

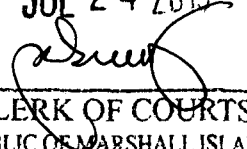
SUPREME COURT

REPUBLIC OF MARSHALL ISLANDS

JIEN LEKKA, attorney-in-fact for)
 KALORA LEKKA,)
)
 Plaintiff-Appellant,)
)
 vs.)
)
 NEIMATA NAKAMURA KABUA,)
 et al.,)
)
 Defendants-Appellees,)
)

Supreme Court Case No. 2006-010
 High Court Civil Action No. 2003-162
 OPINION

FILED

JUL 24 2013

 CLERK OF COURTS
 REPUBLIC OF MARSHALL ISLANDS

Before: CADRA¹, Chief Justice; SEABRIGHT² and KURREN,³ Acting Associate Justices.

Per curiam:

The parties in this action dispute whether Plaintiff may hold and exercise Iroijlaplap title rights to certain lands in the Ralik Chain. The Nitijela issued a declaration of customary law on this issue, stating that only successors of four named Iroijlaplapps may hold and exercise title to the lands. Customary Law

¹ Honorable Daniel N. Cadra, Supreme Court Chief Justice.
² Honorable J. Michael Seabright, District Judge, District of Hawaii, sitting by designation of the Cabinet.
³ Honorable Barry M. Kurren, Magistrate Judge, District of Hawaii, sitting by designation of the Cabinet.

(Ralik Chain) Act 1991 (“Ralik Act”) § 3, 39 MIRC § 403. Therefore, both parties present their genealogy to the Court in arguing for rights to the lands.

Based on the Nitijela’s declaration and the parties’ genealogies, the High Court of the Republic of the Marshall Islands found that Plaintiff-Appellant Kalora Lekka is not a successor of any of the named Irojlaplaps. Further, the High Court declined to find that the Ralik Act impermissibly and retroactively destroys Plaintiff’s alleged rights to the lands. Consequently, the High Court granted summary judgment in favor of Defendant-Appellee Neimata Nakamura Kabua (“Defendant Neimata”)⁴ and dismissed the Amended Complaint. Plaintiff now appeals the High Court’s order, which we AFFIRM.

BACKGROUND

I. Factual Background

As noted by the High Court, the relevant facts are the parties’ genealogies. Indeed, the Nitijela’s declaration of customary law governing who may hold and exercise Irojlaplap rights to lands in the Ralik Chain is based on genealogy:

⁴ Plaintiff also named the following Defendants in this case: “the Ministry of Finance; the Republic of the Marshall Islands, and the Tobolar Copra Processing Plant, Republic of the Marhsall Islands.” However, Plaintiff’s core argument in this case is that she – not Defendant Neimata – should hold Irojlaplap title rights to the lands at issue. The briefs before us, as well as the High Court’s opinion, refer only to Defendant Neimata and to no other Defendant. We do the same in this opinion.

In the Ralik Chain, excluding Ujelang, there are and shall be four (4) separate Irojlaplap domains and titles held and exercised by the successors of:

- (a) Irojlaplap Jeimata;
- (b) Irojlaplap Laelan;
- (c) Irojlaplap Joel; and
- (d) Irojlaplap lobokkoj.

Ralik Act § 3.

Defendant Neimata is a direct descendent of Irojlaplap Laelan.

Irojlaplap Laelan was the father of Kabua Kabua, who was Defendant Neimata's father. In other words, Irojlaplap Laelan was Defendant Neimata's paternal grandfather.

Importantly, Plaintiff admits that she is not a direct descendent of any of the four named Irojlaplaps. Rather, she claims rights to the lands because she is a direct descendent of Iroj Kaiboke. According to Plaintiff, the lands in dispute "originated" with Iroj Kaiboke and are therefore vested in Plaintiff as a descendent of Iroj Kaiboke. Plaintiff disputes the Nitijela's declaration of customary law by countering that, "Under Marshallese customary law, the proper persons to hold the Iroj title for this 'mojen' are the descendants of Kaiboke." (Opening Brief at 12.) However, Iroj Kaiboke is not one of the four Irojlaplaps named in the Ralik Act.

