

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

FILED

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REPUBLIC OF THE MARSHALL ISLANDS

<p>DARREL MALACHI, Plaintiff, vs. TERRY ABON, Defendant.</p>	<p>CIVIL ACTION NO. 2013-213 <u>TRC ANSWER & OPINION</u></p>
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MEMBERS OF THE PANEL: Hon. Grace L. Leban
Presiding Judge, TRC

Hon. Nixon David
Associate Judge, TRC

Hon. Milton Zackios
Pro Tem Associate Judge, TRC

PLACE OF HEARING: Majuro Courthouse

DATES OF HEARING: August 10-13, 16 & 31

PARTIES' CONTENTIONS:

The Plaintiff, Darrel Malachi asserts he is the proper person to hold the Senior Dri Jerbal and Alab titles, rights and interests for Mokeo weto, in Delap, Majuro Atoll, as the successor to his late father, Sailass Malachi, the adopted son of Neijab. Neijab inherited her rights from her mother, Neitele, the person Iroj Laenlen gifted the land in question to, under the custom of *Imon Aje* or *Katlep*, in return for the gold jewelry he received from Neitele. The Plaintiff claims Taklemen should never have succeeded the title of Alab after Neijab. According to the Plaintiff, the titles of Alab and Senior Dri Jerbal should have been passed on to and exercised by his late father, Sailass Malachi according to the custom. He claims that the Marshallese custom of *Imon Aje*, dictates that Sailass Malachi should succeed Neijab because although she was childless, she

considered Sailass Malachi as her own, as a *kanin lujen*. As such, upon the passing of Sailass Malachi, his children should therefore succeed him and inherit those rights (Alab and Senior Dri Jerbal). The Plaintiff also asserts that Taklemen adopted Neimako, Terry Abon's mother, and was not the proper person to have exercised the titles, rights and interests on an *Imon Aje* because they are descendants of the younger bwij of LiJuly. The Plaintiff further asserts that Terry Abon is attempting to exercise a right he claims he acquired through a *kalimur* made by Taklemen John, a right (Taklemen) attained through deception, misrepresentations of the truth and fraud, all in her attempt to take the rights away from Sailass Malachi.

The Plaintiff asks this court to find in favor of his older brother, Jekien Malachi, as the proper person to hold the titles, rights and interests for Alab and Senior Dri Jerbal on Mokeo Weto, in Delap, Majuro Atoll, Marshall Islands, and not Terry Abon.

Defendant Terry Abon contends and states that the Plaintiff's father, Sailass Malachi, was adopted from outside the bwij by Neijab without an expressly written *kalimur* from her. Therefore, his (Sailass Malachi) right to succeed Neijab, as so dictated by custom, was extinguished or terminated upon Neijab's death. The Defendant avers that his rights over Mokeo Weto stem from Taklemen's *kalimur* which was signed and approved by Irojlap Joba Kabua, Iroj Amata Kabua and Iroj-edrik Telean, and further affirmed by Irojlap Jurelang Zedkeia in his speech delivered during her (Alab Taklemen) *eoraak*. The Defendant further asserts that Sailass Malachi was not in a position to know about Taklemen's *kalimur* as he is not a member of Neijab and Taklemen's bwij, and also because, Neijab failed to secure a *kalimur* for herself and her children to hold and exercise any titles or rights on Mokeo Weto, through her own negligent. The Defendant claims he is Neimako Abon's son, and Neimako Abon was customarily adopted by Alab Taklemen John, and as custom dictates, is the proper person to hold and exercise the Alab and Senior Dri Jerbal titles, rights and interests on Mokeo Weto today. This is based on the *kalimur* between Taklemen John and Irojlap Joba Kabua, Iroj Amata Kabua and Leroij Telean, signed and agreed to on January 29, 1980. It is on the basis of this agreement and the above stated reasons, that the Defendant requests to have any land lease agreements signed and executed without his approval be declared null and void. The current Irojlap for Mokeo Weto is Leroij Esther Zedkeia.

QUESTIONS REFERRED TO THE TRC PANEL:

As between Sailass Malachi and Terry Abon, and those claiming through them, who is, in accordance with custom and traditional practice, the proper person to hold the Alab and Senior Dri Jerbal titles, rights and interests on Mokeo Wetu, Delap Village, Majuro Atoll, Republic of the Marshall Islands?

ANSWER:

Terry Abon.

FACTUAL FINDINGS UPON WHICH THE OPINION IN ANSWER IS BASED:

After listening to testimony and reviewing the evidence presented in this case, the TRC Panel concluded that the land in question, Mokeo Wetu, Delap, Majuro Atoll, is an *Imon Ninnin* according to Marshallese custom, passed down from Lakuboke to his daughter, Neiboke, and subsequently in succession to Neijab and Taklemen, as illustrated in Defendant's Exhibit A(2). As such, this Panel finds that the proper person to hold and exercise the titles, rights and interests of the Alab and Senior Dri Jerbal on Mokeo Wetu, is Terry Abon.

Imon Aje are lands gifted by an iroij as payment or in return for good deeds or services to the iroij. (See 577R 458 and J. Tobin, "Land Tenure in the Marshall Islands", p. 30.) Ostensibly, the information from this case supports the notion that Mokeo Wetu is not an *Imon Aje*.

