

'ANEIJO' LAND

PHILIP TEBAHAI - APPELLANT
AND
SANI NAUNI HABINA - RESPONDENT

Coram: Mr Justice F.G. Cooke, Chief Justice
Assessors - Chief Simon Nago
Chief Jack Nirua

Counsel: Mr Boulekone for Appellant
Mr Rakau appeared for his grandfather, Respondent

Interpreter: Christina Narun

JUDGMENT

This is a land dispute between the Appellant, Philip Tebahai, and Respondent, Nauni Habina.

Before the Island Court on the 1st October 1985, the justices found that Nauni Habina was the true custom owner of the land at Aneiyo and that with effect from the said date the land claimed by the Appellant, Philip Tebahai, belongs to Nauni Habina.

Against the decision of the justices, the Appellant appeals to this Court. His grounds of appeal are:-

1. During the Island Court hearings he did not set out fully the basis of his claim.
2. Kaumi Toki who comes from a family different to Habina's family gave me his rights and now I have lost them.
3. That he is the 'tree trunk' and Nauni is only the 'branch' yet the branches won and the trunk lost.
4. That women have as much rights as the male line.
5. That Navalak, an illegitimate child, has full chiefly rights. Is this correct?
6. That the land boundaries of Aneiyo are not clear.

This land dispute has existed between the parties for many years:-
In November 1962 Chief Naulita, Philip Tebahai and the Aneityum Council lodged a report with the District Agent, Mr Hutchinson, that Nauni Habina and his family be sent back to Futuna. When Mr Hutchinson heard that Nauni and his family followed his grandfather to Aneityum, he held that Nauni and his family were entitled to stay in Aneityum.

In August 1967 another report was lodged by the Aneityum Council to Mr Dale, the new British District Agent. When Mr Dale arrived at Port Patrick, he only found Pastor Habina's family there and on being informed by them there was no trouble there, he left.

When Mr Wallington the next British District Agent arrived another

complaint was made by the Aneityum Council that Nauni Habina had claimed to be owner of the land between Ijepthau and Sia at Port Patrick and then to Anelgauhat. An inquiry was held by the French and British District Agents at Anelgauhat in the absence of Nauni who was refused travel in the boat of the Appellant and who had to walk to Anelgauhat. He arrived there before the inquiry was finished and when asked what land he claimed, he said - "I am the owner of the land known as Aneiyo which belonged to my father". The inquiry then ended.

In July 1976 Chief Naulita and Iawoi sent a telegram to Mr Norris, The British District Agent, relating to the same matter. Again, after the inquiry by Mr Norris and assessors, he was satisfied that the land was Habina's.

In October 1976 Mr Norris, the British District Agent, had another meeting concerning the Aneiyo land. The witnesses for Tebahai could only trace their ancestors for two generations whereas Nauni was able to trace his for six generations. Mr Norris was again satisfied with Nauni's explanation.

In January 1977 Mr Browning, another district agent, arrived in an attempt to resolve the same problem and again was satisfied with Nauni's ancestry.

In March 1977 Mr Lenie, the new District Agent, arrived and advised everyone to live in peace.

In June 1964 a council meeting was held about this land at which the land was given to someone called Serou who when asked by Nauni to give the name of his grandfather who was from Aneiyo was unable to do so and left the meeting.

In September 1978 there was another meeting and a son of Nauni (Dorh) was assaulted.

Again in December 1978, November 1979, September 1981, October 1981, February 1984 and June 1984 there were incidents which involved the land.

The Appellant, Philip Tebahai, gave evidence and reiterated what he said before the justices at the Island Court. That Habina the chief went with his wife and children to Futuna. That the old people of Aneiyo tried to get him to come back but he would not do so. His wife died and he married a Futuna girl. He said that Habina told his daughters Wai, Sauwi and Kauiri they should go back to Aneiyo because it was their ground and they had to stay on it. The three girls returned and were married to three local boys. That Wai married Narimai and had two children, a boy who died named Habina and a girl called Tania.

Tania in turn married Wariso but it was a bad marriage and Wariso left her. Tebahai then stated that his father Tobam then married Tania and had three children, Tebahai, Sabi and Tawas (girl).

He said "the old people said there was no one left so they gave me and my brother the rights to the ground and rights to become chief." He said Wai was still calling Nauni to come back but there was just no proof before me that this was so. He stated that Wai told him and his brother all the stories of the old people concerning the history and

rights of the ground passing to him because Nauni did not want to come back. He said old people made a custom ceremony to give him and his brother the rights to the ground. He said they had looked into the family history.

I must say, I find it difficult to accept that custom rights can be so easily passed to him by persons who had no authority in custom to do so.

