IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

	Supreme Court Civil Appeal No.: 2005-003
AINE KELET, ET AL,	)
	)
Plaintiffs/Appellees,	) DECISION ON APPEAL
	)
vs.	)
	)
TELNAN LANKI & PETER BIEN,	)
	)
Defendants/Appellants.	)
	)

BEFORE CADRA, C.J.; KURREN, A.J.;[1] and WALLACE, A.J.:[2]

WALLACE, A.J., with whom CADRA, C.J., and KURREN, A.J., concur:

I. INTRODUCTION

Telnan Lanki and Peter Bien appeal from a judgment of the High Court of the Republic of the Marshall Islands. The High Court held that the decision of the Traditional Rights Court (TRC) was not clearly erroneous or contrary to law, and therefore Takju Jimi and his descendants properly held dri jerbal title in Lokejbar weto. We have jurisdiction pursuant to Article VI, Section 2 of the Marshall Islands Constitution, and we affirm.

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[1] Barry Kurren, United States Magistrate Judge, District of Hawaii, sitting by appointment of the Cabinet.

[2] J. Clifford Wallace, Senior Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation of the Cabinet.

II. FACTS AND PROCEEDINGS

The parties dispute title to a plot of land known as Lokejbar weto, located on the island of Majuro. At one time, both alap and dri jerbal titles on this land were held by one man, Namidrik. Near the end of his life, Namidrik transferred both titles, with approval from the relevant Iroij, to his wife, Limoj. Limoj then invited her friend, Libadriki, to live on the land with her. With the approval of Iroij Tel and her husband, Limoj transferred dri jerbal rights on the land to Libadriki.

Upon the death of Limoj and Libadriki, both women passed their respective titles to their sons by will. Limoj passed alap title to her adopted son, Ajidrik Bien (Ajidrik), and Libadriki passed dri jerbal title to her son Takju Jimi (Takju). Both men shared the land and co-existed amicably throughout their lives. During this time, the government of the Republic of the Marshall Islands entered into a lease agreement to use a section of Lokejbar weto for the Majuro airport. Ajidrik, through his daughter, signed the lease as holder of alap title, while Takju signed the lease as holder of dri jerbal title. Although both men signed, Takju did not directly share in the income generated by the lease. Instead, according to appellants, Ajidrik collected all of the lease payments, and "provided money for [Takju] when he saw fit from time to time." [Opening Brief at 5] This arrangement apparently proved workable during the lifetimes of Ajidrik and Takju, but problems arose when title passed to their descendants. Hackney Takju (Hackney), the son of Takju, filed this action against the Peter Bien, a descendant of Ajidrik, in order to recover a one-half share of the income from the airport lease.

In an opinion dated September 10, 2004, the TRC determined that Hackney was the proper holder of dri jerbal rights in Lokejbar weto. The TRC based this decision on the fact that

Namidrik had properly transferred both alap and dri jerbal rights to his wife; she had, in turn, transferred dri jerbal rights to her friend Libadriki, and Libadriki had passed that title to her son, Takju. The TRC further supported this determination by referring to the fact that Takju signed the lease for the land as its dri jerbal holder.

On November 30, 2004, the High Court, in a brief opinion, concluded that the TRC's decision was "not clearly erroneous or contrary to law" and held that it could "find no basis on which to question the opinion." The High Court entered judgment in favor of Takju's descendants. The court then issued an order on April 4, 2005 awarding damages in the amount of $38,344.10. The court amended this order by stipulation on April 20, 2005, and increased the award to $74,379.60, to be paid annually at a rate of $7,437.96. The present appeal followed.

III. DISCUSSION

Article VI, Section 4(5) of the Constitution of the Marshall Islands provides: "When a question has been certified to the Traditional Rights Court . . . its resolution of the question shall be given substantial weight." Pursuant to this section, the High Court must adopt a decision of the TRC "unless it is clearly erroneous or contrary to law." *Abija v. Bwijmaron*, 2 MILR 6, 15 (1994). We, in turn, review the High Court's factual findings for clear error and its decision of law *de novo*. *Lobo v. Jejo*, 1 MILR 224, 225 (1991).

