

**BETWEEN: SAMANSEN KALOPONG & BERRY  
KALOPONG**

Of Erakor Village, Efate Island  
Claimants

**AND: ASAEL WAYANE KALOPONG**

Of Erakor Village, Efate  
1<sup>st</sup> Defendant

**AND: PERIS KALOPONG**

Of Erakor Village, Efate  
2<sup>nd</sup> Defendant

*Date of Hearing: Monday 22<sup>nd</sup> November 2021 – Wednesday 24<sup>th</sup> November, 2021*  
*Date of Judgment: Thursday 2<sup>nd</sup> December, 2021 – Time: 15:00 Hours*  
*Venue: Efate Island Court – Court-Room, Joint-Court Ontop, Port-Vila*  
*Before: Justice F. Thomas (Presiding Justice)*  
*Justice T. Kalangis (Member)*  
*Justice S.Paton (Member)*  
*Island Court Clerk: A.Alain*  
*In Attendance: All parties*

*Copy : Court File*

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## COURT JUDGMENT

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Samansen Kalopong mo Berry Kalopong tufala i faelem wan claim i kam long Efate Island Court long date ia Monday 5<sup>th</sup> November 2018 follem Rule 1 blong Island Courts Civil Procedure Rules blong year 2005.

Long application nambawan long claim blong tufala claimants, tufala i askem court blong determinem Custom Ownership title blong name ia "TANGIER KALOTUKOR KALOPONG" from we tufala i claim se papa blong tufala late John Maklen Wayane Kalopong nao hemi first born pikinini boy blong grand-father blong tufala Tangier Kalotukor Kalopong. Tufala i claim se papa blong tufala John Maklen Wayane Kalopong nao hemi "TAKLEP" blong Family Wayane Kalopong Tarimaar follem custom mo tradition blong Erakor, South-Efate.

Long application nambatu blong tufala claimants, tufala i askem court ia blong declarem Samansen Kalopong olsem "first born son" mo Berry Kalopong olsem "stret pikinini" blong late John Maklen Wayane Kalopong follem custom mo tradition blong Erakor, South-Efate.

Long application nambatri blong Samansen Kalopong mo Berry Kalopong, tufala i askem court ia blong declarem tufala se tufala nao i stret raetfull persons blong ownem Custom Name ia "TANGIER KALOTUKOR KALOPONG" follem custom mo tradition blong Erakor, South-Efate.



Claimants i gat two witnesses we tufala i faelem witness sworn statements blong tufala blong sapotem claim. Tufala witness ia hemi Samansen Kalopong (we hemi claimant too long case) mo Lisbeth Charley.

Long dates ia 05/05/2021, 08/06/2021 mo 15/09/2021, court i managem case ia long conference mo case file i ready blong court i save harem long manis blong November 2021.

First Defendant Asael Wayane Kalopong i faelem defence statement blong hem long date ia 14/05/2021 mo hemi gat two witnesses: (1) Manuel Wayane Kalopong mo (2) Maret Kalsrap.

Second Defendant Peris Kalopong i faelem defence statement blong hem long date ia 14/05/2021 be hemi confirmem long court se hemi nogat witness.

**TRIFALA MAIN ISSUES WE I STAP LONG CASE IA BLONG COURT I DEAL WETEM HEMI:**

1. Whether late John Maklen Wayane Kalopong hemi "TAKLEP" blong Family Wayane Kalopong Tarimaar follem custom mo tradition blong Erakor, South-Efate?
2. Whether tufala claimants "Samansen Kalopong mo Berry Kalopong" tufala i stret biological son blong late John Maklen we hemi fist born son blong late "TANGIER KALOTUKOR KALOPONG"?
3. Whether tufala claimants oli gat right blong ownem name ia "TANGIER KALOTUKOR KALOPONG" or nogat?

**APPLIKESEN BLONG LOA:**

**KONSTITUSEN BLONG RIPABLIK BLONG VANUATU – Japta 8 - Article 52 'Ol Vilij Kot mo Aelan Kot:** Palemén bambae i mekem ol loa blong stanemap ol velej kot mo aelan kot we bambae oli gat paoa blong jajem ol keis long saed blong kastom wetem sam narafala keis tu mo bambae Palemén i mekem rod blong ol jif oli wok long ol kot ia tu.

