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

AILJEN TOKJEN (acting on behalf of Rosilla Tiej and Biten Joseph), Plaintiff, vs. BARBARA LODGE-LOBJU and YOLANDA LODGE-NED, Defendants.	CIVIL ACTION NO. 2018-00294 OPINION & ANSWER OF THE TRADITIONAL RIGHTS COURT
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MEMBERS OF THE PANEL: Grace L. Leban
Presiding Judge, TRC

Nixon David
Associate Judge, TRC

Claire T. Loeak
Associate Judge, TRC

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

DATE OF HEARING: July 25 - 27, 2023; August 18, 2023

I. INTRODUCTION

This case involves a dispute over the Alap and Senior Dri Jerbal rights and titles of Wotje Weto, Delap Island, Majuro Atoll, Republic of the Marshall Islands (“Wotje Weto”). On November 06, 2018, Plaintiff Ailjen Tokjen, acting on behalf of Rosilla Tiaj for the title of Alap

and Biten Joseph for the Senior Dri Jerbal title (“Plaintiff”), lodged this claim in the High Court against the Defendants, Barbara Lodge-Lobju and Yolanda Lodge-Ned.¹

Defendants Barbara Lodge-Lobju and Yolanda Lodge-Ned (“Defendants”), filed their “Answer To Complaint” on January 11, 2019, and asserted their rights as titleholders stem from their great-grandmother’s older brother, Labwilene, who died without any children.²

A. PROCEDURAL HISTORY

On February 18, 2019, the High Court referred two questions to the Traditional Rights Court (“TRC”) for resolution in accordance with Article VI, Section 4(4) of the Constitution of the Republic of the Marshall Islands (“Constitution”):

1. Who between Ailjen Tokjen, on behalf of Rosilla Tiaj, and Barbara Lodge-Lobju, and those claiming through them, under the customary law and traditional practice of the Marshall Islands, is the proper person to hold and exercise the Alap rights and title over Wotje Weto?
2. Who between Ailjen Token, on behalf of Rosilla Tiaj and Biten Joseph, and Yolanda Lodge-Ned, and those claiming through them, under the customary law and traditional practice of the Marshall Islands, is the proper person to hold and exercise the Senior Dri Jerbal rights and title over Wotje Weto?

The TRC has jurisdiction under Article VI, Section 4(4) of the Constitution and TRC Rules of Procedure, Rule 1.³ The TRC considers these questions in accordance with Article VI,

¹ Plaintiff’s ‘Verified Complaint’.

² Defendants’ ‘Answer to Complaint’ on pages 2 and 4.

³ **TRC RoP Rule 1. Procedure for Invoking Jurisdiction.** A party wishing to invoke the jurisdiction of the Traditional Rights Court shall in the party’s complaint or the answer or other response pleading, or by written motion filed at any time after the commencement of the action and not later than 21 days after service of the last pleading, apply for certification of one or more questions to the TRC for resolution (“Application”). In such

Section 4(3) of the Constitution,⁴ and resolves them based on the customary law and traditional practice of the Marshall Islands.

For the reasons set forth, the TRC Panel finds that Defendant Barbara Lodge-Lobju is the proper person under Marshallese custom to hold and exercise the rights and title of Alap over Wotje Weto. Likewise, Defendant Yolanda Lodge-Ned is the proper person under Marshallese custom to hold and exercise the Senior Dri Jerbal rights and title over Wotje Weto.

II. PROCEDURAL & FACTUAL BACKGROUND

On July 25, 2023, this case came before the TRC Panel in accordance with Rule 7(b) of the TRC Rules of Procedure. However, prior to advancing further in these proceedings, Counsel for the Defendants brought to the attention of this Court an important matter concerning the Plaintiff's failure to provide notification of the passing of Rosilla Tiaj, who passed away on October 1, 2022. The Plaintiff also failed to file a *Motion for Substitution* until July 24, 2023, just one day before the scheduled trial commencement.

