

MAY 27 2016

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

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

HELENA MYZOE (Deceased), et al.,)
)
 PLAINTIFF(S),)
)
 VS.)
)
 AELON KEMMAN, LLC and)
 JAMES McCAFFREY,)
)
 DEFENDANTS,)
)
 VS.)
)
 HARRY UENO,)
)
 DEFENDANT-INTERVENOR,)
)
 VS.)
)
 ESTATE OF CHARLES MULLER,)
)
 DEFENDANT(S))

CIVIL ACTION NO. 2011-019

OPINION AND ANSWER OF THE TRADITIONAL
RIGHTS COURT

MEMBERS OF THE TRC PANEL:

WALTER K. ELBON, PRESIDING JUDGE

NIXON DAVID, JUDGE

GRACE LEBAN, JUDGE

DATE OF HEARING(S): January 19, 20, 22, & 25, 2016

PLACE OF HEARING(S): Majuro Courthouse

THE QUESTIONS PUT BEFORE THE PANEL OF THE TRC FOR ANSWER ARE:

1. Who was the proper person to hold the Alap title on Kemman Island during the time when the lease was signed?
2. Who was the proper person to hold the Senior DriJerbal title for Kemman Island during the signing of the lease?
3. Is Kemman Island a bwij land?

4. Can an Alap lose his/her land titles because of aging and senility?
5. Can a bwij land be given away without the consent of the whole bwij?
6. Can an adopted child inherit land rights when members of the bwij are still alive?

ANSWER TO QUESTIONS:

1. Helena Myzoe.
2. Lawrence Kumtak.
3. Kemman is a bwij land.
4. No.
5. It cannot be.
6. Yes.

ISSUE(S) IN THIS CASE:

The Complaint in this matter was filed on February 1, 2011. The Plaintiffs whose names are shown in the case's caption, disagree with the land lease which was signed on February 1, 2009. The land lease was made between Aelon in Kemman, L.L.C. and James McCaffrey, as Lessee, and the landowners, Harry Ueno, the Irojedrik, and Charles Muller, Alap and Senior Dri-Jerbal. Exhibits and testimony were presented before the TRC Panel. Plaintiff Exhibit 1, is the menmenbwij of the Plaintiffs. No one disputed it, and it shows that Kemman Island is a bwij land. In answer to Question No. 3, Is Kemman Island a bwij land, the TRC panel's answer is yes, as shown above. On the table labeled as 1.3 on the menmenbwij of the Plaintiffs, it shows that Helena Myzoe is older than Charles Muller, and it is rightful and proper under Marshallese custom that she is the Alap during the signing of the land lease, and not Charles Muller. Helena Myzoe is the answer to Question No. 1 as shown above. Lawrence Kumtak, shown again on table 1.3 of the menmenbwij of the Plaintiffs, is the eldest child of Kumtak, younger brother of Bera. Therefore, it is right and proper, under Marshallese custom, for him to be the Senior Dri-Jerbal for Kemman Island during the signing of the lease, and not Charles Muller. Under Marshallese custom, an Alap shall hold his/her title until they pass away. This is the answer to Question No. 4. They do not lose the Alap title because they become old or senile. A bwij land cannot be given away without the consent of the bwij either in writing, or by agreement made amongst the members of the bwij. This is the answer to question no. 5, that if there is no permission from the bwij, then a land cannot be given away. Under Marshallese custom, an adopted child can have rights on lands own by the adoptive parents. They may inherit the titles of Alap and Senior Dri-Jerbal if the members of the bwij allow it or do not oppose. This is the answer to question no. 6, yes it can happen.

As it was disclosed that Kemman Island is a bwij land, all members of the bwij have rights on the land. This matter was filed because Plaintiffs do not agree with Charles Muller, as shown on Plaintiff Exhibit 4. Charles Muller is only a man-maroron and not the Alap since he is younger than Helena Myazoe. Lawrence is the Senior Drijerbal as indicated on the menmenbwij of the Plaintiffs. He signed as the Senior Drijerbal for other wetos of the bwij and there were no challenges, Plaintiff Exhibit 6 & 7. Plaintiff Exhibit 8 also indicates that Helena Myazoe is the Alap, and that she had authorized or given the power to Charles Muller to speak and make amendments on the lease of Terren Weto, Delap, in the year 2009 only.

There is information in this case and also in the testimony that women cannot hold the title of an Alap. In this matter, Charles Muller did not inform his elder sister, Helena Myazoe and other family members about the giving away, or doing a lease for Kemman Island. Charles Muller can only take the title of a man-maroron if his elder sisters within the bwij agree to it. The eldest woman in the bwij is the Alap. The TRC Panel who heard the case agrees on the Judgement of the TRC in High Court Civil Action Case No. 2003-214, Julie Lokboj vs. Lane Rowa.

NAME(S) OF WITNESSES FOR PLAINTIFF:

1. Phillip Muller
2. Vincent Muller
3. Anthony Muller

NAME(S) OF WITNESSES FOR DEFENDANT:

1. Harry Ueno
2. James McCaffrey

IMPORTANT ITEMS AND TANGIBLE AND DOCUMENTARY EVIDENCE RECEIVED:

1. Plaintiff Exhibit 1 – Menmenbwij
2. Plaintiff Exhibit 2 – Land Lease, Kemman Island
3. Plaintiff Exhibit 3 – Email of Phillip Muller and James McCaffrey
4. Plaintiff Exhibit 4 – Ground Lease
5. Plaintiff Exhibit 5 – Medical Summary for Helena Myazoe
6. Plaintiff Exhibit 6 – Land Lease for Terren Weto
7. Plaintiff Exhibit 7 – Land Lease for Terren Weto

8. Plaintiff Exhibit 8 – Jane’s Corporation
9. Plaintiff Exhibit 9 – An Announcement
10. Plaintiff Exhibit 10 – Notice
11. Plaintiff Exhibit 11 – Letter to Milton Zackios
12. Plaintiff Exhibit 12 – Letter In English
13. Plaintiff Exhibit 13 – Tony Muller Deposition 6&7
14. Plaintiff Exhibit 14 – Tony Muller Deposition 11
15. Plaintiff Exhibit 15 – Permission for Land Survey
16. DK1 – Deposition page 20&21
17. DK2 – Deposition page 6
18. DK4 – Certificate of Approval
19. DK6 – Etan Weto kab Ene
20. DK7 – Declaration of James McCaffrey, Exhibit A-J
21. DK8 – Requesting Document of Land Survey
22. DK9 – Mail to Charles Muller

OTHER MATTERS THE COURT PANEL DEEMS IMPORTANT TO MAKE KNOWN:

The TRC Panel’s Answers to High Court Civil Action No. 2002-008 stated that it does not agree with Harry Ueno as the rightful holder of the Irojiedrik title on Teron Weto and Lajaurok Weto.

Dated: 08/21/15

/s/

Walter K. Elbon
Presiding Chief Judge
Traditional Rights Court

/s/

Nixon David
Associate Judge
Traditional Rights Court

/s/

Grace Leban
Associate Judge
Traditional Rights Courts