

Jabwor, is Katleb land to Liriwa. Therefore, it is their contention that Aiboj, Bikej is Bwij land from Liriwa. Plaintiffs Beaja and Jorbon also claim that Nebun and her descendants were ostracized because of a *bwilok* caused by Nebun who had committed incest by marrying her uncle, Lareneo, and that Walur, who is a descendant of the eldest bwij, is the current rightful and proper person to hold and exercise the alap title, right, and interest on Aiboj weto, Bikej Island, Kwajalein Atoll, and that Jack Jorbon is the rightful and proper person to hold and exercise the Senior Dri-Jerbal title, right, and interest on said weto.

According to Plaintiffs Harrington Dribo and Robinson Abner, Aiboj weto, Bikej is different and has no connection to Aiboj weto, Jabwor, as Aiboj in Jabwor belongs to Liriwa's husband, Lobo, and not Liriwa. They assert that Aiboj weto, Bikej belongs to Liriwa. Harrington Dribo and Robinson Abner argue that the rights of a bwij can be stricken or removed for failing to carry out the Iroj's orders, under custom, which is what happened or took place on Aiboj weto, Bikej, according to Dribo and Abner. They also claim that Laemokmok gave Aiboj weto, Bikej to Liriwa, his younger sister, as *Imon Aje* and that Liriwa's descendants inherited these rights from her. After some time, a *bwilok* occurred resulting in the removal of land rights, and Irojlaplap Lojelan Kabua gave Bikej as *Katleb* land to Abner in 1955, which is when the rights of the bwij of Liriwa ceased, except for Abner's and his descendants. Plaintiff Harrington Dribo and Robinson Abner also assert that for over 27 years Abner held the right on Aiboj weto, Bikej, and no one had opposed him.

It is Plaintiff Alee Jorkan and Cansee Alik's contention that Laemokmok's transfer of the land rights for Aiboj weto, Bikej to Liriwa was still through Morjinkot and this has not changed to date. They argue that *Kareo* (the clearing/cleaning of land) and *Katlep* cannot change a Morjinkot award, and that there is insufficient evidence to prove that there was ever a *Katlep* by Irojlaplap Lojelan Kabua transferring the land to Abner. Alee Jorkan and Cansee Alik assert that Abner had won his case against Jibke because of the *Morjinkot* and not because of a *Katlep*.

Defendants Bernie Hitto and Handy Emil argue that the current parties in this case were never involved during the many years the case was ongoing, and assert where were they. Hitto and Emil do not claim to hold the alap and senior dri-gerbal rights, titles, and interest on Aiboj weto, Bikej Island, Kwajalein Atoll. However, as stated in Judge Tuttle's decision and the previous TRC panel's opinion, they also have rights as the members of the bwij who were authorized to pursue the case on behalf of the rightful titleholders. They argue that there was no *Katlep*.

THE QUESTIONS REFERRED TO THE TRC:

1. As between Walur Beaja, Alee Jorkan, Harrington Dribo, and Bernie Hitto, who is the proper person to hold and exercise, the title, rights, and interests of alap on Aiboj weto, Bikej Island, Kwajalein Atoll?

2. As between Jack Jorbon, Cansee Alik, Robinson Abner, and Handy Emil, who is the proper person to hold and exercise, the title, rights, and interests of senior dri-jerbal on Aiboj weto, Bikej Island, Kwajalein Atoll?
3. If the Traditional Rights Court determines that Bernie Hitto is not the proper person to hold and exercise, the title, rights, and interests of alap on Aiboj weto, Bikej Island, Kwajalein Atoll, does Marshallese custom and tradition require that Bernie Hitto receive a financial benefit for having pursued High Court Civil Actions 21-80 and 1986-149 and the appeals of those cases?

ANSWERS TO QUESTIONS:

1. Walur Beaja
2. Robinson Abner
3. According to Marshallese custom, the head of the bwij or the Alap, is responsible for ensuring peace and harmony among the bwij. This same custom also applies to the head of the Dri-jerbals or the Senior Dri-Jerbal. It is the panel's belief that those being recognized as the proper title holders of the Alap and Dri-Jerbal rights on Aiboj weto, Bikej Island, Kwajalein Atoll, will share with the persons who took the burden of pursuing this case, and previous cases, on behalf of the bwij and family, being that it is customary to honor and respect each other, and this rings true with the Marshallese sayings Enra bwe jen lale rara (Care for others by sharing the food plate); Kandrikdrik kin Iakwe (Share what little you have with love); Drik wot jej (Share even if it is small); all of which we have inherited from our elders. These exhibit the strong ties of a family or bwij so long as their relationship is founded on the custom of honoring and respecting each other.

