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 MRJ
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 REPUBLIC OF THE MARSHALL ISLANDS

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

<p>MORTON RILOMETO and MISAKI</p> <p>RILOMETO,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>MARINEY KABUA,</p> <p style="text-align: center;">Defendant,</p> <p style="text-align: center;">vs.</p> <p>TOKO BOTLA and ALMET MOORE,</p> <p style="text-align: center;">Intervenors.</p>	<p>CIVIL ACTION NO. 2017-149 <u>2018-006</u></p> <p style="text-align: center;"><u>TRC OPINION & ANSWER</u></p>
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MEMBERS OF THE PANEL: Grace L. Leban
Presiding Judge, TRC

Nixon David
Associate Judge, TRC

Claire T. Loek
Associate Judge, TRC

PLACE OF HEARING: Majuro Courthouse

DATE OF HEARING: December 14-17, 2021 & January 11, 2022

PARTIES' CONTENTIONS:

This case involves a dispute as to who is the proper person to hold and exercise the titles, rights and interests of *Alap* and *Senior Dri-Jerbal*, on Eneokkot Island, Malel, Arno Atoll (hereinafter referred to as "Eneokkot"). The plaintiffs in this case, Morton Rilometo and Misaki Rilometo ("hereinafter referred to as "Plaintiffs"), assert their natural mother, Kate, was the customarily adopted child or *kanin lujen* of Lijor, whom Lijor took and considered as her own. So, the Plaintiffs believe, that the line of descent from Lijor to Kate, as shown in Plaintiff's Exhibit A, a genealogy of Neijebjeb's *bwij* from Arno Atoll, shows it is proper for Morton Rilometo to hold

and exercise the title, rights and interests of *Alap* and likewise, Misaki Rilometo, to hold and exercise the title, rights and interests of *Senior Dri-Jerbal*.

The Plaintiffs also claim that as a result of opposing the *iroij* at the time, Iroj Jiwirak, Neiboria and Liwinrak were stripped of their titles, rights and interests on Enekokot. As a result, claims arising from Neiboria and Liwinrak ought not to have any effect under Marshallese custom.

As for Defendant Mariney Kabua's claim, the Plaintiffs contend she is not the proper person to hold and exercise the titles, rights and interests of *Alap* and *Senior Dri-Jerbal* on Enekokot because the two wills or *kalimur ko*: Defendant's Exhibit "A", made in 1973, and Plaintiff's Exhibit "C" which was also submitted as Intervenor Exhibit "I-5", filed at the High Court in 1989; though considered as Neiboria's act of bequeathing Ankien Joram, the Plaintiffs claim, the signatures do not match, and that any rights on a *bwij* land are prohibited from being gifted to a *non-bwij* member without consulting the *bwij* beforehand. According to the Plaintiffs, Intervenor Almet Jiwao Moore is not the proper person to hold and exercise the *Alap* title, rights and interests on Enekokot because his mother, Winrak, Kilaine's daughter, is a descendant of Jamos, a male heir, and therefore, Intervenor Moore is a descendant of the male blood line. Their argument is that custom dictates that *bwij* descendants have priority inheritance rights over blood descendants: and as the only living descendants of the *bwij* line from Lijor, the elder sister of Neiboria, their claims to the titles, rights and interests on Enekokot should supersede all other claims.

The Plaintiffs further assert that Toko Botla is not the proper person to hold and exercise the *Senior Dri-Jerbal* title, rights and interests on Enekokot as he failed to appear in person to defend his claim that Neiboria adopted him, and because Intervenor Almet Jiwao Moore was unable to corroborate Intervenor Toko Botla's claim.

On the other hand, the Defendant in this case claims she is the proper person to hold and exercise the titles, rights and interests of *Alap* and *Senior Dri-Jerbal* on Enekokot because her father, Ankien Joram, was the beneficiary of a will or *kalimur* from Neiboria, the *Alap* and *Senior Dri-Jerbal* on Enekokot at the time. She also asserts that Neiboria was well within her rights as *Alap* of Enekokot to make the will, absent an *iroijlaplap* or *iroij-edrik* approval because

Enekotkot had, and to this day as well, no *iroijlaplap* or *iroij-edrik*. The Defendant claims the book on *Customary Titles and Inherent Rights* written by Amata Kabua (“Kabua”): states that the *Iroijlaplap* and *Alap* hold the supreme authority in relation to land determinations in which a line of succession is established for a *bwij*. (Kabua, 1993). Because Enekotkot was devoid of an *iroij*, the supreme authority then lies with the *Alap*. The Defendant asserts it is therefore, proper that she holds and exercises the titles, rights and interests of *Alap* and *Senior Dri-Jerbal* on Enekotkot as the successor to her father, Ankien Joram.

