Supreme Court 2017-05

IN THE SUPREME COURT
REPULIC OF THE MARSHALL ISLANDS

JERAKOJ J. BEJANG, AUN JAMES; and
HERING DREBON, GEORGE INOK
Defendants/Counterclaimants-Appellants

v.

BERNIE HITTO and HANDY EMIL,
Plaintiffs-Appellees,

On appeal from the High Court
H.Ct. CA 21-80 and 1986-149 (Consolidated)
Hon. Colin R. Winchester, Justice

OPENING BRIEF OF APPELLANT

FILED
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REPUBLIC OF THE MARSHALL ISLANDS

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11 FEBRUARY 2019

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JURISDICTION

This Court has subject matter jurisdiction pursuant to Article VI, Section 2 of the Constitution of the Marshall Islands and the Civil Procedure Act, 20 MIRC § 207.

This appeal of the High Court's 23 October 2017 Order Denying Defendants/Counterclaimants' Motion for Post-Judgment Interest (the "Interest Order"), APPENDIX 1, pages 3-6, and is timely pursuant to Supreme Court Rule 3 and Supreme Court Rule 4. Appellants filed a Notice of Appeal with the High Court on 21 November 2017, APPENDIX 1, pages 1-2.

STATEMENT OF THE CASE

Thirty-seven years ago, Plaintiffs brought suit claiming an interest in three wetos on Bigej Island, Kwajalein Atoll. In the 22 May 2015 Judgment of the High Court they lost two of the three claims, to wit, they lost ***all*** their claims to Monke and Lojonen weto to the Bejang family and the Jebrejrej family respectively. They only won one of their three claims, i.e. their claim to Aiboj, against other, separate defendants. On 28 July 2017, the Supreme Court upheld the High Court judgment without modification and no motions for reconsideration were filed.

A number of post-appeal motions were heard in the High Court on 9 October 2017 by Justice Colin R. Winchester. He issued a number of orders on 23 October 2017 resolving those motions. This appeal is from the Interest Order.

POINTS ON WHICH APPELLANT RELIES

The following is a concise statement of the points on which Appellant intends to rely:

1. The High Court erred by concluding that Justice Tuttle's Judgment was not a judgment for money but merely a judgment as to customary land titles. The money follows the land in the Marshall Islands and determining the land rights automatically determined who was entitled to the money on 22 May 2015 thus making it a money judgment.

Further, the judgment explicitly stated "Funds being held in trust in that account may be distributed according to the judgment above, subject to a thirty-one day stay." JUDGMENT, p.37

STANDARD OF REVIEW

This appeal is a matter of law and is reviewed *de novo*.

There are no disputed facts. The appeal is to the interpretation of the Post-Judgment Interest statute, 30 MIRC § 102.

Beginning in 1991 with *Lobo v. Jejo*, 1 MILR (Rev.) 224, 225 this court has held matters of law are reviewed *de novo*. This standard is unquestioned and continues through numerous cases, the most recent being *Dribo v. Bondrik*, et al, 3 MIR 127, 135 (2010). Purely or predominately legal issues are reviewed *de novo*.

De novo review means "no form of appellate deference is acceptable," *Salve Regina Coll. V. Russell*, 499 U.S. 225, 238 (1991).

QUESTIONS PRESENTED

The following is a concise statement of the questions presented in this appeal:

1) Whether the 22 May 2015 Judgment of the High Court in this matter (Justice Tuttle presiding) was a "judgment for payment of money" in terms of 30 MIRC § 102;

2) Whether the calculation of the money owed to each prevailing landowner was purely 'ministerial in nature'; and

3) Whether the purely ministerial nature of calculation of the money owed for the wetos was not reflected by the action of the High Court's in its 23 October 2017 Order Partially Lifting Preliminary Injunction and Approving Partial Distribution of Trust Funds (the "Distribution Order"), APPENDIX 2, which summarily divided the funds into equal shares for the three wetos in question.

