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

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| SOPHIA LELWOJ (on behalf of TARBWIJ LELWOJ), Plaintiff, v. NERISSA HELIES and CARMEN SAMSON, Defendants. | CIVIL ACTION NO. 2023-01257 HCT/LAND/MAJ OPINION OF THE TRADITIONAL RIGHTS COURT |
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**To: Hon. Carl B. Ingram, Chief Justice of the High Court
Mrs. Tiantaake Beero-Sexton, MLSC Staff Attorney, Counsel for Plaintiff
Mr. Karotu Tiba, Public Defender, Counsel for Defendants**

I. Introduction

This case arises from the dispute between the Plaintiff, Sophia Lelwoj (“Sophia”), on behalf of her mother, Tarbwij Lelwoj (“Tarbwij”), and the Defendants, Nerissa Helias (“Nerissa”) and Alap Carmen Samson (“Alap Carmen”), following the defendants’ eviction of Sophia from the house she lived in for 27 years. The dispute is over who is the proper owner of the house situated on Teron Weto in Rita Village, Majuro Atoll, Republic of the Marshall Islands (“disputed house”).

II. Issues / Questions

This Court was tasked to resolve and answer the following questions based on the customary law and traditional practice of the Marshall Islands. The questions are as follows:

1. Where a person builds a house on land to which he has no land rights under Marshallese custom and tradition, and where that house is later left by the person who build the house in the care of another family member for an extended period of time, under custom and tradition, is it proper that the Alap declare that the person who originally built the house has abandoned it, takes possession of the

house and confers ownership of the house upon the family member who took over as the care-taker of the property?

2. If the answer to Question 1 is “yes”, then, under Marshallese custom and tradition, is it proper for the successor Alap who conferred the ownership upon the care-taker family member to evict the care-taker and their family from the house and to return ownership to the original home builder?
3. Under Marshallese custom and tradition, does an Alap have the authority to give permission to a care-taker of a house to renovate and extend the house?
4. If the answer to Question 3 is “yes”, under Marshallese custom and tradition, is there any obligation for the Alap or the care-taker to seek the permission of the original builder (without land rights) prior to the Alap granting that permission to renovate and extend the house?
5. If the answer to Question 3 is “yes” and the answer to Question 4 is “no”, does the Alap thereafter have the authority to convey ownership of the house to the care-taker who undertook the permitted renovations and extensions to the house in place of the original builder, where the original builder was not consulted by either the care-taker or the Alap?
6. If the answer to Question 3 is “yes” and the answer to Question 4 is “yes”, does the Alap thereafter have the authority to convey ownership of the house to the care-taker who undertook the Alap-approved renovations and extensions to the house, where the original builder was not consulted and did not give permission to either the care-taker or the Alap?
7. Upon the death of the care-taker to whom the house was entrusted when the original builder left Teron Weto, under Marshallese custom and tradition, did the Alap’s permission extended to the care-taker by the Alap, extend to the care-taker’s successor-in-interest, where there was no consultation with the original builder?
8. What, if anything, does Marshallese custom and tradition hold with respect to the question of who is the proper owner of a house built on land where the builder has no land rights, and where different persons have built the house or improved or extended the house with the permission of the Alap?
9. Pursuant to Marshallese custom and tradition, who, between Tarbwij Lelwoj and Nerissa Helies, has the right to possession of the disputed house, situated on Teron Weto, Rita Village, Majuro Atoll?

For the reasons set forth below, this Court finds that Tarbwij Lelwoj, represented by Sophia Lelwoj, has the right to possession of the disputed house on Teron according to customary law and traditional practice.

III. Analysis of Relevant Factual Findings

A. Where a person builds a house on land to which he has no land rights under Marshallese custom and tradition, and where that house is later left by the person who built the house in the care of another family member for an extended period of time, under custom and tradition, is it proper that the Alap declare that the original builder of the house has abandoned it, takes possession of the house and confers ownership of the house upon the family member who took over as care-taker of the property?

- Yes, the Alap is authorized under the custom to declare house abandoned, take possession of it, and confer ownership to another where there is cause under the custom.

