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

**ASSISTANT CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS**

JENIS TEN, Plaintiff, vs. LANNY KABUA, ROSELIN PAUL and TIBET PHILLIP Defendants.	CIVIL ACTION NO. 2022 - 02153 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

Jasper Lanki
 Associate Pro Tem Judge, TRC

PLACE OF HEARING: **Ebeye Courthouse**
 Ebeye, Kwajalein Atoll
 Marshall Islands

DATE OF HEARING: **May 14-16, 2024**

INTRODUCTION

On October 18, 2023, the High Court referred questions involving custom in this case for the Traditional Rights Court to resolve. The questions stem from the disputes involving the rights and titles of Alap and Senior Dri Jerbal on nine (9) land parcels located on Nimur Island, Kwajalein Atoll. The land parcels herein mentioned include i) Bietto, ii) Bikomman, iii) Ejel, iv) Enugarret, v) Kabinene, vi) Monkanal, vii) Monkolej, Viii) Monkono, and ix) Tuakloken.

The parties agree that all 9 land parcels in dispute are under the domain of Irojlaplap Laelan, or the current holder Neimat Catherine Reimers (Neimat). They also agree that all 9 land parcels on Nimur Island are *imon bwij* from Liodik, from the jowi (clan) Riloboran, down to Abija, and after Abija, the *bwij* became extinct. The claimants from both parties are from one family and common ancestress, Lieodik (see Plaintiff's Exhibit A/Defendant's Exhibit 7).

PARTIES' CONTENTIONS

The testimonial and documentary evidence from Plaintiff Jenis Ten (Jenis) indicate that she claims to be the proper person to hold and exercise both the Alap and Senior Dri Jerbal on and over the 9 land parcels on Nimur Island, Kwajalein Atoll. According to the Plaintiff, after the death of Abija, and the extinction of the *bwij*, the rights and title of Alap transferred to the *botoktok* (patrilineal bloodline) line, and at that time, it was Eodik Sam (Eodik), a child of Ikirtok, and the holder of the Senior Dri Jerbal at the time was Donald, a child of Nilep (see Plaintiff's Exhibit A").

She also claims that it is not proper for the rights and title of Alap to transfer to Roslin today, as she is a child of a woman called Larok, who is not of the *bwij* as she is a blood descendant, or a child of a man, called Lemto. For this reason, Larok cannot be the one who established a new *bwij* line because she comes from a male. Consequently, the rights and title of Alap continues with the blood descendants from the eldest *bwij* line, or Lijokane's descendants, and then from Lijokane, Ikirtok and Nilep, according to Plaintiff's Exhibit A. The Plaintiff claims that after the death of her elder brother, Donald in 2015 (see Plaintiff's Exhibit C), who held and exercised the Senior Dri Jerbal rights and title during Eodik Sam's alapship, it was proper that the rights and title of Senior Dri Jerbal was passed on to her, the Plaintiff. The Plaintiff also contends that it is not proper, according to Marshallese custom, for Lanny Kabua

(Lanny), who is the *manmaronron* for Neimat, to divest the Plaintiff of the title of Senior Dri Jerbal, and transfer it to her younger sibling, Tibet Phillip (Tibet), faulting the Plaintiff for committing the customary offense of *tomewa*, without any substantial grounds for accusing the Plaintiff of committing *tomewa*.

On the other hand, in the testimonial and documentary evidence presented by the defendants, they claim that Roslin is the proper person to hold and exercise the rights and title of Alap on and over the 9 land parcels on Nimur Island, Kwajalein Atoll. The Defendants also aver that Abija, from the jowi of *Riloberan*, and the last of Liodrik's *bwij*, held and exercised the rights and title of Alap, and after the *bwij* became extinct. For this reason, according to custom, the authority reverted back to the Irojlaplap to designate an Alap for the 9 land parcels on Nimur Island. Irojlaplap Kabua Kabua proceeded with the authority and designated Larok, who began a new *bwij* line, and today the rights and title of Alap ought to be held and exercised by Roslin and her younger brother, Albert. The Defendants contend the eldest *bwij* today are descendants of Ikirtok and Nilep, are *toor in botoktok* or from the bloodline, and are the rightful Senior Dri Jerbal and not the rightful holders of Alap on the 9 land parcels in Nimur Island, Kwajalein Atoll.

