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

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

HATTIE RUSIN, Plaintiff, v. RITTEN JEILAR, et al., Defendants.	CASE NO. 2023-00393 HCT/LAND/MAJ <u>OPINION & ANSWER OF THE TRADITIONAL RIGHTS COURT</u>
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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
Uluga Village, Majuro Atoll
Marshall Islands**

DATE OF HEARING: **September 11 and 30, 2024**

I. Introduction

This is a land case arising from the plaintiff's complaint seeking to eject or evict the defendants from Kimor Weto in Ajeltake Village, Majuro Atoll, Republic of the Marshall Islands ("Kimor"). The Plaintiff, Hattie Rusin, claims the Defendant siblings, Arbi Jeilar, Riten Jeilar, and Fred Jeilar, and their niece, Defendant Biira Jeilar, refuse to acknowledge and respect her as the current Alap and Senior Dri Jerbal of Kimor, and that they have continually demonstrated their disregard for her through a series of adverse conduct against her and her plans for Kimor. She alleges the Defendants recently prevented her from surveying Kimor and that she no longer

trusts them as her adoptive family, and believes they will continue to cause problems for her on Kimor in the future.

The Defendants, on the other hand, argue that their conduct over the years are not reasonable grounds under the custom to warrant eviction from their home of many years. They claim that their father, Jeilar Jolit, placed them on Kimor, and that the Court decision in *Jeilar, et al., v. Rusin*, CA 1998-288, granted them permission to live on Kimor, not Hattie. As such, they do not need Hattie's permission to conduct activities on Kimor, and that their actions are consistent with Marshallese custom.

The parties agree the High Court ruled in favor of Hattie as Alap and Senior Dri Jerbal of Kimor, however disagree that Hattie is authorized, under Marshallese custom, to evict the Defendants from Kimor.

II. Issues & Questions

This Court is tasked with answering the following questions according to Marshallese customary law and traditional practice:

1. Under Marshallese Custom and Tradition, under what circumstances may an Alap eject or evict people from land on which the Alap previously authorized the people to live?
2. Under Marshallese Custom and Tradition, where the Alap previously agreed to permit persons claiming to be family members to live on the land in a single residence, is eviction from the family land an appropriate remedy under Custom and Tradition where the persons claiming to be family members built two additional residences without obtaining permission of the Alap? (*Jeilar, et al. v. Rusin*, Ca 98-288 (06/28/01)).

3. If eviction is not the proper remedy, what are the available and appropriate remedies for the Alap under the above circumstances?
4. In this case, is there or was there any conduct by the Defendants while living on the Alap's land that permits their eviction or ejection from the land under Marshallese Custom and Tradition?

III. Analysis of Factual Findings

- A. Under what circumstances may an Alap eject or evict people from land on which the Alap previously authorized the people to live? Under Marshallese Custom and Tradition, where the Alap agreed previously to permit persons as family members to live on the land in single residence, is eviction from the family land an appropriate remedy under the custom where the persons claiming to be family members built two additional residences without obtaining permission of the Alap (*Jeilar, et al., v. Rusin*, CA 98-288 (06/28/01))**

We address the first two issues or questions together here. There is no Iroiylaplap or Iroiyledrik on Kimor, and that the original owner, Labiliet Lokonwa, adopted Jeilar Jolit and Hattie Rusin. The parties are related by adoption and share a common adoptive ancestor. The Defendants are, by virtue of the adoption, the plaintiff's nephews and grandniece.

Hattie is the current Alap and Senior Dri Jerbal of Kimor and she subsequently permitted the Defendants to continue residing in Kimor following the outcome of the prior case, *Jeilar, et al., v. Rusin*, CA 98-288 (06/28/01).

According to Marshallese customary law and traditional practice, the authority to make any disposition or alienation of land lies with the landowners; that is with the Iroiylaplap, Iroiyledrik where applicable, Alap, and Senior Dri Jerbal, if there is good cause under the custom. *Article X, Section 1(2), Constitution of the Republic of the Marshall Islands*. As a land with no Iroiylaplap or Iroiyledrik, this Court finds that Hattie holds all land interests, rights and titles on Kimor.