**ISLAND COURT ACT CAP [167]: Section 10 'Application of Customary Law':** Subject to the provisions of this Act an island court shall administer the customary law prevailing within the territorial jurisdiction of the court so far as the same is not in conflict with any written law and is not contrary to justice, morality and good order.

Island Court hemi gat power blong administerem ol matter blong custom follem Section 10 blong Island Court Act Cap 167 mo Article 95(3) long Constitution blong year 1980 hemi talem se 'Long dei we Repablik blong Vanuatu i kam independen, ol loa blong kastom bambae oli gohed blong gat paoa mo bambae oli kam pat blong loa blong Ripablik blong Vanuatu.'

Long matter blong Section 10 blong Island Court ACT [CAP 167] mo hemi matter blong kastom concernem "TAKLEP" blong "Family Wayane Kalopong Tarimaar" blong Erakor, mo matter blong olgeta pikinini boys blong late John Maklen Wayane Kalopong, mo Custom Ownership title blong name ia "TANGIER KALOTUKOR KALOPONG", Erakor Village, South-Efaté, Shefa Province.



Court i conductem hearing blong matter ia follem Rule 6 blong Island Court Civil Procedure Rule blong 2005 mo callem case ia. Every parties oli appeared long court olsem we i stap long summons.

Before proceedings blong matter ia, trifala island court justices we i composesem court ia oli mekem declaration blong olgeta se oli nogat any interest long matter ia mo oli no related long any parties long case ia. Court i allowem times long trifala parties sapos trifala i opposem any justice long composition blong court ia be trifala parties i agree everywan se oli oraet wetem panel we i stap nao court ia i proceed.

After we court i READIM, HAREM mo CONSIDEREM applications mo olgeta sworn statements blong claimants wetem olgeta witnesses blong tufala;

Mo bageken after we court i READIM, HAREM mo CONSIDEREM defence statements mo olgeta witnesses blong tufala defendants;

Mo bageken after we court i CROSS-EXAMINEM every trifala parties mo olgeta witnesses blong olgeta, findings blong Court hemi olsem:

**Findings blong Court long Claimants wetem tufala witnesses blong hem; Samansen Kalopong mo Lisbeth Charley long case ia:**

1. Claimants mo tufala witnesses blong hem everywan i agree se John Maklen Wayane Kalopong hemi stret pikinini blong "TANGIER KALOTUKOR KALOPONG".
2. Claimant Berry Kalopong mo witness Samansen Kalopong, tufala everywan i agree se John Maklen Wayane Kalopong hemi first born pikinini boy we i born behind long sister blong hem Nancy Wayane Kalopong inside long first mared blong Tangier Kalotukor Kalopong wetem first wife blong hem Litang blong *Epangtuei*, Efate.
3. Court i faenemaot meaning blong toktok ia "TAKLEP" follem custom blong Erakor, hemi meanim se "pikinini we i kamaot fastaem long womb blong wan woman".
4. Court i faenemaot long tufala claimants se tufala i kiaman long court se John Maklen Kalopong hemi "TAKLEP" blong Tangier Kalotukor Kalopong from we Nancy Wayane Kalopong nao hemi first pikinini we i kamaot fastaem long womb blong first wife blong olfala Tangier inside long first mared blong hem wetem Litang blong *Epangtuei*, Efate.
5. Claimant Berry Kalopong mo witness Samansen Kalopong, tufala everywan i agree se first Defendant Asael Wayane Kalopong hemi first born pikinini boy blong nambatri mared blong Tangier Kalotukor Kalopong wetem nambatri wife blong hem Dorah blong *Eraniao (Erakor)* Smol Island, Efate.
6. Court i faenemaot se witness Lisbeth Charley hemi stret mama blong tufala claimants "Samansen Kalopong mo Berry Kalopong".
7. Court i faenemaot se tufala claimants i gat wan biological brother blong tufala we i born in-between tufala mo name blong hem "Mokor" be tufala claimants i excludemaot hem long claim blong tufala.



