila this 8th day of October, 1986.



Frederick G. Cooke

CHIEF JUSTICE