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CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

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

JACK JORBON, Plaintiff, vs. RIEN MICHAEL and WALTER LAELANG, Defendants.	CIVIL ACTION NO. 2023 - 01720 OPINION OF THE TRADITIONAL RIGHTS COURT
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MEMBERS OF THE PANEL: Grace L. Leban
Presiding Judge

Nixon David
Associate Judge

Claire T. Loeak
Associate Judge

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

DATE OF HEARING: April 15 and 30, 2024

I. INTRODUCTION

This case involves a land dispute between Plaintiff *Pro Se* Jack Jorbon (“Plaintiff Jorbon”) and Defendants Irojiedrik Walter Laelang (“Defendant Irojiedrik Laelang”) and Mr. Rien Michael (“Defendant Michael”) on Arkan Weto in Rairok Village, Majuro Atoll, Republic of the Marshall Islands (“Arkan”).

A. PROCEDURAL HISTORY

On November 21, 2023, Plaintiff Jorbon filed a complaint against the Defendants Michael and Irojiedrik Laelang, stating that Defendant Michael was trespassing on Arkan for

constructing a dwelling house without his knowledge or permission as the Alap and Senior Dri Jerbal.¹

In response, Defendant Iroijedrik Laelang contends that Plaintiff Jorbon is the Alap and Senior Dri Jerbal of Arkan, and argues that he was never aware of the dispute over Arkan in which the TRC declared Plaintiff Jorbon is the proper person to hold and exercise the Alap and Senior Dri Jerbal rights and titles on Arkan.²

He asserts he gave permission for Defendant Michael's construction of a house on Arkan primarily because of their close familial relations. Defendant Michael claims he obtained permission from Defendant Iroijedrik Laelang and was unaware that Plaintiff Jorbon was the Alap and Senior Dri Jerbal of Arkan.³

The High Court, pursuant to Article X, Section 4(4) of the Republic of the Marshall Islands Constitution ("Constitution"), referred its question to this Traditional Rights Court ("TRC") for resolution in accordance with Marshallese customary law and traditional practice.⁴ The question asks whether the Defendant, Iroijedrik Laelang, can authorize Defendant Michael, to construct a dwelling house on Arkan without notice to or consent from the Alap and Senior Dri Jerbal, Plaintiff Jorbon.⁵

For the reasons set forth below, the TRC Panel finds that although Defendant Iroijedrik Laelang can authorize Defendant Michael to construct a dwelling house on Arkan, that his decision is contrary to the principle of *iroij im jela*⁶ under Marshallese customary law and

¹ Plaintiff, *Complaint* November 21 (2023).

² *Defendant Walter's Response By Way of a Supporting Affidavit To Plaintiff's Motion for a Temporary Restraining Order & Preliminary Injunction* December 14 (2023).

³ Defendants, *Separate Rule-2 Statement* January 22 (2024).

⁴ High Court, *Order Referring Questions to the Traditional Rights Court* February 6 (2024); *Constitution 1979* (RMI).

⁵ *Ibid*, note 4 above (2024).

⁶ P.L. 2023-67, *Customary Law (Succession of Customary Rights and Titles in Ralik Chain) Act 2023* (RMI). Section 107(d) defines the principle of '*Iroij im jela*' to mean that a decision of the Iroijlaplap [Iroijedrik] is entitled to the greatest weight in evidence and is presume to be reasonable, proper, and in accordance with customary law and traditional practice, unless it is

traditional practice that presumes the decisions of, or determinations by an Iroij “...are reasonable unless it is clear they are not...”⁷ His decision is therefore unreasonable under Marshallese customary law and traditional practice. (*Thomas, et al., v. Samson, et al., v. Alik, et al.*, 3 MILR 71, 75 (2008)).

B. PROCEDURAL & FACTUAL BACKGROUND

This Court has jurisdiction under Article VI, Section 4(3) of the Constitution and TRC Rules of Procedure, Rule 1, to consider and resolve the question based on Marshallese customary law and traditional practice.⁸

Following the High Court’s Referral Order, this case came before the TRC Panel for trial on April 15, 2024 under Rule 7 of the TRC Rules of Procedure.

Based on the parties’ submissions and suggestions for resolution of the issue, this Court finds the parties agree to the following facts:

- a. that Arkan is located at Rairok, Majuro Atoll and is part of the lands under Bed *Eo An Jebrik*; and
- b. that Defendant Laelang is the Irojiedrik for Arkan as the successor of late Irojiedrik Kelai Nemna; and

established by clear and convincing evidence that it is not. The principle of ‘*Iroj im jela*’ shall be applied consistently in all cases where succession to the title, right and interest in and to land is in question or dispute.