He said Tobam was his father with land at Ijepthau further along the coast. That he gave the grounds to his sister. This again is contrary to custom as land descends by the male line (my custom advisers confirm this). He went on to state that such can happen if a son neglects his father but in our case he admitted he and his brother did not neglect his father so there was no reason whatsoever for the land to be given to his sister.

He then stated that in 1965 Nauni came home and claimed his land in 1970. He said he claimed Itav (No. 3) on plan, Exhibit I. He said Nauni claimed different boundaries on six occasions. I explained that I was only concerned with the boundary set out on the plan as it was the claim of the Respondent.

He admitted there was no chief until Nauni came back. He said people did not accept such but that Nauni himself thought he was chief.

When I told him that it was difficult for me to change the decision of the Council of Chiefs in 1983 which ordered him to return to his own land at Ijepthau and also the decision of the Island Court which ordered him to leave the land by October the 1st, 1985 until he could prove to me that their decisions were manifestly wrong, he then said that the people of this area knew he was adopted by Kaumi Toki in Noumea and maybe the Respondents were trying to hide this.

He said in about 1927 when he was born, he was adopted. This is not true as he stated his age to be 54 years which meant he was born in 1932. As regards the adoption by Kaumi, he stated that Kaumi said - "You belong to me and I give you all my land rights". This is not an adoption as in custom, there must be a ceremony, pigs and kava. My advisers confirm this and I also know this is a fact throughout Vanuatu. I reject the evidence of witnesses with a contrary view. He said he put all these facts to the Council of Chiefs and the justices but they did not accept such. In my opinion they were correct. He submitted a statement to me which I have read but the said statement does not alter the views I am expressing.

He then ended by asking the Court to let him stay on the land given to him by Kaumi, which, he said, was the name given to him by Kaumi but that when he got back to Aneiyo, he was ill and his name was changed to Tebahai but that he did not, by the change of name, lose his rights to Kaumi's land. I am advised this is not correct in custom, if true. It would be so easy for a person to change his name from time to time and acquire more land. I reject this evidence by the Appellant.

In answer to Mr Rakau for the Respondent, he said he heard Habina had visited Aneiyo with his son, Nauni.

It was put to him that the people were happy when Habina married Laku from Futuna and that Dr Gunn mentioned this in his book "Habina the Pastor". He replied he would believe such.

In this appeal, the Appellant called five witnesses. They were not the witnesses he called at the Island Court. Two witnesses whom he called at the Island Court, Charlie Nafaraiang born in 1899 and Sopi Naumu born in 1922, stated respectively that the land is not Philip's. They said that Chief Nauni is the big chief and that Philip had no claim to the land.

In reply to Simon Nago, one of the custom advisers, he said a woman can take land rights in custom. This is contrary to advice given to me and that there was a customary adoption ceremony at a nakamal in Aneiyo, which again conflicts with other evidence and I reject it as the truth.

Maneo, a witness, said he saw Philip walk the ground of Kaumi and that he was present at the Council of Chiefs meeting when they referred the matter back to the family. He did not mention the other decisions of the Council.

Andre Naulita, a chief of Anelgauhat, said he was a member of the Council of Chiefs and that the decision of the Council was to refer the matter back to the family. This I just could not accept in view of Chief Ravei's evidence. He said he was not asked to be a witness at the Island Court, which decision by someone seems strange as he was giving evidence in favour of the Appellant. The said minutes of the Council were never challenged in the Island Court. He then gave evidence about adoption which I just could not accept as it was contrary to custom. I was so advised and believed. I reject his evidence that Philip was adopted by Kaumi.

The next witness was David Yautaea who was supposed to know only a little Bislama although he answered some questions in Bislama without hesitation. Robert Nasuai was put forward as an interpreter in language and sworn but he took over the roll of witness and not as an interpreter with the result I was quite certain it was his evidence I was asked to believe. Yautaea's evidence was similar to that of Naulita and followed the same pattern. To me it was rehearsed evidence and not the truth and I just could not believe it.

The next witness was George Napeio, a man of 87 years who impressed me as telling the truth. He said there was an epidemic of illness at Aneiyo and many people died. His evidence was completely neutral and did not help anyone.

The last witness for the Appellant was Ilebalow who seemed afraid of something in particular the Bible. He gave unsworn evidence and spoke in such a low voice that it was difficult to know what he said. He merely stated that he knew of a chief who had two children, a boy and a girl. The boy gave problems and after the girl married and had two boys, chiefly rights were given to one of the boys. Further that he knew Harry Freeman came to the area and had plantations and that he worked for him.