II. Procedural Background

The following motions were presented to the High Court:

- (1) Defendant Neimata's August 30, 2004 Motion for Summary Judgment; and
- (2) Plaintiff's August 30, 2004 Motion Setting Forth Applicable Reasons That The Customary Law (Ralik Chain) Act of 1991 Does Not Preclude Plaintiff's Claim.

The motions presented the following issue to the High Court: "Does the Ralik Act, which only recognizes successors of Irojilaplaps Jeimata, Laelan, Joel, and Lobokkoj as the four Irojilaplaps of the Ralik Chain (excluding Ujelang), preclude Plaintiff's claim to Ralik Chain Irojilaplap rights . . . ?" (High Court Order at 2.)

The High Court noted that Plaintiff does not claim to be a "hereditary successor of one of the four-named Irojilaplaps, but instead claims [the] Ralik Irojilaplap rights through . . . Kaiboke." (High Court Order at 4.) The High Court found that Plaintiff "is not for purposes of the Ralik Act a 'successor' of one of the four-named Irojilaplaps." (*Id.* at 8.) The High Court also rejected Plaintiff's argument that the Ralik Act impermissibly and retroactively destroys her rights to the land. Therefore, the High Court granted summary judgment in Defendant Neimata's favor.

DISCUSSION

I. *Irojlaplap Title to the Lands*

According to the Constitution of the Republic of the Marshall Islands, the Nitijela, as a legislative body, is responsible for declaring the customary law in the Marshall Islands. Section 2 of Article X of the Constitution provides:

- (1) In the exercise of its legislative functions, it shall be the responsibility of the Nitijela, whenever and to the extent considered appropriate, to declare, by Act, the customary law in the Marshall Islands or in any part thereof. The customary law so declared may include any provisions which, in the opinion of the Nitijela, are necessary or desirable to supplement the established rules of customary law or to take account of any traditional practice.
- (2) This Section shall not be construed to authorize the making of any law that would defeat an otherwise valid claim under Article II.

Constitution of the Republic of the Marshall Islands, art. X, § 2.

Pursuant to this constitutional authority, the Nitijela passed the Ralik Act, which “declare[s] the customary law with respect to the four Irojlaplap domains in the Ralik Chain, excluding Ujelang.” 39 MIRC ch. 4. In Section 3 of the Ralik Act, the Nitijela made the following declaration:

In the Ralik Chain, excluding Ujelang, there are and shall be four (4) separate Irojlaplap domains and titles held and exercised by the successors of:

- (a) Irojlaplap Jeimata;

- (b) Iroiylaplap Laelan;
- (c) Iroiylaplap Joel; and
- (d) Iroiylaplap Lobokkoj.

Ralik Act § 3.

Traditional rules of statutory interpretation apply to this Court's construction of Section 3 of the Ralik Act. "The preeminent canon of statutory interpretation requires us to presume that the legislature says in a statute what it means and means in a statute what it says there." Miranda v. Anchondo, 684 F.3d 844, 849 (9th Cir. 2012) (quotations, brackets and citation omitted). "Thus, statutory interpretation 'begins with the statutory text.'" Id. (citation omitted). "If the statutory language is unambiguous and the statutory scheme is coherent and consistent, judicial inquiry must cease." Id. (quotations and citation omitted). "Resorting to legislative history as an interpretive device is inappropriate if the statute is clear." Id. (citations omitted). Additionally, "when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions." Boudette v. Barnette, 923 F.2d 754, 757 (9th Cir. 1991) (citation omitted).