ARGUMENT

I. The 22 May 2015 Judgment was a 'judgment for payment of money"

A. Marshall Islands law requires post-judgment interest

Marshall Islands law, since the time of the Trust Territory Code in 1966, has provided for post judgment interest. To wit:

> "Every judgment for the payment of money **shall** bear interest at the rate of nine percent (9%) a year from the date it is entered."
>
> [boldface added] 30 MIRC §102.

The word 'shall' is a command making the payment of post-judgment interest mandatory. This interpretation is consistent with U.S. federal practice where the corresponding statute, 28 U.S.C. §1961(a) provides that post-judgment interest at the federal statutory rate "shall be allowed on any money judgment in a civil case recovered in a district court." Once a judgment is obtained, post-judgment "interest is mandatory without regard to the elements of with the

judgment is composed." *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 290 (9th Cir. 1995);

The purpose of awarding interest to a party recovering a money judgment is to compensate the wronged person for being deprived of the monetary value of the loss, *Air Separation* at 290.

B. The Money follows the Land and the Judgment is a Money Judgment

Bikej Island is in the Mid-Atoll Corridor. The landowners were dispossessed of that land so that the Government of the Republic of the Marshall Islands (RMI) could provide it to the United Status under the Military Use and Operating Rights Agreement (MUORA). The landowners were provided payments under a Land Use Agreement (LUA). The landowners were told by the RMI that they either had to accept the LUA or face having their land seized by eminent demand.

In any event, the purpose of the payments under the LUA was to compensate the landowners for the loss of use of their land, the land from which they derived their very sustenance. Thus, the rent from the land can be considered similar to crops (or timber or minerals) severed from a piece of land. Those severed items, in this case the rent payments, belong to the landowners.

C. The High Court erred in following less applicable U.S. cases

The High Court cited three U.S. cases in the Interest Order: *Welch v. Welch*, 519 N.W. 2d 262, 274 (NE 1994), *Fry v. Fry*, 775 N.W.2d 438, 443 (NE 2009), and *J.M. Robinson-Norton Co. v. Coriscana Cotton Factory*, 31 Ky.L.Rptr. 527 (Ky.Ct.App. 1907).

Welch involved a divorce decree and while noting the general Nebraska statute that "[J]udgment interest shall accrue on decrees and judgments for the payment of money from the

date of rendition of judgment until satisfaction of judgment" declined to follow that based on an analysis when the payment of money was immediately due, *Welch* at 274. In *Fry* at 443, the Court discussed the confused state of Nebraska law, noted that the Nebraska Supreme Court appeared to change course in *Killbom v. Killbom*, 215 Neb.148. 337 N.W. 2d 731 (1983). Citing *Killbom*, the Court of Appeals said, "... the majority then determined that interest on any unpaid balance of $37,566.75 shall accrue from the date of the divorce decree, 'which shall was when the [d]istrict [c]ourt should have assigned to appellant her share of appellee's pension and profit sharing trusts." [citation omitted]

D. There are more applicable U.S. cases involving Land and Proceeds

Owing to the federal nature of the United States cases involving land will be State law cases or federal cases applying State law. The issue before the court was Plaintiffs claim to be the alab and dri jerbal of Lojonen and Monke wetos notwithstanding the determinations of the Trust Territory and the Iroijlaplap. In U.S. terms it might be considered an action to quiet title. Certainly, the Counterclaims were to 'quiet' title.

In *McGriff v McGill*, 62 So.2d 28, 29 (1952) (Supreme Court of Florida), the plaintiff sought not only to quiet his title but also a judgment for rents, income and profits. The court held that a court of equity, after lawfully taking jurisdiction over the parties and subject matter of a controversy, will make a full disposition of all issues involved in the controversy between the parties including the award of money damages, in order to avoid multiplicity of suits, *McGriff* at 30.

In *Kuapuhi v. Pa*, 31 Haw. 623 (1930), the Supreme Court of the Territory of Hawaii in an action to quiet title to land, held that a judgment of costs is a money judgment.