These issues do not pertain to questions of customary law or traditional practice and therefore fall beyond the constitutional purview of the TRC's jurisdiction (*Nashion and Sheldon v. Enos and Jacklick*, 3 MILR 83, 89, (2008)).

The Panel promptly directed the issues and Counsels to the certifying court the same day. After a brief consultation with both Counsels and the certifying court, the Panel resumed the trial after Defendants' notice to waive its opposition to the Plaintiff's Notice of Death and Motion for Substitution ("MFS") filed in the High Court.

Application a party shall specify the questions that the party wants certified, and any other party may, within 21 days after such application, move that other questions also be certified. The failure of a party to timely move for certification shall constitute a waiver of trial of such issues by the TRC. However, the High Court, upon a showing of excusable neglect or good cause, may extend the time for filing an Application.

⁴ RMI Constitution Article VI, Section 4(3). The jurisdiction of the Traditional Rights Court shall be limited to the determination of questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice in the Republic of the Marshall Islands

Based on the parties' submissions and suggestions for resolution of the issues, the Panel finds the parties' claims stem from two distinct family lineage. The first lineage belongs to Kejon Kejon (*aka Kejon Rejewa*) who is the Plaintiff's ancestor. The second lineage belongs to Labbo Loren, the Defendants' great grandmother. Kejon Rejewa and Labbo Loren were in fact married (Defendants' Exhibit A). Their son, Laninbit Kejon, held and exercised the Alap and Senior Dri Jerbal rights and titles over Wotje Weto at the time the Plaintiff's *bwij* purportedly approached Iroiylaplap Amata Kabua about their claim.⁵

The Plaintiff asserts Wotje Weto belongs to siblings Kejon Rejewa and Liolet, direct descendants of Lijeri, and not Labwilene, the great-granduncle of the Defendants and Labbo Loren, their great-grandmother. Kejon Rejewa is identified as a descendant of Lijeri's *bwij* in the family genealogy (Plaintiff's Exhibit A).

The Plaintiff represents the eldest descendants of the succeeding lineage of Litarki following the extinction of Lijeri's *bwij*.⁶ Plaintiff claims the elder *bwij* ended with the death of Kejon Rejewa for two reasons. First, Laninbit Kejon, the purported Alap and Senior Dri Jerbal at the time, was supposedly a *botoktok* descendant of Kejon Rejewa. Second, Laninbit Kejon was allegedly an adopted child and therefore not the proper successor to Kejon Rejewa's customary land titles, rights and interests (citing Trust Territories ("TT") cases, and Kabua, *Customary Titles and Inherent Rights*).⁷

The Defendants contend however that their great granduncle Labwilene was Alap and Senior Dri Jerbal over Wotje Weto and when he died childless, Labbo Loren was his only living relative and heir apparent. Labwilene was the registered Alap and Senior Dri Jerbal of Wotje

⁵ Deposition of Elias Juwa Jack, page 4.

⁶ Plaintiff's Exhibit A, *Family Genealogy*.

⁷ Plaintiff's Rule 2 Statement of September 28, 2021: Amon vs. Makroro, 5 TTR 436; Loeak v Loeak, 8 TTR 456; A. Kabua, *Customary Titles and Inherent Rights*.

Weto in 1958, and Iroij Aisea David was the registered Iroilaplap and Iroij-edik at that time (Defendants' Exhibit B). Labwilene's line of succession continued with his sister Labbo Loren and, in subsequent order thereafter, Laninbit Kejon, Frances Laninbit and the Defendants, Barbara Lodge-Lobju and Yolanda Lodge-Ned.

Parties agree the current Iroijlaplap of Wotje Weto is Leroij Esther Zedkaia who is preceded by Iroijlaplap Lein Zedkaia, Iroijlaplap Jurelang Zedkaia, Leroij Atama Zedkaia, Iroijlaplap Amata Kabua, Iroijlaplap Joba Kabua and Iroijlaplap Aisea David.

Parties also agree that Wotje Weto is an imon bwij.