On August 15, 1959, the Determination of Land Ownership was generated and formalized. Subsequent to the hearings conducted with Irojlaplap Aisea, Iroj-edrik Lijeklok, Alab Neijab and Dri Jerbal Taklemen, it was declared and confirmed that Mokeo Wetu was not and should not be an *Imon Aje* or *Katlep*, but an *Imon Ninnin*, because if it was an *Imon Aje*, then Taklemen would not have held or exercised the title and rights of the Senior Dri Jerbal. Custom dictates that if an *Imon Aje* is gifted to a female, then the line of succession for the alabship and Senior Dri Jerbal titles will exclusively pass through her issues, and thereafter in subsequent succession from the line of the first beneficiary, and not through any of her younger siblings' children. The Determination of Land Ownership document illustrates this type of succession. This Land

Determination document also shows that Mokeo was initially an *Imon Ninnin* from Lakuboke to his child, Neiboke and through her (Neiboke), commences a new *bwij*, which we agree is implicitly supported by the fact that the alabship was held and exercised by Neijab, while Taklemen, held the Dri Jerbal right and title. If this were not the case, Irojlaplap Aisea and Iroj-edrik Lijeklok would have corrected it.

Neijab and Taklemen were both childless, however both adopted children from outside the *bwij*. Neijab customarily adopted Sailass Malachi as her own son or *kanin lujen*, and likewise, Taklemen customarily adopted Neimako. Neijab and Taklemen's mothers were sisters and the natural daughters of Neiboke. Neijab failed to leave a will or testament for Sailass Malachi to succeed her and exercise the Alabship and Senior Dri Jerbal titles for Mokeo Weto. As a result of that failure, Sailass Malachi's issues cannot and are unable to succeed as a titleholder on the weto. (See HCT CA 1999-288). The Panel recognizes and acknowledges that Sailass Malachi's rights in the line of succession should not be terminated or be solely determined upon the absence of a *kalimur*, but is also of the opinion that the line of succession deviated from that of an *Imon Ninnin* to an *Imon Bwij* with Neiboke's line, which continued in succession to the current generation today of Darrel Malachi and Terry Abon, in which Darrel Malachi is a descendant of a patrilineal line, whereas Terry Abon comes from a matrilineal line.

During the *eoraak* of Alab Taklemen, Irojlaplap Jurelang Zedkeia expressed his recognition of Terry Abon as the proper person to hold and exercise the Alab and Senior Dri Jerbal titles, rights and interests on Mokeo Weto, in Delap, Majuro Atoll. The Panel believes his acknowledgement only solidifies Taklemen John's *kalimur*.

RELEVANT CUSTOMARY & TRADITIONAL PRACTICE:

1. *Kokajriri* – The adoption of a child after birth or as a young child as if it were your own. Adoption may occur within the same *bwij* as well as outside the *bwij*.
2. *Kanin lujen* – Considered as one's biological child or natural child.
3. *Imon Aje* – land given to an individual who performs good deeds for the chief.

4. *Imon Ninnin* – land given by an *alab* or head of the *bwij*, to his child or children, with the approval from the *bwij* and the *iroijlaplap*.
5. *Katlep* – land allocated by the chief/iroijlaplap to an individual or bwij, or to place or the placement of a person/people on the land.

APPLYING THE CUSTOM TO FACTUAL FINDINGS:

The evidence in this case clearly shows that Neijab adopted Sailass Malachi and Taklemen adopted Neimako, and they both considered their adopted children as their own, or *kanin lujerro*. The evidence also shows that Mokeo Weto is not an *Imon Aje* or *Katlep*, but an *Imon Ninnin*, for the descendants of Lakuboke, as illustrated in Defendant’s Exhibit A(2).

PLAINTIFFS’ WITNESSES:

1. Darrel Malachi
2. Mudge Samuel
3. Hainrick Moore

DEFENDANT’S WITNESSES:

1. Terry Abon
2. Joseph Jorlang
3. Austen Jurelang
4. Jimmy Kamram

PLAINTIFFS’ EVIDENCE:

1. Plaintiff’s Exhibit A – Menmenbwij/Genealogy Chart
2. Plaintiff’s Exhibit B – 1954 Ownership of Land Release #124
3. Plaintiff’s Exhibit B1 – Ownership of Land, Majuro Atoll 1959
4. Plaintiffs’ Exhibit C – Certificate of Death - Sailass Malachi
5. Plaintiff’s Exhibit D – Certificate of Birth Steria or Malachi
6. Plaintiff’s Exhibit E – Delayed Registration of Birth
7. Plaintiff’s Exhibit K – Certificate of Death Neijab
8. Plaintiff’s Exhibit H – Admitted Order of Adoption of Makko Beed

DEFENDANT’S EVIDENCE:

1. Defendant’s Exhibit A – Genealogy Chart
2. Defendant’s Exhibit B – Kalimur of Taklemen John
3. Defendant’s Exhibit C – Land Determination of Mokeo Weto
4. Defendant’s Exhibit D – NTA Land Lease 1990
5. Defendant’s Exhibit E – NTA Land Lease 2015
6. Defendant’s Exhibit F – Affidavit of Leroij Esther Zedkeia
7. Defendant’s Exhibit G – Death Certificate of Taklemen John
8. Defendant’s Exhibit H – Death Certificate of Jilam (aka Makko) Abon

OTHER FACTS CONSIDERED BY PANEL:

The Panel is of the understanding that foreign wills, or those wills made by foreigners ordinarily become effective upon the death of the testator. In this case, however, Taklemen’s *kalimur* to Neimako was made during Taklemen’s lifetime, and both were alive and well when it was executed. In this regard, the Panel believes that Marshallese custom allows for these types of situations in which a will is executed when the principal or testator, is very much alive.

With respect to Neimako’s adoption by Taklemen, whether or not it was registered in a court of law, this Panel believes it was legitimized through the custom as it was common knowledge that the adoption took place and many acknowledged it.

Dated: 12th November 2021.

/s/
Hon. Grace L. Leban
Presiding Judge, TRC

/s/
Hon. Nixon David
Associate Judge, TRC

/s/
Hon. Milton Zackios
Pro Tem Associate Judge, TRC