However, according to the Defendants, the Senior Dri Jerbal rights and title that was previously held and exercised by Jenis Ten, was divested by the Irojlaplap and transferred to her younger brother, Tibet Phillip (Tibet), following Plaintiff Ten's act of *tomewa*, or changing her allegiance and loyalty to another Irojlaplap, and not recognizing Neimat as the Irojlaplap of the 9 land parcels on Nimur Island, Kwajalein Atoll today.

QUESTIONS REFERRED TO THE TRC PANEL TO ANSWER

1. As between the Plaintiff and the Defendant Roslin Paul and those claiming through them, who is the proper person, under Marshallese customary law and traditional practice, to hold and exercise the rights and title of Alap on and over these land parcels on Nimur Island, Kwajalein Atoll, Republic of the Marshall Islands: (i) Bietto, (ii) Bikomman, (iii) Ejel, (iv) Ennugarret, (v) Kabinene (vi) Monkanal, (vi) Monkolej, (viii) Monkono, im (ix) Tuakloken.
2. As between the Plaintiff and Defendant Tibet Phillip, and those claiming through them, who is the proper person, under Marshallese customary law and traditional practice, to hold and exercise the rights and title of Senior Dri Jerbal on the land parcels above mentioned.
3. Is there a custom in the Marshall Islands called “Tomewa”? And if yes, how does the custom of “Tomewa” work?
4. Did the Plaintiff commit the offense of “Tomewa”? If yes, then is it proper for Defendant Lanny Kabua (Lanny) to nullify or revoke the title of Senior Dri Jerbal according to Marshallese customary law and traditional practice? Or should there have been time given to the Plaintiff to seek forgiveness before she was divested of her Senior Dri Jerbal rights and title?
5. If the Plaintiff had not committed a customary wrong, is it proper and required for Defendant Lanny to designate and recognize her as an Alap on these land parcels?

ANSWER

1. Roslin Paul
2. Tibet Phillip
3. Yes, *tomewa* is a Marshallese custom. In the past, during times of war between chiefs,

if a *ritarinae* (fighter/soldier) changes his allegiance or loyalty to the enemy, he would be considered to have committed an act of *tomewa* as he has deserted his fellow fighters to join the opposing ones. This is one of the serious offenses that may ultimately give cause to the Iroij to divest the *ritarinae* (soldier) who has committed *tomewa* of his land rights. In applying this today, while there are no longer wars between the chiefs as in the past, the Iroij are now disputing and opposing one another in the courts about their land rights and titles.

4. Yes, the Plaintiff, Jenis, in her recognition of Lajan Kabua (Lajan) to designate her as an Alap and Senior Dri Jerbal on the land parcels in this case, as her Irojlaplap, at this time when Neimat is currently holding and exercising the Irojlaplap title for the domain that both Lajan and Neimat are from, we consider as an act of *tomewa*, as there is currently a land dispute between them. There is authority with Defendant Lanny, who is the designated *manmaronron* for Neimat, to divest Jenis of her land rights and title based on his belief that she committed an act of *tomewa*. However, the Plaintiff could have sought out her Iroij and ask for their kind consideration and forgiveness, as Iroij im jela.

5. Yes, if there was no offense or wrongdoing on her part against her Iroij, it would have been proper for Defendant Lanny to recognize and designate her as an Alap for the land parcels in dispute.

FACTS UPON WHICH ANSWER IS BASED

After the panel reviewed the evidence before this court, including the testimonial evidence from the parties' witnesses, it considered the Plaintiff's complaint involving both the Alap and Senior Dri Jerbal rights and title on the 9 land parcels on Nimur Island, Kwajalein Atoll, for the domain of Laelan.