The Iowa Supreme Court case of *Moser v. Thorp Sales Corp.*, 334 N.W.2d 715 (1983) is most directly on point. It involved funds being held by the Clerk of Court pending resolution of the underlying land issues. The Iowa Supreme Court found:

> The trial court's determination that the Mosers were entitled to those principal amounts from the Fund were the equivalent of money judgments in Mosers' favor, and the trial court properly determined that those amounts should bear interest at the rate applicable to judgment rather than an enhanced rate of interest.

Moser at 719.

II. The calculation of the money owed to each landowner was "ministerial in nature"

A. A Judgment as to "Funds" is a Money Judgment

Similar to *Fry* court's dicta at 443, it might have been preferable if Justice Tuttle had been more explicit in her judgment. What she did was clear. She set aside the preliminary injunction and ordered "Funds being held in trust in that account may be distributed according to the judgment above, subject to a thirty-one day stay." JUDGMENT, p. 37.

This is a judgment about "funds." Black's Law Dictionary, 5th Ed. 1979, page 606, defines "fund":

> A generic term and all-embracing as compared to the term "money," etc. which is specific. A sum of money or other liquid assets set apart for a specific purpose, or available for the payment of debts or claims.
>
> In the plural [funds], this word has a variety of slightly different meanings, as follows: money and much more, such a notes, bills, checks, drafts, stock and bonds, and in broader meaning my include property of every kind.

Thus, the specific term 'money' is included in the more general term 'funds" and the judgment is a money judgment. While the judgment did not name a specific amount, it did refer to the 'judgment above" which stated who held which of the six land interests in question on the

three wetos. Absent a specific allocation among these interests one may assume that they are equal, which is consistent with the testimony in front of the TRC.

III. Funds were divided into Equal shares, confirming the certainty of the amount due

In his 23 October 2017 Distribution Order, Justice Winchester found:

"7. Each of the wetos is entitled to one-third of the balance." He noted in footnote 2, "Counsel agree that the three wetos are approximately the same size, and that the distribution of the funds in equal thirds is appropriate."

IV. Equity as well as Law requires the payment of Post-Judgment Interest

A. By appealing Plaintiffs voluntarily exposed themselves to post-judgment interest

One may search the entire earlier Supreme Court opinion in this matter, S.Ct. 2015-04, and not find a single favorable word about Plaintiffs' appeal as to Monke and Lojonen wetos. Why Plaintiffs chose to appeal -- especially since they did not raise a single appealable, *legal* issue -- is unknown. Perhaps they thought they had 'nothing to lose' by rolling the dice once more. If they lost, there was no risk as they had already lost and they would not lose anything more. But, on the other hand, if they won, they would win big, i.e. more than $1.1 million.

Plaintiffs, however, do have something to lose: they must pay the two years of post-judgment interest that has accrued. The Monke and Lojonen landowners have been deprived of their money for those years. Plaintiffs, through their lawyer, are imputed to know Marshall Islands law, specifically here, the statute on post-judgment interest.

As discussed in the *Air Separation* case, costs of the loss of the use of a money judgment should not be borne by the injured [party] but the "[party] whose initial wrongful conduct invoked the judicial process and who has the use of the money judgment throughout the period of the delay." Failure to award post judgment interest would create an incentive for [parties] to

exploit the time value of money by frivolously appealing or other delaying payment, *Air Separation* at 290. This is exactly what Plaintiffs did with their frivolous appeal.

Money has time value, the only way to make a party whole is to award interest from the time the party should have received the money, *Air Separation* at 290. The judgment in this case was entered on 22 May 2015, that is when the Monke and Lojonen landowners became entitled to their money, and post-judgment interest accrues from that date.

B. By law, the Lojonen and Monke landowners are owed Post Judgment interest

As noted above, the post-judgment interest statue uses the word 'shall" which is a command.

