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

<p>AMIMA ALIK, Plaintiff, vs. YOSEPH KINTARO, Defendant.</p>	<p>CIVIL ACTION NO. 2022-021 TRC OPINION & ANSWER</p>
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MEMBERS OF THE PANEL: Hon. Grace L. Leban
Presiding Judge, TRC

Hon. Nixon David
Associate Judge, TRC

Hon. Claire T. Loeak
Associate Judge, TRC

PLACE OF HEARING: Majuro Courthouse
Uliga, Majuro Atoll
Marshall Islands

DATE OF HEARING: June 6-8, 2023; July 24, 2023
10am

PARTIES' CONTENTIONS:

The dispute between the parties relates to Enbar Weto on Toka, Ebon Atoll, Marshall Islands. Both parties admit that Enbar Weto is an *Imon Aje* to Binikio from Phillip. Plaintiff Amima Alik claims he is the proper person to hold and exercise the Alap title, rights and interests on and over Enbar Weto as an inheritance from his mother, Mita, a younger sibling of Binikio. According to Plaintiff Alik's claims, before Binikio died, he bequeathed Enbar to his mother, Nelle, to become the Alap on and over it; and after Nelle, Enbar became an *imon bwij*

when it transferred from Nelle to her daughter, Mita, the Plaintiff's mother. According to Alik, after the death of his mother, Mita, it is proper for him to succeed her and assume the title of Alap on and over Enbar Weto now because it is an *imon bwij*. The Plaintiff acknowledges that Binikio had a child, Taupe, whose children are alive today. And that Taupe's children would have been the proper persons to hold and exercise the title, rights and interests of Alap on and over Enbar today, but because they primarily live on Jobat and Ailinglaplap, and because they acknowledge Plaintiff Alik, then Alik is the proper person to hold and exercise the title, rights and interests of Alap on and over Enbar Weto, Ebon Atoll.

Defendant Yoseph Kintaro claims he is the proper person to hold and exercise the title, rights and interest on and over Enbar Weto, on Toka, Ebon Atoll, Marshall Islands. According to Defendant Kintaro, Binikio bequeathed Enbar Weto to his mother, Milka, after she took care of and nursed him for a long time. As such, Defendant Kintaro contends Enbar Weto is an *Imon Aje* to his mother and her descendants and not members of the *bwij*. In this regard, he further contends that after Milka's death, it is proper for him, the Defendant, to hold and exercise the title, rights interests on and over Enbar Weto today.

QUESTION CERTIFIED TO THE TRC PANEL TO ANSWER:

As between Amima Alik and Yoseph Kintaro, who is the proper person to hold and exercise the title, rights and interests of Alap today on Enbar Weto, Toka, Ebon Atoll, Marshall Islands?

ANSWER TO CERTIFIED QUESTION:

Yoseph Kintaro.

FACTUAL FINDINGS UPON WHICH ANSWER IS BASED:

In his opening, Plaintiff Amima Alik argues Enbar Weto belonged to an alap named Ibo. After Ibo he bequeathed to his daughter, Limij, the title, rights and interest of Alap on and over

Enbar Weto. Limij then gifted Enbar Weto to her husband, Phillip, who held and exercised the title, rights and interests of Alap on and over Enbar Weto after Limij. Later, Phillip bequeathed Enbar Weto to his nephew, Binikio as an *Imon Aje* because he took care of and nursed Phillip for a time. Binikio was the Alap of Enbar Weto. On one occasion, Binikio moved to Jaluit and entrusted Enbar Weto to his mother, Nelle, to look after. Binikio predeceased his mother. After Binikio died, Nelle succeeded him and became the Alap of Enbar weto, and upon her death, her daughter, Mita, then succeeded her. Plaintiff Amima Alik claims that with the passing of his mother, Mita, and because he is Mita's only surviving child today, it is only proper for the title, rights and interests of Alap on and over Enbar Weto to pass on to him.

