

OCT 14 2022

ASSISTANT CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

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

<p>HENSEY H. SORMILE, BERTINE LAKJOHN, and EMTY SORMILE</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>LIWOJ JERBAL</p> <p style="text-align: center;">Defendant.</p>	<p>CIVIL ACTION NO. 2016-143</p> <p style="text-align: center;">OPINION AND ANSWER TO SUPPLEMENTAL QUESTIONS</p>
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PANEL MEMBERS:

Grace L. Leban
Presiding Judge, TRC

Nixon David
Associate Judge, TRC

Claire T. Loeak
Associate Judge, TRC

SUPPLEMENTAL QUESTION:

This case was referred back to the TRC Panel to review and answer additional questions certified from the High Court. The High Court held that the majority opinion issued by the Panel did not follow Rule 201(b) and 201(e) of the Rules of Evidence (“ROE”) 28 MIRC Chap 1. According to the High Court, the majority opinion of the TRC Panel failed to follow Rule 201(b) in their findings that (i) Lobeia, like Laelan and Jeimata, lived during the 1900s and not the 1800s, and (ii) that this is undisputed. The testimonial evidence offered by the plaintiffs’ witness, Philomena Muller, indicates her mother, Neirele, was born in 1911, and that Lobeia is Neirele’s grandfather and as such, this Panel, acknowledges that indeed, Lobeia may have lived during the 1800s and 1900s.

The High Court also stated that the majority opinion of the Panel, failed to follow Rule 201(e) when it gave the plaintiffs no opportunity to make representations as to its decision to ‘take judicial notice’ of evidence prior to issuing its opinion.

So, this Panel, with the addition of Associate Judge Claire T. Loeak, who replaced Judge Walter Elbon in the Traditional Rights Court, called for a hearing on April 5, 2022, to give plaintiffs an opportunity to present their arguments regarding the TRC Panel majority’s decision to take *judicial notice* of the evidence. The court was also able to admit into evidence, Plaintiff’s Exhibit P-10, an account of family history, pursuant Rule of Evidence 804(b)(4). In addition to this, Plaintiff’s Exhibit P-15, a photograph of late Jeimata Kabua’s tombstone; as well as, Plaintiff’s Exhibit P-16, an excerpt from *Jack E. Tobin’s* book; and Plaintiff’s Exhibit P-18, the transcribed testimony of Namdrik Labi regarding Plaintiff’s Exhibit P-10, were all admitted into evidence. Additionally, the Panel was able to admit into evidence, the Defendant’s Exhibit, Defendant Exhibit D-2, a genealogy chart incorporating the chiefly succession lines of Ratak Ean. Plaintiffs made objections to the admission of Defendant’s Exhibit D-2, however, the Exhibit was admitted under the Traditional Rights Court’s Rules of Civil Procedures, Rule 15.

ANSWER TO SUPPLEMENTAL QUESTION:

The question referred to the Traditional Rights Court as stated in the High Court’s Order of February 2, 2022 is as follows:

As between Hensey Sorimle and Liwoj Jerbal, who is the proper person to hold and exercise the titles, rights and interests of IroiJlaplap and IroiJedrik on and over Biken Island, Aur Atoll and Airok Island, Maloelap Atoll, Republic of the Marshall Islands?

ANSWER:

- **Liwoj Jerbal is the proper person to hold and exercise the IroiJlaplap title, rights and interests on and over Biken Island, Aur Atoll and Airok Island, Maloelap Atoll.**
- **As the proper person who holds the IroiJlaplap title on and over Biken Island, Aur Atoll and Airok Island, Maloelap Atoll, the authority to designated a IroiJedrik from among her nephews from the bwij, or from the bloodline, or a person of**

chiefly blood from within their bwij line of succession, is with Liwoj Jerbal. (*See CA 2006-101, Latdrik v. Jane's Corp.*; *CA 2017-026, Clanry v. Zedkaia*); (*Kabua, p. 2*).

The Panel, following its review of the previous majority answer, found Liwoj Jerbal is the proper person to hold and exercise the Irojlap on and over Biken, Aur Atoll and Airok, Maloelap Atoll as previously held.