⁷ *Abner, et al., v. Jibke, et al.*, 1 MILR (Rev.) 3, 7 (1984); *Thomas, et al. v. Samson, et al., v. Alik, et al.*, 3 MILR 71, 75 (2008), 75.

⁸ **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; **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 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.

- c. that Defendant Michael is not claiming any land title rights on Arkan; and that the High Court decision in *Civil Action No. 2020-0329* is the primary case law authority in this matter.⁹

During trial, Plaintiff Jorbon waived his right to make his opening statement, while Defendants proceeded with theirs under Rule 7(b).¹⁰ The parties presented their case through testimonial evidence, and while no documentary evidence was properly admitted at trial, this Court takes judicial notice of the constitutional provisions and case law authority submitted by the parties. Specifically, this Court takes judicial notice of Article X of the RMI Constitution as the governing law on the preservation of customary law and traditional practice with respect to any “...alienation or disposition of land...”¹¹ This Court also takes judicial notice of the caselaw authority in the High Court’s decision in *Civil Action No. 2020-00329*.¹²

This Court also accepts Plaintiff’s submission titled “*Ratak Chain – Exercise of Traditional & Customary Authority*” for illustration purposes only in connection with Plaintiff’s witness, Alap Alvin Jacklick, who testified, not as an expert witness, but as an elder of the community with extensive knowledge of the custom. No other documents were accepted as exhibits.

A week after the parties submitted their written Closing Arguments, this Court recalled the parties and witnesses under Rule 7(e) of the TRC Rules of Procedure for the purpose of

⁹ Plaintiff, *Findings and Conclusions and Rule 2 Statement* January 29 (2024) 2; Plaintiff, *Amended Rule 2 Statement* April 9 (2024); Defendant, *Rule 2 Statements* January 22 (2024); Defendant, *Amended Rule 2 Statement* April 9 (2024).

¹⁰ *TRC RoP, 2017* (RMI). Rule 7(b): Each party will then be informed that the party may make a statement in which that party informs the court regarding the issues in the case and how it suggests the court resolve the questions presented.

¹¹ *Constitution 1979* (RMI). 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 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 Irojlaplap, 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.

¹² *Jorbon v. Akira* (Unreported High Court Civil Action 2020-00329, May 31, 2022).

clarifying existing evidence, and not Rule 7(c) as stated in the Order.¹³ Plaintiff Jorbon appeared via Zoom on April 30, 2024, in response to this Court’s Order that recalled the parties and witnesses.¹⁴

Under Rule 15 of the TRC Rules of Procedure, this Court “...*may admit any evidence that is reasonably relevant to the question under its consideration...*” as well as receive evidence through, among others, “...*electronic means...*”¹⁵

II. RELEVANT CUSTOMARY LAW & TRADITIONAL PRACTICE

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

1. *iroij im jela* defined in the *Customary Law (Succession of Customary Rights and Titles in Ralik Chain) Act 2023* (RMI) means that a decision of the Iroijlaplap is entitled to the greatest weight in evidence and is presume to be reasonable, proper, and in accordance with customary law and traditional practice, unless it is established by clear and convincing evidence that it is not. The principle of ‘*iroij im jela*’ shall be applied consistently in all cases where succession to the title, right and interest in and to land is in question or dispute.
2. *jab komakut dreka in jenme eo* (also spelled *jab iu-iun drekein jenme eo*) is defined to mean the “...*custom of never moving or disturbing the drekein jenme...*” (*bedrock or long-established arrangement or foundation*). (*Thomas et al., v. Samson et al., v. Alik, et al.*, CA 2000-184).¹⁶

¹³ *TRC RoP, 2017* (RMI). Rule 7(e): At any stage of its proceedings, the Traditional Rights Court may call or recall witnesses, ask questions of any witness or party, and require that additional evidence be presented to it.

¹⁴ *TRC Order To Recall Witnesses*, April 25, 2024.

¹⁵ *TRC RoP, 2017* (RMI). Rule 15: 6, 7.

¹⁶ Unreported High Court Civil Action No. 2000-184 (2006); 3 MILR 71, 72 (2008).