The Defendant further contends that Intervenors are not the proper persons to hold and exercise rights on Enekotkot because there is not enough evidence to support their claims over and on Enekotkot. She also asserts that according to anthropologist Jack Tobin’s (“hereinafter referred to as “Tobin”) book, *adoption* is defined as the act of taking care of or the caretaking of, a child. (Tobin, 1956). The Defendant was unable to clarify the assertion that her father, Ankien Joram, was an adopted child of Ezkel. She asserts however, that her father was kind to Neiboria and took good care of her, and that Neiboria gifted her father with land because of it. And the members of the family knew about the *kalimur* to Ankien Joram and they acknowledged its validity throughout the years leading up to the disputes arising from this case. This is made clear, she claims, if one were to observe who the current residents of Enekotkot are today: as none other than the Defendant’s children. As to this assertion, no one challenged it or claimed it as false.

In the same manner, the Intervenors, Almet Jiwao Moore and Toko Botla, confirm the Plaintiffs, Morton Rilometo and Misaki Rilometo are children of Kate, in whom, Lijor had adopted. They also assert Defendant’s father, Ankien Joram, was an adopted child of Ezkel. The Intervenors claim Almet Jiwao Moore is not an adopted child, but a member of the *bwij*, a child of Winrak, as shown in Plaintiff’s Exhibit A. The Intervenors assert that according to Marshallese custom, an adopted child is precluded from inheriting any titles, rights and interests of *Alap* or *Senior Dri-Jerbal* on *bwij* land until members of the *bwij* and blood lines are extinct. Intervenors assert that gifting land to a *kokajriri* requires the consultation and consent of the *bwij*. As Intervenor Almet Jiwao Moore is the senior family member of the *bwij*, he is the proper person to hold and exercise the *Alap* title, rights and interests on Enekotkot. Intervenor Almet Jiwao Moore referred

to Tobin's book in support of the customary practice of prioritizing the order of inheritance on *bwij* land as it relates to an adopted child. In support of his assertion, Intervenor Almet Jiwao Moore called Hepisos Kotton, whom this Panel acknowledged as an elderly member of the community knowledgeable in Marshallese custom, to testify as to his knowledge and understanding of the customary practice relating to the line of succession on a *bwij* land and an adopted child's rights. Intervenor Almet Jiwao Moore provided corroborating evidence as to his assertion that an adopted child can only inherit on a *bwij* land when both the *bwij* and blood lines become extinct. As such, he is the proper person to hold and exercise the title, rights and interests of *Alap* on Enekokot.

Furthermore, Intervenor Toko Botla asserts that as the senior family member and descendant of an adopted child, he is the proper person to hold and exercise the *Senior Dri-Jerbal* title, rights and interests on Enekokot. He, however, failed to appear before this court to defend his claim that he is indeed an adopted child of Neiboria, and that it is proper for him to hold and exercise the *Senior Dri Jerbal* title, rights and interests on Enekokot.

QUESTIONS CERTIFIED TO THE TRC PANEL

1. Under the customary and traditional practices of the Marshall Islands, on *bwij* land, can an *alap* acting alone, where there are no persons holding the *iroijlaplap* or *iroij-edrik* titles, rights and interests make a valid *kalimur* regarding such lands? If yes, under what circumstances?
2. On *bwij* land, do surviving members of the *bwij* or *botoktok* have a priority in succession to the *alap* or *senior dri-gerbal* title, over claims of an adopted child under a *kalimur*?
3. Under the customary and traditional practices of the Marshall Islands, can a child adopted under the custom of "*kanin lujen*" succeed to the *alap* or *senior dri-gerbal* right on *bwij* land? If so, under what circumstances?

4. Taking into consideration your answers to questions 1, 2, and 3, who then, between plaintiff Morton Rilometo, defendant Mariney Kabua and intervenor Almet “Jiwao” Moore is the proper person to hold the *alap* title, rights and interests over Enekokot Island, Malel, Arno Atoll? Why?
5. Taking into consideration your answers to questions 1, 2 and 3, who then, between plaintiff Misaki Rilometo, defendant Marine Kabua and intervenor Toko Botla is the proper person to hold the *senior dri-jerbal* title, rights and interests over Enekokot Island, Malel, Arno Atoll? Why?