Under Marshallese custom, the authority to make any disposition or alienation on land lies with the landowners. This Court acknowledges the parties' agreement that there is no Irojlaplap or Irojiedrik on Teron, and that Defendant Carmen Samson ("Alap Carmen") is the current Alap, and the current Senior Dri Jerbal is Betty Tibon Imaikta ("SDJ Betty"). As such, in the absence of an Irojlaplap or an Irojiedrik, the authority over Teron currently lies with Alap Carmen and SDJ Betty. Const. Art. X, Sec. 1(2).

This Court finds the predecessors of Alap Carmen and SDJ Betty, that is Alap Jelke Jenre and Senior Dri Jerbal Labi Tibon respectively, authorized Tarina B. Jokon, a.k.a Tarina Abo ("Tarina"), the original caretaker of the disputed house, to mortgage it in 1992 for \$29,149.17 with the Marshall Islands Development Bank ("MIDB") for renovations.¹ This is illustrated in

¹ Plaintiff's Exhibit B.

Plaintiff's Exhibit B, which the defendants opposed and objected to its admission into evidence in their written closing arguments.²

This Court addresses the defendants' objection here. In their *Defendants' Closing Statement*, Defendants argue that Plaintiff's Exhibit B is not admissible under Rule 902(2) of the Rules of Evidence.³ This Court however, admits Plaintiff's Exhibit B under Rule 15(b) of the Traditional Rights Court Rules of Procedures.

Plaintiff's Exhibit B is a document showing that Tarina received the landowners' consent and approval to mortgage the disputed house in 1992 and this Court finds its admission would not be unfair to either party. In addition, the defendants failed to raise any objections during the trial but expressly stated they had no objection to its admission. Furthermore, the defendants cross-examined the witnesses who offered testimonial evidence in relation to Exhibit B during the trial. Defendants also had ample time to notify the financial institution to give testimony on rebuttal. But again, when asked, Defendants had no rebuttal witnesses to counter the testimonial evidence regarding the exhibit.

Moreover, this Court finds the testimony of the Plaintiff's non-party witness, SDJ Betty, offered sufficient verification that Alap Jelke Jenre and Senior Dri Jerbal Labi Tibon signed Plaintiff's Exhibit B. *Jorbon v. Akira*, CA 2020-329.

According to the testimony of SDJ Betty, the eldest daughter of Senior Dri Jerbal Labi Tibon, she recognized the signatures of her father and the alap on the document. This Court will accept the testimony of SDJ Betty as a person who, on numerous occasions, witnessed the alap and her father sign documents in the past. *Id.*

² Defendants' Closing Statement (Dft.'s Clos. Stmt., filed Feb. 06, 2025).

³ Dft.'s Clos. Stmt., filed Feb. 06, 2025, at 4-5.

According to High Court Civil Action 2020-329, *Jorbon v. Akira*, the Irojiedrik that succeeded his irojiedrik mother, testified and said that he recognized his mother, Leroij Kalora Zaion's signature on the Bill of Sale as he has seen it on land documents belonging to their family.

Additionally, Marshallese customary law and traditional practice dictates that an alap is generally in charge of the management of the land as the clan head. This authority includes assigning plots on the land for constructing dwelling houses and ensuring there is peace and harmony on the land, among other things, in conjunction with the other land title holders. We see this authority exercised by both the alap and senior dri jermal of Teron in Plaintiff's Exhibit B. *Rusin v. Jeilar, et al.*, CA 2023-0393; *Peter v. Napking, et al.*, CA 06-163 (09/16/08); *Lokar v. Latak*, 6 TTR 375; J.A. Tobin, *Land Tenure in the Marshall Islands*, 12, 63 (1956).

In the case of *Lokar v. Latak*, 6 TTR 375, the Court said that an alap has the authority to place a person who has no land rights on the land and grant him permission to construct a dwelling house on the land to live with his family. The Court also said the alap also had a corresponding authority to remove that person without cause under the custom. In the instant case however, there were no blatant disrespectful causes under the custom to warrant any eviction. Other than the fact that Nerissa had left the house in the care of her sisters for over 40 years. She had no apparent interest in its general upkeep and maintenance or concern that her sisters felt it necessary to mortgage the house for renovations. In considering all of these, this Court finds that she was completely disinterested and indifferent to the circumstances surrounding the house.

In fact, testimonial evidence suggests the Alap could have taken possession of the disputed house due to abandonment, and if Tarbwij had not assumed the mortgage payment on behalf of Tarina, then MIDB could have foreclosed on it for default.

In either case, this Court finds Nerissa neglected her duties and responsibilities as a homeowner and ignored her customary duties to the landowners.