8. Court i faenemaot se Lisbeth Charley i bornem 4 pikinini: (1<sup>st</sup>) Litang we hemi wan girl, (2<sup>nd</sup>) Samansen we hemi wan boy , (3<sup>rd</sup>) Mokor we hemi wan boy mo (4<sup>th</sup>) Berry we hemi wan boy.
9. Court i faenemaot se Lisbeth Charley hemi no raisemap fofala pikinini blong hem wanples.
10. Court i faenemaot se late John Maklen Wayane Kalopong i maredem Lisbeth Charley long 10/01/1963 long Presbyterian Church long Erakor Village mo Pastor we hemi officiatem mared ia hemi Pastor Kalangis.
11. Court i faenemaot se Lisbeth Charley i givimaot nambatri pikinini boy ia “Mokor” i go long apu Johnny long Melemaat.
12. Court i faenemaot se Lisbeth Charley i no raisemap tufala claimants long Erakor Village.
13. Court i faenemaot se claimants mo witnesses blong hem oli confirmem long court se after we Lisbeth Charley mo John Maklen i seraot, Lisbeth i move-on long life blong hem mo live long wan defector relationship wetem Serge Meltelili blong Vao, Malekula. Nao behind Serge Meltelili i leavim olgeta bageken mo tufala claimants i grow-up wetem mama blong tufala nomo.
14. Court i faenemaot se inside long mared life blong Lisbeth Charley mo John Maklen i gat issues blong domestic violence, alcohol mo adultery mo i end-up long separation we Lisbeth Charley i willingly decide blong walkaot long home blong tufala mo end-up long divorce.
15. Court i faenemaot se tufala claimants i grow-up outside long Erakor Village mo outside long home blong John Maklen. Taem tufala i grow kam adult, nao tufala i just decide blong move-in i go back long Erakor Village follem instruction blong mama blong tufala we hemi Lisbeth Charley.
16. Court i faenemaot se i gat discrimination toktok i stap finis againsem tufala claimants se tufala i no pikinini boy blong late John Maklen since tufala i smol boys kasem nowia mo hemi wan longtaem outstanding Family Kalopong issue but ever since, tufala claimants wetem witness blong tufala we hemi mama blong tufala stret; Lisbeth Charley oli fail blong addresseem issue ia taem late John Maklen i laef yet i stap blong save sortemaot long level blong Family Kalopong blong Erakor Village, Efate.
17. Court i faenemaot se Witness Lisbeth Charley hemi main paramount important witness blong matter we i stap before long court ia be court i faenemaot se Witness Lisbeth i no really helpem court ia blong describem more aboutem life blong hem we hemi gat wetem late ex-husband blong hem John Maklen Kalopong long wannem kaen relationship tufala i gat since tufala i meetim tufala long first time, kasem taem tufala i mared, mo gat pikinini, describem good ol issues we tufala i stap fesem inside long home mo kasem taem we tufala i separate mo finally divorce.
18. Claimants mo tufala witnesses blong hem oli no convinsem court blong givim any credible evidence blong sapotem claim blong claimants se tufala i stret pikinini boy blong late John Maklen Kalopong.
19. Court i faenemaot se name ia “TANGIER KALOTUKOR KALOPONG” hemi no wan chiefly title name be hemi wan given name blong wan person.



20. Court i faenemaot se tufala claimants i stap claimem ownership blong name ia "TANGIER KALOTUKOR KALOPONG" from interest blong tufala i stap long kraon blong Family Kalopong.
21. Court i faenemaot se Claimants mo tufala witnesses blong hem oli stap tokbaot plante "will" blong year 1971 mo kraon blong late Tangier Kalotukor Kalopong wetem John Maklen but hemi no subject or matters blong court proceeding ia.

