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ASSISTANT CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

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

<p>CLARY MAKRORO, (on behalf of Naomi Makroro)</p> <p>Plaintiffs,</p> <p>vs.</p> <p>CARITHA LANI, PERCY LAIEB & JOHNNY MACK,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 2018-074</p> <p><u>TRC PANEL MAJORITY OPINION</u></p>
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MEMBERS OF THE PANEL: Hon. Grace L. Leban
Presiding Judge, TRC

Hon. Nixon David
Associate Judge, TRC

Hon. Milton Zackios
Pro Tem Associate Judge, TRC

PLACE OF HEARING: Majuro Courthouse

DATE OF HEARING: February 23 & 24, 2021; April 29, 2021

PARTIES' CONTENTIONS:

Plaintiff Clary Makroro, on behalf of Naomi Makroro, in the first instance, claimed he is one of the Senior Dri Jerbal for Ronbad weto, Rairok Village, Majuro Atoll. He now claims that after Defendant Johnny Mack refused to acknowledge that they both hold Senior Dri Jerbal title to Ronbad weto, Plaintiff Makroro then changed his claim and stated he is the sole holder of the Senior Dri Jerbal title for Ronbad weto and not Defendant Mack. According to Plaintiff Makroro, he is the proper person to hold the Senior Dri Jerbal rights on Ronbad weto because his grandmother, Litaimon Makroro, is the adopted child of Libojrak, and the Defendant's grandfather, Arkilos Konou, Libojrak took him as her own after she successfully treated him with traditional medicine, and he was not a member of the bwij. Plaintiff Clary Makroro

that he is the proper person to hold the Senior Dri Jerbal title on Ronbad weto and not Defendant Mack.

Defendant Mack contends that even though Libojrak adopted Litaimon Makroro from within the bwij, and Arkilos Konou from outside the bwij after she treated him with traditional medicine, that Libojrak considered both Litaimon and Arkilos as her children and treated them equally. Defendant Mack also claims that Alab Percy Laieb, the current alab for Ronbad weto, acknowledges Defendant Mack as a Senior Dri Jerbal. He also claims Alab Laieb is only continuing the custom or practice that his predecessors used by acknowledging Arkilos Konou as Dri Jerbal on Ronbad weto and Litaimon Makroro as Dri Jerbal on Lole and Kinawe weto, when performing their duties to the Alab.

QUESTIONS REFERRED TO THE TRC PANEL:

1. BETWEEN PLAINTIFF CLARY MAKRORO AND DEFENDANT JOHNNY MACK, AND THOSE CLAIMING THROUGH THEM, WHO IS, IN ACCORDANCE WITH THE CUSTOM AND TRADITIONAL PRACTICE, IS THE PROPER PERSON TO HOLD THE SENIOR DRI JERBAL INTEREST ON RONBAD WETO, RAIROK VILLAGE, MAJURO ATOLL.

ANSWER:

1. CLARY MAKRORO

FACTUAL FINDINGS UPON WHICH THE OPINION IN ANSWER IS BASED:

Both Plaintiff and Defendant agree Percy Laieb is the current alab for Ronbad weto. There are three wetos in close proximity, Lole, Kinawe and Ronbad and Percy Laieb is the current alab for all three wetos.

The issues in this case began when one of the defendants, Caritha Lani, started construction of her house on Ronbad weto. In her (Lani) testimony, she was supposed to build her house on Kinawe weto, however after Kijolok Beaja, who is now deceased, halted the construction, she stopped altogether. She testified that she then met with Defendant Johnny Mack around the

same time. She testified that Mack told her she can build her house on the other weto, Ronbad, but she must first go see Alab Percy Laieb, who is also one of the Defendants in this case, about it. Alab Laieb agreed and allowed Lani to start building her house on Ronbad weto, and this essentially was what started the dispute between the parties. Plaintiff Makroro claims that Defendant Mack neglected to talk or consult him about Caritha Lani building a house on Ronbad weto.