Black's Law Dictionary, 5th Ed. 1979, page 1233, defines "shall":

> As used in statutes, contracts, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and it its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory. It has invariable significance of excluding the idea of discretion.

C. The amount of post-judgment interest should be remanded to the High Court for calculation

Although not incorporated in its 28 July 2017 opinion in the S.Ct. 2015-04, the Supreme Court enquired about Appellants claim to Post-Judgment Interest at oral argument. There is no official transcript of the oral argument but in Appellant's 18 September 2017 High Court Reply to Plaintiffs' Opposition to Defendant-Counterclaimants claim, Appellants included an unofficial transcript of that portion of the oral argument before the Supreme Court. The accuracy of that unofficial transcript was not disputed by Plaintiffs in the High Court.

Justice Seabright: There was a filing this morning which I didn't pay close attention to. About interest.

Mr. McCaffrey: Well, yes, Your Honor.

Justice Seabright : I am just trying to figure out different options as to where we go. Are you asking this court to sort of take out a calculator or would it be remanded to the High Court for consideration, for a final accounting, regardless of how we rule?

Mr. McCaffrey : Yes, Your Honor, I think probably interest is allowable under Rule 37 but I think it would be included in your mandate to the High Court. And, I have done sample calculations for you, you know, that is in the filing.

The practice in federal courts, as shown in *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288 (9th Cir. 1995), is for the trial court to be the court to first address any disputes regarding post-judgment interest. Thus, this calculation should be remanded to the High Court with instructions.

CONCLUSION

Defendants/Counterclaimants-Appellants respectfully request that:

1) the Order of High Court denying post-judgment interest be vacated and that post-judgment interest be awarded to Appellants;

2) Interest from the date of judgment (22 May 2015) to date of disbursement (30 November 2017) be allowed pursuant to Supreme Court Rule 37 to be calculated based on two-thirds of the total payments held by the Clerk of Courts for these three wetos on date of judgment;

3) Interest be allowed on the unpaid interest since the date of fund disbursement, i.e. 30 November 2017 to date; and

4) This matter be remanded to the High Court with instructions for the calculation of such amounts.

Respectfully submitted,

Digitally signed by James McCaffrey
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James McCaffrey
Attorney for Def./Counterclaimants-Appellants

STATEMENT OF RELATED CASE

Plaintiff's appeal to the substance of the judgment against them at to Monke and Lojonen wetos was previously heard by this Court in Supreme Court 2015-04.

There are various actions proceedings in the High Court between and among members of the Plaintiff's family none of which directly affect this appeal and should not be deemed related under Supreme Court Rule 28(11).

APPENDIX

High Court Orders of 23 October 2017:

1. Order Denying Defendants/Counterclaimants' Motion for Post-Judgment Interest.

2. Order Partially Lifting Preliminary Injunction and Approving Partial Distribution of Trust Funds

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REPUBLIC OF THE MARSHALL ISLANDS

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Attorney for Defendants/Counterclaimants
JERAKOJ J. BEJANG, AUN JAMES (Monke weto)
HERING DREBON, and GEORGE INOK (Lojonen weto)[1]

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

JERAKOJ J. BEJANG, AUN JAMES
HERING DREBON, and GEORGE INOK

Defendants/Counterclaimants-Appellants

vs.

BERNIE HITTO and HANDY EMIL,

Plaintiffs-Appellees

Civil Actions No. 21-80 and 1986-149
(Consolidated)

NOTICE OF APPEAL TO THE SUPREME COURT UNDER RULES 3 AND 4 OF THE MARSHALL ISLANDS SUPREME COURT RULES OF PROCEDURE;

ATTACHMENT:
23 OCTOBER 2017 "ORDER DENYING DEFENANDT/COUNTERCLAIMANTS MOTION FOR POST-JUDGMENT INTEREST"; and

CERTIFICATE OF SERVICE

[1] The names of Defendants/Counterclaimants are updated as a result of the High Court's 23 October 2017 Order Allowing Substitution of Jerakoj J. Bejang, Hering Drebon and George Inok.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Jerakoj J. Bejang, Aun James, Hering Drebon, and George Inok ("Appellants"), Defendants/Counterclaimants in the above-named case, hereby appeal to the Supreme Court of the Republic of the Marshall Islands from one—and only one—of the orders of the High Court entered in this action on 23 October 2017, to wit "Order Denying Defendant/Counterclaimants Motion for Post-Judgment Interest," a copy of which is attached to this notice.