The record of the Council of Chiefs meeting of 8th January 1984 is Exhibit 4. It is signed by Chief Ravei Samana and said to be witnessed by Chief Naulita and Chief Yautaea. The report stated there was enough proof to show that Nauni Habina is the real custom owner of Aneiyo and is the actual chief of the place and area. That Philip, the Appellant's land is located at Ijepthau and that he has absolutely nothing to do with Aneiyo land. Further that Philip received clear orders from the

Island Council of Chiefs to leave Aneiyo land and return to his own land at Ijepthau so as to avoid further problems.

For the Respondents, Vake Rakau produced the Will of Frederick Freeman, Exhibit 5 and a statement by Nauni to Freeman, Exhibit 5 (a). It was proof that Harry Freeman was on the property before.

He produced two deeds to show that land in Itav (claimed by Philip) was sold by Pastor Epeteneto to Harry Freeman. They are Exhibits 5 (b) and (c).

He then produced a family tree, Exhibit 6 (c) which shows the Pastor was a cousin of Habina, in custom called brother. The first sale was in 1888 and the second in 1892.

Mr Rakau said it seems strange that if Kaumi was owner of the land he was present when it was sold.

Robi Vakesa the son of Nauni, and had Laku as his grandmother and who was the mother of Nauni, said that Laku had a family in Aneityum, Exhibit 8. Exhibit 8 (1) Imasinjap went to Futuna and gave child to woman from Futuna. The child was Rakau and Laku is descendant from Rakau.

He said that Kaumi went to New Caledonia because he made trouble with Yarun's wife and Yarun chased him away and he went to New Caledonia. He said when Philip and his parents came back to Aneiyo, the mother of Philip asked Nakit to look after Philip as the husband of Tania was beating her (his name was Thomas Tobam) because he told him, Robi, that Philip was not his son. Further that many people told him that Philip was not Thomas's son.

Robi said he never heard of any adoption and that the only ceremony made was to put the name Naumu on Sopi, the alleged brother of Philip. He said land rights pass automatically from father to son. He further said that all the problems regarding the land he recorded and handed to the Island Court, Exhibit 9 and 9A.

He said that if Wai ever called Nauni it was because she just wanted to see her brother. He said, in answer to Mr Boulekone, that Wai married Nelmi, a man from Itch, that is area beyond No. 6 on the plan, exhibit 1. It was put by Mr Boulekone that Nelmi's father, Nasuanleig, came from Aneiyo. He said he did not know but that Nelmi came from Itch and Wai went to live with him there.

He said, in custom an illegitimate child has only rights to his own father's land and that he did not think Philip was the real son of Kaumi. At this stage, Philip showed a large mole on the inside of his right eye and said his father, Thomas had one too. Robi said he remembered one on the outside of the right eye of Thomas. I cannot possibly accept this as a sign of relationship between Philip and Thomas without expert evidence. It could easily be pure coincidence,

Willie Nafata gave evidence that Mr Norris, the District Agent, attempted to settle the land matter but without success. That he tried and an agreement was made but broken by Philip.

Finally, Chief Ravei Samana from Futuna and a member of the Malvatumauri, gave evidence how he took the minutes of the meeting which found that Nauni was the custom owner of Aneiyo and that Philip should return to

his father's land at Ijepthau. He explained why the two chiefs did not sign but said he had their authority to put their names as witnesses. His evidence was completely contrary to the evidence given by the chiefs whose evidence I did not accept as the truth.

Mr Boulekone then made submissions on behalf of the Appellant and set them out under headings (a) to (o):-

Under (a) That the Court should recognise that Kaumi adopted Philip according to Aneityum custom.

I reject this as there was no proof that Philip was adopted by Kaumi. In custom there must be a ceremony, pigs and kava. Kaumi was in New Caledonia when he should have been here if Philip was to be adopted.

- (b) That Philip was the grandson of Nalumine or Nelmi as he was the husband of Wai the mother of Tania and mother of Philip. I accept this.
- (c) That Tania was the only live child of Nalumine or Nelmi. I accept this.
- (d) That Nauni and Philip come from the same family i.e. Habina. I accept this with reservation as Philip's paternity has not been proved.
- (e) That Kaumi had ground at Itav, area No. 3 on plan, Exhibit 1. I have no proof of this before me as land was sold in Itav area to Harry Freeman by Pastor Epeteneto in 1888 and 1892. The pastor was a cousin of Habina.
- (f) That Nalumine has a piece of ground at Aneiyo area. I have no proof of this. When Wai married, she went to Itch with Nalumine. His land is beyond No. 6 on plan, Exhibit I.
- (g) That Habina has a piece of ground at Aneiyo area. Nothing has been shown to me.
- (h) That Nauni comes from the blood of man and Philip from blood of woman. That Nauni is the boss of the ground of the family. I accept this but it is the first time it has been admitted.
- (i) That following custom, Philip has the right of the use of a piece of ground of the original family which is represented by Nauni Habina.
In my opinion, Philip follows the land of his father who comes from Ijepthau, not Aneiyo.
- (j) That according to custom, Philip has rights over land of Kaumi who adopted him which is part 3 of plan, Exhibit 1.
I do not accept any adoption or that Kaumi had land at area 3 on plan.
- (k) That Philip is also custom owner of ground of Nalumine, area 4 on plan. This has not been proved to me.
- (l) That the Supreme Court should consider other people in Aneiyo case.
My only concern in this case is the appeal of Philip.
- (m) That there are 3 centres on Aneityum.
I accept this.

