

IN THE TRADITIONAL RIGHTS COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

FILED

OCT 25 2017

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

HILMER ANMONTHA &
CHARLES T. DOMNICK,

Plaintiffs,

v.

HELLA JORBAL for NEITO
MELKAI

Defendants.

Civil Action No. 2002-307

OPINION and ANSWER

MEMBERS OF THE PANEL: Presiding Judge, Walter K. Elbon
Associate Judge, Nixon David
Associate Judge, Grace Leban

DATE AND LOCATION: Majuro Courthouse, February 22, 24 & 28th and May
18th, 2017

CLAIMS OF BOTH PARTIES: Parties argued before the TRC Panel regarding who is the proper person to hold and exercise the Dri Jerbal or Senior Dri Jerbal titles over Erlap weto in Laura, Majuro Atoll and also if in fact, there are two parts of Erlap weto, such as Erlap-iar (Lagoon side) and Loeio or Tulik Erlap (Ocean side)

QUESTIONS REFERRED TO THE TRC:

1. Who between Charles Domnick and Neito Melkai, is the proper person to hold the Senior Dri Jerbal title over Loeio on Erlap weto in Laura?
2. Who between Charles Domnick and Neito Melkai is the proper person to hold the Senior Dri Jerbal title for Erlap-iar (Lagoon side) weto, Laura?

Answer to question No. 1) **Neito Melkai holds the Dri Jerbal or Senior Dri Jerbal rights for Loeio, or Ocean side Erlap weto, Laura.**

Answer to question No. 2) **Charles T. Domnick holds the Dri Jerbal or Senior Dri Jerbal title for Lagoon side Erlap weto, Laura.**

FACTUAL FINDINGS UPON WHICH THE OPINION AND ANSWER IS BASED:

These are the questions in which the High Court had certified and referred to the TRC to answer and explain. During the trial, there were evidences and testimonies from each party. The defendants based their claim on their understanding that Erlap weto, due to a Jibakwe, changed to a Mworjinkot for the predecessors of Alap Lauto, and later on a Mon-kalotlot from Lauto to Neito Melkai, who is the Defendant in this case. During the hearing, as it appears on the evidence and documents in the case file, both parties asked the TRC Panel to consider the information presented in High Court Civil Action No. 1996-301. The Judgment in High Court Civil Action 1996-301, indicate that Elmer Anmontha was Alap on Erlap Wetu, Laura. In the same case, Civil Action 1996-301, Neito Melkai testified that she is the Senior Dri Jerbal on Loieo side, Erlap Wetu, and Charles Domnick also testified that he is the Senior Dri Jerbal on Erlap Wetu, Lagoon side, Laura.

APPLICABLE CUSTOMARY LAW AND TRADITIONAL PRACTICE:

JIBOKWE: A *Jibokwe* occurs when two Iroj's are fighting each other during a battle. The Iroj that loses the battle will be considered *Jibokwe*, along with those on his side. In the present days, these types of fighting are nonexistent. Today, in order to settle a dispute between two Iroj's, they will seek legal conclusion from the Courts and those who stood by and supported the Iroj who loses in Court will be considered *Jibokwe* along with the Iroj. (The Opinion in TRC/ High Court Civil Action 2007-057). The Judgment by the TRC Panel in High Court Civil Action No. 1996-301, the words *Jibokwe* or *Bwilok* are not mentioned in reference to the two wetos of Konan and Erlap, and also Kabilo and Batlon, because these two wetos are considered to be one, according to Civil Action No. 1996-301. In the High Court Judgment, it indicates that in the mid 1800's there was a battle between the two Jowi's, Jidrikdrik and Dri Luit. It states that Jidrikdrik lost the battle, and were forced to return to the islands of Namdrik, Mili, Arno and Maloelap. It also indicates that the descendants of Lauto stayed back in Majuro, but it does not explain why they stayed back in Majuro. Who are the descendants of Lauto, or the predecessors? The evidences and testimonies in High Court Civil Action No. 2010-177 indicate that the descendants of Lauto are Elmer Anmontha and Charles Domnick, and they are from the same Jowi and Bwij. If the *Jibokwe* had taken place, it would effect all of them.

