

FEB 17 2020

ASST. CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

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

JIEN LEKKA )  
)  
Plaintiff, )  
vs )  
TOBIN KAIKO & KEY KAIKO )  
)  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION NO. 2017-149

OPINION AND ANSWER  
OF THE TRADITIONAL  
RIGHTS COURT (TRC)

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

PLACE OF HEARING: Majuro Courthouse

DATE(S) OF HEARING: November 27, 28, and December 5, 2019

THE PARTIES' CONTENTIONS:

The plaintiff argues that he had built the house or residential home for his children and not for the defendant, Key Kaiko, but that she could continue to live in the residential home and take care of the children. However, if she were to remarry, she would then need to leave the residential home and plaintiff would return to the home and reside with the children. Plaintiff states that he has authority or rights over the home because he financed or has been paying the mortgage off and secured the lease with the landowners and therefore owns the house.

The defendant asserts that the plaintiff left her and the children and that she a right to live in the house even if she did remarry and the right to remain in the home with the children.

QUESTION REFERRED BY THE HIGH COURT:

When a married couple, husband and wife, are no longer staying together or have been divorced, is there a Marshallese custom as to who owns the house if it were built on land which both have no rights on/to?

If there is a custom, what is it?

ANSWER: Yes, there is.

FACTUAL FINDING UPON WHICH THE OPINION IN ANSWER IS BASED:

The Marshallese custom that is appropriate to address the question referred by the High Court and the parties for answer is based on the custom and fact that both plaintiff and defendant have no rights to the land the house was built on. During trial of the case, there were witnesses who testified and gave evidence as well as documentary evidence presented, which the panel heard and admitted as evidence.

The house which is the subject matter of this dispute was built on a land parcel in which both husband and wife have no land rights on. The construction of the house started when Key, the defendant, asked Ready, ex-wife of Senior Dri-Jerbal Johnny Mack, to seek permission or consent from Johnny Mack. She was given permission, orally to construct the house on the land. Later on, plaintiff Jien Lekka then made arrangements with the landowners, the alap and the senior ri-gerbal, securing a lease agreement made under his name only. The landowners consented to Jien Lekka building and executed a lease which Jien Lekka was the sole lessee and not Key.

The agreement or lease (Plaintiff Exhibit P-1) which the alap, ri-gerbal, and Jien agreed to and signed was executed on June 2010. This case was filed on July 2017. Jien Lekka's letter to Tobin Kaiko and Key B. Kaiko (Plaintiff P-2) instructing them to leave or move out from the house was written in April 2017. On April 2, 2018, the plaintiff filed interrogatories or questions

for the defendants to answer, (Plaintiff Exhibit P-14). The third question (Question No. 3) posed was “Did plaintiff orally inform defendant Key Kaiko that she could continue to live in the house but that if she remarried, she would have to move out of the house? The answer, yes, during an argument they had. The fourth question (Question No. 4) “Did plaintiff tell Tobin Kaiko that he would be returning to the house and that Tobin should take the defendant, Key Kaiko, to live with him at his house in Rita? The answer, yes, there was a time plaintiff had spoken these words to Tobin”.

As both Jien and Key have no rights on the land the house is situated on, the custom applicable in this case would be that the landowners have authority and can decide who they recognize as the rightful owner of the house or who it should go to. There was information received from both parties that the house is for the children to reside in. The landowners having signed the lease agreement with Jien acknowledged him as the owner of the house.

#### APPLICABLE CUSTOMARY LAW & TRADITIONAL PRACTICE:

The custom as stated by one of plaintiff Jien Lekka's witnesses, when he took the stand, testified it is **IMON JOLET**. Mr. Tisen Dick testified in court as an expert witness. When he was asked is there a Marshallese custom as to who owns the house if it were built on leased land? His answer was **IMON JOLET**. As the landowners recognize and agree that the house is Jien Lekka's, the custom of Imon Jolet is applicable.

#### PLAINTIFF'S WITNESSES

1. Johnny Mack
2. Jeann Laiep
3. Tijen Dick
4. Helkena Anni
5. Jien Lekka

#### DEFENDANTS' WITNESSES:

1. Reaty L. Mack
2. Key Kaiko

PLAINTIFF'S EXHIBITS:

1. Exhibit P-1, Ground Lease Agreement
2. Exhibit P-2, Letter to Tobin Kaiko & Key from Jien
3. Exhibit P-3, Eviction Notice
4. Exhibit P-4, USDA Rural Development Monthly Billing Statement
5. Exhibit P-5, MIDB Loan History
6. Exhibit P-6, USDA monthly billing statement
7. Exhibit P-7, Display/Original Balance & Status
8. Exhibit P-8, Insurance Policy No. MAR-FIR00-00862
9. Exhibit P-9, Display/Original Balance & Status
10. Exhibit P-10, Sr. Dri-Jerbal Johnny Mack certification re: lease payment
11. Exhibit P-11, Certificate of Live Birth, Lone Lekka
12. Exhibit P-12, Certificate of Live Birth, Kalora Lekka 11
13. Exhibit P-13, Power of Attorney
14. Exhibit P-14, Defendants' Answers - Interrogations

DEFENDANTS' EXHIBITS:

1. Defendant Exhibit No. 1, Money Gram receiving/receipt
2. Defendant Exhibit No. 2, Acknowledgement

OTHER MATTERS THE PANEL BELIEVES SHOULD BE MENTIONED:

The panel recognizes that in custom and practices of other countries, including the US, a probate case would have been filed to address the issue of the house and who the rightful owner is. However, because the case was referred to the court of custom or TRC to answer whether there is an applicable Marshallese custom as to who owns the house when a married couple, husband and wife, are no longer staying together or have been divorced, and the panel recognize that the house was built on land which both have no rights to, it is therefore only proper that the owners of the land decide who owns the house. It is clear from testimonies and documentary evidence that the landowners, the alap and senior ri-gerbal, recognize and agree that the house is Jien's. It is Imon Jolet to Jien Lekka from the landowners.

Date: February 03, 2020

/s/ Walter K. Elbon  
Presiding Judge, TRC

/s/ Nixon David  
Associate Judge, TRC

/s/ Grace Leban  
Associate Judge, TRC