The following is concise statement of the questions present by this appeal:

1) Whether the 22 May 2015 Judgment of the High Court in this matter (Justice Tuttle presiding) was a "judgment for payment of money" in terms of 30 MIRC § 102;

2) Whether the calculation of the money owed to each prevailing landowner was purely 'ministerial in nature'; and

3) Whether the purely ministerial nature of calculation of the money owed for the wetos was not reflected by the action of the High Court's in its 23 October 2017 "Order Partially Lifting Preliminary Injunction and Approving Partial Distribution of Trust Funds" which summarily divided the funds into equal shares for the three wetos in question.

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Dated: 21 November 2017
Baja California

James McCaffrey
Attorney for Defendants/Counterclaimants

FILED
OCT 23 2017
ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

BERNIE HITTO and HANDY EMIL, Plaintiffs, v. RAEIN TOKA and NANCY CALEB (aka NANCY PIAMON) on behalf of BILLY PIAMON, Defendants, v. ALDEN BEJANG, AUN JAMES, AMON JEBREJREJ and CALORINA KINERE, Defendants/Counterclaimants.	CIVIL ACTIONS 21-80 and 1986-149 **ORDER DENYING DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR POST-JUDGMENT INTEREST**

Scott Stege, counsel for plaintiffs and counsel for defendant in Case No. 2003-059
James McCaffrey, counsel for defendants/counterclaimants
Roy Chikamoto, counsel for proposed intervenors
Rosalie Konou, counsel for proposed intervenors
Witten Philippo, counsel for proposed plaintiffs in Case No. 2003-059

On May 22, 2015, Associate Justice Dinsmore Tuttle ("Judge Tuttle") issued a judgment in this matter. The judgment determined the alap and senior dri jerbal interest holders on Aibwij, Monke and Lojonen wetos. It also lifted a long-standing preliminary injunction and directed that the funds held in the Bank of Guam trust account be distributed.

Judge Tuttle's judgment was affirmed by the Supreme Court on July 28, 2017. Defendant/Counterclaimants ("DCs") were and are the prevailing parties as to Monke and Lojonen wetos.

On August 24, 2017, DCs filed a motion asking the Court to award them post-judgment interest from May 22, 2015. Plaintiffs opposed the motion. Oral arguments were heard on October 9, 2017.

Awards of post-judgment interest are governed by 30 MIRC §102, which states, "A judgment for the payment of money . . . shall bear interest at the rate of nine percent (9%) a year from the date it is filed." The award of post-judgment interest is statutorily mandated if the judgment is a "judgment for the payment of money."

DCs argue that Judge Tuttle's judgment is a judgment for the payment of money. They primarily rely on *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288 (9th Cir. 1995). In that case, the trial court awarded the plaintiff a judgment in the amount of $184,000 plus costs and pre-judgment interest. Defendants appealed but were unsuccessful. Plaintiff then asked the trial court to award post-judgment interest on the previously awarded pre-judgment interest. The trial court refused. On appeal, the Ninth Circuit reversed. Because the trial court judgment was a judgment for the payment of money, the *Air Separation* opinion is not particularly helpful here.

Although plaintiffs fail to support their opposition with pertinent caselaw, they do state what seems obvious – a money judgment is a decree in which one person is judicially determined to owe money to another person. Judge Tuttle's judgment does not do that.

