

IN THE TRADITIONAL RIGHTS COURT
REPUBLIC OF THE MARSHALL ISLANDS

RITOK H. JACK,)
)
 Plaintiff,)
)
 vs.)
)
 TOKIKO HISAIAH)
 and DAVID HISAIAH,)
)
 Defendants.)
 _____)

CIVIL ACTION NO. 1999-250

OPINION IN ANSWER

The Traditional Rights Court heard High Court Civil Action No. 1999-250 on October 23 -30, 2000, at Uliga Courthouse, Majuro Atoll, Republic of the Marshall Islands. The members of the panel were Associate Judge Biliet Edmond, Associate Judge Iroj Bwillej Jibas, and Associate Judge Berson Joseph who presided over the hearing.

This case was referred to the Traditional Rights Court to determine, pursuant to the custom, who among the parties is the proper person to inherit both the Alab and Dri-jerbal rights on Wojalik Ean Weto in Arrak, Majuro Atoll. This is a very big and sad case because it involves a daughter going against her mother and her siblings. It is big because it is the first of its kind to come before this court. This case concerns the weto called Wojalik Ean which was purchased by "the husband" with a pickup truck, money, and also food and material goods.

The Traditional Rights Court recognizes that this case will be very valuable to the trial assistants and attorneys to cite from in their cases today and in the days to come. The Court also recognizes that the custom plays a major role in resolving the dispute in this case.

THE CUSTOM:

1. EBAL UM EO: It means that if Wojalik Ean Weto was Bwij Land and belonged to Andrew Hisaiah who was the last of the bwij when he passed away, who would have been the right person to inherit his rights on the weto? The custom that goes with the term tells us that the surviving wife would never have any rights whatsoever on this type of land. The wife will return to her own people and live with them. Under the custom, the people who inherit on this type of land are the children of Andrew Hisaiah, his siblings.

THE DISPUTE:

1. The question Presented: As between the parties, who is the proper person to hold the right, title, and interest of Alab and Dri-jerbal on Wojalik Ean Weto in Arrak after Andrew Hisaiah who bought these rights passed away?

2. Opinion in Answer to the Question: Tokiko Hisaiah and David Hisaiah.

3. Summary of Reasoning on which Opinion in Answer is based:

a) The weto in question is not a Bwij Land but is one that we recognize was bought. Andrew Hisaiah had bought this weto from Tarkein Inok. We know and understand that Andrew Hisaiah did not buy the land only for himself but had bought it for him and his wife, and all their children, including Gloria Kani, Andrew Hisaiah's own daughter who is in Saipan today.

There is no question that Andrew Hisaiah's marriage to Tokiko Hisaiah was a very good marriage from the start until Andrew Hisaiah passed away. Now that Andrew Hisaiah has passed away, it is only right that Tokiko Hisaiah succeed him, and after that their children will succeed them, and each of them knows who is first in line as between themselves. This is the custom as we know it and really fair for all.

The term Ebal Um Eo does not apply to all types of purchased land. This Court is in agreement with this statement, "The properties of the husband are also properties of the wife," which was given during the testimony of one of the defendants' witnesses. If Andrew and Tokiko Hisaiah had been divorced, then that would have been an entirely different matter.

b) All the defendants' witnesses, except Kaname Yamamura, are related to Andrew Hisaiah and had lived and worked with him, helped him in all his needs and were aware of his plans and arrangements regarding his family. In their testimonies they told this Court that these two wetos, Wojalik Ean and Anmarut, Andrew Hisaiah had bought for his family, and that means it was for Tokiko Hisaiah and all their children without any exception. They will live and "**care for each other**" on these wetos. This Court believes that on Andrew Hisaiah's mind and thoughts, **OR** any man for that matter, the wife came first, then his children. It is true that that is the custom and should be applied for Andrew Hisaiah's own properties.

c) Plaintiff's Exhibit No. 3 - Confirmation of Landright: The burden of proving it to this Court lies on the Plaintiff's shoulders. This Court recognizes the fact that the piece of evidence that the Plaintiff clearly relied most upon and placed all her hopes on to prove her case was her own Exhibit No. 3 because as this Court saw the counsel repeatedly presented and referred to it about twenty (20) times like it was their goal. The truth is, this document is not something that we can take and use for any other purpose, including proving the Plaintiff's claim other than what it was intended for, the Farmers Home office's own internal use where this document came from. In his testimony, Loibwij Kabua, the former administrator, stated that the document in question is one of the requirements that one has to