MWORJINKOT: Both parties agree that these wetos were established by *Mworjinkot*. Iroj Jebdrik was the only proper person to have established a *Mworjinkot* in the 1800's, after the battle on Majuro between Iroj Kaiboke and Iroj Jebdrik. *Mworjinkot* on these wetos was given to those before Lauto. It is not clear if those before Lauto had given the rights over these lands, solely to Lauto. These circumstances make evident that the wetos have formed into a Mon Bwij when Lauto held the Alap right. Lanilobet who held the Alap rights after Lauto had recognized

Atirere, the father of Elmer, as his successor. Although the will should not have been produced in 1977, he would have been Alap regardless, after Lauto and Laninlobet according to the order of the bwij. Today, Elmer is Alap over these wetos as the Iroj and Leroij's before have recognized Elmer and Charles Domnick, the Dri Jerbal. (Plaintiff's Exhibits 3&4)

IMONKALOTLOT: Imonkalotlot applies when there are no surviving members of the bwij left. Both parties agree that Lauto adopted Likibin, Neito's mother, and also adopted Neito. Likibin and Neito, as adopted children of Lauto were considered as part of the family of Lauto and properly lived with Lauto and cared for him on behalf of the others in the bwij of Lauto.

There were wills presented as evidence by both parties. In Defendant Exhibit 1, Iroj Mo Jitiam said Lauto made his will orally, stating that Neito is Dri Jerbal on Erlap weto, but it did not indicate who was Alap. Iroj Mo Jitiam indicated that this was done under adoption and *Imonkalotlot*. As an adopted child, it was Neito's responsibility to care for and protect Lauto being that he was her father. Regarding *Imonkalotlot* Iroj Mo Jitiam knows the bwij has not gone extinct yet and as Iroj of Erlap weto, he should have notified the members of the bwij. Similar to the other wills, the members of the bwij should have been notified and agreed.

On behalf of Loeio, is it part of Erlap weto? Neito testified during the High Court trial Civil Action 1996-301 and testified that that she is the Senior Dri Jerbal for Erlap weto. Plaintiff Exhibit No. 1 and 2 shows a map of Laura Village and it indicates that Loeio is part of Erlap weto. The anthropologist Dr. Leonard Mason indicated that he drafted the map. Dr. Mason and those who assisted him could not have been able to obtain the information reflective on the map had they not gotten assistance from those residing in Laura Village and the owners of these wetos listed in the map. This proves that Loeio is part of Erlap weto. The current Iroj of Erlap weto, Leiroj Takbar Ishiguru, also agrees that Loeio is part of Erlap weto.

ANALYSIS:

Previous Iroj and Leiroij's and the current Leiroij recognized and still recognize Charles T. Domnick as the Senior Dri Jerbal on Erlap weto in Laura. Neito Melkai, as an adopted child, also has rights as a Dri Jerbal on Erlap weto, but cannot be a Senior Dri Jerbal. The Panel recognizes that there are two parts of Erlap weto, Erlap-iar (Erlap-lagoon side) and Loeio (Erlap-ocean side). Based on this fact, Neito can only hold Senior Dri Jerbal rights on Loeio on Erlap-lik (Erlap-ocean side) only and not the other parcels on Erlap weto. These are the answers to the questions given to the TRC Panel to answer. Neito Melkai is Senior Dri Jerbal on Loeio- ocean side, Erlap weto and Charles T. Domnick is Senior Dri Jerbal on Erlap- lagoon side, and the other parcels of land on Erlap weto besides Loeio on Erlap weto.