3. *katleb* is defined to mean the act of taking away or removing one *bwij* from the land or *weto* by an Iroj and resettling it by another. (*Thomas et al., v. Samson et al., v. Alik, et al.*, CA 2000-184).¹⁷

Equally important, as per Alap Jacklick, is the corresponding duties of an Alap who is charged with the responsibility to look after the people on the land. The custom of reciprocity obliges the Alap to cooperate with the Iroj and loyally carry out the tasks assigned to him. The Panel finds this is consistent with the custom of reciprocity and the mutual respect between the iroj and his alaps, and the people. (Tobin 1956, pp 4-5, 10-11, 23-24).

Alap Jacklick concluded his testimony stating that the lack of communication between the Iroj and his Alap is primarily the main reason for a majority of the land disputes, and it is critical for the maintenance of peace, harmony and love among the people that they cooperate.

This Panel also finds that the custom and principle of reciprocity, or the corresponding duties and responsibilities of the Alap and Senior Dri Jerbal to the Iroj is equally critical for the maintenance of peace and harmony in a community.

The custom of *iroij im jela* imposes a corresponding duty of responsibility on the iroj in the exercise of his authority over the land and people; the same can be said of the Alap and his corresponding duties to his iroj to extend due regard and *ekkan* to him, and execute the Iroj's tasks, especially those intended for the purpose of "looking after the people" and to fairly manage the "...*division of food...work..., and...land.*" (Tobin 1956, pp 4-5, 10-11, 23-24).

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?*" (*Lobo vs. Jejo* (1991)).¹⁸

The party relying on the custom has the burden of proof as to its existence and substance to the

¹⁷ *Ibid.*, note 16 above; Jack A. Tobin, *Land Tenure in the Marshall Islands* (1956) 40,41.

¹⁸ 1 MILR (Rev.) 224, 226 (1991).

case.¹⁹ It is only when the “...*custom is incorporated in a statute or has formed the basis of a final court decision does it become law in the modern sense.*” (*Jack v. Hisaiah and Hisaiah* (2002)).²⁰

A. PARTIES’ CONTENTIONS

1. Plaintiff’s Claims

Plaintiff Jorbon claims Defendant Irojiedrik Laelang failed to consult him as Arkan’s Alap and Senior Dri Jerbal, or obtain his consent before authorizing Defendant Michael to construct a dwelling house on Arkan. He argues that according to Section 1(2) of Article X of the Constitution, any division of land under Marshallese customary law requires approval of not only the Iroj, but also the Alap and Senior Dri Jerbal of the land in question.²¹ In this particular case, the absence of his consent as the Alap and Senior Dri Jerbal, Defendant Michael’s construction on Arkan contradicts Marshallese customary law and the principle of *iroij im jela* and *jab komakit drekein jenme eo*.²²

The Panel finds the preservation of customary law and traditional practice is explicitly provided for under Article X of the Constitution and takes judicial notice of the governing law under Section 1(2) thereof. Additionally, the Panel finds that the Supreme Court has affirmed this custom to be an “...*undisputed and prevailing customary practice among the people of the Marshall Islands*” in *Mwedriktok v. Langijota and Abija*, 1 MILR (Rev.) 172, 174, in that there are three equal interests on land; Irojlaplap, [or Irojiedrik where applicable], Alap and Senior Dri Jerbal.

¹⁹ *Zaion, et al., v. Peter and Nenam*, 1 MILR (Rev.) 228, 232 (1991); *Tibon v. Jihu, et al.*, 3 MILR 1, 5 (2005).

²⁰ 2 MILR 206, 209 (2002).

²¹ *Plaintiff’s Closing Arguments* April 22 (2024) 4; *Plaintiff’s Findings and Conclusions and Rule 2 Statement* January 29 (2024); *Plaintiff’s Amended Rule 2 Statement* April 9 (2024).

²² *Ibid.*, note 21 above.

At trial, Alap Alvin Jacklick, subpoenaed to testify as an expert witness on Marshallese customary law and traditional practice, was however acknowledged by this Panel, not as an expert witness, but as a well-known elder of the community with extensive knowledge of Marshallese custom. Given the lack of written guidelines or criteria for assessing expertise in Marshallese custom and the absence of a learned treatise referenced by Alap Jacklick during examination, this Court accepts his testimony under Rule 15 of the TRC Rules of Procedure.

According to Alap Jacklick, in order for an individual to build a house on a *weto* or pay tribute (“*ekkan*”)²³ to the Iroij without knowledge of who currently exercises the Alap title, he or she must seek guidance from the [Senior] Dri Jerbal. This process will ensure all three, or four where applicable, corresponding land rights and titles are given due notice and consultation on matters involving the land.