ANSWER

1. Yes, an *Alap* holding and exercising both titles, rights and interests of *Alap* and *Senior Dri-Jerbal* is authorized and can make a valid *kalimur* on a *bwij* land devoid of an *iroij*, as in the absence of an *iroij* on that land, the supreme authority lies with the *alap*. However, a *kalimur* is valid absent any challenges from members of the *bwij* or blood line.
2. Members of the *bwij* or blood line have priority in the line of succession on a *bwij* land, and in the event the two lines become extinct, an adopted child or *kokajiriri* will then succeed and inherit the title, rights and interests on the land. However, if a *kalimur* exists and has been validated and confirmed, then the adopted child or *kokajiriri* stands to succeed, notwithstanding the fact that members of the *bwij* or blood line are still alive.
3. Yes, an adopted child considered as a natural child or *kanin lujen* stands to succeed as *Alap* or *Senior Dri-Jerbal* on a *bwij* land if members of the *bwij* or blood line are extinct, and there exists a *kalimur* that has been validated and confirmed.
4. Almet Jiwao Moore is the proper person to hold and exercise the *Alap* title, rights and interests on Enekokot according to the genealogy of Neijebjeb and Neiboria’s 1989 *kalimur*.
5. Mariney Kabua is the proper person to hold and exercise the *Senior Dri-Jerbal* title, rights and interests on Jittaken, Enekokot, and Almet Jiwao Moore is the proper person

to hold and exercise the *Senior Dri-Jerbal* title, rights and interests on Enekokot, Jittoen as shown in Neboria's 1989 *kalimur*.

FACTUAL FINDINGS UPON WHICH ANSWER IS BASED

After the Panel reviewed all the evidence submitted by the three parties in this case, it then applied the relevant facts as they relate to the questions certified from the High Court. The testimonial evidence in this case revealed Plaintiffs Morton Rilometo and Misaki Rilometo attempted to sell Enekokot. The sale, however, was prevented by Defendant Mariney Kabua and Intervenors, Almet Jiwao Moore and Toko Botla. The Plaintiffs then, brought their claim for the court to determine the proper person to hold and exercise the *Alap* and *Senior Dri-Jerbal* titles, rights and interests on Enekokot.

The Plaintiffs' claim the two titles of *Alap* and *Senior Dri-Jerbal* should be held and exercised by them as they are members of the *bwij*, because their mother, Kate, was the adopted child of Lijor, a *bwij* member of Enekokot, as shown in Plaintiff's Exhibit "A", a genealogy chart or *menmenbwij* for the descendants of Neijebjeb from Enekokot. The contents of Plaintiff's Exhibit "A" was not disputed. Plaintiffs' claim that Iroj Jiwirak, who was the *Iroj* on Enekokot during his lifetime, stripped Neiboria and Winrak of their titles, rights and interests as *alaps* and *senior dri-jerbals*: this, a result of opposing him. Plaintiff assert Defendant Mariney Kabua and Intervenors Almet Jiwao Moore and Toko Botla, should therefore, be barred from succeeding to any titles, rights and interests on Enekokot by virtue of Neiboria and Winrak's punishment. However, there was no clear evidence showing the *Alap* and *Senior Dri-Jerbal* titles, rights and interests were no longer exercised by Neiboria or Winrak on Enekokot. Furthermore, Plaintiffs are children of Kate, the adopted child of Lijor, who, according to the family genealogy, is older than Neiboria. And in the absence of a *kalimur*, the Plaintiffs' priority in the line of succession is subordinate to that of a *bwij* or blood descendant.

The Plaintiffs also believe Almet Jiwao Moore is not the proper person to succeed as *Alap* for Enekokot because his mother, Winrak, is from the male line as her mother Kilaine, is a child of Jamoj, which means, Intervenor Almet Jiwao Moore is from the male blood line. According to customary and traditional practice, patrilineal descendants have subordinate rights to succeed on *bwij* land than matrilineal descendants. The Panel agrees. However, a new *bwij* line was

established by Winrak, a female descendant of Kilaine. The extinction of the *bwij* line occurred with the death of Neiboria who had no children of her own, in which the line of succession would then be transferred to the eldest child of the eldest male and so on until a new *bwij* line is established. The Panel believes a new *bwij* line started with Winrak. As such, Intervenor Almet Jiwao Moore, the eldest surviving child of Winrak and a member of the *bwij*, is ostensibly the proper person to hold and exercise the titles, rights and interests on *bwij* lands previously held by Neiboria and Winrak.

The Plaintiffs say Toko Botla is not the proper person to succeed as *Senior Dri-Jerbal* because he failed to appear before this Panel to defend his claim to the *Senior Dri-Jerbal* title on Enekotkot as Neiboria's *kokajriri*. Also, Intervenor Almet Jiwao Moore did not provide corroborating evidence to support Toko Botla's claim that he is Neiboria's *kokajriri* through testimonial or documentary evidence.

