

FILED

AUG 29 2018

CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

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

EMILA ZEDHKEIA, on behalf of EMILE AINE)
)
Plaintiff,)
v.)
)
LISEN LEIT & KENNETH KEDI)
)
Defendants.)
)

CIVIL ACTION NO. 2014-229

**OPINION & ANSWER OF THE
TRADITIONAL RIGHTS COURT**

MEMBERS OF COURT PANEL: Presiding Judge Nixon David
Pro tem Judge Caios Lucky
Pro tem Judge Risi Graham

HEARING DATES: June 5,6,7,8,11,12,13,14,15,18,19,20 and July 20

PLACE OF HEARING: Majuro Courthouse

THE PARTIES' CONTENTIONS:

Plaintiff and Defendant both agree that Monlokklap weto in Ajeltake, Majuro Atoll is bwij land from Alap Litiria, mother of Plaintiff Emile Aine and Defendant Lisen Leit. From Litiria the rights went to her children. Litiria's children are Berta, Jumos, Emile, Lutrik, Lisen, and Romme. Plaintiff Emile claims that pursuant to Marshallese custom and the line of succession from her mother Alap Litiria she is the rightful person to hold both the alap and senior dri-jerbal rights on Monlokklap weto, in accordance to the order of succession and custom. Defendant Lisen Leit, claims that her mother, Alap Litiria, had set apart and bequeathed to her, and her children, Monlokklap weto, including the alap and senior dri-jerbal rights on Monlokklap weto.

THE QUESTION(S) REFERRED TO THE TRC PANEL FOR ANSWER(S):

1. Who as between Emile Aine and Lisen Leit is the proper person to hold and exercise the alap right?

The answer of the TRC Panel is – Lisen Leit.

2. Who as between Emile Aine and Lisen Leit is the proper person to hold and exercise the senior dri-jerbal right?

The answer of the TRC Panel is – Lisen Leit.

FACTUAL FINDINGS UPON WHICH THE OPINION IN ANSWER IS BASED:

At trial, based on the witnesses and the evidence admitted by the Plaintiff(s) and Defendant(s), in accordance with Marshallese custom and the genealogy chart of Litiria, Emile should have held and exercised the Alap and Senior Dri-Jerbal rights on Monloklap Weto, Ajeltake, Majuro Atoll.

Testimonial evidence by the defendants made it clear to the TRC Panel that Lisen Leit is the proper person to hold the Alap and Senior Dri-Jerbal rights on Monloklap Weto, Ajeltake, based on the testimony and evidence presented to the panel. As stated by Leroij Arleen Jacob in her testimony, she recognized that Emile Aini should have held and exercised the Alap and Senior Dri-Jerbal rights on Monloklap Weto. She also stated that if there were any prior agreements or wills made by the previous alaps to Lisen Leit, she will also recognize her as it is the custom. (Defendant Exhibit P).

Iroij Kelai Namna in his testimony also recognized Emile as the alap in accordance with custom because she is older and still living today. However, after understanding that Monloklap Weto in Ajeltake was bequeathed in a will by Alap Litiria to Lisen and her children, and the previous Irojjs agreed to it, he, in truth, said he does not have the power or authority today to revoke or change this pursuant to custom. Iroij Telnan Lanki and Iroij Alden Nemna did not oppose any of the arrangements made by Alap Litiria with respect to the transfer Monloklap to her daughter, Lisen Leit, and her children. Based on these facts, he stated that he will therefore recognize Lisen Leit as the Alap and Senior Dri-jerbal on Monloklap Weto in Ajeltake. (Defendant Exhibit 2S), (Defendant Exhibit 2P), (Defendant Exhibit 2J), (Defendant Exhibit 2Q), (Defendant Exhibit 2B).

According to Lutrik Smart's testimony, she stated that all the wills concerning Monloklap Weto has her younger sister, Lisen, as beneficiary, and that she was fully aware and understood this to be the case.

Frank Beinkotkot testified that he lived on the neighboring weto adjacent to the weto Lisen resides on (Monloklap Weto), and saw Lisen living on the weto from 1945 to date (2018). This confirms that Monloklap Weto in Ajeltake belongs to or is owned by Lisen.

APPLICABLE CUSTOMARY LAW AND TRADITIONAL PRACTICE:

Imon Aje and Will by an Alap, from Alap Litiria to Lisen Leit.

ANALYSIS:

Alap Litiria had six (6) children – Berta (f), Jumos (m), Emile (f), Lutrik (f), Lisen (f), and Ronny (m), as shown in Plaintiff Exhibit D. According to the evidence presented before the panel at the trial, it was clear that Alap Litiria held and exercised the Alap right/title on many lands. However, with respect to Monloklap Weto, Aejltake, Majuro, it was set aside from the rest and transferred to Lisen Leit and her children. This is a clear indication that Lisen Leit is the Alap and Senior Dri-Jerbal for Monloklap Weto pursuant to the agreement by the bwij and the Iroijs of Monloklap Weto.

