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IN THE TRADITIONAL RIGHTS COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

TAKBAR ISHIGURO,)
)
 Plaintiff,)
)
 VS.)
)
 KALEMEN JINUNA,)
)
 Defendant.)
 _____)

CIVIL ACTION NO. 2012-212

OPINION AND ANSWER OF THE TRADITIONAL
RIGHTS COURT

MEMBERS OF THE PANEL: Presiding Judge Grace Leban
Associate Judge Nixon David
Pro tem Judge Risi Graham

PLACE AND DATE OF COURT PANEL’S HEARING: Majuro Courthouse, June 14-15, 2016

THE PARTIES’ CONTENTIONS:

Plaintiff claims that on or about September 5, 2012, the Defendant Kalem Jinuna wrote a letter to Takeo Ishiguro, Plaintiff Takbar Ishiguro’s son, instructing him to remove all of his belonging from a residence on Jienbel Weto in Laura because he was going to demolish the residence on October 9. After receiving the letter, Takeo Ishiguro asked Kalem Jinuna not to demolish the residence because it belonged to Takbar Ishiguro and her deceased husband, Molik Ishiguro. Kalem Jinuna told Takeo Ishiguro that the house on Jienbel Weto does not belong to Takbar Ishiguro or her husband Molik, and on October 9, 2012, Kalem Jinuna tore down the residence and built a home, a pool hall, and a laundromat of his own on that area.

Defendant claims that his family have Dri-Jerbal land title on Jienbel Weto. He also claims that his actions of demolishing an old abandoned house on the land, which was not owned by the Plaintiff, was necessary and that he, the Defendant, acted within his customary duties and responsibilities as a Senior Dri-Jerbal on Jienbel Weto.

THE QUESTION(S) REFERRED BY THE HIGH COURT:

Question No. 1: Was Defendant Kalem Jinuna senior dri-jerbal for Jienbel Weto, Laura Village, Majuro Atoll, Republic of the Marshall Islands at the relevant times for this law suit?

Question No. 2: Was it proper under custom for Defendant Kalem Jinuna to tear down the building in question without the consent of plaintiff in her capacity as owner of the building?

Question No. 3: Was it proper under custom for Defendant Kalem Jinuna to tear down the building in question without the consent of the alab?

Question No. 4: If it was not proper for Defendant Kalem Jinuna to tear down the building, what is the proper remedy under custom?

SUMMARY ANSWER:

Answer No. 1: No, Defendant Kalem Jinuna was not the Senior Dri-Jerbal on Jienbel Weto, Laura Village, Majuro Atoll at the time of this lawsuit.

Answer No. 2: No, it is not proper for Defendant Kalem Jinuna to tear down the building without the consent of the owner.

Answer No. 3: No, it was not proper under Marshallese custom for Defendant Kalem Jinuna to tear down the building without the consent of the Alab.

Answer No. 4: Defendant Kalem Jinuna should have discussed and made an agreement with the Alab of Jienbel, and the owner before demolishing the building.

FACTUAL FINDINGS UPON WHICH THE OPINION IN ANSWER IS BASED:

Plaintiff Exhibit P-4, Rakko's family genealogy chart (*Menmenbwij*) shows that Defendant Kalem Jinuna is not the current Senior Dri-Jerbal on Jienbel Weto, but he is in line to be. This means that there are those before Kalem Jinuna that are still alive and are entitled to the Senior Dri-Jerbal right. In his testimony before this court, Hermon Napkin, the current Alab of Jienbel Weto, testified that Defendant Kalem Jinuna is a dri-jerbal, but is not the Senior Dri-Jerbal of Jienbel Weto. The Iroj edrik of Jienbel Weto, Vincent Muller, also testified that Kalem Jinuna is not the current Senior Dri-Jerbal on Jienbel Weto.

The panel of this Court finds that it is not proper for Defendant Kalem Jinuna to tear down the building without the consent of the owner. In his testimony, Takeo Ishiguro, the son of Molik and Takbar Ishiguro, testified that he received a letter from Defendant Kalem Jinuna saying that he was

going to demolish Takeo Ishiguro's house on October 9 (Plaintiff Exhibit P-1). Ishiguro further testified that he told Jinuna not to demolish the house because Jinuna did not built it. Defendant Jinuna later testified in court that he had a heated argument with Ishiguro over the building and he had told Ishiguro that the house did not belong to him. Jinuna also testified that after his heated argument with Ishiguro he became angry and that is why he tore down the building.