III. RELEVANT CUSTOMARY LAW & TRADITIONAL PRACTICE

The relevant customary law and traditional practice for consideration in this case include:

1. *bedbed ijin bedbed ijon* (also spelled *padpad ijin padpad ijon*) is defined to mean whether you are present or not, it matters not as we are all one family, and those who are present represent the entire family and land rights are retained. (*Bikajela v. Katwan and Kattilman*, CA 2020-00640).
2. *imon bwij* – matrilineal land (islet or land parcel) that is inherited through the female line. Marshallese customary pattern provides for matrilineal descent of land rights. (*Lokkon v. Nakap*, 1 MILR (Rev.) 69, 71 (1987)).
3. *adopted child* – a child who is adopted within the same bwij or from outside the bwij after birth or as a young child as if it were your own. The rights of an adopted child become effective upon the extinction of the *bwij* and *botoktok* lineage, and a valid *kalimur* endorsed by the Iroijlaplap and, in certain cases, members of the *bwij* and *botoktok*, exists. (*Rilometo and Rilometo v. Kabua v. Botla and Moor*, CA 2018-006; *Malachi v. Abon*, CA 2013-00213).

The Supreme Court has held that every question of custom involves two factual determinations: first, is there a custom? If so, the second, what is it?⁸ The party relying on the custom has the burden of proof as to its existence and substance to the case.⁹

A. PARTIES' CONTENTIONS

1. Plaintiff's Claim

The custom of *bedbed ijin bedbed ijon*, the Plaintiff claims, is applicable in this case as the older *bwij* of Lijeri that lived and exercised the rights and titles of Alap and Senior Dri Jerbal on Wotje Weto represented the entire family, including the younger *bwij* of Litarki that had lived on Maloelap Atoll until the 1960s and 1970s. As the custom of *bedbed ijin bedbed ijon* provides that even if Litarki's *bwij* lived on Maloelap Atoll, the family genealogy (Plaintiff's Exhibit A) shows Litarki's *bwij* ought to succeed Kejon Rejewa's *bwij* (Lijeri). (citing *Limine vs. Lainej*; *Edwin vs. Thomas*; *Amon vs. Makroro*; *Loeak vs. Loeak*; and *Kabua, Customary Titles and Inherent Rights*).¹⁰

Plaintiff claims their *menmenbwij* was acknowledged by previous Irojilaplap. Testimonial evidence offered during trial by Plaintiff's witness Albert Alberttar and the deposition of Elias Juwa Jack indicated that the family genealogy was acknowledged by Leroij Esther Zedkaia's predecessors; namely Irojilaplap Amata Kabua, Leroij Atama Zedkaia, and Irojilaplap Jurelang Zedkaia.¹¹

Plaintiff also asserts Kejon Rejewa was the last *bwij* descendant of Lijeri who exercised the Alap and Senior Dri Jerbal rights and titles over Wotje Weto. As such, Laninbit Kejon's succession rights were subordinate to members of the younger *bwij* because Wotje Weto is an

⁸ *Lobo v. Jejo*, 1MILR (Rev.) 224, 226 (1991).

⁹ *Zaion, et al., v. Peter and Nenam*, 1MILR (Rev.) 228, 232 (1991); *Tibon v. Jihu, et al.* 3MILR 1, 5 (2005).

¹⁰ *Ibid*, note 7, page 3.

¹¹ Plaintiff's Testimony given July 25, 2023 via Zoom; Transcript of Deposition of Elias Juwa Jack, page 4.

imon bwij and the hierarchical succession line prioritizes *bwij* descendants over children of the *botoktok* and an adopted child.¹² For this reason, Plaintiff argues Laninbit Kejon should never have become the Alap or Senior Dri Jerbal in the first place. The rights and titles ought to have transferred to the younger *bwij* of Litarki when Kejon Rejewa died. He claims to be the proper person to hold and exercise the Alap and Senior Dri Jerbal rights and titles over *Wotje Weto*.