FACTUAL FINDINGS UPON WHICH THE OPINION IN ANSWER IS BASED:

After considering the witness' testimony and the evidence presented during trial, the panel unanimously agreed on the answers presented in this opinion. At a meeting held after trial, during which then TRC Presiding and Chief Judge, Honorable Walter K. Elbon, was still in good health and of sound mind, the members of the panel agreed on the answers. Prior to the completion of a written Opinion in Answer, Chief Judge Elbon passed away unexpectedly. Therefore, and with the parties' in full agreement, Pro Tem Acting Associate Judge Milton Zackios was appointed to replace late Judge Elbon. After a complete review and thorough examination of the evidence by Judge Zackios, the panel proceeded to meet, and again agreed on the same answers the previous panel, who had presided over the trial, had agreed on. The Opinion in Answer by the TRC panel is based on the following.

The parties are all in agreement that Aiboj weto, Bikej Island, Kwajalein Atoll, is one of the Morjinkot lands received by Laemokmok from Iroj Laninbit. There was no information presented regarding

when this Morjinkot had occurred, but it is the understanding of the court that Morjinkot is the most esteemed and highest land award given by an Iroj to a commoner in recognition of valor and bringing victory to an Iroj as mentioned in Irojlaplap and President Amata Kabua's book on custom. The panel also understands that Morjinkot can only be changed or overturned by serious reasons, which have also been specified in Irojlaplap and President Amata Kabua's book. (Kabua, 1993)

The TRC panel concurs that Aiboj weto, Bikej is now *Imon Bwij* or bwij land, as the inheritance pattern of the rights have passed down through the bwij of Liriwa. Based on the testimony and evidence presented in this case, such as Plaintiff's Exhibit Dribo P5, Abner states that after Lojabkij held and exercised the alab right, it passed to Abner's mother, Liwabat, who was the last surviving member of her generation at the time. It is also indicated in Kotmene Abner's own affidavit, Plaintiffs' Exhibit P-10, where he states it is his understanding that the descendants of Nebun's bwij are the Alap and the children of Abner are the Dri-Jerbal, during that time.

Plaintiffs Harrington Dribo and Robinson Abner claim that Irojlaplap Lojelan had given as *Katlep* to Abner Aiboj weto, Bikej, by Lojelan handing to Abner a machete, charging him to clean and maintain Bikej. Plaintiffs Harrington Dribo and Robinson Abner also claim that the *Katlep* took over or replaced the *Morjinkot*. The Court is of the belief that although Irojlaplap Lojelan gave the machete to Abner to proceed and clean Aiboj weto, Bikej, it was not an act of a *Katlep*. Herring Dribon testified at the hearing on February 27, 2020 that Abner was not the only person who received a machete to clean and clear Bikej. He further testified that Irojlaplap Lojelan Kabua had given machetes to his grandmother, Abner, and others who were on Bikej at that time to clean it. It is the understanding of the panel regarding *Katlep* that an Iroj can give land as *Katlep* to a person who may or may not necessarily be a part of the bwij, and that at the time the *Katlep* is made, the Iroj will move the people who were on the land. (Tobin, 1956). The panel concludes that Irojlaplap Lojelan did not move the people who were living on Aiboj weto, Bikej. This was evident in William Briand's testimony who testified as a witness on behalf of Plaintiffs Beaja and Jorbon, who stated that as a young boy he and other members of Liriwa's family used to visit Aiboj weto, Bikej. The panel also concludes there was no *Katlep* as there is no written evidence. Further, there is no mention whatsoever of this *Katlep* in the affidavits of Kotmene Abner, Plaintiffs' Exhibit P-10, Mathrine Abner's, Defendant's Exhibit 11, and Abner's own affidavit, Plaintiffs' Exhibit Dribo P-5. The statements in all these affidavits make no mention of a *Katlep* being made in regard to Aiboj weto, Bikej.

