IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

BATLE LATDRIK, plaintiff, vs. MINISTER FOR INTERNAL AND OUTER ISLANDS AFFAIRS AND MARSHALLS ENERGY COMPANY, INC., defendants.	CIVIL ACTION NO. 2021-01453 (2007-062) **ORDER GRANTING SUMMARY JUDGMENT AND DISMISSING COMPLAINT**

To: Tiantaake Beero-Sexton, MLSC, counsel for plaintiff
Gregory Danz, counsel for defendants

I. Introduction.

On July 27, 2023, plaintiffs were served with a copy of defendants' Joint Motion for Summary Judgment. The plaintiff had 21 days to file an opposition; he did not. The parties had agreed that the summary judgment motion would be decided without oral arguments. The Court now issues this Order granting defendants' joint motion for summary judgment for the reasons set out below and without oral argument.

On November 25, 20013, the High Court entered an order holding this case in abeyance pending the outcome in *Latdrik v. Jane's Corporation*, H.Ct. Civ. No. 2006-101. That case has been decided with the Court holding that Raymond Latdrik did not have royal blood and could not claim

and hold the *iroij erik* title.[1]

II. Summary of Defendants' Motion.

The defendants' have moved to dismiss the complaint on the grounds that :

a. plaintiff cannot assert ownership of *Utuwe weto* as holder of the *iroij edik, alab* and *senior dri jerbal* interests because such claim is precluded as a matter of law; and,

b. plaintiff's claim are barred by the doctrine of issue preclusion and/or collateral estoppel.

At issue, are the *iroij erik, alab*, and senior dri jerbal interests. The plaintiff claims all three interests.

III. Historical Background.

The issues of the ownership of Utuwe weto, in relation to the *alab* and *senior dri jerbal* interests, and the alleged unlawful taking and trespass by the defendants was litigated, appealed and finally determined in *Zedkaia and Toring v. MEC, et. al.*, S.Ct. 2001-001 (November, 2013) (H.Ct. Civ. 2006-062) (re-numbered as Civil Action No. 2021- 01453). In that case, the Supreme Court affirmed the judgment of the High Court granting summary judgment in favor of the defendants holding that (1) to the extent the disputed land was created by the Republic on submerged areas below the high water mark, the Republic owned that land; and, (2) to the extent the disputed land was not below the high water mark when the Republic entered the land, plaintiffs' claims were time-barred.

As was observed by the trial court in the above referenced case, *Utuwe weto* was a small island, now nonexistent, in Delap, Majuro Atoll. In 1975, the plaintiffs' predecessors entered into

[1] This holding was later confirmed in *Latdrik v. Laik*, H.Ct. Civ. No. 2006-101 (slip op). In this case, it was Batle Latdrik as successor to Rayomnd Latdrik who initiated the action.

a quit claim with the Government of the Trust Territory of the Pacific Islands (the TTPI) entitled "Quitclaim New Port Development, Majuro, Marshall Islands" (the "New Port Development")in which the plaintiffs' predecessor granted the TTPI all lands within the New Port Development except for Lot B and D as depicted on the Survey May No. 8010/74, Delap Islands, Majuro Atoll. This survey showed the areas on the lagoon side of the roadway where the port would be constructed. The Republic, as successor to the TTPI, with regards to all the lands within the New Port Development. In 1979, the Republic, on the ocean side land of the New Port Development area, created by landfill portions of the land below the ordinary high water mark. Republic constructed fuel storage tanks and other facilities on the land filled area. The land was to used for a power generation station and a fuel tank farm. Citing 9 MIRC §103, the High Court held that to the extent the land that was created was below the high water mark, that land belonged to the Republic. The plaintiffs made reference to 9 MIRC §105, however, the High Court held that this section which basically transferred new land created through "land-fill or other land reclamation processes, from marine areas below the ordinary high water mark" to the owners of adjoining lands, was not retroactive as there was no clear indication by the Nitijela that this provision was to be given retrospective effect. The plaintiff also made reference to 24 MIRC §118 which basically stated that all public land currently held by the National or Local Government should be returned to the rightful landowners. The Court found that no claim was made to *Utuwe weto* and that 24 MIRC §119 was repealed in 2004 and while that law was in effect, the Republic leased the land to MEC and MEC mortgaged the land to the United States of America Rural Utilities Service and during all these activities no objection was made. Moreover, the Court made reference to 29 MIRC §117 which states that "actions for the recovery of land or any interest therein, with the exception that the

limitations of twenty years shall not apply to the inheritance of land by rightful heirs" must be brought within 20 years from when the action first accrued. The High Court found that the plaintiffs' action first accrued in 1979 when the Republic first entered *Utuwe weto* and commenced filling the land and that the plaintiffs' cause of action was precluded as a matter of law.

