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IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Land Appeal Case No. 55 of 2004

IN THE MATTER OF: THE ISLAND COURTS ACT

AND IN THE MATTER: A LAND APPEAL FROM THE MALEKULA ISLAND COURT

BETWEEN: SETH MALTAPE AND FAMILY
First Appellant

AND: FAMILY URELELES
Second Appellant

AND: RANGONMAL SETHY SAMUEL
First Respondent

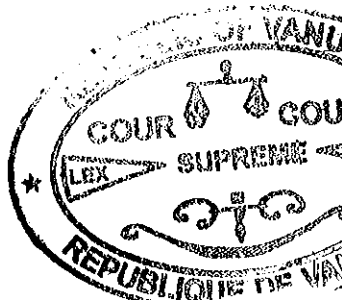
AND: SETH MULON & SAMSIN MULON
Second Respondent

Coram:	Judge Macdonald
Assessor:	Justice D. Vandel
Assessor:	Justice T. Shema
1st Appellant:	Mr. W. Daniel
2nd Appellant:	Mr. G. Boar
1st Respondent:	Mr. E. Nalyal
2nd Respondent:	No appearance
Date of hearing:	28th September 2010
Date of decision:	28th September 2010

ORAL JUDGMENT

Introduction

1. This is an appeal against a judgment of the Island Court at Malekula of 12 March 2004. The appeal is brought under s.22 of the Island Courts Act [CAP.167].



2. The Island Court was required to determine the ownership of land situated at the north east part of Malekula, known as Lowo land. Ownership was disputed by four claimants.

3. Having considered the evidence and applied the rules of custom the Court adjudged Sethy Samuel Rangonmal (the first respondent in this appeal) to be the rightful owner of the land.

Sworn Statements

4. In addition to the notices of appeal, which contain several grounds of appeal, the two appellants have filed 16 sworn statements in support of the appeal. The first respondent has filed 14 sworn statements in reply.

5. An issue arises as to whether we should receive such statements, and in that regard we have considered the arguments from both sides.

6. Without traversing each sworn statement in detail it appears that a number are of limited relevance, reflecting no more than a repetition of matters that were advanced before the Island Court. Others contain expressions of disagreement or disappointment with the decision now under appeal. However, in our opinion there are five sworn statements that fall into a different category as they contain information, which if accepted as true, could have led to a different outcome before the Island Court.

7. The five sworn statements in question are from, Jacob Japeth, Daniel Urinimal, Sepeta Sarisets, John Meltekral and George Rongonmal. They allege that in his evidence to the Island Court the first respondent has fabricated his family tree. The first respondent denies that is the case but obviously that it is not something that can be resolved without hearing evidence. Counsel advise that three of those

witnesses could be described as supporters of the first appellant, while the remaining two are supporters of the first respondent.

8. Section 22(3) of the Act allows the Court on hearing an appeal to receive such evidence "as it thinks fit". In the ordinary course that discretion is only likely to be exercised in favour of new evidence, that is, evidence that was either unavailable at the time of the original hearing, or which could not have been discovered with reasonable diligence beforehand.

9. A question therefore arises as to whether the five witnesses just mentioned would have been aware of the intended evidence of the first respondent, given that sworn statements would have been filed and served a long time before the hearing. In light of what counsel have said it seems probable that they would not have been aware of his intended evidence because they were neither parties to the proceedings nor witnesses at the original hearing.

10. In those circumstances it seems fair to treat their sworn statements as containing new evidence. We therefore take them into account in considering the appeals, even though we are in no position to assess the accuracy or truth of what is now alleged,

Grounds of Appeal

11. We will deal briefly with what we perceive to be the main grounds of appeal, leaving the most important ground till last:

    1) The first ground of appeal is that the land, the subject of the claim, was not well defined by the Court. Mr Daniel and Mr Boar, counsel for the appellants, developed an extensive argument that in error the Court not only gave a determination as to the ownership of Lowo land, but also of Tenmalive land.