The panel also recognizes that while it is true the older bwijs remained on Jaluit and other locations throughout the islands, and Abner stayed in Kwajalein Atoll, it was only appropriate then that the Irojlaplap Lojelan recognize Abner and hand down the machete to him to hold and exercise the alap right. *Berber Ijin*, *Berber ijon*, although the others were in Jaluit, and elsewhere, but Abner being the family member there, held the title and exercised the right on behalf of the entire family, during his time. This was the case in Civil Action 2000-080, Kios vs. Kios, in which the court decided that even

if a person may not be present during important family events, such as family funerals, that does not mean that the person then, as a result, loses his/her right or will not inherit rights according to custom. The court held the same in Civil Action 2003-122, Tibon vs. Molik vs. deBrum.

With respect to whether or not a *bwilok* occurred, the panel found there was insufficient evidence to prove this had happened. If there was a *bwilok* concerning the land rights on Aiboj, Jabwor, Jaluit, the questions referred to the panel do not concern Aiboj, Jabwor but rather Aiboj, Bikej only. The panel examined Kotmene Abner's statement in Civil Action 21-80, or Plaintiffs' Exhibit P10, and it indicates that Kotmene did recognize his aunts Lijileej and Nebun as members of Liriwa's *bwij*. Further, he does not mention there ever being a *bwilok* against Abner's older sisters.

After hearing the facts that Aiboj weto, Bikej is *Imon Bwij* or land belonging to the *bwij* of Liriwa, the panel examined closely the two genealogy charts admitted into evidence, Plaintiff's/Intervenor Exhibit B, the genealogy chart of the *bwij* of Liriwa, and Plaintiffs' Exhibit P-1, the genealogy chart of Laemokmok's children and descendants. In this court case, there are three individuals who claim to be the current and proper person, to hold and exercise the title, rights, and interests of alap on Aiboj weto, Bikej Island, Kwajalein Atoll. They are Walur Beaja, Harrington Dribo, and Alee.

Notwithstanding Harrington being the son of a female, in his generation, he is the grandson of Abner. Therefore, and rightfully so, the line of succession must continue down through the *bwij* members considering the *bwij* is not extinct. As to Alee Jorkan, he is an adopted child of Carl, who is the grandson of Nebun. It was not made clear who the parents of Jorkan were. According to custom, an adopted child can only inherit and exercise rights if both the children of the *bwij* and then the children of the *boktoktok* have all passed or cease to exist. At this time, however, the *botoktok* has flowed from Abner to his eldest son Kotmene, and now to Kotmene's son, Robinson Abner. Therefore, it is clear from the order of the *bwij* in the two family genealogy charts that Walur Beaja is the rightful and most appropriate person, based on the order of the *bwij* of Liriwa, to hold and exercise the alap right at this time, for the reason that Limaile's *bwij* is not extinct, which continues down to her daughter Lijileej, and to Lijileej's daughter Agnes, and now Walur, who is the daughter of Agnes.

Coming now to who the rightful and proper person is to hold and exercise the Senior Dri-Jerbal title, rights, and interests, alongside Liriwa's *bwij*. First off, Jack Jorbon is a generation younger than Cansee and Robinson and cannot supersede those who are a generation older than him. With respect to Cansee Jorkan Alik, she will have to wait until the *Botoktok* becomes extinct, since the *Botoktok* has flowed from Abner to Kotmene and at this time to Robinson. Therefore, we consider that the second *Botoktok* is with Cansee because although she is the daughter of a male, Cansee's father is considered *Bwij*, being the son of a female. Accordingly, the court recognizes Robinson Abner as the rightful and proper person to hold and exercise the Senior Dri-Jerbal title, rights, and interests on Aiboj weto, Bikej Island, Kwajalein Atoll.

Consequently, the TRC panel agrees that because Aiboj weto, Bikej Island, Kwajalein Atoll is bwij land, belonging to the descendants of Liriwa's bwij, it is therefore appropriate that Walur Beaja is the proper person to hold and exercise, the title, rights, and interests of Alap and Robinson Abner the proper person to hold and exercise, the title, rights, and interests of Senior Dri-Jerbal.

APPLICABLE CUSTOMARY LAW AND TRADITIONAL PRACTICE:

1. ***Morjinkot*** – The giving of one or more wetos or islands by an Iroj to a warrior for bravery in battle. His courageous behavior was demonstrated by shielding the Irojlaplap from the enemy's deadly spears during war and is the cost of shedding blood from an enemy's spear.
2. ***Berber ijin berber ijon***- We are the same notwithstanding one stays here and one there.
3. ***Katlep*** – The placement of a commoner on a piece of land by an Iroj, requiring the people there to move off. In doing this, it does not necessarily mean it is a punishment for an offense they committed but rather it is to place on the land a person without land(s).
4. ***Bwilok/Tum*** – Cutting off or the divesting of land rights of a person or bwij for serious offenses of custom.
5. ***Imon Aje*** – If an Iroj or an alab, having informed the bwij, transfers land to someone who may or may not be a member of their bwij.