With respect to the Plaintiff's claim alleging she is the proper person to hold and exercise

the Alap rights and title over the 9 land parcels on Nimur Island, this panel reviewed all the grounds submitted by Ten. According to the genealogy of Liodrik, from the jowi Rilobaren, the descendants today are from the two daughters of Liodrik or Liodrik's descendants. The eldest bwij is from the eldest female Lijkane, and the younger bwij is from the younger daughter Neibarbar (see Plaintiff's Exhibit A). The succession line, according to Liodrik's genealogy continued until the time of Abija, in which Liodrik's bwij became extinct in light of the prior passing of Ikirtok, a bwij descendant, and Nilep, also a bwij descendant. For this reason, the rights and title of Alap naturally transferred to the bloodline (botoktok/patrilineal), and at that time, the proper person was Larok, the daughter of Lemto, the uncle of Abija, Ikirtok, and Nilep. Larok is a blood descendant from Lemto, and it was proper for Nelu and subsequently, Neimat to recognize Larok as a blood descendant and not a bwij, however, according to custom, because Larok is a female, a new bwij line is established and her descendants would inherit the rights and title of Alap for the 9 land parcels on Nimur Island, because they are children of the female line, or bwij. (Kabua, 1993).

After Larok and her younger siblings died, the rights and title of Alap reverted back to the bwij as a new bwij line was established with Larok. In this regard, the rights and title of Alap were held and exercised by Larok's descendants, and the first one was Eodrik Sam. This can be attested to through the signature of Eodrik Sam as an Alap in the LUA (see Plaintiff's Exhibit B), and in the document signed by the Irojlaplap of the domain of Laelan recognizing her in 5/12/18, in which designated man maronron Lanny signed on her behalf (see Plaintiff's Exhibit G).

This panel finds it was proper for the rights and title of Alap to have been held and exercised by Eodrik Sam, as a descendant of the new bwij established by her mother, Larok,

and as the eldest child of Larok, according to the family genealogy and custom. After Eodrik Sam, it follows that the rights and title of Alap would pass on to the younger sibling of Eodrik and a child of Larok, that is Roslin.

This panel also reviewed the Plaintiff's claim against Defendant Lanny, who was designated by Neimat as her man maronron for the domain of Laelan (see Defendant's Exhibit 8), as he divested her of the Senior Dri Jerbal rights and title and transferred them onto her younger brother, Tibet, with the belief that the Plaintiff committed an act of tomewa, according to custom. This panel finds that it is proper for the Plaintiff to inherit the rights and title of Senior Dri Jerbal for the 9 land parcels on Nimur Island, Kwajalein Atoll, as a botoktok descendant. In her testimony, the Plaintiff claimed there is insufficient and no substantial grounds for Defendant Lanny to divest her of the Senior Dri Jerbal title. She also stated that without her understanding and knowledge, Iroj Lajan Kabua wrote the certification acknowledging and designating her, Ten, as a Senior Dri Jerbal for the 9 land parcels in Nimur Island (see Plaintiff's Exhibit H/Defendant's Exhibit 1).

RELEVANT CUSTOM AND TRADITIONAL PRACTICE

1. *Tomewa* – In the past, as in the language of the great canoe voyages, this occurs when one disembarks and leaves the canoe he originated a voyage on for another. In the terms used by the warring chiefs of the past, if a *kajur* (one of his people) leaves his Iroj (chief's) battle formation and joins another, the departure of the *kajur* or soldier is an act of *tomewa*, as he has left his initial warring troops for another troop of soldiers.
2. *Elot bwij eo* – When a *bwij* becomes extinct with no remaining female descendants, or children borne of a female, we classify the *bwij* as, extinct (*elot*), and the line of

succession of rights and title converts from the matrilineal descendants, or *bwij*, to children of the males, or patrilineal (*botoktok*/bloodline).