2. Defendants' Claim

Defendants Barbara Lodge-Lobju and Yolanda Lodge-Ned, on the other hand, contend that they inherited *Wotje Weto* from their maternal great-grandmother, Labbo Loren. Labbo Loren was married to Kejon Rejewa, the Plaintiff's ancestor. (Defendants' Exhibit A). The Defendants testified that Labbo Loren was also the only surviving sibling of her elder brother, Labwilene, who died childless.

A Trust Territory of the Pacific Islands ("TTPI") document from 1958 (Defendant's Exhibit B) shows that Labwilene held and exercised the Alap and Senior Dri Jerbal titles for *Wotje Weto* and was the registered landowner along with Irojlaplap Aisea David.

Leroij Esther Zedkaia stated in her deposition that Labwilene was given *Wotje Weto* and Labbo Loren, not Kejon Rejewa, was the landowner of *Wotje Weto* and Laninbit Kejon's predecessor.¹³ She also confirmed that she issued a document certifying that Barbara Lodge-Lobju is the Alap and Yolanda Lodge-Ned is the Senior Dri Jerbal over *Wotje Weto* (Defendants' Exhibit E), and that neither she nor her brothers, the late Irojlaplap Jurelang Zedkaia and late Irojlaplap Lein had previously issued any document certifying that the Plaintiff or those he

¹² Ibid, note 7, page 3.

¹³ Defendants' Exhibit F, page 5 and 13.

represents (Rosilla Tiaj and Biten Joseph) held the Alap or Senior Dri Jerbal titles over Wotje Weto.¹⁴

Alap Samuel Langrine testified that he knew Labbo Loren as a landowner in Delap and that she was an Alap on Wotje Weto and that Laninbit Kejon and Frances Laninbit were her successors in interest. He also testified that he is presently the Alap of Remejon Weto that is adjacent to Wotje Weto. As an Alap of Delap, he knows the Defendants and their great grandmother, grandfather and mother as landowners of Wotje Weto. He stated further that he never knew Kejon Rejewa.

Defendants argue that Laninbit Kejon was Labbo Loren's successor and became the Alap of Wotje Weto until his death in 1997 (Defendant's Exhibit A); his only daughter, Frances Laninbit, exercised the Senior Dri Jerbal title (Defendants' Exhibits G, H, I and J) during his lifetime. Frances Laninbit then became the Alap as Laninbit Kejon's successor and the Senior Dri Jerbal for Wotje Weto until she died in 2015.

Defendants' rights as titleholders on Wotje Weto stem from the succession line of Labwilene and Labbo Loren, and each succeeding Iroiylaplap of Wotje Weto since Iroiylaplap Aisea David endorsed the succession lineage.

As an Alap of the adjacent weto of Eonmaj in Delap, Lojan Toring testified that he knew nothing about the Plaintiff's family as Delap landowners, but confirmed that the Defendants are currently exercising Alap and Senior Dri Jerbal rights on Wotje Weto. He also testified that he only knew of a Rosilla Samuel, and knew nothing about Kejon Rejewa as a landowner of Wotje Weto.

IV. DISCUSSION

¹⁴ Defendants' Exhibit F, page 6.

A. Applying Facts to Custom

The Plaintiff relies on the custom of *bedbed ijin bedbed ijon* but does not provide any referencing authority for which this Panel can use. Albeit, the Panel agrees with the Plaintiff's assertion that *bedbed ijin bedbed ijon* dictates that the succession line continues uninterrupted if, absent any special arrangement (*Malachi v. Abon*, 2013-00213; *Bikajela v. Katwan and Kattilman*, CA 2020-640), or other factors dictating otherwise, the claimants can establish its substance in the present case.¹⁵