The Nebraska Supreme Court, in *Welch v. Welch*, 519 N.W.2d 262, 274 (NE 1994), defines a judgment for the payment of money as "one which is immediately due and collectible where its nonpayment is a breach of duty on a judgment debtor." See also *Fry v. Fry*, 775 N.W.2d 438, 443 (NE 2009). Judge Tuttle's judgment does not require plaintiffs to pay anything to anyone, and consequently, their failure to do so would not be a breach of their duty.

DCs argue that the portion of Judge Tuttle's judgment that orders the distribution of funds from the Bank of Guam trust account is a judgment for the payment of money. In *J.M. Robinson-Norton Co. v. Corsicana Cotton Factory*, 31 Ky.L.Rptr. 527 (Ky. Ct. App. 1907), the Kentucky Court of Appeals held that the trial court judgment was a judgment for the payment of money, but then distinguished a judgment directing the distribution of money held in a court fund, stating, "An order for the distribution of a fund in court is not an order for the payment of money by the appellant. * * * So such orders have been held not [to be] judgments for the payment of money."

Judge Tuttle's judgment is a judgment determining customary land titles. It is not a judgment for the payment of money.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

1. DCs' motion for post-judgment interest is denied.

DATED this 23rd day of October, 2017.

BY THE COURT:

Colin Winchester

COLIN R. WINCHESTER
Associate Justice

Civil Actions No. **21-80** and **1986-149** (Consolidated) [Bigej]

METHOD OF FILING

The foregoing

NOTICE OF APPEAL TO THE SUPREME COURT UNDER RULES 3 AND 4 OF THE MARSHALL ISLANDS SUPREME COURT RULES OF PROCEDURE;

ATTACHMENT:
23 OCTOBER 2017 "ORDER DENYING DEFENANDT/COUNTERCLAIMANTS MOTION FOR POST-JUDGMENT INTEREST"

will be filed with the High Court

Clerk of Courts – High Court
P.O. Box 378
Majuro, MH 96960

CERTIFICATE OF SERVICE

I hereby certify that an exact duplicate of the document(s) filed above was duly served upon the below-named person(s) on the date below written by sending him a copy by

(x) by Email to the address listed opposite his name

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Dated: 21 November 2017
Baja California

By: /s/ *James McCaffrey*
James McCaffrey
Attorney for MONKE and LOJONEN Defendants

FILED

OCT 23 2017

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

BERNIE HITTO and HANDY EMIL, Plaintiffs, v. RAEIN TOKA and NANCY CALEB (aka NANCY PIAMON) on behalf of BILLY PIAMON, Defendants, v. ALDEN BEJANG, AUN JAMES, AMON JEBREJREJ and CALORINA KINERE, Defendants/Counterclaimants.	CIVIL ACTIONS 21-80 and 1986-149 **ORDER PARTIALLY LIFTING PRELIMINARY INJUNCTION AND APPROVING PARTIAL DISTRIBUTION OF TRUST FUNDS**

Scott Stege, counsel for plaintiffs and counsel for defendant in Case No. 2003-059
James McCaffrey, counsel for defendants/counterclaimants
Roy Chikamoto, counsel for proposed intervenors
Rosalie Konou, counsel for proposed intervenors
Witten Philippo, counsel for proposed plaintiffs in Case No. 2003-059
Filimon Manoni, RMI Attorney General
Maybelline Bing, Secretary, Ministry of Finance, Banking and Postal Services
Ingrid K. Kabua, Clerk of the Court

On May 22, 2015, Associate Justice Dinsmore Tuttle ("Judge Tuttle") issued a judgment in this matter. Judge Tuttle's judgment refers to two preliminary injunctions.[1] The first was purportedly issued by the Trust Territory High Court in November 1981, and the second was purportedly issued by the RMI High Court in October 1985. According to Judge Tuttle, the preliminary injunctions enjoined defendants from receiving or disbursing the alab and dri jerbal payments for Aibwij, Monke and Lojonen wetos.

