

**BETWEEN: SILU CHARLE KALTAVALULU MALASIKOTO AND
FAMILY MALASIKOTO**
Of Mele Village, Efate, Vanuatu
CLAIMANTS

AND: SAILAS KALOPOVI VATOKO AND FAMILY
Of Mele Village, Efate, Vanuatu
1ST DEFENDANTS

AND: NAKMAU SAMBO OF FAMILY LAKELOTAUA
Of Mele Village, Efate, Vanuatu
2ND DEFENDANTS

AND: ELMU KALTAMAT LAPUA FAMILY
Of Mele Village, Efate, Vanuatu
3RD DEFENDANTS

Date of Hearing: Monday 6th November, 2023 – Time: 10:30 Hours – 12:00 Hours
Date of Judgment: Monday 6th November, 2023 – Time: 17:00 Hours
Venue: Efate Island Court – Court-Room, Joint-Court Ontop, Port-Vila
Before: Justice F. Thomas (Presiding Justice)
Justice R. Tining (Member)
Justice L. Sakita (Member)
Island Court Clerk: Alida Alain
In Attendance: Claimants – Represented by Silu Charle Kaltavalulu Malasikoto
1st Defendants – Represented by Sailas Kalopovi Vatoko
2nd Defendants – Represented by Nakmau Sambo
3rd Defendants – Represented by Edwin Malas

Court File
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JUDGMENT

1. **03/08/2021** – “Silu Charle Kaltavalulu Malasikoto” mo “Family Malasikoto”; olgeta claimants long case ia oli faelem mo registerem wan civil application againsem trifala defendants long case ia follem **Rule 1(2) blong Island Court Civil Procedure Rules blong 2005** mo askem court blong mekem olgeta declaration ia:
 - 1) Long case blong “Sailas Kalopovi Vatokoto” mo Family, oli nogat right over long kastom property blong “Family Malasikoto”:
 - 1) Oli no blood line long Family Tree blong MALASIKOTO
 - 2) Oli nogat right blong yusum name ia MALASIKOTO
 - 3) Oli gat own Family Tree blong olgeta we oli kolem olgeta “FAMILY KALOPOVI” hemi papa blong “Eriki” mo hemi maredem “Toumikoto”. Mo tufala i bornem “Sailas Kalopovi Vatokoto”
 - 4) “Sailas Kalopovi Vatoko” mo “Family Kalopovi” oli kamaot long Family blong Woman.
 - 2) “Sailas Kalopovi Vatoko” hemi no save representem “Family MALASIKOTO” long any custom issue blong olgeta



2. **01/08/2021 & 13/09/2021** - I gat two court conferences long matter we i stap mo case file ia hemi ready blong court i save deal wetem before Justice Felix Thomas (Presiding Justice), Justice Serah Paton mo Justice Timothy Kalangis. Long semtaem during tufala conference ia, olgeta first defendants we oli represented by "Sailas Kalopovi Vatoko" oli faelem wan written Application blong Objection againsem Justice Felix Thomas mo Justice Timothy Kalangis. Court i listim matter ia long date ia 11 April 2022 blong sitaon mo determinem. Unfortunately, Efate Island Court i nomo sitaon long date ia 11 April 2022 mo listim matter i go long wan narafala time blong deal wetem.
3. **03/03/2022** – Claimant hemi faelem wan narafala "Urgent Application to Amend Paragraph 7 (1) (a, b, c & d) and 2 of the urgent Application for Declarations" filed on Tuesday 3rd August 2021. Long urgent application blong amendment ia, hemi apply from:

- 1) Leave blong kot blong amendem 'Urgent application for declarations filed on Tuesday 3rd August 2021' by deleting paragraph 7 (1) (a, b, c & d) and 2 mo replacem wetem this declaration or orders below:
 - 1) Declaration se "Vatoko Family" oli part blong "Malasikoto Family" through matrilineal descent line or bloodline blong woman ia "Toumikoto Malaskito"
 - 2) Declaration se only some "Vatoko" members (not whole tribe blong "Vatokoto") we oli born through long woman ia "Toumikoto" hem nomo only female/matrilineal descendants blong "Malasikoto Family"
 - 3) Declaration se ol "Vatoko" members stated long Paragraph (b), follem custom blong Patrilineal inheritance custom, oli nogat ownership rights be oli gat secondary rights nomo olsem use, reside, mekem gardens, harvesting fruits, fishing or catem trees for housing inside long custom graon blong "Family Malasikoto"
 - 4) Declaration se follem patrilineal custom of inheritance, only "Malasikoto Family" mo ol male descendants blong hem oli gat ownership rights long ol custom graon blong hem.

