

BETWEEN: WALTER JONAH

Plaintiff

AND: ALBERT NIMALIA

Defendant

Date of hearing: 12<sup>th</sup> June, 2001, 9.00am

Coram: Before Mr Justice Oliver A. Saksak  
Clerk: Ms Wendy Wanemay

Counsel: Mr Kiel Loughman for the Plaintiff  
The Defendant appearing in person.

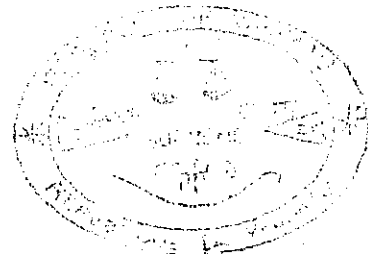
## JUDGEMENT

### CLAIM

The Plaintiff claims for an order for specific performance of the peace settlement reached between the parties on 12<sup>th</sup> May, 1992. In the alternative he claims for an order in the following terms:-

- (i) the return of the tusked pig or payment of VT20.000 as value of the pig
- (ii) payment of expenses for Ariana's lodgings and contributions with the Plaintiff for 7 years plus about 3/4 of a month at say Vt700.000.
- (iii) general damages for the loss of the deceased Johnethy Jonah at say Vt1.000.000.

He further claims interests at 12.5% per annum and also for costs. The Plaintiff issued proceedings by writ of summons filed on 22<sup>nd</sup> November 2000.



## FACTS

The facts are that in 1986 at a dance at Urmet Village the deceased, being the Plaintiff's brother was assaulted by the Defendant. As a result of the assault the deceased was admitted to the Norsup Hospital. He was later transferred to the Northern District Hospital in Luganville where he died.

The Defendant was charged with a criminal offence. He was convicted and sentenced to two years in jail. A custom peace ceremony was arranged by Chiefs Nisai Virabat of Urmet Village and Chief Rapsai of Anwatak Village on 12<sup>th</sup> May 1992. The purpose of the custom peace ceremony was to normalise relations between the Defendant's families and the Plaintiff's families. At this custom peace ceremony the deceased's relatives gave a tusked pig to the Defendant and the Defendant gave his own daughter named Ariana Albert who was then ten years old as compensation for the deceased brother of the Plaintiff.

It is alleged that Ariana had an affair with a young man from Urmet on 23 April 1999. This behaviour did not please the Plaintiff so that on 5<sup>th</sup> May, 1999 he reprimanded Ariana. The effect of it was that Ariana had to leave the Plaintiff's house to live with his relatives.

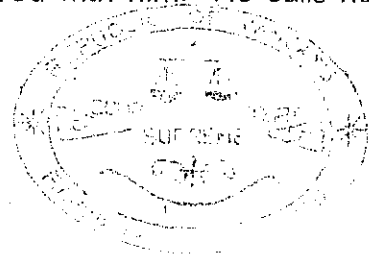
It is further alleged that on 1<sup>st</sup> June, 1999 the Defendant breached the peace and settlement agreement reached on 12 May, 1992 by recalling or accepting back his daughter Ariana.

On 29<sup>th</sup> June, 1999 the Plaintiff went to the Defendant's house to request the return of Ariana but she refused to return with the Plaintiff. And finally on 30 June 1999 the Plaintiff and his father again went to the Defendant's house to ask for the return of Ariana only to be confronted with by a group of angry men including the Defendant abusing them and wilfully and intentionally defying the terms of the custom peace settlement agreement of 12 May 1992.

It is upon those facts and allegations that the Plaintiff brings his claims.

## EVIDENCE

(a). Plaintiff The Plaintiff filed an affidavit in support of his claims on the date of hearing. He testified by simply confirming the contents of his statement which he read into evidence. He was cross-examined by the Defendant. He does not call any other witnesses to confirm the custom peace ceremony. He gives no evidence in relation to his expenses relating to the care and upbringing of Ariana within the seven years she lived with him. He gives no evidence concerning the value of the pig he says he gave to the Defendant. He does not call any witnesses to rebut the evidence of Ariana about the maltreatment he administered on Ariana during the seven years she lived with him. He calls no



witnesses to give evidence to rebut the Defendant's evidence that the agreement and peace settlement was done through force and intimidation.

**(b). \*Defendant** The Defendant gave evidence himself by reading his statement tendered into evidence as Exhibit D1. His evidence is that he was imprisoned for two years after the Supreme Court had convicted him of intentional assault causing death. He still denies that it was not he who is responsible for the death of the Plaintiff's brother. He did not appeal against the decision of the Court. After completion of his two year term he returned to Urmet Village in 1989. It was then that the Plaintiff's family forced him to give them his daughter Ariana as compensation for the deceased. He refused. Then in January 1992 the Plaintiff and his family stopped another daughter of his and took her to Uri. The Defendant went to see the Police on the same day who went and retrieved the Defendant's daughter from the Plaintiff's family. Then sometime in January 1992 the Plaintiff forced Chief Rapsai to inform him that he should give up his daughter or else he would be shot dead. On hearing this the Defendant was afraid and he went along to the ceremony arranged to take place at Urmet although it was not his will to do so. He did so only because he felt intimidated by the threats from the Plaintiff. After the ceremony the Plaintiff then forced him to register Ariana in the Plaintiff's name. The office at Lakatoro refused to do this as it was not in compliance with any orders of the Court. There has not been any registration until the present time.