**Findings blong Court long First Defendant "Asael Wayane Kalopong" mo tufala witnesses blong hem "Manuel Wayane Kalopong" mo "Maret Kalsrap" long case ia:**

1. Court i faenemaot se First Defendant Asael Kalopong hemi step-brother blong late John Maklen from tufala i born out long wan papa be two different mama, John Maklen i second born pikinini long first mared after long sister Nancy mo Asael hemi first born pikinini long nambatri mared blong Tangier Kalotukor Wayane Kalopong wetem Dorah blong *Eraniao (Erakor)* Smol Island, Efate
2. Court i faenemaot se nambatu witness blong First Defendant we hemi Maret Kalsrap hem i wan long olgeta step-sister blong John Maklen from oli born long wan papa nomo.
3. Court i faenemaot long First Defendant mo Witness Manuel Wayane se tufala i agree se Asael Wayane Kalopong hemi "TAKLEP" blong Dorah we hemi nambatri wife blong Tangier Kalotukor Kalopong.
4. Court i faenemaot se First Witness Manuel Wayane Kalopong mo Asael Kalopong tufala i stret brother.
5. Court i faenemaot se Maret Kalsrap i confirmem long court se Lisbeth Charley i meanim blong muvaot long home mo leavim behind husband blong hem John Maklen wetem first born pikinini girl blong tufala Litang. Long taem ia, Litang i gat around 2 years old. Nao behind, John Maklen i askem papa blong olgeta Tangier Kalotukor Kalopong mo mama blong tufala Dorah blong tufala i helpem hem blong raisemap smol girl ia Litang long Erakor Village, Efate.
6. Court i faenemaot se first Defendant Asael Wayane Kalopong mo tufala witness blong hem oli confirmem long court se tufala claimants i no stret pikinini blong late John Maklen from John Maklen stret i talemaot long papa blong olgeta we hemi Tangier Kalotukor Kalopong.
7. Court i faenemaot se first defendant i still stanap strong mo talem se tufala claimants ia nogat right blong ownem name ia "Tangier Kalotukor Kalopong" from we tufala i no bloodline blong John Maklen we hemi stret step-brother blong hem, first defendant Asael Wayane Kalopong.
8. Taem court i questionem Witness Manuel Wayane Kalopong, court i faenemaot se hemi confirmem statement blong claimants se tufala claimants ia i no grow-up long Erakor Village wetem papa blong tufala John Maklen.
9. Court i faenemaot se Witness Manuel Wayane Kalopong hemi harem finis long mouth blong sister blong hem Deisy (deceased) over long 20 years finis se Samansen mo Berry tufala i no bloodline blong John Maklen.



10. Court i faenemaot too long witness Manuel Wayane Kalopong se hemi no save se tufala claimants i born long where from hemi just save long tufala nomo taem tufala i kam long Erakor olsem ol adults. Witness ia hemi confirmem se Samansen Kalopong nao i kam fastaem mo Berry Kalopong i just kam behind blong settle long Erakor Village.
11. Court i faenemaot se first defendant Asael Wayane Kalopong i bin involve directly wetem Cecil Joseph blong faetem wan French Police man blong Malekula Island we name blong hem Moise mo hemi blong Lamap. Tufala i faetem Moise long "La Bacotte" Bar follem instruction blong John Maklen from Moise i stap gat sexual affairs wetem Lisbeth Charley.
12. First defendant mo tufala witnesses blong hem everywan oli agree se first born girl blong Lisbeth Charley wetem John Maklen hemi stret pikinini blong tufala we name blong hem Litang.
13. Court i faenemaot se First Defendant wetem olgeta witnesses blong hem oli confirmem eveywan se taem Lisbeth Charley i ronwe long John Maklen, John Maklen i go back live long Erakor Village finis. Olgeta oli no save long ol narafala pikinini we i includim tufala claimants blong Lisbeth we oli born after long separation ia.
14. Court i faenemaot long First Defendant wetem tufala witnesses blong hem se inside long home blong Lisbeth Charley mo John Maklen i gat issues blong domestic violence, alcohol mo adulteries mo i end-up long separation we Lisbeth Charley i willingly decide blong walkaot long home blong tufala mo end-up long divorce.
15. Court i faenemaot se i gat wan John Maklen hemi wan French police man.
16. Court i faenemaot se i gat bigfala issue we John Maklen hemi gat wetem wan narafala French Police officer we name blong hem Moise blong Lamap i mekem se ol French gendarmes oli mas singaotem olfala Kaltak wetem olfala Tangier Kalotukor Kalopong blong sortemaot issue ia. Issue we hemi raised hemi from we Moise i stap gat sexual affairs wetem Lisbeth we hemi wife blong John Maklen.
17. Court i faenemaot se name ia "TANGIER KALOTUKOR KALOPONG" hemi no wan chiefly title name be hemi wan given name blong wan person we hemi papa blong olgeta ia:
  - i. (First mared): Nancy, John Maklen mo Bula
  - ii. (Second mared): No pikinini
  - iii. (Third mared): Asael, Deisy, Maret, William mo Manuel
18. Court i faenemaot se long year 1971, defendant Asael Wayane Kalopong i stap work long New Caledonia mo long taem ia, late papa blong hem Tangier Kalotukor Kalopong i stap sick mo sendem toktok i go long Asael blong kam kamback home long Vanuatu blong hemi save givimaot last toktok blong hem (Tangier Kalotukor Kalopong) long family.
19. Court i faenemaot se long "will blong year 1971" we late Tangier Wayane Kalotukor Kalopong i mekem hemi tokbaot mainly management blong olgeta affairs blong Family blong Tangier Kalotukor Wayane.
20. Court i faenemaot se First Defendant mo tufala witnesses blong hem oli tokbaot plante "will" blong year 1971 but hemi no subject blong court proceeding ia.