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go through when applying for a building loan. It is still the current practice. He went further to testify that Plaintiff Ritok H. Jack had needed this document in order for her request to be granted by the said office. This Court is not faulting Ritok H. Jack for signing with respect to the Senior Di-jerbal right because as one of the children of Andrew Hisaiah she also owns this land, and because she was the one who needed the house built and went ahead and sign. The same thing is also true for the other children of Andrew Hisaiah. However, if Ritok H. Jack had signed thinking that she owns it exclusively, then she's wrong. If Andrew Hisaiah had given this right to Ritok H. Jack to sign as Senior Dri-jerbal and intended for Wojalik Ean Weto to be owned by her exclusively, then it is an arrangement that is in great violation of the custom. What happens to Tokiko Hisaiah, David Hisaiah, and their other children? From the Plaintiff's own testimony, this Court finds it hard to believe that Andrew Hisaiah had arranged this major deviation. If it is indeed true that he had arranged for this deviation, then in this Court's opinion it would not be proper nor right under the custom for this Court to recognize and honor it because it violates the custom. Under the custom, everyone in the family should be aware of everything. That is the custom and we should recognize and honor it.

d) The Former Alab and Dri-jerbal: Tarkein Inok stated that even though she sold Wojalik Ean Weto to Andrew Hisaiah she still has the right to express her wishes regarding this weto just as she stated in her own testimony, and just as she's indicated in Plaintiff's Exhibit Nos. 4, 5, and 6. This is a first for this Court and it doesn't really know what kind of sale this is. In a way, this Court can say that Tarkein Inok is very fortunate to have been able to make such a sale. However, this Court does not encourage others to make a similar sale. In this Court's opinion, it is something extremely improper and therefore, it is

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not one that this Court can consider to prove the Plaintiff's case.

NAME OF WITNESSES AND ADDRESSES:

FOR THE PLAINTIFF:

1. Tarkein Inok, Laura Village, Majuro, Marshall Islands
2. Ritok H. Jack, Wojalik Ean Wetu, Arrak Village, Majuro, Marshall Islands

FOR THE DEFENDANTS:

1. Loibwij Kabua, Honolulu, Hawaii, USA
2. Tatashi Hisaiah, United States of America
3. Aini Clement, Rita Village, Majuro, Marshall Islands
4. Bilimon Andrew, Rita Village, Majuro, Marshall Islands
5. Kaname Yamamura, Rita Village, Majuro, Marshall Islands
6. Mekwa Clement, Rita Village, Majuro, Marshall Islands
7. Kinen Lajuan, Ajeltake Village, Majuro, Marshall Islands
8. Drike Erakdrik, Rairok Village, Majuro, Marshall Islands
9. David Hisaiah, Rita Village, Majuro, Marshall Islands
10. Tokiko Hisaiah, Rita Village, Majuro, Marshall Islands

EXHIBITS:

PLAINTIFF'S:

1. Lease Agreement
2. Lease Agreement
3. Certification of Landright
4. Document to Amend the Kalimur on Wojalik Ean Wetu, Arrak, Majuro
5. Confirmation of the Sale of Wojalik Ean

6. Objection to the Lease on Wojalik Ean, Arrak, Majuro

FOR THE DEFENDANTS:

1. Challenge

FINDINGS REACHED AFTER HEARING THIS CASE:

1. Tokiko Hisaiah is the surviving spouse of Andrew Hisaiah and is the person entitled to administer all the properties of Andrew Hisaiah for herself and all their children. And in all her testimony before this Court, Tokiko Hisaiah had told this Court that she really loves her daughter, Ritok H. Jack. This Court wants to praise her for loving all her children equally. This Court finds that she truly values and respects the saying, "Jined ilo Kobo," and this Court really believes that that is how she'll continue to love her daughter and will never "kaliaki (disown her)."

2. Tarkein Inok has no right whatsoever on Wojalik Ean Weto, starting the day she received the payment for this weto from Andrew Hisaiah.

3. In her testimony before this Court, Ritok H. Jack too expressed her love for her mother. It is true that a person who has no mother is very unfortunate. This Court also recognizes that although Wojalik Ean Weto belongs to all of them but because Ritok H. Jack is the one who is looking after and taking care of it for all of them, it is only proper that the other children show her the recognition, appreciation, and respect she deserves by informing her of their wishes first, not to seek her permission but just in the SPIRIT OF RECOGNITION, respect, appreciation, and mostly love. From that will come peace, and respect and caring for one another. That is not a bad thing to do and not something the children will find hard to follow.

OBSERVATION:

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NOW, THEREFORE, based on all the foregoing, **IT IS THE UNANIMOUS OPINION** of this panel that Wojalik Ean Weto is now owned by Tokiko Hisaiah and all her children by Andrew Hisaiah, including Gloria Kani who is the daughter of Andrew Hisaiah living in Saipan, Commonwealth of the Northern Mariana Islands, and Tokiko Hisaiah's own children from her previous marriage.

This Court is also of the opinion and belief that **UNDER CUSTOM**, yes, it has the authority to override anything and any arrangement that it finds to be violation of the Marshallese custom.

Dated: November 16th, 2000.

/s/ Berson Joseph
Associate Judge, TRC

/s/ Bwillej Jibas
Associate Judge, TRC

/s/ Biliet Edmond
Associate Judge, TRC

(Note: Filed November 16th, 2000)

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