Judge Tuttle's judgment was affirmed by the Supreme Court on July 28, 2017. Oral arguments on several post-judgment motions were heard on September 28, 2017, and October 9, 2017. In the weeks leading up to the oral arguments and beyond, counsel diligently sought information about the nearly $1.9 million currently held in a Bank of Guam trust account known as the "ALM Bikej" trust account.. Based on the evidence presented by counsel and their agreements, I now enter the following:

FINDINGS OF FACT

1. The money that should have been held in trust from November 1981 through October 1985 has not been located.

2. From October 1985 through the present, quarterly payments for the alap shares and senior dri jerbal shares for Aibwij, Monke and Lojonen wetos have been deposited into the ALM Bikej trust account.

3. The entire balance of the ALM Bikej trust account was withdrawn in 2002 and was about to be distributed according to Judge Johnson's judgment. When the judgment was appealed, the entire amount was re-deposited.

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[1] Judge Tuttle judgment at p. 4.

4. Other than as stated in paragraph 3, no withdrawals have occurred.

5. Interest has been regularly added to the ALM Bikej trust account.

6. As of July 2017, the amount in the ALM Bikej trust account was approximately $1,899,500.

7. Each of the wetos is entitled to one-third of the balance.[2]

8. In separate orders issued this day, I have awarded $1,883.45 from the Aibwij weto portion to attorney James McCaffrey for costs, and approximately $54,000 from the Aibwij weto portion to attorney Scott Stege for attorney's fees.

9. High Court Case Nos. 2003-059 and 2017-226 justify the continued holding of the balance of the Aibwij portion of the trust funds pending resolution of those two cases.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

1. In the absence of an intervening court order, on November 30, 2017, the Clerk of the Court is authorized and directed to withdraw an amount equal to two-thirds of the ALM Bikej account balance and pay the same to attorney James McCaffrey's trust account for equitable and appropriate distribution to his past and/or present clients and payment of his attorney's fees.

2. In the absence of an intervening court order, on November 30, 2017, the Clerk of the Court is authorized and directed to withdraw the approximate amount of $54,000[3] from the remaining balance and pay the same to attorney Scott Stege as attorney's fees.

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[2] Counsel agree that the three wetos are approximately the same size, and that the distribution of the funds in equal thirds is appropriate.

[3] The exact amount will be determined by the Court on November 30, 2017.

3. In the absence of an intervening court order, on November 30, 2017, the Clerk of the Court is authorized and directed to withdraw the amount of $1,883.45 from the remaining balance and pay the same to attorney James McCaffrey for reimbursement of his costs.

4. Pending further order of the Court, the remaining balance of the ALM Bikej trust funds shall continue to be held in the ALM Bikej trust account at the Bank of Guam.

5. Effective November 30, 2017, the Ministry of Finance, Banking and Postal Services shall: (a) pay the alap share for Monke weto directly to Jerakoj J. Bejang; (b) pay the senior dri jerbal share for Monke weto directly to Aun James; (c) pay the alap share for Lojonen weto directly to Hering Drebon; (d) pay the senior dri jerbal share for Lojonen weto directly to George Inok; and (e) continue to deposit the alap and senior dri jerbal shares for Aibwij weto in the ALM Bikej trust account at the Bank of Guam pending further order of this Court.

6. If and when the money that should have been held in trust from 1981 through 1985 is located, the Court will enter an additional order to address the distribution of that money.

DATED this 23rd day of October, 2017.

BY THE COURT:

Colin Winchester

COLIN R. WINCHESTER
Associate Justice

CERTIFICATE OF SERVICE

I hereby certify that an exact duplicate of this document was duly served upon the below-named person(s) on the date below written by sending him a copy by

(**x**) by Email to the address listed opposite his name

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Attorney for Plaintiffs
scottstege@gmail.com

Dated: 11 February 2019
RMI Date

By: /s/ *James McCaffrey*
James McCaffrey
Attorney for Appellants