The statutory language of Section 3 of the Ralik Act is clear: with respect to lands in the Ralik Chain (excluding Ujelang), there are four separate Iroiylaplap domains and titles to be held and exercised by the successors of the

four named Iroiylaplaps. In re Jackson, 184 F.3d 1046, 1051 (9th Cir. 1999) (“Statutory interpretation begins with the plain meaning of the statute’s language.”). Given that the statute designates only four Iroiylaplaps, successors of any other Iroiylaplap are excluded from holding title to the Ralik Chain lands. Boudette, 923 F.2d at 757 (“[W]hen a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions.”). Accordingly, the statutory language is clear that the Nitijela intended that only successors of the four named Iroiylaplaps may hold and exercise title to the lands at issue.

Plaintiff admits she is not a direct descendent of any of the four named Iroiylaplaps. Therefore, under the plain language of the statute, the Court finds that Plaintiff is not a successor of any of them. Miranda, 684 F.3d at 849 (“Unless otherwise defined, words of a statute will be interpreted as taking their ordinary, contemporary, common meaning.” (Brackets and citation omitted).) Accordingly, the Ralik Act precludes Plaintiff from holding and exercising Iroiylaplap rights to the Ralik Chain lands.

II. The Takings Claim

Next, Plaintiff argues that the Ralik Act deprived her of her property without due process of law in violation of Article II, Section 4(1) of the Marshall Islands Constitution. We disagree.

As noted above, the Constitution specifically gives the Nitijela the right to declare customary law. This power, including the power to “supplement the established rules of customary law or to take account of any traditional practice,” is only limited by the prohibition of making a law “that would defeat an otherwise valid claim under Article II.” *Id.* art. X, § 2(2). Thus, the plain language of the Constitution unambiguously provides the Nitijela with broad powers to declare the customary law. And, in our view, the Constitution affords the Nitijela correspondingly broad discretion in its exercise of that power.

Given this broad mandate and discretion, we cannot constitutionally review the Nitijela’s decision-making de novo or “second-guess such determination.” See Kabua Kabua v. Kabua Family Defendants, C.A. Nos. 1984-98 & 1984-102 (consol), 24 (High Ct. Marshall Islands Dec. 1, 1993). Instead, where the Nitijela has exercised its Constitutional duties we must defer to its specific findings unless a claimant clearly establishes a violation of Article II.


And this is where Plaintiff's argument falls short. Although the Constitution provides a specific limitation on the Nitijela's ability to declare customary law (if the law would defeat a valid due process claim), Plaintiff has simply failed to provide evidence that the Nitijela exceeded its authority in invoking Article X, Section 2 when it enacted the Ralik Act. In short, there is simply no evidence to support Plaintiff's claim that she had "vested property rights" that were taken without due process of law.

CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff is not a successor of any of the named Irojilaplaps in Section 3 of the Ralik Act and concludes that the Act precludes Plaintiff from holding and exercising Irojilaplap rights to the lands at issue. Further, the Court rejects Plaintiff's claim that she possessed vested property rights taken without due process. As a result, the Court AFFIRMS the High Court's September 11, 2006 Order Granting Defendant Neimata Nakamura Kabua's Summary Judgment Motion.

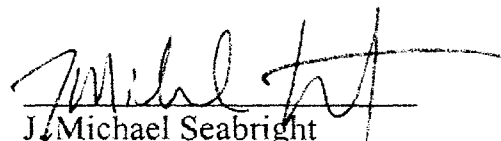
AFFIRMED.

Dated: July 23, 2013



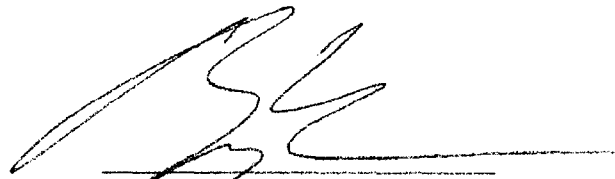
Daniel N. Cadra
Chief Justice

Dated: July 23, 2013



J. Michael Seabright
Associate Justice

Dated: July 23, 2013



Barry M. Kurren
Associate Justice