We accept that there might be some room for confusion with the maps presented to the Court, and from the fact that Lowo land is within the larger area none as Tenmalive land. However, we do not interpret the judgment of the Court as dealing with anything other than Lowo land. In our view that is evident from the sixth paragraph on page 6 where the Court states:

> "From the totality of the evidence presented to the Court and in the application of the rules of custom, it is this day adjudged that counter claimant 3, Rangonmal Sethy Samuel is the rightful owner of Lowo land as mapped and marked in his claim accordingly."

We therefore reject the first ground of appeal.

2) The second ground of appeal is based on the alleged conduct of the Court itself, and in this regard there is an allegation of bias made against Magistrate Macrevth Edwin. That is a serious allegation. It.is said to arise from several factors. The first is that favourable treatment was given to the first respondent by allowing him to amend his map four times in the course of the hearing. There is an allegation that after the Court had conducted a site inspection the learned Magistrate had taken a ride back to Lakatoro in the same truck as the first respondent. This was without any of the other members of the Court being present. There is a further allegation that the learned Magistrate had eaten in the same restaurant in Lakatoro with the first respondent. Finally, there is mention of the learned Magistrate having been a school friend of Lawson Samuel who is a son of the first respondent.

It is difficult to know whether there is any substance in these allegations. We do not know whether there was any discussion about the case if the ride on the truck and the meal at the restaurant had taken place. It might be unfair, in any event, to reach any adverse conclusions without first inviting

comment from the learned Magistrate. We also bear in mind that these are events that may or may not have happened occurred over six years ago. The first respondent contends that the other claimants had the same opportunity to amend their maps, but failed to take the opportunity. We also note of course that the learned Magistrate was only one of four members of the Island Court, which we consider makes it more difficult for the appellants to establish bias or the perception of bias in this case.

In the circumstances we reject this ground of appeal.

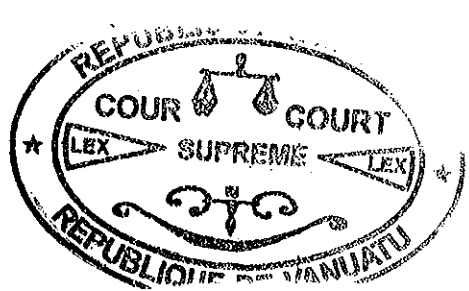
3) The third ground of appeal is that the judgment was not in accordance with the evidence presented to the Court. The evidence had also not been properly considered and the Court reached wrong conclusions. Again counsel for the appellants presented detailed submissions.

One difficulty is that there is no formal transcript of the evidence. We appreciate that Mr Daniel has set out in question and answer form an exchange that apparently took place in the course of the hearing, but its accuracy cannot be verified by reference to a formal transcript.

In our view the judgment of the Island Court presents as being clear and well-reasoned. We are not satisfied that the complaints by counsel have been established and we reject this third ground of appeal.

4) The fourth ground of appeal, advanced by Mr Boar is that two witnesses called by the second appellant were sworn in, but were then dismissed by the Court, without being given the opportunity to give any evidence at all. That was unfair.

Again the absence of a transcript makes it difficult to determine what happened. However, Mr Boar's submission is at odds with the decision of



the Court, from which it would appear that the witnesses did give evidence, but that was curtailed because of giving evidence that irrelevant. Questions of relevance were entirely a matter for the Court. In the circumstances we do not accept that this ground of appeal is made out either.

5) The fifth ground of appeal is that the first respondent's evidence before the Island Court is now brought into question by the five sworn statements alleging that he fabricated his family tree. In other words it is suggested that he misled the Court. We express no view on the accuracy or truthfulness of such statements. However, as already indicated, if the statements are believed then the outcome before the Island Court could have been different. In light of that, and in the interests of justice, we consider that the proper course is to allow the appeal.

Result

12. The decision of the Island Court of 12 March 2004 is set aside and we direct, pursuant to s 22 of the Act, that the matter be re-heard by a differently constituted Island Court.

Dated at Port Vila, this 28th day of September, 2010

BY THE COURT

J. Macdonald
Judge

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