Witness Susan Alik, who testified for the Plaintiff, concurred with the succession lineage claimed by the Plaintiff and illustrated in Plaintiff's Exhibit 1, that from Ibo, the title of Alap passed down the line to the present day, and that it is proper for her father, Plaintiff Amima Alik, to hold and exercise the title, rights and interests of Alap on and over Enbar Weto. In Plaintiff's testimony, he alleged that Binikio had a daughter, named Taupe, who had children of her own, and that they are the proper persons to hold and exercise the title, rights and interests of Alap on and over Enbar Weto, but because they were born and raised on Jobat and Ailinglaplap and as they assert no claim over Enbar Weto, he will then proceed and assert a claim on behalf of them all. He also argues that Leroij Neimat Reimers supports him as Iroij Jimata, Leroij Neimat's *maan maronron*, signed a document giving notice (*Plaintiff's Exhibit 4*), of a revocation of another document that granted Komi, Defendant Kintaro's son, to reside on Enbar Weto. The Plaintiff submitted a *kalimur* (*Plaintiff's Exhibit 2*), and opposed portions of the statements made in it and certain signatories that validated the said *kalimur*, however he affirmed some of the statements as valid and acknowledged Iroijlaplap Kabua Kabua's signature and the signature of

the Community Court Judge of Ebon at the time the *kalimur* was made. The Plaintiff claims the person who signed the *Kalimur*, Nathan, under the Alap's title, was never an alap of Enbar Weto. According to the Plaintiff, Binikio made a *kalimur* for Enbar to pass on to his mother Nelle, and then Plaintiff's mother, but the *kalimur* was made orally and not on paper because at the time, a *kalimur* was usually made orally, and not on paper. There were three (3) Alap witnesses, who were present when Binikio made his *kalimur*. In the Plaintiff's testimony, after the title, rights and interests of Alap transferred from Nelle to his mother, Mita, that the succession line passed through matrilineally. Therefore, because he is the only surviving issue of Mita today, that he is the proper person to succeed the title, rights and interests of Alap on and over Enbar Weto. Witness Antonio Korn, gave oral testimony that as a surviving child of Taupe, Binikio's child, she acknowledges her uncle, Amima Alik, as an Alap of Enbar Weto today.

The Defendant Yoseph Kintaro's claims assert he is the proper person to hold and exercise the title, rights and interests of Alap on and over Enbar Weto as his inheritance from his mother, Milka. According to Defendant Kintaro, Binikio gave Enbar Weto to Milka as an *Imon Aje* because Milka took good care of Binikio when he was ill and no one was near to look after and nurse him. The Defendant submitted Defendant Exhibit 2, which is also Plaintiff's Exhibit 2, considered to be a *kalimur* from Binikio to Milka for the title, rights and interests of Alap on and over Enbar Weto. With respect to Plaintiff's Exhibit 3 (*CA 183: Memorandum of Pre-Trial Conference*), which the Plaintiff asserts is proof that Nelle held and exercised the title, rights and interests of Alap, the Defendant refuted with his submission of Defendant's Exhibit 5 (*CA 183: Order of Dismissal*) and argues the Court dismissed the case and it was unresolved. Defendant Kintaro testified that Binikio had no children, however Plaintiff entered into evidence a birth certificate for Antonio Korn (Plaintiff Exhibit 5) to refute the Defendant Kintaro's claim.

Based on all the evidence in this case, the panel accepts that Plaintiff's Exhibit 2 which is also Defendant's Exhibit 2 is reliable evidence that Enbar Weto was an *Imon Aje* from Binikio to Milka, in whom Defendant Yoseph Kintaro is an heir. Both parties agree the *kalimur* contain Irojilaplap Kabua Kabua's signature, the Iroj of Enbar Weto, as well as the Ebon's Community Court Judge's signature, at the time. In their testimonies, Susan Alik and later Plaintiff Amima Alik, discounted the validity of a portion of the statements in the *kalimur* and a few of the signatures therein. They only acknowledge the validity of a few signatures, such as Irojilaplap Kabua and the Judge from Ebon, and agree with a few of the statements contained in the *kalimur*. The Panel believes if they agree with a portion of the statements and signatures, then it means the *Kalimur* titled "History Eo An Enbar Weto" is a reliable piece of evidence for the Panel to consider.

For that reason, the Panel accepts and acknowledges that Yoseph Kintaro obtained and is in possession a *kalimur* but Amima Alik did not and does not have one. Plaintiff Alik claims he received a *kalimur* orally and not in writing like Defendant Yoseph Kintaro; nevertheless, he claims he was given an oral one.