- (n) That a large part of Aneityum consists of bad ground.
I accept this.
- (o) That all the chiefs and big men of Aneityum are ready to create peace in Aneiyo as a result of the dispute.
I consider that if the chiefs looked after their own areas and stopped interfering in Aneiyo, there is a greater possibility of peace there.

Mr Rakau then made submissions on behalf of his grandfather, Nauni, the Respondent. He submitted:-

- (1) That Philip never before pointed out that there was land of Nalumine in Aneiyo.
- (2) He only talked about land of Kaumi.
- (3) That Nauni knows well that Nelmi comes from Itch, not Aneiyo.
- (4) That Nauni never heard of any adoption ceremony of Philip by Kaumi.
- (5) That Nauni says Philip could not prove he had land in Itav but there was proof of sales in that area to Harry Freeman by the Pastor.
- (6) That if Philip did adopt Kaumi, he never came to Aneiyo to show him the land as Habina did to Nauni.
- (7) That until today, Philip never recognised Nauni was the boss of Aneiyo.
- (8) That the clerk of the Island Court granted an extra 30 days to others to claim but none did so except Philip.
- (9) That Harry Freeman handed the keys of his house to Nauni.
- (10) That when the surveyor made the plan many showed areas as theirs but none showed any belonging to Nauni.
- (11) Regarding the request of Philip that he will co-operate with Nauni, the Court should consider:-
 - (a) Philip kidnapped Nauni and tried to send him back to Futuna. That is a bad offence against a chief.
 - (b) Nauni's presence here is the result of Government action.
 - (c) That Nauni does not require Philip's help to rule and plan the area.
 - (d) That Nauni does not believe Philip is ready to co-operate.
 - (e) That Nauni only wants to live in peace and security.

I have no hesitation in deciding that Mr Boulekone was unable to satisfy me that I should alter the many decisions of the District Agents, the Council of Chiefs in 1983 (I only believed Ravei Samana's report as he gave evidence) and the decision of the Island Court, that Nauni is the true customary owner of the land, Aneiyo, as set out on plan, Exhibit I.


The Appellant, through his counsel, did attempt to claim the land, Itav, No. 3 on the plan, Exhibit I by adoption to Kaumi but I could not accept such as there was no ceremony, no pigs or kava. Again, he claimed land by descent through Wai's marriage to Nelmi whose father, Nasauanleig, was supposed to come from Aneiyo but again this failed as Nelmi came from

Itch (beyond area 6 on plan, Exhibit I). Then the clear, unchallenged evidence of Ravei Samana that the two chiefs, Naulita and Yautaea, lied about the decision of the Council of Chiefs of 8th January 1983.

I prefer to accept evidence that is the truth. I regret to say Philip and his witnesses did not convince me they were telling the truth. I confirm the decision of the Island Court in so far as they decided that Nauni was the true customary owner of Aneiyo. Any other decision not relevant to such is quashed.

I therefore dismiss the appeal of Philip Tebahai and make the following Orders:-

1. That on or before the 31st October 1986, Philip Tebahai shall leave the land of Aneiyo and return to Ijepthau for a period of one year. I am prepared to return at the end of that period and see whether any arrangement can be made whereby he may return to an area in Aneiyo allocated to him by the chief of Aneiyo.
2. That failure to leave the land by the 31st October 1986 will be considered to be a contempt of this Court and Philip Tebahai will have to answer to this Court should there be such contempt either by way of a large fine or imprisonment.
3. That other persons residing on the land of Aneiyo as set out in the plan, must, if they wish to stay on the land enter into lease agreements with the chief of Aneiyo, if he agrees to grant them a lease. Failure to do so by them or refusal by the chief of a lease, then they must leave the land of Aneiyo also by 31st October 1986.
4. Finally, I order that Chief Naulita and Chief Yautaea shall not enter Aneiyo land for a period of two years in the hope that during such time peace will return to Aneiyo and the families be united by their own efforts.



Frederick G. Cooke

CHIEF JUSTICE

13th August, 1986