**Findings blong Court long Second Defendant “Peris Kalopong” long case ia:**

1. Court i faenemaot long Second Defendant se Berry mo Samansen, tufala i no pikinini blong John Maklen from we hem (Peris) i gat fifteen years finis taem ol cousin brothers blong hem oli stap talemaot long hem ol problem blong John Maklen mo Lisbeth Charley.
2. Court i faenemaot se Second Defendant i confirmem long court ia se tufala claimants i stret pikinini blong Moise blong Lamap, Malekula.
3. Court i faenemaot long Second Defendant se i gat wan narafala French Police man we name blong hem Tutu Wanemut we hemi related too trifala ia: Peris, John Maklen mo Asael olsem cousin brother. Mr Tutu i confirmem long Peris Kalopong se Moise i gat sexual affairs wetem Lisbeth Charley mo hemia nao i causem tumas dispute inside long home blong John Maklen.
4. Court i faenemaot se Second Defendant Peris Kalopong i dinaem full claim blong tufala claimants.
5. Court i faenemaot se Second Defendant i holem tribal chief blong Family Kalopong from John Maklen nao i proposem hem but hemi no subject blong court proceeding ia.
6. Second Defendant Peris Kalopong i confirmem long court se name ia Tangier Kalotukor Kalopong hemi name blong papa blong John Maklen Wayane Kalopong be hemi no wan chiefly title or name blong wan custom property.

**Findings blong Court long Witness “Nancy Wayane Kalopong” follem Application blong tufala claimants base long Island Courts (Civil Procedure) Rules 2005 – Rules 5 “Summons to witness” (1) mo (2) we court i grantem, mo findings blong court i go olsem:**

1. Court i faenemaot se Witness Nancy Wayane Kalopong i fail blong no karem wetem hem any relevant documents concernem matter ia follem Rule 5 (2) blong Island Courts (Civil Procedure) Rule 2005 olsem we i stap long summons court.
2. Court i faenemaot se Witness Nancy Wayane Kalopong hemi first born pikinini blong late Tangier Kalotukor Kalopong, hemi bigfala sister blong late John Maklen mo Bula. Nancy i born long Tangoa smol Island long Island blong Santo long date ia 24/07/1936 mo hemi gat nowia 85 years old.
3. Court i faenemaot se Witness Nancy Wayane Kalopong hemi save good family issues we i stap long court ia concernem Family Wayane Kalopong.
4. Court i faenemaot se Witness Nancy Wayane Kalopong hemi save good long ol narafala step brothers mo step sisters blong hem we oli born behind long hem long nambatu mo nambatri mared blong late papa blong hem Tangier Kalotukor Kalopong.
5. Court i faenemaot se Witness Nancy Wayane Kalopong i gat wan good relationship wetem brother blong hem late John Maklen Kalopong.