Consequently, the authority to place people on the land or evict them from it, provided there is sufficient cause according to Marshallese customary law and traditional practice, lies with Alap Hattie.

While the defendants admittedly claim that, among other acts, they prevented the plaintiff from surveying Kimor, and refused to notify her about family burials and the construction of more than one dwelling house on Kimor; they also claim that they hold the same rights on Kimor as Hattie, as Jeilar's children; and that their actions do not justify eviction under Marshallese custom and tradition because their conduct is consistent with Marshallese custom.

They base their argument on the case of *Lokar v. Latak*, 6 TTR 375 ("*Lokar*"), where the defendant, like the Defendants in this case, was granted permission by the plaintiff Alap to live with his family on the land. The Court in that case held the plaintiff Alap's decision to remove the defendant and his entire family and property was valid under Marshallese custom. The defendant was not connected to the land and he had no land interests. He received permission to construct a dwelling house and to live on the land just like everyone else. His permission, the Court said, was subject to revocation without cause under the custom. In the instant case, the Defendants argue they cannot be evicted because their rights on Kimor are the same as Hattie's land interests by virtue of the adoption of their father and Hattie by Labiliet.

First, we address the Defendants' claim that their circumstances, as family members who have land interests on the land, distinguishes their case from the *Lokar* case. This Court agrees the circumstances in the *Lokar* case are distinct to the Defendants' circumstances insofar as family relations are concerned. However, we disagree that their land interests on Kimor are the same as Hattie's. This is because in the previous case, the Court said Jeilar could not assign any

land interests on Kimor to his children because he had none to give, only Hattie had land interests. *Jeilar, et al., v. Rusin*, CA 98-288 (06/28/01).

We find that in *Toring v. Lejebjeb*, 6 TTR 494, the Court said the [Senior] Dri Jerbal land interests of a child of an adopted person is “*weaker and may be terminated without any substantial showing of cause...and the “good cause” necessary to his removal could be a lot less persuasive than would normally be required.*” Here, it appears that even a [Senior] Dri Jerbal can be removed from the land if there is good cause under the custom.

We also find that in the case of *Makroro v. Benjamin*, 5 TTR 519, the custom of reciprocity between the landowners is mutual for the purpose of maintaining peace on the land, and upon good cause under the custom, a person may be evicted.

Moreover, the Defendants also argue that their behavior, as compared to the defendant’s son in the *Lokar* case, are in no way similar and so Hattie cannot remove them from Kimor. We do find that the offenses committed against the Alap in the *Lokar* case involved physical altercations and a customary taboo regarding family relations; which are indeed different from the actions taken by the Defendants in the instant case.

This Court, however, finds that the series of acts and disturbances committed by the defendant’s son in the *Lokar* case have the same impact and effect as in the instant case. Because in both cases, the series of conduct cumulatively resulted in the flagrant disregard and disrespect of the Alap of the land.

In *Peter v. Napking, et al.*, CA 06-163 (09/16/08), the Defendant Alap sought to evict the plaintiff Rosa Peter from Barkan Weto for her refusing to comply with his and the Senior Dri Jerbal’s plans and notices, and for her flagrant disregard for their authority as landowners when she lodged a complaint against them. The Court ruled in favor of the defendants Alap and Senior

Dri Jerbal, stating that the actions of the Rosa were contrary to Marshallese custom, but that she can remain on the land as long as she acknowledges and respects the Alap and Senior Dri Jerbal, and cease from refusing to comply with their plans.

This, we find, implies that a person or Rosa was subject to the Alap and Senior Dri Jerbal's authority to remove her from the land if she continues to disregard and disrespect their authority by refusing to comply with the customary obligations on the land. What distinguishes the plaintiff in the *Napking* case from the Defendants in the instant case, is that she, upon realizing her error during the trial, made amends with the defendant Alap and Senior Dri Jerbal and, apologized and said she will comply with any notices and plans from the them going forward. Unlike the Defendants in this case, where Arbi Jeilar stated emphatically in his testimony that he and his siblings will continue conducting activities on Kimor without giving notice or acquiring consent from Hattie, even if this Court or the High Court determines that Hattie is the Alap.