This Court also finds it hard to accept that as the purported true owner, Nerissa did not once, assert her claim over the house or inquire as to its status throughout the years abroad or during her visits. She testified that she obtained permission from Labi Tibon, who held the Senior Dri Jerbal rights and title at the time, however, she was unable to submit sufficient evidence to this Court showing that permission was also obtained from the Alap at the time. Notwithstanding this, this Court finds the evidence supports Nerissa's claim that she was the original builder of the house in dispute.

In addition, this Court finds the determination by the Alap and correspondingly, the Senior Dri Jerbal, that Nerissa had abandoned the disputed house reasonable, given her prolonged absence and indifferent conduct with respect to the circumstances surrounding the disputed house for over 40 years. These acts and inactions, this Court finds, include, but are not limited to:

- i. neglecting to inquire about the general upkeep of the house; and
- ii. neglecting to confront her sisters, Tarina Abo and Tarbwij Lelwoj, regarding the mortgage taken against the house for the renovations; and
- iii. neglecting to communicate regularly with the landowners of Teron throughout the years; and

- iv. waiting to be shown an accommodation room during her visits from the United States of America (USA).

Consequently, this Court finds the landowners' acknowledgement that Tarina was the person living in, and thereby responsible for, the disputed house, was a reasonable determination under the custom, given Nerissa had permanently migrated and left the house to Tarina in 1982. As such, the alap's authority to take possession of the disputed house and confer ownership to another person was consistent with Marshallese custom. *Lokar v. Latak*, 6 TTR 375.

B. If the answer to Question 1 is "yes", then, under Marshallese custom and tradition, is it proper for the successor to the Alap who conferred the ownership upon the care-taker family member to evict the care-taker and their family from the house and return ownership to the original home builder?

- It is unreasonable for the current alap to disregard the previous alap's prior decision which conferred ownership of the house to Tarina and permitted her to live in the house for 27 years.

In *Lokot and Kabua v. Kramer, et al.*, 2 MILR 89 (1997), the Supreme Court agreed with the High Court's dismissal of the claimants' attempt to evict the defendants' from the land in which they had been occupying for 15 years. The Supreme Court stated that the "*...the lapse of 15 years from the time defendant occupied the land until suit was filed by plaintiffs was unreasonable...*"

Similarly, in the present case, Nerissa and the current alap evicted Sophia and Tarbwij from the house after 27 years in which they were able to renovate and live in it pursuant to the agreement with the previous alap.

On the other hand, the plaintiffs, namely Tarbwij and Sophia, along with Tarbwij's late husband, began occupying and paying the mortgage for the disputed house around 1996. Sophia, in fact, has lived in the disputed house since 1996, while her parents, who assumed responsibility for paying the mortgage, resided in Maloelap until they relocated to Majuro. Notwithstanding

this, Tarbwij and her husband continued paying the mortgage against the house until sometime in 2022.⁴ The mortgage was eventually paid in full using Tarbwij's husband's salary and social security benefits following his death.

Accordingly, this Court finds that Nerissa lived in the USA for over 40 years. She made no financial or customary contribution toward the house all those years. And in contrast, the plaintiffs have lived and occupied the disputed house for about 27 years. Not only have they lived and occupied it for 27 years, but they have also committed financial resources and fulfilled customary duties to ensure the house was maintained and secured within the family as requested by Tarina.

Without any cause under the custom, this Court finds that evicting Sophia, and her mother Tarbwij, from the house after 27 years of occupying it, maintaining the customary duties to the landowners, and paying off the mortgage against the house, is unreasonable and inconsistent with Marshallese custom. *Lokot and Kabua v. Kramer, et al.*, 2 MILR 89 (1997).

C. Under Marshallese custom and tradition, does the Alap have the authority to give permission to a care-taker of a house to renovate and extend the house?

- Yes, Marshallese custom and tradition dictates that the Alap may authorize the care-taker in whom the disputed house was conferred, to renovate and extend it.

This Court finds that because Tarina was conferred ownership of the disputed house, the landowners, that is the Alap, together with the Senior Dri Jerbal, had the authority to give her permission to renovate and extend it. In addition, this Court finds SDJ Betty's testimony in which she stated that under the custom, an alap may take possession of a house deemed abandoned by the owner and subsequently confer ownership thereof to someone else, to be consistent with Marshallese custom too. *Lokar v. Latak*, 6 TTR 375.