The plaintiff, in the case presently before this Court, when initially filed in 2007, was Raymond Latdrik. While he was still alive, the case was held in abeyance pending disposition in another related case.[2] During the pendency of the case, Raymond died and was substituted by Batle Latdrik, his younger brother. The issues in dispute in this case were the claim ownership of Utuwe *weto*, in particular the *iroij edik*, *alab* and *senior dri jerbal* interests, and the unlawful taking and trespass alleged against the Republic. The same issues of the ownership of *Utuwe weto*, unlawful taking and trespass by Republic were raised and was fully litigated in *Atama Zedkaia, et al., v. MEC, et. al.,* Civ. No. 2006-157 hereinafter the "*Zedkaia* case". In that case, Atama Zedkaia, the *iroij laplap* for *Utuwe weto* , Rebecca Mwejenwa, claiming the *alab* title and Tolbwij Toring, claiming the *senior dri jerbal* title, sued MEC and the Minister of Internal and Outer Islands Affairs (hereinafter the "Minister") on the issue of ownership of *Utuwe weto* and also alleging unlawful taking and trespass by the defendants (MEC and the Republic). Both Atama Zedkaia and Rebecca Mwejenwa were later substituted by Jurelang Zedkaia and Tolbwij Toring as *iroij laplap* and *alab*, respectively. The High Court, on a summary motion filed by the defendants, rule in favor of defendants and held that: (1) to the extent that the land where the MEC tank farm is situated was created by the Republic on submerged lands below the high water mar, that land belongs to the

---

[2] Order to Hold In Abeyance, *Raymond Latdrik v. Minister of Interior and Outer Islands Affairs and MEC,* H.Ct. Civ. No. 2007-062, dated November 25, 2013, pending the outcome in Latdrik v. Jane's Corporation, Civ. No. 2006-101.

Republic; and, (2) plaintiffs' claim for lands not below the high water mark is barred by the applicable statute of limitations.

III. Discussion.

In *Garity v. APWU National Labor Organization*[3], the 9th Circuit Court of Appeals enunciated the following requirements for the doctrine of issue preclusion to apply: (1) the issues was previously decided are identical to the ones presented in the present action; (2) the prior action was fully adjudicated on the merits; and, (3) the party against whom the doctrine is invoked was a party or in privity a party in the prior action.

The interests Batle Latdrik is now claiming are the *iroij edik, alab* and *senior dri jerbal titles*, the on Utuwe weto. These were the same claims to *alab* and *dri jerbal* interests claimed by Tolbwij Toring in the *Zedkaia* case (ibid) which were raised and fully argued by Toring, i.e., ownership to *Utuwe weto* and the unlawful taking an trespass by the Republic. Based on the opportunity accorded the parties to fully argue the case, a final determination granting the defendants' motion for summary judgment was entered against Latdrik's claim of the *iroij edik, alab* and *senior dri jerbal* interests.. The High Court's determination was appealed to the Supreme Court which affirmed the High Courts judgment.

Tolbwij Toring was the recognized *alab* (on the death of Rebecca Mwejenwa) and *senior dri jerbal* for the now nonexistent Utuwe weto. As the alab and *senior dri jerbal*, he would have adequately represented the interests of Batle Latdrik who claims the same alab and dri jerbal interest. As such all the requirements as enunciated by the 9th Circuit in *Garity v. APWU National Labor Organization, (ibid)*to enable the Court to grant summary judgment have been met: (1) the issues

[3] 828 F.3d 848 (9th Cir. July 05, 2016).

of ownership of and alleged unlawful taking and trespass were previously decided is the *Atama* case; (2) the prior action (the *Atama* case) was fully adjudicated on the merits; and, (3) Batle Latdrik, against whom the doctrine is invoked, claims the alab and senior dri jerbal interests to *Utuwe* weto interests were fully argued and adjudicated against Tolbwij Toring. This Court finds that because Tolbwij Toring was the recognized *alab* and *senior dri jerbal* and now Batle Latdrik is claiming those same interests, Batle Latdrik is in privity with Tolbwij Toring and who appearing by "virtual representation"[4] for Batle Latdrik.

As to Batle's claim of the *iroij edik* interest, this title was also the subject of a final determination in *Batle v. Laik*, S.Ct. 2028-101 (H.Ct. No. 2006-101) slip op., in which Batle Latdrik, was the plaintiff and the Supreme Court held up held the determination of the High Court that Batle Latdrik did not have any royal blood and could not claim the iroij edik interest.[5]

Accordingly, this Court finds that Batle Latdrik is precluded from asserting ownership of Utuwe weto :

(1) under 9 MIRC §103 *(Public Lands and Resources Act)*, former 24 MIRC §119 and 29 MIRC §117 (statue of limitations);

(2) by the doctrine of *issue preclusion/res judicata/collateral estoppel.*

IV. CONCLUSION.

To conclude, IT IS ORDERED that the plaintiff's complaint is hereby DISMISSED WITH

---

[4] See *E.E.O.C. v. Pemco Aeroplex, Inc.*, 383 F.3d 1280 (11th Cir. September 13, 2004); the appellate court holding that the doctrine of virtual representation is, in essence, provides that person may be bound by judgment even though not party if he is closely aligned with the interests of a party to the previous suit so as to be his virtual representative; whether the party is "virtual representative" of another is a question of fact.

[5] See *Gallardo v. AT & T Mobility, LLC* , 937 F.Supp.2d 1128 (D.Cal. March 29, 2013); *Porter v. Shah*, 660 F.3d 809 (D.C.Cir. June 01, 2010).

PREJUDICE; and,

IT IS FURTHER ORDERED that the parties be responsible for their own costs of litigation.

Dated and Entered this September 5, 2023.

Witten T. Philippo
Associate Justice