In his testimony, the alab of Jienbel Weto, Hermon Napkin testified that the Defendant Jinuna had confronted him and asked his permission to tear down the building. Alab Napkin further testified that he did not agree with Jinuna on tearing down of the building and had told Defendant Jinuna, "how can I allow you to tear down the building when my predecessors did not tear it down...". This court agree that it would have been proper for Defendant Kalem Jinuna to have had the Alab's consent before tearing down the building on Jienbel Weto.

It is the belief of this court that under Marshallese custom, it is proper to have the consent of the Iroij or Iroij edrik, and the consent of the Alab to tear down a building on a weto, especially if it does not belong to the person tearing it down. Defendant Jinuna should have made an agreement with the Iroij edrik, the Alab, and the owner on his plan to tear down the building on Jienbel Weto.

APPLICABLE CUSTOMARY LAW AND TRADITIONAL PRACTICE:

Berberjin berberjen, berberjinma wot kwe – Stay here, stay there, it matters not as we are the same. We are the same notwithstanding one stays here and on there (Kabua, 1993).

ANALYSIS:

In his testimony, Defendant Kalem Jinuna testified that he considers himself the Senior Dri Jerbal because he is the only member of the clan (bwij) who has been residing on Jienbel Weto over a long period of time, and that currently he is the only person donating the Jienbel Weto's traditional shares of food off the land or food bought to Church and the Community. According the Jinuna, the current Senior Dri Jerbal do not live on the land and does not donate anything to the Church and the Community on behalf of Jienbel Weto. For these reason, Defendant Jinuna consider himself the Senior Dri Jerbal on Jienbel Weto.

This Court however finds that Defendant Jinuna is not the Senior Dri Jerbal irrespective of his claims because the Marshallese custom defines Jinuna's claim as, *berberjin, berberjen, berberjinma wot kwe*. Regardless of his whereabouts, if the Senior Dri Jerbal is not physically on the land, or tending the land, all other dri-jerbal who are living on the land will act on his behalf.

WITNESSES:

Plaintiff(s) Witnesses:

1. Takeo Ishiguro
2. Hermon Napkin
3. Josepha Maddison
4. Vincent Muller
5. Takbar Ishiguro

Defendant(s) Witnesses:

1. Kalemén Jinuna

EXHIBITS AND TANGIBLE EVIDENCE:

Plaintiff(s) Exhibits:

1. Plaintiff Exhibit 3A – Picture of house on Jienbel Weto
2. Plaintiff Exhibit 3B – Picture of Molik's Ishiguro's house
3. Plaintiff Exhibit P4 – Genealogy Chart
4. Plaintiff Exhibit 5A – Plaintiff Exhibit 1 – Letter from Kalemén Jinuna to Takeo Ishiguro
5. Lobonju's Will (Marshallese)
6. Plaintiff Exhibit 5B – Lobonju's Will (English)

Defendant(s) Exhibits:

1. Defendant Exhibit D-1 – Notice of Who is the Senior Dri-Jerbal on Loelen Weto, Uliga (6/8/12)

OTHER MATTERS THE PANEL BELIEVES SHOULD BE MENTIONED:

Defendant Kalemén Jinuna stated in court that Takeo Ishiguro and parents did not own the building that he tore down on Jienbel Weto. He testified that it belonged to Jemba, the uncle of Molik. According to Takbar Ishiguro, after the wave in 1979, and after Jemba had passed away, her husband, Molik Ishiguro, built the house in place of Jemba's old house. Takbar further stated that she and Molik did not live in the house, however, they rented it to the Peace Corp, and after they placed a woman, named Tana John, Molik's relative, to live in the house.

In his testimony, Defendant Jinuna testified that there is no Iroj edrik on Jienbel Weto. Testimonies of Josepha Maddison, Alab Hermon Napkin, and Vincent Muller said that the late Iroj edrik, Lobonju, made

a Will (Plaintiff Exhibit 5A/5B) declaring the Iroj edrik title to be passed down to Liene and her children. The Menmenbwij (Plaintiff Exhibit P4) shows that Liene's son, Henry Muller, is the father of Vincent Muller. Henry Muller held the Iroj edrik title as accorded by testimonies.

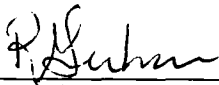
Dated: July 6, 2016



Presiding Judge Grace Leban – Traditional Rights Court



Judge Nixon David – Traditional Rights Court



Pro Tem Judge Risi Graham – Traditional Rights Court