⁴ Plaintiff's Exhibit C.

In the case of *Lokar*, the defendant was granted permission to construct a dwelling house on the land by the alap and senior dri jermal. The Court in that case said that the corresponding authority of the alap to remove the defendant from the land was also consistent with Marshallese custom. This Court finds that in the instant case, the permission from the Alap and Senior Dri Jermal to Tarina, and subsequently Tarbwij, to renovate and extend the house is consistent with Marshallese custom.

Although Tarina has passed on and therefore unable to offer testimonial evidence as to the arrangement she made with Nerissa, and subsequently with Tarbwij, the fact that she did not transfer the responsibility of the mortgage to Nerissa indicates to this Court that she firmly believed Nerissa no longer owned the house.

On the other hand, Tarbwij testified that Tarina specifically asked her to take over the mortgage payments to prevent the foreclosure of the disputed house by MIDB. This Court finds Tarina's request to Tarbwij reasonable and consistent with that of a care-taker turned owner of the disputed house.

Furthermore, the fact that Tarbwij continued the mortgage payments through her husband's salary, and then her beneficiary checks from the Marshall Islands Social Security Administration following his death, indicate to this Court that Tarbwij, and her husband and daughter, not only acted on their knowledge that the house belonged to them by virtue of Tarina's arrangement, but also fulfilled their sense of ownership through financial and customary considerations to maintain ownership of the house.

This Court finds that Nerissa, on the other hand, provided insufficient evidence to counter the facts that support the plaintiffs' claims that Tarina had acquired ownership of the house and subsequently asked Tarbwij to pay the mortgage against the house as a successor-in-interest.

We also find that Nerissa failed to confront Tarina regarding the mortgage she took against the house for the renovations. In fact, Nerissa testified she felt it was useless to do so since the changes had already been made.

As such, this Court finds the Alap was well within his authority under the custom to permit Tarina, care-taker turned owner, to renovate and extend the disputed house.

D. If the answer to Question 3 is “yes”, under Marshallese custom and tradition, is there any obligation for the Alap or the care-taker to seek the permission of the original builder (without land rights) prior to the Alap granting that permission to renovate and extend the house?

- Under Marshallese custom, the homeowner (without land rights) is obliged to seek the landowners’ approval to undertake any renovations on a house. And it is the alap’s responsibility to grant permission to renovate homes on his land.

As stated above, the landowners have the authority under the custom to give permission to Tarina, original care-taker turned owner of the disputed house, to renovate and extend it. *Id.*

As the owner of the house, Tarina was obliged to seek permission from the Alap and Senior Dri Jerbal to secure a mortgage for the renovations. The Alap was not obliged to seek permission from Tarina as the new owner, or from Nerissa, the original builder, if the house had already been conferred upon Tarina.

Testimonial evidence confirms all the renovations that went into the house, and the financial means obtained to undertake such renovations, were made with no consultation with Nerissa. Consultations were however, undertaken between Tarina, the original care-taker turned owner of the disputed house, and the Alap and Senior Dri Jerbal of Teron at the time.⁵ This is consistent with Marshallese custom and tradition.

⁵ Plaintiff’s Exhibit B.

E. *If the answer to Question 3 is “yes” and the answer to Question 4 is “no”, does the Alap thereafter have the authority to convey ownership of the house to the care-taker who undertook the permitted renovations and extensions to the house in place of the original builder, where the original builder was not consulted by either the care-taker or the Alap?*

- Yes, under Marshallese custom, the Alap, together with the Senior Dri Jerbal, have authority to convey ownership of the house to the care-taker who undertook the permitted renovations and extensions to the house.

As stated above, because there is no Irojilaplap or Irojiedrik in Teron, the Alap and Senior Dri Jerbal, as landowners, have the authority under the custom to convey ownership of the house deemed abandoned to another person after taking possession of it. In the instant case, the landowners conveyed ownership of the house to Tarina. It is reasonable that the alap would also recognize Tarina’s successor-in-interest, that is Tarbwij and not Nerissa, as the new owner of the disputed house.

This Court finds the evidence, in totality, supports the claim that Tarina was conferred ownership of the disputed house by the landowners, and she subsequently gave the house to Tarbwij. This was the status quo for 27 years.