Olgeta Claimants oli mekem application blong amendment long original claim blong olgeta ia follem court of Appeal Judgment dated 18th February 2022 long Civil Appeal Case No. 3470 of 2021, paragraph 61 mo 62 – Case between *"Silu Malasikoto, Toriko Malasikoto and Freddy Malasikoto (Appellants) v Silas Vatoko, Morris Kelly Vatoko and Nakmau Sambo (1st Respondents) AND Humphrey Tamata, National Coordinator of Custom Land Management Office (2nd Respondent)"*

4. **01/11/2023** – "Sailas Kalopovi Vatoko" mo Family; olgeta First Defendants long case ia, oli faelem wan 'Urgent Application to Strike-Out Civil Case No. 2538 of 2021 base on Court of Appeal Judgment dated 18th February 2022 / Res Judicata' mo askem court ia blong urgently strickemaot case ia. Long urgent application blong strike-out ia, First Defendants hemi base long paragraph 60, 61 mo 62 long Court of Appeal Judgement dated 18/02/2022 long Civil Appeal Case No. 21/3470 CoA/CIVA we hemi read olsem:

New case filed in the Efate Island Court

60. Mr Fiuka submitted that Messrs Malasikoto filed Efate Island Court Civil Case No. 2538 of 2021 to obtain declarations as to the differing rights of patrilineal and matrilineal descent lines within Family Malasikoto.

61. However, the application in Civil Case No. 2538 of 2021 does not seek any declaration as to the rights of patrilineal and matrilineal descent lines within Family Malasikoto. Instead, the application seeks an order declaring that Sailas Kalopovi Vatoko and Family are not members of Family Malasikoto, do not have a right to use the name 'Malasikoto' and do not have any rights over the custom property of Family Malasikoto.

62. Family Vatoko's membership of Family Malasikoto and rights as custom owners of Pangona land were already decided in the Efate Island Court's 22 July 2004 judgment. That judgment was not appealed and cannot now be appealed. The Supreme Court in its decision of 12 July 2019 made findings of fact that Family Vatoko are part of Family Malasikoto and that they have interests in Pangona land. The Court of Appeal dismissed



the appeal against that decision: *Malasikoto v Vatoko* [2019] VUCA 65. Without deciding the point, it would appear then that the orders sought in Efate Island Court Civil Case No. 2538 of 2021 are *res judicata*.

5. **02/11/2023** – “Silu Charle Kaltavalulu Malasikoto” i faelem response blong hem long behalf blong olgeta claimants againsem *‘Urgent Application to Strike-Out Civil Case No. 2538 of 2021 base on Court of Appeal Judgment dated 18th February 2022 / Res Judicata’* mo talem se oli totally opposem urgent application blong strike-out ia follem olgeta reasons ia:
 - 1) Afta we Court of Appeal Judgment dated 18th February 2022 in Civil Appeal Case No. 3470 of 2021 paragraphs 61 mo 62 talem se declarations we olgeta Appellants (*Silu Malasikoto, Toriko Malasikoto and Freddy Malasikoto*) i faelem long 3rd August 2021 long EIC Case No. 21/2538 IC/DCLR hemi *re judicata*, from reason ia, olgeta claimants long EIC Case No. 21/2538 IC/DCLR oli faelem wan urgent application blong amendem original claim blong declaration we i stap before long EIC blong deal wetem.
 - 2) Olgeta Claimants oli servem trifala defendants blong EIC Case No. 21/2538 IC/DCLR wetem *‘Urgent Application to Amend Paragraph 7 (1) (a, b, c & d) and 2 of the urgent Application for Declarations’* filed on Tuesday 3rd August 2021 be trifala defendants ia oli never faelem response blong olgeta i kam long court kasem today 06/11/2023.
 - 3) Olgeta claimants oli claim se *‘Urgent Application to Amend Paragraph 7 (1) (a, b, c & d) and 2 of the urgent Application for Declarations’* filed on Tuesday 3rd August 2021 hemi no *res judicata* mo hemi consistent wetem submission blong olgeta long paragraph 60 blong Court of Appeal Judgment dated 18/02/2022 long Civil Appeal Case No. 21/3470 CoA/CIVA. Follem olgeta reasons ia “Silu Charle Kaltavalulu Malasikoto” i askem court blong dismissim *‘Urgent Application to Strike-Out Civil Case No. 2538 of 2021’* we First Defendant i faelem i kam long court ia.
6. **06/11/2023** – Efate Island Court i kollem case ia mo every parties oli present long court after we oli risivim summons blong court.
 - 1) **Interest blong olgeta Justices:** Before court i allowem time blong every parties long case ia blong mekem objection long any member blong bench we i composem EIC sitting ia, i gat declaration of interest we trifala EIC Justices oli talemaot mo wanwan long trifala i statem clear long statement blong olgeta wanwan se oli nogat any interest long matter we hemi listed before long court ia.
 - 2) **Objection blong olgeta parties:** Court hemi recordem se i gat wan written Objection we First Respondent hemi faelem i kam long court againsem Presiding Justice Felix Thomas mo Justice Timothy Kalangis. Bench hemi informem olgeta every parties we oli present long hearing today 06/11/2023 se Justice Timothy Kalangis hemi no save sitaon blong deal wetem case ia from hemi stap oversea nowia under long Seasonal Work Program mo narafala member blong Panel long tufala last court conference Justice Serah Paton, hemi too hemi no save attendem court ia today from hemi gat personal commitment. Tufala niufala member blong bench we i available blong composem EIC sitting ia together wetem Presiding Justice Felix Thomas hemi Justice Lutu Sakita mo Justice Roy Tining. Court i givim time long every parties blong givim view blong olgeta sapos oli okay wetem composition blong bench ia mo everywan oli agree se trifala Justices ia ‘Justice Felix Thomas, Justice Lutu Sakita mo Justice Roy Tining’ bae oli save hearem mo deal wetem ol applications we i stap long case ia. First Respondent “Sailas Kalopovi Vatoko” hemi verbally withdrawemaot written objection blong hem we hemi faelem long date ia 13/08/2021.
 - 3) **Hearing blong tufala urgent applications:**