Appellants challenge the TRC's decision by contending that dri jerbal title never passed to Libadriki, but instead both the alap and dri jerbal titles remained within Namidrik's family. They argue that under "customary rights of [succession]," Ajidrik received both titles, notwithstanding his mother's efforts to transfer dri jerbal title to her friend, Libadriki. Appellants cite a number of cases to support this argument, but they are of little help because

they merely provide the general rules for passing land title by inheritance. *See, e.g., Bulele & Jamore v. Reimers & Larence*, 1 MILR 259, 262 (1990); *Limine v. Lainej*, 1 TTR, 231 (1955); *Jatios v. Levi*, 1 TTR 578 (1954). Appellants have cited no cases, however, suggesting that these customary rules of inheritance would somehow serve to invalidate an otherwise valid transfer of title made before death and thus prior to application of inheritance law. In this case, the TRC held that dri jerbal title was properly passed from Limoj to Libadriki during Limoj's lifetime, and that Limoj was free to pass her title by will to her descendants. None of the cases cited by appellants demonstrate this decision to be contrary to customary law.

Moreover, appellants have failed to explain why, if Ajidrik held both titles, he allowed Takju to sign the airport lease as holder of dri jerbal title. Appellants speculate that Leroij Reab, who approved the lease, was merely permitting Takju to sign the lease as a courtesy, all the while "knowing such interest would always belong to Ajidrik and his family." [Opening Brief at 7] Appellants offer no objective support for this dubious argument, and have not shown the TRC's contrary finding to be clearly erroneous.

Appellants next argue that the original transfer of dri jerbal rights from Limoj to Libadriki did not have the necessary approval from the appropriate Iroij. They contend that in order to transfer dri jerbal title properly, Limoj "was required to obtain prior consent or approval of Iroij Edrik Jakeo, with further confirmation from the Droulul of Iroijlaplap Jebdrik." [Opening brief at 7] Appellants also argue that the past statements of other Iroij, including those of Iroij Edrik Tolnan Lanki and Leroij Kalora Zaion, should be controlling on the outcome of this case and the TRC erred in crediting the conflicting statements of Jeltan Lanki.

1. Did the lower Courts misapply [M]arshallese customary law of inheritance to title of dri[]jerbal on the land in its opinion favourable to the children of Takju Jimi . . .

2. Did the lower Courts misapply [M]arshallese customary law or requirements limiting any claim of entitlement to the title of dri jerbal by the children of Takju during the life estates of the children of Ajidrik . . .

3. Did the lower Courts err or violated [M]arshallese custom and traditional practices . . . in rejecting customary decisions of former [L]eroij Kalora Zaion, and current [I]roij [E]drik Telnan Lanki . . .

4. Did the Hi[g]h Court err in amending the Opinion of the Traditional Rights Court requiring the children (Peter Bien) of Ajidrik to compensate the children (Hackney Takju) of Takju when customary land status, authority or permission extended to their father - Takju, is limited or contingent upon rights and obligations of Ajidrik himself, deriving from former owner and holder of the two kajur titles . . .

5. Did the Traditional Right[s] Court make or weigh[] its Opinion based on the evidence presented by both parties, and or did it apply that evidence pursuant to customary law . . .

[Notice of Appeal at 1] We have looked in vain for an issue pertaining to damages. Pursuant to Rule 3, we have refrained from considering any issue that a party fails to include in its notice of appeal. *See, e.g. Korok v. Neiwan Lok*, 1 MILR 93 (1988) ("Appellant has no right to brief and argue issues beyond the notice of appeal"); *Rang v. Lajwa*, 1 MILR 214 (1990) (dismissing appeal when appellants gave "no notice at all concerning the alleged errors and questions to be raised on appeal").

It is true that we have, on occasion, considered issues outside the notice of appeal, when the interest of justice so required. *See, e.g. Abner v. Jibke*, 1 MILR 3 (1984) (excusing non-compliance with Rule 3 "so that rights may not be lost through the efforts of inadequate counsel"); *Bulale and Jamore v. Reimers and Clarence*, 1 MILR 259 (1992) (giving consideration to questions of land rights "notwithstanding the deficiencies in the notice"). But

appellants cannot claim the benefits of these cases. Even in *Bulale*, we cautioned that although, under the circumstances, we would excuse the deficiencies in appellants' notice of appeal, we might not be "so leniently disposed in future cases." We now reiterate the point that cases like *Abner* and *Bulale* are the rare exception, not the rule. The Supreme Court Rules of Procedure require us to disregard those arguments not "set forth in the notice of appeal or fairly comprised therein." In this case, appellants filed a notice of appeal that made no specific mention of any problems with the High Court's damages order. Because appellants raised the issue of damages for the first time in their opening brief, we will not consider their damages arguments on appeal.

For the reasons stated above, the Judgement and Amended Order of the High Court are hereby AFFIRMED.

Dated: 8/14, 2008

Daniel Cadra, Chief Justice

Dated: Dec 12, 2008

Barry Kurren, Associate Justice

Dated: _____, 2008

J. Clifford Wallace, Associate Justice