The Iroij is endowed with the paramount responsibility on the land for maintaining peace, harmony, and love among his peers as dictated by the principle of *iroij im jela*. This principle, Alap Jacklick attested to, operates under the presumption that the Iroij fairly exercises authority over land matters and land division. For the Iroij to make determinations on land without consulting his Alap, he said, is contrary to this principle of *iroij im jela*. The Iroij is presumed to know who his Alaps and Senior Dri Jerbals are and, to maintain communication with them on matters concerning the land.

Alap Jacklick further specified that the portion of land in question was one that was procured by Plaintiff Jorbon. And if the Iroij has given a land away as a gift, whether *katleb* or *imon wia*, it is within his or her discretion to categorize or classify what type of gift land it is.

²³ Jack A. Tobin, *Land Tenure in the Marshall Islands* (1956) 74: defines “*ekkan*” as the tribute paid to the Iroij; food, mats, etc.

2. Defendants' Claims

Defendant Iroijedrik Laelang disputes Plaintiff Jorbon's claim that he is the Alap and Senior Dri Jerbal of Arkan.²⁴ He argues that his predecessor, Iroijedrik Kelai Nemna, never conveyed this information to him, even after the High Court's Judgment in *Civil Action No. 2020-0329*.²⁵ The High Court, per the parties' stipulation, adopted the TRC's Opinion acknowledging Plaintiff Jorbon as the Alap and Senior Dri Jerbal of Arkan.²⁶

Defendant Iroijedrik Laelang challenges Plaintiff Jorbon's claim that Arkan was *katleb* to him by his later mother, Leroij Zion. He argues that Plaintiff Jorbon's failure to substantiate that he removed all the residents out of Arkan following the *katleb* from Leroij Zion, reveals Arkan was not *katleb* as he claims.²⁷ The inhabitants have remained on Arkan to this day, contrary to the custom of *katleb*. Furthermore, he claims a *katleb* cannot be effectuated through monetary transactions, as shown in Plaintiff's Bill of Sale.²⁸

This Panel finds that a *katleb* is comprehensively explained on pages 40-41 in Jack A. Tobin's book, "*Land Tenure in the Marshall Islands...*" The treatise essentially defines *katleb* as a classification of land in which the iroij "...plants" people on the land...after all former inhabitants were cleared off the land with no one remaining on it at the time of the gift."²⁹

B. DISCUSSION

1. APPLYING FACTS TO CUSTOM

i. Iroij Im Jela

²⁴ *Ibid*, note 2 above.

²⁵ Defendants, *Rule 2 Statement* January 22, (2024); *Amended Rule 2 Statement* April 9 (2024).

²⁶ *Ibid*; *Jorbon v. Akira* (Unreported, High Court of the Marshall Islands, Civil Action 2020-0329, 2020, May 31, 2022).

²⁷ Defendants, *Written Closing* April 9 (2024), p4; *Written Closing Argument* December 27 (2023), p2.

²⁸ Defendants, *Written Closing Arguments* April 19 (2024) 4; *Rule 2 Statement* January 22 (2024) 2; *Amended Rule 2 Statement* April 9 (2024).

²⁹ Jack A. Tobin, *Land Tenure in the Marshall Islands* (1956), 40, 41.

This Panel finds that the custom of iroij im jela has become customary law in the modern sense through the Supreme Court decision in *Thomas* and more recently in the enacted Public Law P.L. 2023-67, *Customary Law (Succession of Customary Rights and Titles in Ralik Chain) Act 2023*.

The Panel also finds the testimony of the Plaintiff's only witness to be consistent with the custom of iroij im jela as defined by the public law and applied in *Thomas*. We find that essentially, the custom of iroij of jela recognizes the importance of maintaining peace and harmony through effective communication, and that the Iroij holds the paramount responsibility of maintaining that peace and harmony on his lands. It is this paramount responsibility of maintaining peace and harmony on his lands, we find, that underpins the principle of iroij im jela; that the decisions made in relation to the land are presumed to be reasonable for the purpose of maintaining peace and harmony on his lands. As such, their determinations are entitled to the greatest weight under this presumption. The principle of iroij of jela, however, can be contravened when it is clear that the decision of the iroij is unreasonable as illustrated in *Thomas*. (*Thomas, et al., v. Samson, et al., v. Alik, et al.*)³⁰