ANALYSIS:

It is evident from this case that Aiboj weto, Bikej Island, Kwajalein Atoll is Morjinkot land awarded by Irojlaplap Laninbit to Laemokmok, who then gave to his younger sister, Liriwa, and was passed down through Liriwa's bwij. To date, Laemokmok's Morjinkot is continued to be inherited through Liriwa's bwij.

Although the bwij has spread out throughout the islands, with some family members remaining on Jaluit and some on Kwajalein, *Berber ijin berber ijon*, Abner and those who were on Aiboj, Bikej, Kwajalein Atoll were there on behalf of the bwij. Irojlaplap Jeimata, and later on Irojlaplap Lojelan, recognized and authorized Abner as one of their alaps, as indicated on Plaintiffs' Exhibit P10, Kotmene Abner's affidavit.

The TRC panel recognizes that Aiboj weto, Bikej is land belonging to the bwij and that there is insufficient evidence to prove that Aiboj weto, Bikej was Katlep land given to Abner. This was the claim of Plaintiff Harrington Dribo, Robinson Abner, and their witnesses. However, in his grandfather Abner's affidavit (Exhibit Dribo P5), and his uncle Kotmene's affidavit (Exhibit P10), and his aunty Mathrine's affidavit (Exhibit D11), none of them stated that this was *Katlep* land.

The panel also recognizes that there was not enough evidence to prove that there had been a *bwilok* or divesting of land rights that took place on or in regard to Aiboj weto, Bikej.

WITNESSES:

1. Witnesses for Plaintiffs Walur Beaja & Jack Jorbon
 - a. William Briand
 - b. Esther Kelen
 - c. Romeo Olson Jorbon
 - d. Belmar Graham
 - e. Helkena Anni

2. Witnesses for Plaintiffs Harrington Dribo & Robinson Abner
 - a. Harrington Dribo
 - b. Helkena Anni
 - c. Herring Dribon
 - d. Bill Labija
 - e. Robinson Abner

3. Witnesses for Plaintiffs Alee Jorkan and Cansee Alik
 - a. Baneb Bikajela
 - b. Tison Dick
 - c. Cansee Jorkan Alee

4. Witnesses for Defendants Bernie Hitto & Handy Emil
 - a. Hersa Nemra
 - b. Handy Emil
 - c. Neiran Anuntak

EXHIBITS AND TANGIBLE EVIDENCE:

1. **Exhibits for Plaintiffs Walur Beaja & Jack Jorbon**
 - a. Plaintiff's Exhibit P1 – Genealogy Chart of the children & grandchildren of Laemokmok (Lajidrik)
 - b. Plaintiff's Exhibit P2 – Genealogy Chart of Ri-Liriwa and descendants
 - c. Plaintiff's Exhibit P3 – Genealogy Chart of Ri-Liriwa and descendants
 - d. Plaintiff's Exhibit P4 – Genealogy Chart of Liriwa to Jiokbed, Jabkoj, & Lareneo and their descendants
 - e. Plaintiff's Exhibit P5 – Genealogy Chart of Likalleb and descendants
 - f. Plaintiff's Exhibit P6 – Genealogy Chart of Laimokmok to LiRiwa
 - g. Plaintiff's Exhibit P7 – Genealogy Chart of Liwabat and descendants
 - h. Plaintiff's Exhibit P8 – Genealogy Chart of Nebun and descendants
 - i. Plaintiff's Exhibit P9 – Special Power of Attorney of Walur (6/4/2015)
 - j. Plaintiff's Exhibit P2a – Genealogy Chart of Liriwa (Page #1)
 - k. Plaintiff's Exhibit P3a – Genealogy Chart of Libokni (Page #2)