The Panel finds there is insufficient evidence to support the Plaintiff's claim that their ancestor, Kejon Rejewa, held the Alap and Senior Dri Jerbal rights and titles over Wotje Weto.. Because the transfer of the succession line from Lijeri's bwij to Litarki's bwij is contingent upon establishing that Kejon Rejewa and his predecessors held and exercised the rights and titles of Alap and Senior Dri Jerbal on Wotje Weto, the Panel concluded that the evidence does not substantiate the Plaintiff's claim regarding Kejon Rejewa's exercise of the Alap and Senior Dri Jerbal titles. As such, the customary practice of *bedbed ijin bedbed ijon* has no relevance and is deemed inapplicable to this case

This court has stated that the "*custom of bedbed ijin bedbed ijon is not a controlling custom because custom and land rights can change if there are good reasons.*"¹⁶ And to deviate from "*...orders and arrangements put in place by Iroijs of the weto in accordance with custom*" would be a violation of Marshallese custom (*Malachi v. Abon*, CA 2013-00213).

In this case, the Panel finds that although the Defendants' submission does not include a *menmenbwij*, the endorsement of the succession line of Labwilene to the Defendants today by the current Irojilaplap and her predecessors is consistent with Marshallese custom.

¹⁵ Ibid, note 9.

¹⁶ *Tibon v. Molik v. deBrum*, CA 2003-00122.

In Leroij Esther Zedkaia's deposition (Defendants' Exhibit F), she stated that her grandmother was the previous landowner of Wotje Weto before it was given to Labwilene and that she has never heard of the two *bwij* of Lijeri and Litarki. She confirmed that Kejon Rejewa was a landowner of Mejelok Weto, but not Wotje Weto.

Furthermore, Defendants' Exhibit B illustrates Labwilene held both titles of Alap and Senior Dri Jerbal over Wotje Weto, thereby supporting the Defendants' claim that their rights as titleholders on Wotje Weto originated from Labwilene and subsequently, Labbo Loren.

The Panel considered the testimonies of the Plaintiff and Elias Juwa Jack in which they both claim that Irojilaplap Amata Kabua and Leroij Atama Zedkaia acknowledged the validity of their family's genealogy. The Panel however was unable to find sufficient evidence to substantiate this claim. Consequently, the Panel concluded that while the two Irojilaplap acknowledged the *menmenbwij*, neither of them issued any documents certifying the Plaintiff or Rosilla Tiaj and Biten Joseph were in fact, the proper persons to hold and exercise the Alap and Senior Dri Jerbal for Wotje Weto. Furthermore, the Panel found no additional corroborating evidence presented during the trial to support the assertion that the statements were made by the two Irojilaplap at the relevant time. The Panel also found Plaintiff's rebuttal witness, Elias Juwa Jack's claim that Kejon Rejewa also exercised the Irojierik title over Wotje Weto during his lifetime confusing and even more so, his contradictory assertion that he is the proper successor to the Irojierik, Alap and Senior Dri Jerbal rights and titles over Wotje Weto.

The Panel also reviewed the Plaintiff's assertion that Irojilaplap Jurelang Zedkaia acknowledged the family's claim over the Alap and Senior Dri Jerbal rights and title on Wotje Weto when he signed a document allowing a member of the family to build on Wotje Weto (Plaintiff's Exhibit B). Given that there were apparently an Alap and a Senior Dri Jerbal of

Wotje Weto at the relevant time the document was signed, the Panel is unable to determine its reliability as it appears Irojilaplap Jurelang Zedkaia signed for all three land interests: Irojilaplap, Alap and Senior Dri Jerbal.

At best, the Panel finds that Plaintiff's Exhibit B provides evidence that late Irojilaplap Jurelang Zedkaia signed a document granting Claton Jabjulan permission to build a house on Wotje Weto in 1998 when Leroij Atama Zedkaia was still alive. Although Claton Jabjulan built a house on Wotje Weto, the document appears on its face, to be inconsistent with *Article X, Section 1(2)* of the Constitution.¹⁷

Furthermore, the Panel finds Irojilaplap Jurelang Zedkaia had an opportunity to validate the Plaintiff's family's claim over Wotje Weto and issue a certificate of traditional successor. Such a certification would have served as a formal recognition of their assertion over the Alap and Senior Dri Jerbal rights and titles on Wotje Weto. But he did not.