In his testimony, Defendant Iroijedrik Laelang attested to the iroij's duty to consult with his alaps on matters involving the land. His assertion that he was never made aware of Plaintiff Jorbon's procurement of Arkan from his predecessors, Leroij Zion and Iroijedrik Kelai Nemna cannot be relied on because the *Bill of Sale* contains not only his mother's signature as Iroijedrik of Arkan, but also the then Alap and Senior Dri Jermal Jennet Bungitak, the successor-in-interest to Leroij Zion, Iroijedrik Telnan Lanki,

³⁰ Unreported High Court CA 2000-184; 3 MILR 71, 75 (2008).

as well as the *20/20 Committee Bed eo an Jebrik. (Jorbon v. Akira)*.³¹ Iroijedrik Kelai Nemna, his predecessor, agreed to this. This Panel therefore finds insufficient evidence under the custom to justify Defendant Iroijedrik Laelang’s refusal to recognize Plaintiff Jorbon as the current Alap and Senior Dri Jerbal of Arkan.

ii. Jab Komakut Dreka In Jenme Eo

Plaintiff Jorbon relies on the doctrine of *drekein jenme* to substantiate his *katleb* dated December of 1984 and filed with the High Court in 1985, as a long-established arrangement between himself and late Leroij Zion, her successor-in-interest, the late Iroijedrik Telnan Lanki, the then Alap and Senior Dri Jerbal, late Jennet Bungitak, and the members of the *20/20 Committee Eo An Bed Eo An Jebdrik*.³² The Panel finds that in *Thomas*, the Supreme Court upheld the High Court and TRC rulings that held a “...seventy-year time period is more than sufficient to invoke the Marshallese custom of “never moving or disturbing” the *drekein jenme*.”³³ (emphasis added). In *Thomas*, this Court held that the seventy-year-old *katleb* cannot be changed based on the custom of *drekein jenme*. The Supreme Court said that in doing so, the “...TRC implicitly ruled that the [Iroijlaplap’s] decision was not reasonable since it contravened the doctrine of *drekein jenme*.”

This Panel finds the same principle is applicable in this case, although Plaintiff’s *katleb* existed for a period of approximately forty-years, which is more than half of the period in *Thomas*, this Court finds a period of almost forty years is comparatively longstanding.

³¹ *Ibid*, note 30 above.

³² *Jorbon v. Akira* (Unreported High Court Civil Action No. 2020-0329, 2020) May 31, 2022.

³³ *Thomas, et al., v. Samson, et al., v. Alik, et al.*, 3 MILR 71, 75 (2008).

iii. Katleb

The Panel finds that Arkan, as conveyed to Plaintiff Jorbon through the *Bill of Sale* does not necessarily align with the definition of a *katleb* under custom. Although Plaintiff Jorbon was unable to sufficiently substantiate that Arkan is indeed a *katleb* to him by means of the *Bill of Sale*, Alap Jacklick's attestation shed light on the Iroj's prerogative to categorize land he has gifted to an individual under the custom of *Iroj im Jela*. Testimonial evidence ostensibly alludes to the possibility that Arkan may align more closely with a purchased land (*imon wia*) rather than *katleb*. It is clear to this Panel however, that Arkan was validly conveyed to Plaintiff Jorbon by means of the *Bill of Sale*, irrespective of its classification.

III. CONCLUSION

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

1. Plaintiff has sufficiently substantiated the applicability of the custom of *Iroj im Jela* in that the principle, as applied to the decision of Defendant Irojiedrik Laelang, contravenes the custom of "never moving or disturbing the *drekein jenme*."
2. Defendant Irojiedrik Laelang's refusal to recognize Plaintiff Jorbon as Arkan's Alap and Senior Dri Jerbal is unreasonable under the custom of *iroj im jela* and therefore the custom of *jab komakut drekein jenme eo*, may be applied to his decision.
3. Whether Arkan was a *katleb* to Plaintiff Jorbon or an *imon wia* under the custom, the *Bill of Sales* is valid under the custom as it contains the endorsement of all the relevant interests on land.

Accordingly, this Court finds that although Defendant Irojiedrik Laelang can authorize Defendant Michael to construct a dwelling house on Arkan under the custom of *Iroj im Jela*, his decision to permit the construction without notice to or consent from Plaintiff Jorbon as Alap and Senior Dri Jerbal is unreasonable under the custom of *jab komakut drekein jenme eo* “...never moving or disturbing the drekein jenme.” (*Thomas, et al., v. Samson, et al., v. Alik, et al.*, 3 MILR 71, 75 (2008)).

Dated: 14th June 2024.

/s/
Grace L. Leban
Presiding Judge, TRC

/s/
Nixon David
Associate Judge, TRC

/s/
Claire T. Loeak
Associate Judge, TRC