According to custom, there are two ways a succession line in a genealogy will deviate from norm. First is if there was a termination of rights (*bwilok*) or punishment (*lia*), and the second is if there was a *kalimur*, in which those in authority at the time it was made signed along with those who are next in line, as was the case in *Malachi v. Abon*. It is clear in this case that Plaintiff's Exhibit 2/Defendant's Exhibit 2 is a *kalimur* to Milka from Binikio for the title, rights and interests of Alap on and over Enbar Weto. And as an *Imon Aje*, Milka and her descendants are beneficiaries and the surviving member today is Yoseph Kintaro. And Exhibit D2 also certifies to this panel that Irojilaplap Kabua Kabua concurred with the granting of Enbar Weto to

Milka by signing the *kalimur*, that is Exhibit D2. In addition to Irojlaplap Kabua Kabua, the Community Court Judge of Ebon also signed at the time, as well as other titleholders for Enbar Weto at the time, including some members of the Ebon Local Council who attested to the *kalimur*.

The Panel also accepts that in addition to Irojlaplap Kabua Kabua's concurrence with Binikio's *kalimur* to Milka; Leroij Neimat Reimers, who is the current Irojlaplap of Enbar Weto, indicated her resolve to follow her predecessors and acknowledged the *kalimur* or Plaintiff's Exhibit 2/Defendant's Exhibit 2, and signed a certification on January 15, 2018 which is marked as Defendant's Exhibit 3. The Panel also took into consideration the Plaintiff's submission, Plaintiff's Exhibit 3, which Iroj Jimata Kabua signed on behalf of Leroij Neimat Reimers. After reviewing P3, the panel is unable to confirm whether Leroij Neimat had sufficient knowledge and understanding of P3 as she was not the one who signed, but her *maan maronron* Iroj Jimata Kabua.

Based on the statements above, the TRC Panel acknowledges that it is proper for Defendant Yoseph Kintaro to hold and exercise the title, rights and interests of Alap on and over Enbar Weto, Toka, Ebon Atoll, Marshall Islands, today.

RELEVANT CUSTOM & TRADITIONAL PRACTICE:

1. *Imon Aje – land gifted by an Iroj or an Alap to a person who looked after and cared for him/her as he/she grew older and weaker.*
2. *Imon Bwij – land belonging to the bwij.*

APPLYING CUSTOM TO THE FACTUAL FINDINGS:

It is clear in this case that both parties agree Enbar Weto on Toka, Ebon Atoll, Marshall Islands is an *imon aje* from Phillip to Binikio. Plaintiff argues that Enbar Weto is an *imon bwij*. Yes, it would have been an *imon bwij* if no will granting it to Milka from Binikio was made, as shown in *Plaintiff's Exhibit 2/Defendant's Exhibit 2*, which is a *kalimur* of how Binikio bequeathed Enbar Weto to Milka because she tended to him and took care of him while on his sick bed, and Iroijlaplap Kabua Kabua and Alab Nathan Jokaidrik concurred to this by signing their names on it.

Plaintiff's Witnesses:

1. Susan Alik
2. Antonia Korn
3. Amima Alik
4. Robin Reimers

Defendant's Witnesses:

1. Yoseph Kintaro
2. Komi Kintaro

Plaintiff's Exhibits:

1. Plaintiff's Exhibit 1 – Genealogy Chart
2. Plaintiff's Exhibit 2 – Written History of Enbar Weto
3. Plaintiff's Exhibit 3 – Leroij Neimat Reimers' January 2019 Revocation
4. Plaintiff's Exhibit 4 – Civil Action 183
5. Plaintiff's Exhibit 5 – TTPI Certificate of Birth Antonia Korn

Defendant's Exhibits:

1. Defendant's Exhibit 1 – Genealogy Chart

2. Defendant's Exhibit 2 – Written History of Enbar Weto
3. Defendant's Exhibit 3 – Leroij Neimat Reimers' January 15, 2018 Verification
4. Defendant's Exhibit 4 – Genealogy of Andrew & Emle
5. Defendant's Exhibit 5 – Civil Action 183, Order of Dismissal

OTHER FACTS CONSIDERED BY PANEL:

If the succession line had continued down according to the genealogy of the families, then Binikio's surviving descendants, like Antonia Korn and her siblings would have been the proper persons to hold and exercise the title, rights and interests of Alap on and over Enbar Weto. By acknowledging Amima Alik as their uncle, they relinquished their claim to support his lawsuit in this case on behalf of them all.

The Panel acknowledges the importance of the custom and family ties. To love, honor and respect each other are ways that strengthen and preserve our customs and our society. As the parties in this case are members of the same family, it is this panel's hope that they will honor our custom; a source of blessings and pursue to love, respect and honor each other.

Dated: 24 August 2023.

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

_____/s/
Hon. Nixon David
Associate Judge, TRC

_____/s/
Hon. Claire T. Loeak
Associate Judge, TRC