NAMES OF WITNESSES FOR PLAINTIFFS:

1. Sailass Melkai
2. Kalemén Jinuna
3. Hella Jorbal

NAMES OF WITNESSES FOR DEFENDANTS:

1. Hella Jorbal
2. Charles T. Domnick
3. Libon Lanwa
4. Jack Jorban
5. Leiroij Takbar Ishiguru

EVIDENCES ADMITTED:

1. P-1 Laura Village Map
2. P-2 Laura Village Map
3. P-3 Lease Erlap weto
4. P-4 Lease Erlap weto
5. P-5 Lease Erlap weto
6. P-6 Ownership of land, Majuro Atoll 1959
7. P-7 Statement of Claim damage
8. P-8 Statement of claim ownership
9. P-9 April 1958 meetings/ownership of weto's
10. P-10 Kojela, May 28, 1966\
11. P-10a Will
12. P-11 Genealogy Chart
13. P-11a Genealogy Chart
14. P-12 Photograph of houses on Erlap lagoon side
15. P-13 Photograph of houses on Erlap lagoon side
16. P-14 Transcript of CA No. 1996-301
17. P-15 Right of way agreement
18. P-16 Majuro Atoll land determination
19. P-17a Photograph view 130 ft from shoreline
20. P-17b Photograph view down side of school building to main road
21. P-17c Photograph view 330 ft from shoreline
22. P-17d Photograph view from main rd in direction of Lowio side Erlap weto
23. P-17e Photograph view from main rd looking indirection of Lowio side of Erlap weto
24. P-17f Photograph view of large breadfruit tree looking in direction of Lowio-side view
25. P-17g Photograph view 530 ft from shoreline looking at Erlap Lowio- side

26. P-17h Photograph 530 ft looking back towards main rd & shoreline
27. P-17i Photograph view looking at Erlap weto Lowio-side towards trail-split
28. P-17j Photograph view at trail-split at 715 ft from shoreline
29. P-17k Photograph view of Lowio-side jungle
30. P-17l Photograph view at 992 ft from shoreline
31. P-17m Photograph view 1192 ft from shoreline
32. P-17n Photograph view at 1307 ft from shoreline
33. P-17o Photograph view at 1307 ft Erlap Lowio-side looking back at shoreline
34. P-17p Photograph view at 1307 ft looking at Batlon weto ocean side
35. P-17q Photograph view from 1473 ft of Erlap Lowio-side
36. P-17 r Photograph view 1473 ft mark of heavily wooded area of Erlap
37. P-17s Photograph view at 1558 ft from shoreline
38. P-17t Photograph view 1558 ft mark
39. P-17u Photograph view at 1795 ft from shoreline
40. P-17 v Photograph view at 1795 ft mark on Erlap Lowio-side to shoreline
41. P-17w Photograph view of Batlon weto located ocean-side of Lowio part of Erlap
42. D-1 Kabin im koweppen lok kalimur an alab Lautto Jibaru
43. D-2 Officer ro an Bed eo an Jebdrik
44. D-3 Kalimur kin maron eo an Alab
45. D-4 Kalimur an Langilobet
46. D-5 TRC Summary of Case 1996-301 & High Court Judgment
47. D-6 Right of way agreement

OTHER MATTERS TRC PANEL BELIEVES SHOULD BE MENTIONED:

According to the testimony of Hella Jorbai, she indicated the boundaries of Erlap weto towards the ocean side. She indicated that from the main road, lagoon side, looking towards the ocean side, you will see a breadfruit which indicates the ending of Erlap weto's boundary! Mr. Strauss, counsel for plaintiff, indicated in his statements and evidences that Erlap weto from the lagoon side to Loeio- ocean side of Erlap weto, is 1,740 foot in length and the other side is 1,970 feet long. The boundary measurements presented to the TRC panel regarding Erlap weto were vague, as a result, the Panel has determined it best that the Iroij or Leiroij along with Charles T. Domnick and Hella Jorbai should make a concerted effort to determine the boundaries of Erlap weto which includes Loeio- ocean side.

Neito Melkai and Hella Jorbai and other members of the family, including the male head of the family, Silass Melkai, who is listed under Lauto as an adopted child, being that those before him did not oppose the arrangement, including the previous Iroij and Leiroij's.

Hence, the Panel deems appropriate the use of the store and the house, because they also have Dri Jerbal rights, but they must respect and recognize the Senior Dri Jerbal, Alap and Leiroij of Erlap weto, since Erlap Loeio ocean side is the only parcel of land in which Neito holds Senior Dri Jerbal rights over.

Dated: _____

Walter K. Elbon
Presiding Judge, TRC

Nixon David
Associate Judge, TRC

Grace Leban
Associate Judge, TRC