Conclusively, this Panel believes Neiboria held and exercised the *Alap* and *Senior Dri-Jerbal* titles, rights and interests on Enekotkot. If she was not the *Alap* or *Senior Dri-Jerbal* on Enekotkot, then she would not have possessed the authority to make valid *kalimur ko* for the *bwij* on Enekotkot or the other lands, as shown on Defendant's Exhibits "A" - *Pepa in Kalimur* made in 1973, and Plaintiff Exhibit "C" or Intervenor Exhibit "I-5" - *Baber in Kalimur*, filed with the High Court in 1989. This Panel also believes Neiboria recognized Winrak as the proper person to succeed her after she passes away. We see this in Plaintiff Exhibit "C" and Intervenor Exhibit "I-5". In this manner, the Panel believes the line of succession through the *bwij* continued on to this day. As such, the Panel opines that, Intervenor Almet Jiwao Moore is the proper person to hold and exercise the *Alap* title, rights and interests on and over Enekotkot, and the *Senior Dri-Jerbal* title, rights and interests on Jittoen, Enekotkot, and the other *bwij* lands as shown in Plaintiff Exhibit "C" and Intervenor Exhibit "I-5".

As for the arguments relating to adoption or *kokajriri* and the circumstances in which a *kokajriri* may succeed to titles, rights and interests on *bwij* lands belonging to the adoptive family: the Panel agrees with the argument stating the custom provides that an adopted child or *kokajriri* may inherit lands belonging to the adoptive family if and when the *bwij* and blood lines are

extinct. Also, if there is in existence a valid *kalimur* for the adopted child or *kokajriri* to succeed on the lands of the adoptive family, as elaborated in the case, *CA 2012-213, Malachi vs. Abon*.

The Panel agrees that Kate, the Plaintiffs' mother, was the adopted daughter of Lijor as *kanin lujen*, and this is also indicative of the freedom with which she and her descendants remained on Enekotkot even after Lijor's passing. But the custom also provides that an adopted child and descendants of that adopted child or *kokajriri* may inherit and succeed as a titleholder on land, if and when, the *bwij* and blood lines are extinct, and a valid *kalimur* exists. Here, a *kalimur* for Ankien Joram was issued by Neiboria during her *Alap* and *Senior Dri-Jerbal* tenure, the Panel believes Defendant Mariney Kabua is the proper person to hold and exercise the Senior Dri-Jerbal title, rights and interests on Jittaken, Enekotkot as shown in Plaintiff Exhibit "C" and Intervenor Exhibit "I-5". The Panel takes note of Plaintiffs' arguments concerning Plaintiff Exhibit "F", and their claims that the circumstances in the case, *Jacob vs. Hermios vs. Kendall* is similar to their claims here. This Panel, however draws a distinction here as it believes Wilfred Kendall was not only considered a *kanin lujen*, but he was also considered by the *Iroij* as the last living family member from the preceding generation and the *Iroij* at that time, *Iroij Hermios*, the holder of customary knowledge and wisdom or "*iroij im jela*", recognized the value of certifying that Wilfred Kendall was the proper person to hold and exercise the title, rights and interests as one considered to be a father/parent to the succeeding generation. This is in line with our view that although Lijor considered Kate as her *kanin lujen*, no formal recognition or *kalimur* was given to her regarding any of the lands belonging to the *bwij*.

RELEVANT CUSTOMARY LAW & TRADITIONAL PRACTICE

1. *Kanin Lujen* – an adopted child considered as one's biological or natural child.
2. *Imon bwij* – a land, land parcel or islet belonging to a *bwij* or the matrilineal line of descent.
3. *Pikajjok* – the act of jumping beyond or ahead of; or as it relates to life, this occurs when one wrongfully places oneself ahead of and onto a place meant for someone else; overstepping authority or *ultra vires*.
4. *Kalimur* – an agreement by the *Iroij*, *Alap*, and members of the *bwij* in relation to the line of succession on lands or property, the subject of the agreement to a person from the *bwij* or a non-*bwij* member.

APPLYING THE CUSTOM TO FACTUAL FINDINGS

Lijor considered Kate, whom she adopted as *kanin lujen*. This was demonstrated by Lijor when she placed and allowed Kate and her descendants to live freely on Enekokot. It is befitting for members of Lijor's *bwij*, which include Neiboria and Winrak, to be considerate of and care for the well-being of those adopted as *kanin lujen* by their ancestor, Lijor. And by the same token, Lijor's descendants considered *kanin lujen*, ought to respect members of Lijor's family and *bwij*.

