

IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

JARLING THOMAS, et al. )

Plaintiffs-Appellees, )

vs. )

ABUIT SAMSON, )

Defendant-Appellant, )

vs. )

HELENA ALIK, )

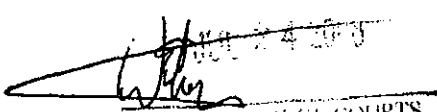
Intervenor-Appellant. )

Supreme Court Case No. 2007-001

High Court Civil Action No. 2005-077

OPINION

FILED

  
ASST. CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS

BEFORE: CADRA, Chief Justice; WALLACE\* and KURREN,\*\* Acting Associate Justices.

KURREN, Acting Associate Justice:

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a dispute over who holds the alab and senior dri jermal rights to Lorilejman Weto, Arrak Village, Majuro Atoll, in the Republic of the Marshall Islands. Plaintiff-Appellee Jarling Thomas, et al. ("Thomas"),

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\* Honorable J. Clifford Wallace, Senior Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation of the Cabinet.

\*\* Honorable Barry M. Kurren, Magistrate Judge, District of Hawaii, sitting by designation of the Cabinet.

Defendant-Appellant Abuit Samson ("Samson"), and Intervenor-Appellant Helena Alik ("Alik") all claim an interest in these rights.

The dispute was referred to the Traditional Rights Court ("TRC"), which heard the matter between January 6 and January 16, 2006. On March 17, 2006, the TRC ruled that Thomas held the alab and senior dri jermal rights to Lorilejman Weto.

The matter then went before the High Court pursuant to Rule 9 of the TRC's Rules of Procedure. The High Court affirmed the TRC decision, finding that there was "no evidence that the TRC's decision is clear[ly] erroneous or contrary to law." (High Court Final Judgment 3.) Samson and Alik have now appealed the High Court's decision. The parties waived oral argument, and after careful consideration of the briefs and the record before us, and for the reasons set forth below, the Court AFFIRMS the decision of the High Court affirming the TRC and finding in favor of Thomas.

#### STANDARD OF REVIEW

Errors of law are reviewed de novo. Pierce v. Underwood, 487 U.S. 552, 584 (1988); Pwalendin v. Ehmel, 8 TTR 548, 552 (App. Div. Pohnpei 1986). However, the High Court and this Court must give "proper deference" to the decision of the TRC in cases, such as this one, that involve customary law. See

Tibon v. Jibu, 3 MILR 1 (2005). “Accordingly, a finding of fact as to the custom is to be reversed or modified only if clearly erroneous. A finding of fact is ‘clearly erroneous’ when a review of the entire record produces a definite and firm conviction that the court below made a mistake.” Id. (internal quotations and citations omitted).

### DISCUSSION

Alik, Thomas, and Samson all claim an interest in Lorilejman Weto. There is no dispute that Alik’s ancestors once owned the rights to this land; Alik now claims that she and her family still own these rights. (TRC Op. 3.) Thomas claims, however, that the alab and dri jermal rights to Lorilejman Weto were given to her ancestor, Bokmej, as a *katleb* sometime around 1930. Samson, on the other hand, claims that one of his ancestors, also named Samson, was a joint recipient of that same *katleb* given to Bokmej.

The TRC ruled in favor of Thomas. Specifically, the TRC found that Alik’s family had lost its rights to the Lorilejman Weto at some point in the past, and had failed to raise their claims during subsequent meetings for determination of alab and dri jermal rights. In addition, the TRC found that as a matter of customary law, a *katleb* was “given to only one person,” not two. (TRC Op. 4 (emphasis removed).) That one person, according to the TRC, was Bokmej. The

TRC found that it could not be the case that Samson shared in the *katleb* to Bokmej. Finally, the TRC found that later land adjudications in favor of Samson had disturbed the custom of *drekein jenme* and were invalid. Accordingly, the TRC ruled that the rightful holder of the alab and dri jermal rights to Lorilejman Weto was Thomas, descendant of Bokmej. The TRC ruling was adopted by the High Court, and we now AFFIRM that decision.