- (1) Filing Date: 01/11/2023 - 'Urgent Application to Strike-Out Civil Case No. 2538 of 2021 base on Court of Appeal Judgment dated 18th February 2022 / Res Judicata' we filed First Defendant i mekem.
- (2) Filing Date: 03/03/2022 - "Urgent Application to Amend Paragraph 7 (1) (a, b, c & d) and 2 of the urgent Application for Declarations filed on Tuesday 3rd August 2021 we olgeta claimants oli mekem.
- 4) **Findings blong Court:** Court i allowem time long every parties blong oli givim response blong olgeta long tufala applications ia mo findings blong court hemi olsem:

- (1) Second Respondent mo Third Respondent tufala i supportem 'Urgent Application to Strike-Out Civil Case No. 2538 of 2021 base on Court of Appeal Judgment dated 18th February 2022 / Res Judicata' we filed First Defendant i mekem.
- (2) Concernem "Urgent Application to Amend Paragraph 7 (1) (a, b, c & d) and 2 of the urgent Application for Declarations filed on Tuesday 3rd August 2021 we olgeta claimants oli mekem mo faelem long date ia 03/03/2022, every trifala defendants oli oppose long grounds se Court of Appeal Judgment dated 18th February 2022 long Civil Appeal Case No. 3470 of 2021 paragraphs 60, 61 mo 62 concernem niufala case ia long EIC we hemi Case No. 21/2538 IC/DCLR hemi "Res Judicata". Trifala Defendants oli strongly addressem court se court ia hemi nomo gat power blong save lukluk long case ia from hemi "Res Judicata".
- (3) Court i hearem mo considerem "Silu Charlie Kaltavalulu Malasikoto" hemi bin declared finis olsem chief blong "Malasikoto Family" by Efate Island Court.
- (4) Court i faenemaot se olgeta Claimants oli mekem Urgent Application to Amend Paragraph 7 (1) (a, b, c & d) and 2 long original claim long case ia i kam long EIC after we Court of Appeal hemi mekem decision blong hem finis long Civil Appeal Case No. 3470 of 2021 long date ia 18th February 2022 se EIC Case No. 21/2538 IC/DCLR hemi "Res Judicata".
- (5) Court i hearem mo considerem too se olgeta Claimants oli still stanap strong se First Defendant hemi no part blong Patrilineal line blong "Family Malasikoto". First Defendant i stap olsem Spokeman nomo blong "Malasikoto Family" mo blong mekem wan declaration long olgeta statement ia follem application we i kam long court, Efate Island Court i questionem bigwan power we Efate Island Court hemi gat blong lukluk long matter ia after long ruling blong Court of Appeal Case No. 3470 of 2021.

- 5) **Rulings blong Court:** After we Efate Island Court hemi hearem, readim mo deliberate long ol statements blong every parties, olgeta rulings blong court i olsem:

- 1) Ruling blong Court over long 'Urgent Application to Strike-Out Civil Case No. 2538 of 2021 base on Court of Appeal Judgment dated 18th February 2022 / Res Judicata' - Efate Island Court i grantem application ia mo mekem order se Case No. 21/2538 IC/DCLR hemi strike-out entirely follem Court of Appeal Judgment dated 18th February 2022 long Civil Appeal Case No. 3470 of 2021 - paragraphs 60, 61 mo 62 concernem matter we hemi subject long EIC nowia we hemi Case No. 21/2538 IC/DCLR hemi "Res Judicata".

Definition blong word ia "Res Judicata" hemi meanim se "matter that has been finally juridically decided on its merits and cannot be litigated again between the same parties."



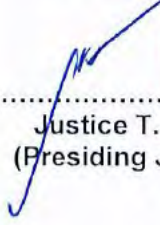
- 2) Ruling blong Court over long "Urgent Application to Amend Paragraph 7 (1) (a, b, c & d) and 2 of the urgent Application for Declarations – Efate Island Court i no grandem application ia nomo from se Court of Appeal i mekem ruling blong hem finis se EIC Case No. 21/2538 hemi "Res Judicata"
- 6) **Notification blong right blong appeal**: Follem Rule 8 blong Island Court Civil Procedure Rules blong 2005, Every parties long case ia oli gat right blong appealim judgement ia sapos oli no happy wetem i go long Magistrate Court within 30 days from date blong Judgement ia.

DATED at Port Vila this 6th November, 2023.


Justice R. Tining
(Member)

BY THE COURT




Justice T. Felix
(Presiding Justice)


Justice L. Sakita
(Member)