Furthermore, this Court finds that Hattie acted in the Defendants' interests following the outcome of the prior decision in Civil Action 1999-288 Consolidated with Civil Action 1999-301. She permitted the Defendants to continue living on Kimor despite challenging her rights and titles as Alap and Senior Dri Jerbal. She gave them time to make amends with her as dictated by custom. This, we find, is consistent with the Marshallese custom of reciprocity and the Alap's corresponding obligation to look after the land and the people, and to maintain peace and harmony among the people living on the land. (Tobin, 1956 p. 12).

We find the Defendants, in contrast, have not reciprocated in kind to Hattie's exercise of her customary duty to them as an Alap of Kimor, after challenging her land rights in the prior cases and in the series of conduct against her throughout the years following.

Hattie fulfilled what the Court said in the *Napking* case regarding the Alap's request to evict Rosa from the land; as it permitted Rosa to remain on the land as long as she respects the landowners and complies with their plans and orders. Hattie permitted the Defendants to remain on Kimor immediately after the cases were disposed.

Second, the Defendants say their actions are consistent with Marshallese custom. They offered no evidence during trial to support this claim, except to distinguish their conduct with that of the conduct of the defendant's son in the *Lokar* case in their closing arguments. We address their conduct here. We find the Defendants' series of adverse actions included, but not limited to, the following:

1. challenging Hattie's authority as Alap and Senior Dri Jerbal regarding the use of the land by disturbing her brother, Stanley Heine, who acquired her consent and approval in his initial clearing of the land on Kimor to build a dwelling house, planting a banana patch, and constructing a wall around his property; and
2. unilaterally deciding to construct other homes and holding burials on Kimor without giving notice to Hattie or acquiring her consent first; and
3. declaring their intention of appealing the prior decision that recognized Hattie as Alap and Senior Dri Jerbal of Kimor; and
4. their most recent challenge of preventing Hattie from surveying Kimor; and
5. Arbi stating that they do not, and will not, acknowledge Hattie as the Alap and Senior Dri Jerbal on Kimor, and that they do not need her permission to conduct any activities on Kimor, now or in the future.

These are all related to land use activities that under the custom, require the consent and approval of all classes of land rights on the land. *Article X, Section 1(2), Constitution of the*

Republic of the Marshall Islands. In the case of Kimor, the consent and approval of Alap and Senior Dri Jerbal, are exclusively Hattie's.

We analyzed and compared the Defendants' actions with those of Stanley Heine's, since both claim family ties to Hattie. We found that on one hand, Stanley Heine requested Hattie's permission to clear the land for the purpose of constructing his dwelling house, and later on, her approval to plant a banana patch and build a fence around his property.

On the other hand, we found the Defendants refused to acquire Hattie's permission, or at least to give her notice, for building additional dwelling houses on the land, or for burying their relatives on Kimor.

It is this Court's view that as professed family members of the Alap, the Defendants should be examples to others living on Kimor. Their behavior throughout the years has been contrary to Hattie's benefit as Alap and Senior Dri Jerbal, contrary to the maintenance of peace and harmony on Kimor; not the example that family members should set as relatives of the Alap.

In summation, we find the Defendants' circumstances, as professed family members with ties to Kimor, do not absolve them of their responsibility to the Alap and Senior Dri Jerbal. Their actions above, we find, are intentional and a direct disregard for Hattie as Alap, and that their continued refusal to recognize her as Kimor's Alap in the past, throughout the trial, and as expressly stated, for the foreseeable future, are inconsistent with Marshallese custom.

B. If eviction is not the proper remedy, what are the available and appropriate remedies for the Alap under the above circumstances?

As the person with exclusive land rights and titles on Kimor, Hattie has the authority to dispose, alienate and make land determinations on Kimor. The authority includes the decision to place people on the land, or vice versa, to evict them from the land, if there is good cause under

the custom. As stated above, the paramount responsibility as Alap and Senior Dri Jerbal of Kimor, is to look after the land and the people on the land, and to ensure there is peace and harmony.