6. Court i faenemaot se Witness Nancy Wayane Kalopong i confirmem se first born pikinini blong late John Maklen wetem Lisbeth Charley hemi Litang Kalopong hemi grow-up long Erakor wetem paternal grand-parents blong hem mo family Kalopong long Erakor.
7. Court i faenemaot se Witness Nancy Wayane Kalopong i confirmem truth se ol narafala pikinini we Lisbeth Charley i born olsem "Samansen, Mokor mo Berry" oli born long French Hospital mo oli no grow-up long Erakor kasem taem oli adult.
8. Witness Nancy i confirmem too long court se smol brother blong hem John Maklen mo Lisbeth Charley tufala i stap gat mared life problem inside long home blong tufala mo i causem separation blong tufala we i lukim Lisbeth Charley hemwan i decide blong ronwe fastaem mo kam settle long Vila mo continue blong move-on long life blong hem wetem ol niufala partners blong hem.
9. Witness Nancy i confirmem long court se name blong late papa blong hem nao hemi Tangier Kalotukor Kalopong.
10. Court i faenemaot se Witness Nancy hemi wan woman we hemi really committem hem long work blong hem long British Works long Vila mo i gat some important events we i stap happen inside Family Kalopong be hemi no present.
11. Court i faenemaot se Witness Nancy hemi no save long any statements (point 1, point 2 mo point 3) we i stap long "Admission Statement" we tufala claimants i faelem i kam long court.
12. Court i faenemaot se Witness Nancy Wayane Kalopong olsem elderly pikinini blong late Tangier Kalotukor Kalopong i confirmem long court ia se late papa blong olgeta Tangier Kalotukor Kalopong i talemaot finis long hem wetem ol narafala members blong family Kalopong se John Maklen Kalopong mo Asael Kalopong nao bae i lukaotem Family Kalopong from John Maklen i first bon pikinini boy inside long first mared mo Asael hemi first born pikinini boy inside long third mared be second mared i nogat any surviving pikinini.
13. Court i faenemaot se Witness Nancy Wayane Kalopong hemi talemaot truth inside long court se hem nao hemi "TAKLEP" blong late Tangier Kalotukor Kalopong wetem Litang blong *Epangtuei*, South Efate.

After we court ia i mekem olgeta findings blong hem long trifala parties, court ia hemi convinced bigwan mo hemi stap long wan gudfala position blong mekem decisions long trifala applications we i stap before long court ia.

### **ORDERS BLONG COURT**

1. Court i convince inaf mo declarem se John Maklen Wayane Kalopong hemi no "TAKLEP" blong Tangier Kalotukor Wayane Kalopong inside long first mared wetem woman ia Litang blong *Epangtuei* follem custom mo tradition blong Erakor, South Efate from we Nancy Wayane Kalopong nao hemi breakem womb blong mama Litang wetem Tangier Kalotukor.
2. Custom Ownership blong name ia "Tangier Kalotukor Kalopong" we tufala claimants i claimem i no save succeed from hemi no wan custom title or wan custom property, hemi wan given name blong





wan person mo every descendants blong man ia "Tangier Kalotukor Kalopong" oli gat right blong yusum name ia olsem wan name inside long family blong namem anywan inside long tribe ia.

3. Long nambatu application blong tufala claimants hemia blong declarem Samansen Kalopong olsem "first born son" mo Berry Kalopong olsem "stret pikinini" blong late John Maklen Wayane Kalopong, Application ia i no save succeed from Efate Island Court i no convinced inaf.
4. Court i declarem tufala claimants se tufala i no stret biological pikinini blong late John Maklen Kalopong blong Erakor Village, South Efate.
5. Long nambatri application blong tufala claimants, court i no save declarem mo no save grantem application ia se tufala i stret raetfull persons blong ownem custom name ia "Tangier Kalotukor Kalopong" from we tufala i no stret biological pikinini blong late John Maklen Kalopong blong Erakor Village, South Efate.
6. Court i orderem tufala claimants blong stop yusum name ia "Tangier Kalotukor Wayane Kalopong" from tufala claimants i no qualify olsem descendants blong name ia.
7. Follem Rule 8 blong Island Courts Civil Procedure Rule blong 2005, any party i gat right blong save appealim decision ia i go long Magistrate Court, mo appeal i mas tekemples bifo 30 days afta long decision ia.

**DATED at Port Vila this 2<sup>nd</sup> December, 2021.**

**BY THE COURT**



Justice S. PATON  
(Member)

Justice T. FELIX  
(Presiding Justice)



Justice T. KALANGIS  
(Member)