Ariana Nimalia now 16 years of age gave evidence that she was taken against her will on 22 January 1992 to live with the Plaintiff at Uri. She was treated like a slave. At times she was sent to fetch water from the river at night. The Plaintiff did not buy her clothes whenever he sold copra. She was never given money to spend. She was made to carry heavy baskets for long distances. The Plaintiff often abused her and sometimes he would take her belongings without her permission. But she now realises that all these things are not right and she decided to leave the Plaintiff and return to her father. On 23 May, 1999 the Plaintiff returned home after drinking Kava at a nakamal. As he entered the house the Plaintiff took out a knife and was about to stab her when his wife intervened and removed the knife. That night the Plaintiff threw her out of the house. She had to sleep in the kitchen house. For one month until 3 June 1999 she slept without a blanket. I should note at this point that the witness was shedding tears on telling of these events. At this treatment, the witness ran away back to her father at Anwatak Village. When the Plaintiff and his relatives went to bring her back she refused to follow them. It is due to all the bad treatment she has received that she does not want to go back to the Plaintiff. She says firmly that she is no longer a part of the Plaintiff's family.

Her statement was read into evidence and tendered as Exhibit D2.



## **SUBMISSIONS**

**(a). Plaintiff** Mr Loughman submits that the claim arises out of a breach of agreement on 1<sup>st</sup> June, 1999. He conceded that if the Court takes the action from the date of the death of the deceased, it would be time-barred.

He further submitted that the Defendant has not rebutted the Plaintiff's evidence. He submitted that as there was no rifle on the scene and date of the ceremony that the fears held by the Defendant were mere speculation. It is submitted therefore that the Defendant entered into the agreement in his own free-will. Concerning the treatment of Ariana it is submitted that sleeping in the Plaintiff's house or cutting his cocoa and selling them for money and fetching water from the river were not the treatment normally given to slaves. It is submitted that there was no evidence of maltreatment.

Concerning the orders sought, Mr Loughman submitted that the Plaintiff has difficulty relating to his claim for expenses in relation to the upbringing of Ariana for seven years. Further that the Plaintiff acknowledges difficulty in obtaining an order for the return of Ariana. It is submitted that the only option is for an order against the Defendant to return the tusked pig or its value of VT20,000, and for other orders as the Court thinks fit.

**(b). Defendant** The Defendant submitted only that Ariana was given to the Plaintiff as a result of force or intimidation. It is also submitted that Ariana has left the Plaintiff as a result of the maltreatment given to her. The decision to remain with him as her father is her own and he has nothing to do with it all.

## **FINDINGS**

1. In relation to the loss of a pig with tusk to the Defendant, I find there to be no evidence. Even if there were such evidence as to its truth, it has been repaid with or by the pig given by the Defendant to chief Nisai. The evidence has not been rebutted.

For these reasons I rule that the Plaintiff's claim under this head is dismissed.

2. In relation to the Plaintiff's expenses for keeping Ariana for seven years, I find there to be no evidence. The Plaintiff has conceded through Counsel that he acknowledges difficulty with this claim.

Accordingly, I rule that the Plaintiff's claim under this head is dismissed.

3. Concerning the claim for general damages for loss of Johnethy Jonah, this claim is some 15 years old. It is time-barred by section 3 of the limitations Act No.4 of 1991. There has been no applications for extension of time either under sections 15 or 16 of the said Act.



Accordingly, the Plaintiff's claim under this head is dismissed.

4. For an order of Specific performance of peace settlement of 12 May 1992, firstly I find there to be no evidence confirming such peace settlement or agreement. Two chiefs were involved in the arrangement of this peace agreement. The Plaintiff did not call them to testify. But even if there was such an ceremony, it was a customary ceremony performed at the direction of a customary tribunal. That tribunal only can enforce its decision and not this court which is a court of law.

Secondly, Ariana is now 16 years old. She was only 10 years old when she was taken to live with the Plaintiff. She has exercised her right of choice as to where she will live so as to ensure protection of her life and her person. That is a constitutional right and this Court cannot interfere with her choice.

Thirdly, Ariana gave moving and convincing evidence of maltreatment which have not been rebutted by the Plaintiff.

Accordingly, the Plaintiff's claim under this head is also dismissed.

### **CONCLUSION**

In summary the Plaintiff's claims are dismissed in their entirety.

There will be no order as to costs. Each party will pay their own costs.

**DATED at Lakatoro this 12<sup>th</sup> day of June, 2001.**

**BY THE COURT**

  
.....  
**OLIVER A. SAKSAK**  
Judge