We find that in *Jekkeini v. Bilimon*, 5 TTR 442, the Court said “...*the failure to acknowledge the alap and to pay him his share of the copra harvest is generally regarded as good cause for removal ...from the land by the iroij.*” This Court distinguishes this case from the instant case as it states the iroij has the authority to remove people from the land for disrespecting the alap. In the instant case before this Court, there is no iroij on Kimor. Hattie holds the remaining land interests and titles on the land. Under the custom, she has the authority to evict the Defendants from the land, not as an iroij, but as the sole holder of land interests on Kimor.

As stated above regarding the *Napking* case, eviction is a remedy for, among other customary offenses, flagrant disregard and disrespect of the Alap. In the instant case, the use of land for construction and burials was carried out without notice to or consent from the Alap. If evicting the Defendants is not the proper remedy for the adverse conduct alleged on the land, then as Arbi emphatically testified, he and his siblings will continue to engage in activities on Kimor without giving notice to Hattie because they do not, and will not acknowledge that she is the Alap of Kimor.

Hattie testified that she does not trust the Defendants enough to believe that they will stop disturbing the peace and conducting activities against her interests as the Alap of Kimor. This Court finds that her words here seem to imply that she would likely be disenfranchised from exercising and enjoying her rights and interests as the Alap and Senior Dri Jerbal of Kimor. And she would have to tolerate further disturbances from the Defendants as long as they continue to

reside on Kimor with the same attitude towards her. This Court finds this would be contrary to Marshallese custom. This is because as the Alap and Senior Dri Jerbal of Kimor, the Defendants are obligated under the custom to respect her and carry out her plans and notices regarding the use of land.

C. In this case, is there or was there any conduct by the Defendants while living on the Alap's land that permits their eviction or ejection from the land under Marshallese Custom and Tradition?

As stated above, this Court finds that the Defendants' conduct on Kimor prior to trial cumulatively amounts to flagrant disregard and disrespect for Hattie as their Alap. On the stand, Arbi testified that they will continue to conduct activities on Kimor without seeking Hattie's approval, and that they have no intention of acknowledging her as Kimor's Alap, even if this Court or the High Court determines that she is. We find the Defendants' conduct and attitude toward the Alap inconsistent with Marshallese custom, and sufficient to warrant eviction under the custom, or other redress the High Court deems appropriate.

The Defendants claim the *Napking* case provides case law authority not to evict them from Kimor. However, as stated above, this Court distinguishes the plaintiff in the *Napking* case from the instant case because Rosa Peter, upon realizing her error, apologized and sought to make amends with the defendant Alap and Senior Dri Jerbal. The Court in that case implicitly said that Rosa may be evicted from the land if she does not respect the Alap and Senior Dri Jerbal by adhering to their plans and orders regarding customary obligations on the land.

Here, the Defendants knowingly and deliberately acted against Hattie knowing full well that she is the current Alap and Senior Dri Jerbal of Kimor. They have no intention of making

amends with Hattie given their conduct in the past, during trial, and as expressly attested to on the stand, for the foreseeable future.

IV. CONCLUSION

An Alap has the paramount responsibility and authority to ensure there is peace and harmony among the people living on the land. As Alap and Senior Dri Jerbal of Kimor, Hattie has the authority to maintain peace and harmony. The authority to evict the Defendants from Kimor lies with her, as well as the authority to place people on the weto. As the one to exclusively hold the two land interests on Kimor, her decisions are presumed to be reasonable under the custom, unless there is evidence showing they are not.

We find that Hattie has adequately provided evidence to support her claims under the custom that the adverse conduct of the Defendants warrants their eviction from Kimor; and that they have no intention of stopping and will, by the Defendants' own admission, continue to conduct activities against her interest as Alap of Kimor.

On the other hand, this Court finds the Defendants have failed to provide sufficient evidence to support their claims that as family of the original owner, they have the same land interests on the land as Hattie, and that Hattie cannot evict them because their actions are consistent with Marshallese custom.

After reviewing court file and the evidence presented during the trial, and for the reasons stated above, we conclude that under the circumstances of the parties in this case, Hattie has the authority under the custom to evict the Defendants from Kimor, if she so desires, because the series of adverse activities and conduct over time justify their eviction under the custom.

Dated: November 07, 2024

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

_____/s/_____
Nixon David
Associate Judge, TRC

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