- l. Plaintiff's Exhibit P4a – Genealogy Chart of Libokni (Page #3)
- m. Plaintiff's Exhibit P5a – Genealogy Chart of Libokni (Carl to Alee)
- n. Plaintiff's Exhibit P6a – Genealogy Chart of Libokni (Jiockbed to Kobin/Abner to Harrington/Page #5)
- o. Plaintiff's Exhibit P7a – Genealogy Chart of Libokni (Lalita to August/Lisos)
- p. Plaintiff's Exhibit P8a – Notarized Hand-Written Letter of Litha Lalita (01/22/2020)
- q. Plaintiff's Exhibit P9a – Genealogy Chart of Libokni (Lalita to August/Abner to Robinson & Handy)
- r. Plaintiff's Exhibit P10 – Affidavit of Kotmene Abner in CA21-80 (2/1/85)
- s. Plaintiff's Exhibit P11a – Genealogy Chart of Lobo & Liriwa with Texts Omitted
- t. Plaintiff's Exhibit P11a – Genealogy Chart of Lobo & Liriwa with Texts Intact

2. Exhibits for Plaintiffs Harrington Dribo & Robinson Abner

- a. Plaintiff's Exhibit Dribo P2 – Records and files of the Land Registration Authority (6 pages)
- b. Plaintiff's Exhibit Dribo P3 – Customary Titles & Inherent Rights, Kabua
- c. Plaintiff's Exhibit Dribo P4 – Atoll Research Bulletin #11; Land Tenure in the Marshall Islands, Tobin
- d. Plaintiff's Exhibit Dribo P5 – Letter by Abner (9/82) / translation (2/19/20)
- e. Plaintiff's Exhibit Dribo P6 – Documents Offered in Support of Motion For Continuance of Trial Setting in this Matter (11/5/01)
- f. Plaintiff's Exhibit Dribo P7 – Genealogy Chart of Laimokmok
- g. Plaintiff's Exhibit Dribo P8 – Etto Non Raan Kein – A Marshall Islands History
- h. Plaintiff's Exhibit Dribo P9 – Memo re: distribution of Money for Mid Corridor Atolls, Kwajalein (12/21/76)
- i. Plaintiff's Exhibit Dribo P10 – CA 21-80 and 1986-149 Consolidated Judgment
- j. Plaintiff's Exhibit Dribo P11 – Certification (2/17/20)
- k. Plaintiff's Exhibit Dribo P12 – Certificate of Death for Mebur

3. Exhibits for Plaintiffs Alee Jorkan and Cansee Alik

- a. Plaintiff's Exhibit A (Alik/Jorkan) – Genealogy Chart of Likbad
- b. Plaintiff's Exhibit B (Alik/Jorkan) – Genealogy Chart of Liriwa

4. Exhibits for Defendants Bernie Hitto & Handy Emil

- a. Defendant's Exhibit D1 - Kabua Kabua's Statement 1985
- b. Defendant's Exhibit D2 – Imata 1995 Dismissal Request
- c. Defendant's Exhibit D3 – Amata 1985 Sato
- d. Defendant's Exhibit D4 – Aronto Lobo's Affidavit 1985
- e. Defendant's Exhibit D5 – Menmenbwij
- f. Defendant's Exhibit D6 – Horizontal version of D5
- g. Defendant's Exhibit D7 – Special Power of Attorney from Imata
- h. Defendant's Exhibit D8 – Listing of Church Collection
- i. Defendant's Exhibit D9 – Updated Listing of Kwaj Alabs
- j. Defendant's Exhibit D10 – Affidavit of Kotmene
- k. Defendant's Exhibit D11 – Matrine Abner's Affidavit
- l. Defendant's Exhibit D12 – Iroj Book by Michael Kabua
- m. Defendant's Exhibit D13 – Luckner's Affidavit

n. Defendant's Exhibit D14 – TRC's Opinion

OTHER MATTERS THE PANEL BELIEVES SHOULD BE MENTIONED:

This Court recognizes the authority of the Irojlaplap of Aiboj weto, Bikej Island, Kwajalein, that granted the parties to pursue their case in court. However, the TRC panel regards as right and true the saying *Iroj im Jela* and is of the belief that only the iroj can bring his people together to work out what is in their best interest, that they may live in peace and harmony among each other with their respective rights and interests on the Iroj's land. Further, as the Iroj's *Kajur*, the families of Aiboj weto, Bikej Island, should also show respect to their Iroj, take care and work the land, and ensure to that they carry out the Iroj's instructions from time to time, as the custom dictates that we should honor and respect each other.

Dated: March 10, 2021

/s/ Grace L. Leban
Chief Judge, TRC

/s/ Nixon David
Associate Judge, TRC

/s/ Milton Zackios
Associate Judge, TRC