FACTUAL FINDINGS UPON WHICH ANSWER IS BASED:

In Plaintiffs' Exhibit P-7, the genealogy chart purported to be for the Iroj of Ralik Chain, the Panel finds that Lobeia and Jeimata are both six (6) generations in succession from Litarao in their respective lines. And the testimony given by witness Philomena Muller indicates she agrees with this. The Panel also finds that Exhibit P-6, an agreement between Germany and the Marshallese chiefs in 1885, shows both Lobeia and Kabua the Great, Jeimata's father, signed the agreement. And according to P-15, a photograph of Jeimata's tombstone bearing Jeimata's birth year of 1850, Jeimata would have been thirty-five (35) at the time his father, Kabua the Great, signed the agreement with Germany. This implicitly indicates that Lobeia may or may not have been from the same generation as Jeimata and Laelan. There is just no evidence to clearly show this, other than the evidence presented that Lobeia lived during the 1800s and 1900s.

The Panel found inconsistencies between the evidence presented in Exhibit P-10, and the other evidence the plaintiffs submitted. For instance, according to the evidence found in Exhibit P-10, Lobeia won in a battle against Jortoka, and Jortoka, as a result of his defeat, gave Airok, Maloelap and Biken, Aur to him. This Panel finds that as a wartime custom of the chiefs, historically the victorious chief would assume ownership of all that belonged to the defeated chief. However, the story as told shows only two (2) property or land parcels among all the lands that belonged to Jortoka in the Ratak Ean domain, were transferred to Lobeia and his younger brothers. Exhibit P-10, also shows that Mamjilan and her younger sister, Wanlur, were Leroij (female for iroj) from *kabinmeto* in the Ralik Chain, and that Mamjilan and Lakiat are the biological parents of Lobeia. The Panel reviewed the genealogy chart that is purportedly for the Ralik chiefly families, Exhibit P-7, and finds there are no names resembling Mamjilan or Wanlur in the genealogy chart for the Ralik chiefly families. The Panel, found only Lakiat's name, Lobeia's father and Mamjilan's husband. As such, the Panel finds this to be inconsistent with the evidence as presented in Exhibit P-10, as well with the other evidence the plaintiffs submitted

because Exhibit P-10 shows that Mamjilan is a Leroij from *kabinmeto* in the Ralik Chain, but her name is not on the chiefly families' genealogy chart, and yet her husband Lakiat's name, is. Likewise, Exhibit P-10 also shows that Lailik's mother was Wanlur, the younger sister of Mamjilan, who was also a Leroij. Again, the Panel finds this to be inconsistent with the evidence in Exhibit P-7, because the genealogy chart of the Ralik chiefs shows no Wanlur anywhere in the succession lines. Exhibit P-7, however, shows that Lobeia is Lakiat's son in the genealogy chart that is purportedly for the chiefs of the Ralik Chain, and in the genealogy chart that is purported to be for the chiefs of the Ratak Chain, Defendant's Exhibit D-2. This, the Panel finds a discrepancy in the evidence shown in P-10 and P-7, and in the witnesses' testimonies because they contradict one another.

As to Exhibit P-16, the excerpt from *Tobin*: after reviewing the historical account by *Tobin*, the Panel finds that Irojlaplap Murjel's reign as Irojlaplap was from 1916 to 1919. The Panel finds nothing that shows Tonusia also reigned as Irojlaplap of Airok at the same time; only that he was an Iroj in Airok, Maloelap at that time, and this is indicated in the genealogy chart for the chiefs of Ratak-Ean in Exhibit D-2, because Tonusia is also shown to be in the chiefly succession line for the Irojlaplap of Airok, Maloelap. The period *Tobin* was referring to here, however, Tonusia could not have been an Irojlaplap, but an Iroj, because according to custom, the person who holds the title, rights and interest is referred to and addressed as *laplap* or *Irojlaplap*.

The Panel is still convinced that when Murjel and Lobeia both signed the agreement between the Iroj and the German government, that even if Lobeia signed it, it does not prove that he was the reigning Irojlaplap for Airok and Biken at the time. In reviewing the document, the Panel finds that the other Iroj who signed for other islands, and in many of the atolls in the Marshalls, a significant number of those who signed as Irojlaplap were not a reigning Irojlaplap at the time. For example, on Majuro, not only did Kaiboke signed for his chiefly house, but Rime and Leit who stood to succeed Kaiboke, also signed. On Mili Atoll, Langinat was the only one who signed, but the others who held titles for other chiefly houses at that time, did not. On Ebon Atoll, there are only two (2) domains, but more than two (2) chiefs signed the agreement. This favors the idea that even if Lobeia signed, it does not mean he was the reigning Irojlaplap