3. *Jidrak in bwij* – After a *bwij* become extinct, the rights and title of Alap goes from the female line of succession (matrilineal), to the children of the male (patrilineal). Upon the emergence or birth of a female, it is considered a new *bwij* line or the establishment of new matrilineal succession line wherein the succession line of the Alap will then revert back to the children of the *bwij* (matrilineal line of succession).

APPLYING THE CUSTOM TO THE FACTS

This panel finds that when Lajan made the certification for the Plaintiff to hold and exercise the Alap and Senior Dri Jerbal, and where it clearly shows that Lajan signed as an Irojlaplap of the Mojen eo an Laelan, is grounds for Neimat, who currently hold and exercises the Irojlaplap rights and title for Mojen eo an Laelan, to consider it an explicit statement of the Plaintiff's act of *tomewa*.

The parties agree on the extinction of Liodrik's *bwij* with Abija as a child of Likili, and the deaths of Ikirtok, the child of Lijibke, and Nilep, the child of Larok.

After the extinction of the *bwij*, the rights and title of Alap converted and transferred to the children of the males or the patrilineal descendants, and the proper person at that time was Larok and her younger siblings as children of Lemto, the uncle of Alap of Abija, Ikirtok, and Nilep. However, Lemto had a daughter, Larok. For this reason, the rights and title of Alap was converted and transferred from the patrilineal descendants to the children of the *bwij* upon the establishment of a new *bwij* line by Larok. The children of Larok are in line to succeed her as Alap.

Plaintiff's Witnesses

1. Meto Pam
2. Loibwij Kabua
3. Kimo Ten

Defendants' Witnesses

1. Alvin Jacklick
2. Lanny Kabua
3. Wilson Note

Plaintiff's Exhibits

1. Exhibit A – Liodrik's Genealogy
2. Exhibit B – LUA
3. Exhibit C – Certificate of Death, Donald Phillip (9/25/15)
4. Exhibit D – Designation of Succession Interest (9/30/15)
5. Exhibit E – Determination of Land Rights (5/25/18)
6. Exhibit F – Certificate of Death, Eodrik Sam (9/24/20)
7. Exhibit G – Recognition and Approval by Irojlaplap (8/20/21)
8. Exhibit H – Irojlaplap Recognition and Approval (4/21/21)

Defendants' Exhibits

1. Exhibit 1 – Irojlaplap Recognition and Approval (4/21/21)
2. Exhibit 2 – Letter to the Attorney General Richard Hickson (5/29/21)
3. Exhibit 3 – Revocation of Designation of Successor in Interest (6/12/21)
4. Exhibit 4 – Letter from the Attorney General to the Secretary of Finance (6/16/21)
5. Exhibit 5 – Letter from Lanny Kabua to the Attorney General (8/20/21)

6. Exhibit 6 – Memo from the Attorney General to the Secretary of Finance (8/20/21)
7. Exhibit 7 – Genealogy of Liodrik – Jowi Rilobaren
8. Exhibit 8 – Special Power of Attorney by Leroij Neimat Reimers (4/28/14)

OTHER FACTORS THE TRC CONSIDERED

This panel believes it is crucially important for the Irojlaplap and his *kajur* (Alap and people) to communicate and have mutual respect and love for one another. As our custom which sets us apart since time immemorial dictates reciprocity and mutual respect for one another. Therefore, this panel believes if there was any wrongdoing on the part of the Plaintiff with her Iroj, that a step in the right direction would be to approach her Iroj, in addition to calling or writing to them to ask for forgiveness. In this regard, the panel believes this will help foster a better relationship between the Iroj and their people, one of mutual respect as dictated by the custom of reciprocity.

Dated: September 3, 2024

/s/
Grace L. Leban
Presiding Judge, TRC

/s/
Nixon David
Associate Judge, TRC

/s/
Jasper Lanki
Associate Judge, TRC