PLAINTIFF’S WITNESSES:

1. Emila Zedhkeia
2. Jorelik Tibon
3. Marylynn Jacklick
4. Emile Aine
5. Zedhkeia Zedhkeia
6. Iroij Kelai Nemna
7. Biten Meloktokan

DEFENDANTS’ WITNESSES:

1. Melanie Enne
2. Disvey Riklong
3. Arleen Lailang
4. Aren Palik
5. Alfred Capelle
6. Lutrik Smart
7. Lisen Leit
8. Alap Beinkotkot

PLAINTIFF EXHIBITS:

1. Plaintiff Exhibit A – Genealogy Ending with Litiria
2. Plaintiff Exhibit B – Genealogy Starting with Litiria
3. Plaintiff Exhibit C – Land Determination
4. Plaintiff Exhibit D – Power of Attorney
5. Plaintiff Exhibit E – Death Certificate
6. Plaintiff Exhibit F – General Power of Attorney
7. Plaintiff Exhibit G – Deposition
8. Plaintiff Exhibit H – General Power of Attorney

9. Plaintiff Exhibit I – Letter by Emila Zed
10. Plaintiff Exhibit J – Land Lease Agreement
11. Plaintiff Exhibit K – Letter from Alden Nemna
12. Plaintiff Exhibit L – Affidavit Listing Emile as Alap and Dri-Jerbal
13. Plaintiff Exhibit L1 – Letter from Kelai Nemna
14. Plaintiff Exhibit M – Letter from Director
15. Plaintiff Exhibit N – Affidavit of Emile Aine
16. Plaintiff Exhibit O – TRC Opinion Civil Action 2012-228
17. Plaintiff Exhibit P – Affidavit of Lisen Leit
18. Plaintiff Exhibit Q – Judgment of Civil Action 2012-228
19. Plaintiff Exhibit R – Record of Hearing for Monloklap Weto
20. Plaintiff Exhibit S – Maron Kin Kappe (Delegation of Authority)
21. Plaintiff Exhibit T – Judicial Notice CA 2001-291 Order of Dismissal w/prejudice
22. Plaintiff Exhibit U – Letter dated 5/15/94
23. Plaintiff Exhibit V – CA 2012-228
24. Plaintiff Exhibit X – Affidavit, CA 1994-040
25. Plaintiff Exhibit Y – Letter of Jeltan Lanki & Leroij Kalora Zion
26. Plaintiff Exhibit Z – Ch-4 Notary Public in English
27. Plaintiff Exhibit Z1 – Notary Public Marshallese

DEFENDANTS' EXHIBITS:

1. Defendant Exhibit 2D – Memorandum
2. Defendant Exhibit 2A – Letter from Kenneth Kedi to Emila Zed
3. Defendant Exhibit 2G – Letter from Jeltan Lanki
4. Defendant Exhibit 2H – Lease Agreement
5. Defendant Exhibit 2I – Complaint, Civil Action 2005-101
6. Defendant Exhibit 2F – Bujen Kalimur Im Kamaron (Will & Authorization)
7. Defendant Exhibit F1 – Delegation of Authority
8. Defendant Exhibit 2F2 – Delegation of Authority
9. Defendant Exhibit 2J – March 24, 2000 Letter
10. Defendant Exhibit 2C – Ground Lease Agreement
11. Defendant Exhibit 2B – Notice/Announcement to General Public
12. Defendant Exhibit 2K – Emile's Letter
13. Defendant Exhibit 2L – Lobonju's Wetos
14. Defendant Exhibit 2M – Delegation of Authority, 11/10/16
15. Defendant Exhibit 2N – Genealogy, Litoria
16. Defendant Exhibit 2O – Marshall Islands Lands Report
17. Defendant Exhibit 2P – Litoria's Kalimur to Lisen
18. Defendant Exhibit 2F3 – Transcript of Recording

19. Defendant Exhibit 2Q – Will Feb. 10, 1980
20. Defendant Exhibit 2I1 – Civil Action 2005-101
21. Defendant Exhibit 2R – Binding Will by Mama Litiria Smart
22. Defendant Exhibit 2R1 – Explanation regarding Alap Emile Aini’s Will
23. Defendant Exhibit 2S – Non Kalikar Non Jabrewot Armij (Notice to All Persons)

OTHER MATTERS THE PANEL BELIEVES SHOULD BE MENTIONED:

These families are one according to the genealogy chart - all descendants of Alap Litiria. However, it was confirmed that there was a will by Alap Litiria bequeathing Monloklap Weto to Lisen and her children, and empowering her to hold and exercise the rights of Alap and Senior Dri-Jerbal rights on Monloklap Weto in Ajeltake, Majuro.

One issue that was argued repeatedly concerned legal documents, such as a power of attorney, its application and the extent of its authority especially in relation to the custom. According to expert witness Alfred Capelle, he stated that a power of attorney is a western concept and that it cannot be used to give away or change the order or line of succession on land, but can be used for other matters and personal property.

There was also discussion with respect to adoptions and how adoptions are also part of the custom, as evidenced by Lutrik’s adoption of Kenneth Kedi. Lutrik stated that after her son’s death, she adopted Kenneth Kedi as her own son, taking the place of her son who had passed. She also informed the panel that she had informed the bwij at her son’s burial that she was adopting Kenneth as if he were her own son who had passed away. This was agreed to by members of the bwij as well as the Iroijs who confirmed the adoption of Kenneth Kedi by Lutrik under custom.

Equally there were other important issues also raised during the case trial however, the panel will not address them as they are not related to the questions referred to the panel to answer.

It is evident to the panel that plaintiff and defendant are from the same family, descendants of the bwij of Alap Litiria, and that they have to live together in peace and protect and care for each other as the custom dictates.

Dated: 8/8/18

/s/ Nixon David
Presiding Judge, TRC

/s/ Caious Lucky
Pro Tem Judge, TRC

/s/ Risi Graham
Pro Tem Judge, TRC