The Panel acknowledges that consistent with *Rule 1101(d)(1)* of the Evidence Act, the current Irojilaplap and her predecessors, late Irojilaplap Lein Zedkaia and late Irojilaplap Jurelang Zedkaia, issued documents certifying Defendants and their mother, Frances Laninbit (Defendants' Exhibits C, D and E), as Alap and Senior Dri Jerbal of Wotje Weto.¹⁸ The Panel accordingly finds it must consider said documents as reliable evidence and give substantial weight to the Irojilaplap's determination as to the Alap and Senior Dri Jerbal of Wotje Weto.

¹⁷ **Article X, Section 1(2):** Without prejudice to the continued application of the customary law pursuant to Section 1 of Article XIII, and subject to the customary law or to any traditional practice in any part of the Republic, it shall not be lawful or competent for any person having any right in any land in the Republic, under the customary law or any traditional practice to make any alienation or disposition of that land, whether by way of sale, mortgage, lease, license or otherwise, without the approval of the Irojilaplap, Irojiedrik where necessary, Alap and the Senior Dri Jerbal of such land, who shall be deemed to represent all persons having an interest in that land.

¹⁸ **Rule 1101(d)(1):** In respect to any weto, or part thereof, substantial weight shall be given to determinations by the person holding the title of Irojilaplap, or if there is no Irojilaplap, the title of Irojierik, as to who are the Alap, Senior Drijerbal, Dri Jerbal, and other title holders.

The Supreme Court has held in *Lokkon v. Nakap*, 1 MILR (Rev.) 69, 71 (1987) that “*Marshallese customary pattern provides for matrilineal descent of land rights.*” In this regard, since Plaintiff’s assertion is contingent upon the validity of Kejon Rejewa’s lineage claim over Wotje Weto, their claim over Wotje Weto as an *imon bwij* dissolved and is no longer relevant as Kejon Rejewa has been deemed as not a legitimate successor in interest on Wotje Weto.

In contrast, the Panel finds the Defendants’ assertion that upon the death of Laninbit Kejon, his only daughter Frances Laninbit established a new *bwij* line (*jidraak in bwij*) is consistent with Marshallese custom. The Defendants are accordingly, first generation *bwij* descendants from their mother.

The Panel also deliberated on the Plaintiff’s claim that Laninbit Kejon was Kejon Rejewa’s adopted son and therefore not the proper person to inherit his rights and titles over Wotje Weto. As discussed above, the Panel has conclusively determined that Kejon Rejewa was not an Alap or Senior Dri Jerbal of Wotje Weto. As such, any such discussion on the rights of Laninbit Kejon as an adopted child the Panel finds insufficient. Even so, the Panel found the evidence presented at trial was insufficient to support a determination that Laninbit Kejon was in fact adopted.

V. CONCLUSION

After considering all the documentary and testimonial evidence presented by the parties and for the reasons stated above, the Panel concludes and finds that:

1. Laninbit Kejon inherited Wotje Weto from his mother, Labbo Loren, and not his father, Kejon Rejewa;
2. Wotje Weto is an *imon bwij*;
3. Kejon Rejewa was never an Alap or Senior Dri Jerbal of Wotje Weto;

4. Given that Kejon Rejewa was never an Alap or Senior Dri Jerbal of Wotje Weto, the customary of *bedbed ijin bedbed ijon* is inapplicable in this case as the Plaintiff was unable to substantiate its relevance thereof.

Accordingly, this Court finds that Barbara Lodge-Lobju is the proper person under Marshallese custom to hold and exercise the title, rights and interests of Alap over Wotje Weto, and likewise, Yolanda Lodge-Ned is the proper person under Marshallese custom to hold and exercise the title, rights and interests of Senior Dri Jerbal over Wotje Weto.

Dated: 02, October 2023.

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

_____/s/_____
Nixon David
Associate Judge, TRC

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