F. *Upon the death of the care-taker to whom the house was entrusted when the original builder left Teron Weto, under Marshallese custom and tradition, did the Alap’s permission extended to the care-taker by the Alap, extend to the care-taker’s successor-in-interest, where there was no consultation with the original builder?*

- Under Marshallese custom, the initial permission given to the original care-taker to renovate and extend the house would reasonably be extended to the successor-int-interest.

As stated above, given that the house was conferred upon Tarina, the original care-taker of the house, it follows that, as the new homeowner, her request for Tarbwij to assume the mortgage against the disputed house transferred responsibility of the house to Tarbwij. As Tarbwij and her family occupied the disputed house for 27 years, they were

able to pay the mortgage off in full and successfully renovated and extended the house with authorization from the landowners.

Evidently, as the person in whom Tarina entrusted the house to, Tarbwij, and her family, not only occupied the house, but also committed considerable personal time and resources to it. The landowners' recognition of the plaintiffs as Tarina's successors-in-interest, this Court finds, is consistent with Marshallese custom. The Marshallese custom of reciprocity dictates that Tarbwij and her family's commitment to fulfilling Tarina's request by maintaining the general upkeep of the house and paying the mortgage against the house in full ought to be commended and given due regard.

Therefore, the Alap, together with the Senior Dri Jerbal, have the authority to convey ownership of the house to Tarina, and upon her death, Tarina's successor-in-interest, which the evidence suggests, is Tarbwij.

G. What, if anything, does Marshallese custom and tradition hold with respect to the question of who is the proper owner of the house built on land where the builder has no land rights, and where different persons have built the house or improved or extended the house with permissions of the Alap?

As stated above, the Marshallese customary law and traditional practice dictate that an alap is generally in charge of the management and use of land, in consultation with the Irojlaplap, Irojiedrik where applicable, and the Senior Dri Jerbal. Const. Art. X, Sec. 1(2); J. A. Tobin, *Land Tenure in the Marshall Islands* at 6-11 (1956).

This Court finds that because there is no Irojlaplap or Irojiedrik on Teron, the Alap and Senior Dri Jerbal are the persons authorized under the custom to permit a person to construct a dwelling house and to live on the land as was in the case of *Lokar*.

After reviewing the evidence, this Court finds that Tarina received authority from the landowners, the Alap and Senior Dri Jerbal, to renovate and extend the house, based

on the idea that Nerissa no longer owned the house. The authority was later extended to the new occupiers of the house, the plaintiffs.

We also find that Tarina, having been granted authority to renovate the house and to mortgage it, transferred the responsibility of paying off the mortgage to Tarbwij. Tarbwij, along with her family, have occupied and continued paying the mortgage against the house for 27 years. In the 27 years that they have occupied the house and continued the payments on the mortgage, neither the alap or senior dri jermal have had any causes under the custom to evict them. Not until Nerissa took along Alap Carmen to evict Sophia from the house.

In her testimony, Alap Carmen expressed her support for Nerissa to reclaim the house because she believes Nerissa is the proper owner of the house. However, SDJ Betty does not agree with the eviction of the plaintiffs. She testified that the decision of her predecessors, Alap Jelke Jenre and Senior Dri Jermal Labi Tibon, was valid and that she will acknowledge the person who can provide documentary evidence to support their claim as to the proper owner of the disputed house.

This Court finds that on the authority of Alap Carmen by herself, Nerissa cannot reclaim the house and evict Sophia if the previous Alap and Senior Dri Jermal deemed Nerissa abandoned it, and consequently conferred its ownership to another. This Court finds that Nerissa's absence for over 40 years compared with the plaintiffs' occupancy of the disputed house for 27 years compelling in our determination that Tarbwij is the proper owner of the disputed house under the custom. The Supreme Court has said that even 15 years of occupancy is a long period and to evict a person from the land is unreasonable. *See Lokot and Kabua v. Kramer, et al.*, 2 MILR 89 (1997).

IV. CONCLUSION

In conclusion, this Court finds that in accordance with Marshallese custom and tradition, Tarbwij Lelwoj has the right of possession of the disputed house, situated on Teron Weto, Rita Village, Majuro Atoll.

Dated: 14 March 2025.

 /s/
Grace L. Leban
Chief Judge
Traditional Rights Court

 /s/
Nixon David
Associate Judge
Traditional Rights Court

 /s/
Claire T. Loeak
Associate Judge
Traditional Rights Court