#### I. SAMSON'S OBJECTIONS

Samson first argues that the TRC “erred in fact by determining that Exhibit 3, which purports to recognize Bokmej as the holder of the Alab rights on Lorilejman Weto, was in fact ‘good and proper’ and that it contained the signature of Irojlablab Amata Kabua.” (Appellant’s Brief 7.) Samson additionally argues that as a matter of law, Exhibit 3 is invalid under a common law statute of frauds theory. As Thomas points out, however, Exhibit 3 is not a transfer of property, but a determination of inheritance, and so the statute of frauds would not apply. Moreover, it does not appear that the TRC believed Exhibit 3 to have been actually signed; rather, it appears that the TRC merely believed the document to have been adopted by Amata Kabua. The TRC made neither an error of law nor an error of fact in accepting and relying on Exhibit 3.

Samson next argues that the TRC “erred in law by misapplying the Marshallese custom of ‘never mov[ing] or disturb[ing] the *drekein jenme*,’ particularly insofar as Exhibit 3 was not good and proper.” (Appellant’s Brief 7.) Specifically, Samson argues that the decision of Amata Kabua’s land committee should not have been accorded special weight under the *drekein jenme* doctrine because the land committee ruled in favor of Thomas only in 1995, which is not long enough for the decision to be accorded “rock of the ages” status. As Thomas points out, however, the decision that the TRC said should not be disturbed was not the decision of the land committee recognizing certain land rights, but the original decision to award those land rights via the 1930 *katleb* to Bokmej. (See TRC Op. 3, stating that Amata Kabua “understood what his predecessors had confirmed, and he himself knew not to cause any change”.) This seventy-year time period is more than sufficient to invoke the *drekein jenme* doctrine.

Samson also argues that “the High Court erred in fact by determining that the evidence in Kaiboke’s Book supported, rather than undermined, the plaintiff’s theory of the case.” (Appellant’s Brief 17.) However, the High Court never stated that Kaiboke’s Book supported plaintiff’s theory of the case. The High Court said only that Kaiboke’s Book was “consistent with the TRC’s finding that the plaintiff Thomas is the Alab and Senior Dri Jerbal of Lorilejman.” (High

Court Final Judgment 3.) Moreover, Samson fails to show why the information contained in Kaiboke's Book—namely, that the alab and dri jermal rights passed to Laudrik after Bokmej's death—supports the position that the *katleb* was originally given to both Samson and Bokmej.

Finally, Samson argues that “the Traditional Rights Court and the High Court erred in law by ignoring the Marshallese custom of presuming the decisions of a Leroijablab are reasonable unless it is clear they are not.” (Appellant's Brief 19.) Samson contends, as he did before the High Court, that “the court erred by not properly considering the testimony and opinion of Leroijablab Amata Zedkaia,” who had determined in 2001 that Samson held the alab rights to Lorilejman Weto. (Appellant's Brief 20.) In finding in favor of Thomas, however, it is evident that the TRC implicitly ruled that the Amata Zedkaia's decision was *not* reasonable since it contravened the doctrine of *drekein jenme*. Neither the TRC nor the High Court erred in applying the doctrine of *drekein jenme* to contravene the more recent decision of Amata Zedkaia.


## II. ALIK'S OBJECTIONS

Alik argues that neither Samson nor Thomas is the proper owner of Lorilejman Weto, and that his family, the original owners of Lorilejman Weto, has a superior interest in the land. Alik fails to allege any specific, non-conclusory

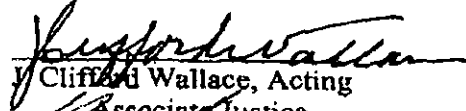
legal or factual errors of either the TRC or the High Court, however, so we are unable to address Alik's concerns further.

CONCLUSION

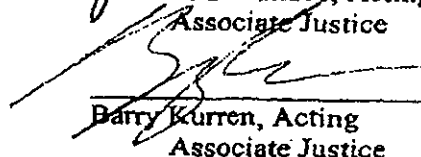
The High Court properly found that the TRC decision was neither clearly erroneous nor contrary to law, and that Thomas properly holds the alab and senior dri jermal rights to Lorilejman Weto. Accordingly, the judgment of the High Court is AFFIRMED and this appeal is DISMISSED.



Daniel Cadra, Chief Justice



Clifford Wallace, Acting  
Associate Justice



Barry Kurren, Acting  
Associate Justice