It is also clear from this case that Enekokot is a *bwij* land, by testimonial evidence and as shown in Plaintiff's Exhibit "A", Neijebjeb's genealogy showing her line of descent which continued down to descendants of Lutomwe and then, to Winrak's descendants who are still alive today.

The Marshallese term, *pikajjok*, the Panel believes, would have occurred if the offsprings of Kate had inherited the titles, rights and interests of *Alap* and *Senior Dri-Jerbal* while members of the *bwij* and blood line are still living.

It is also clear from this case that Neiboria executed two (2) *kalimur* or wills during her lifetime and tenure as an *Alap* and *Senior Dri-Jerbal* of Enekokot. The first one she made in 1973 bequeathing Ankien Joram with her title, rights and interests on Enekokot; and the second one, made several years later, was filed in the High Court of the Marshall Islands in 1989. Neiboria must have realized it was more appropriate to make the second *kalimur* to Winrak, who succeeded her according to the genealogy chart of the *bwij*. However, instead of giving all her rights over Enekokot, she divided Enekokot and gifted Jittaken to Ankien Joram to live and work the land, and the other side, Jittoen, she left to her successor.

PLAINTIFFS' WITNESSES

1. Morton Rilometo
2. Misaki Rilometo
3. Helty Bakol

DEFENDANT'S WITNESS

1. Kone Ankien

INTERVENORS' WITNESSES

1. Hainrick Moore
2. Hepisos Kotton

PLAINTIFFS' EVIDENCE

1. Plaintiff's Exhibit A –Genealogy Chart of Enekokot
2. Plaintiff's Exhibit B – Civil Action 72 Judgement
3. Plaintiff's Exhibit B1 – English Translation for CA72 Jemlok
4. Plaintiff's Exhibit C – 1989 Kalimur (Will) of Neiboria
5. Plaintiff's Exhibit D – Civil Action 23 Judgement
6. Plaintiff's Exhibit E – Civil Action 81 Judgement
7. Plaintiff's Exhibit F – Civil Action 2008-221 Judgement

DEFENDANT'S EVIDENCE

1. Defendant's Exhibit A – Baber In Kalimur (October 26, 1973)

INTERVENORS' EVIDENCE

1. Intervenor Exhibit I-2 – Illustration of Genealogy Chart
2. Intervenor Exhibit I-3 – Illustration of Liolon's Genealogy
3. Intervenor Exhibit I-4 – Genealogy Chart
4. Intervenor Exhibit I-5 – Neiboria's Will
5. Intervenor Exhibit I-6 – Civil Action 82 Judgement
6. Intervenor Exhibit I-7 – Civil Action 87 Judgement

OTHER FACTS CONSIDERED BY PANEL

Neiboria made two wills in relation to Enekokot: one was made in 1973 and the other one in 1989. Here, the Panel believes, although Neiboria made a *kalimur* for Ankien Joram 1973 regarding her rights on and over Enekokot, that Neiboria came to the realization that there were members of the *bwij* still living, and that Marshallese custom dictates the rights ought to pass through the *bwij* line. As such, the Panel believes Neiboria proceeded and passed on her rights on and over Enekokot to Winrak, however, she gifted the *Senior Dri Jerbal* title, rights and interests to Ankien Joram for Jittaken, Enekokot, as shown in the 1989 *kalimur*.

It is also the Panel's belief that irrespective of the claim that Defendant Mariney Kabua and Plaintiffs, Morton Rilometo and Misaki Rilometo, are descendants from an adopted child of the *bwij*, that it is clear Defendant Mariney Kabua's father was the beneficiary of a *kalimur* from Neiboria. If the Plaintiffs, Morton Rilometo and Misaki Rilometo, had been in possession of a *kalimur* like the one made to the Defendant's father, then they also, would have had authority to succeed on lands belonging to their grandmother, Lijor. The authority to look after the Plaintiffs is with the *bwij*, as their mother was adopted by, and considered *kanin lujen* Lijor, Neiboria's older sister. The Plaintiffs also consider themselves as descendants of an adopted child of the *bwij*. This Panel hopes the descendants of Winrak who are the proper titleholders on Enekokot today will properly look after the descendants of the adopted child and likewise, that the descendants of the adopted child will recognize and show respect to those in authority of the *bwij* lands belonging to the descendants of Neijebjeb from Arno Atoll, and in particular Enekokot. It has always been the custom and traditional practice to show respect and love for one another.

Dated: February 11th, 2022

/s/
Grace L. Leban
Presiding Judge, TRC

/s/
Nixon David
Associate Judge, TRC

/s/
Claire T. Loeak
Associate Judge, TRC