After reviewing all the evidence admitted in this case, the TRC Panel is of the understanding that Libojrak adopted Litaimon Makroro since she was a young child from the bwij. It is also the TRC Panel's understanding that after Libojrak treated and healed Arkilos Konou from an abscess in his throat with traditional medicine, Arkilos wanted to take Libojrak as his mother as is customary after treatment is successful, and Libojrak, having no child, was gratified and took Arkilos as her own son or *kanin lujen*. Libojrak considered and treated Litaimon and Arkilos the same, as her own children and she gave them both Dri Jerbal rights on her wetos. This is illustrated in previous cases involving the same family, in *Benjamin v. Arkilos* and *Diamond Makroro v. Benjamin L.*, as she (Libojrak) bequeathed to both children, Litaimon Makroro and Arkilos Konou Dri Jerbal rights on Ronbad weto. These rights were equally shared by both, however as concluded in these two cases, the customary practice of *maan maronron* took place and notwithstanding Litaimon's status as the elder child, she acknowledged and recognized Arkilos as the one to exercise the rights and title in both their names, as the *maan maronron*, premised by the old proverb, "*ejelok drik in emaan*".

As the TRC Panel considers the facts in this case in relation to the current circumstances of the day, the previous generation of Litaimon and Arkilos is in the past, and we now have before us, their descendants who are asking who is the proper person to hold the Senior Dri Jerbal title between Clary Makroro, the grandson of Litaimon, and Johnny Mack, the grandson of Arkilos. Alab Percy Laieb testified before this Panel that he acknowledges and recognizes Johnny Mack and not Clary Makroro as the current Senior Dri Jerbal for Ronbad weto. Alab Laieb said he is only following what his predecessor, Alab Kelet Jorlikiep, had set when he also acknowledged Johnny Mack by having him sign as Senior Dri Jerbal in a lease for Margaret Muller, marked as Defendant's Exhibit A, and a lease for Dwight Heine, marked as Defendant's Exhibit B.

However, the Panel believes both Plaintiff Clary Makroro and Defendant Johnny Mack hold equal rights on Ronbad weto as Dri Jerbal, but because of the hierarchical order of regard in accordance with customary practice, one must be designated or selected to be the head or Senior Dri Jerbal responsible for carrying out their duties and responsibilities on the land as illustrated in *Konou v. Makroro*. The Panel believes this arrangement, according to customary practice, also took place when one was designated to hold the Senior Dri Jerbal title between Litaimon and Arkilos. In this regard, the Panel reviewed the hierarchy of the line of descent from Libojrak to her children, Litaimon and Arkilos, and found that although Litaimon was older than Arkilos, it was Arkilos that held the title. In the ensuing generation of Clancy and Jane, it was determined that although they had equal rights as Dri Jerbal on Ronbad weto, that Clancy Makroro would be acknowledged and recognized before Jane Konou as Senior Dri Jerbal on Ronbad weto, in the December 17, 1974 agreement signed by Alab Benjamin L., Clancy Makroro as the first Senior Dri Jerbal and Jane Konou as the second Senior Dri Jerbal according to customary practice. The arrangement clearly shows that descendants of Litaimon and Arkilos have the same or equal rights as dri jerbal on Ronbad weto, however according to the custom, there has to be a head as seen from the previous generation. Plaintiff Clary Makroro and Defendant Johnny Mack, are currently the dri jerbal on Ronbad weto, however as demonstrated by the previous generations, and according to the custom, the head is Clary Makroro as a descendant of the male line and Johnny Mack is of the female line. Therefore, the patrilineal line of succession continues from Clancy Makroro to his son, Plaintiff Clary Makroro, as the proper person to be the current Senior Dri Jerbal on Ronbad weto.

RELEVANT CUSTOMARY & TRADITIONAL PRACTICE:

1. *Kokajriri* – The adoption of a child after birth or as a young child as if it were your own. Adoption may occur within the same bwij as well as outside the bwij.
2. *Ukot boka* – The act of serving to reciprocate treatment received in a relation. Return kindness for kindness received. A person gives back to the parents because they nurtured him/her since childhood. As parents become weak with old age, a child *ukot boka eo* by becoming their caretakers.
3. *Kanin lujen* – Considered as one's biological child or natural child.

4. *Maan maronron* – The alab’s son is the *maan maronron* (loosely translated, “man of the house”) for his father’s sisters (his aunties) and is responsible for ensuring the duties and other works on the land are carried out as delegated by the female elders.
5. *Ejelok drik in emaan* – Although a female is older and holds the alap title, if she has a younger brother, then the younger brother will ascend the ranks of succession and exercise the alap rights under this premise, that there’s no such thing as a younger male in succession.
6. *Toor in botoktok* – The title and interest of the dri jermal or Senior Dri Jermal passes through the patrilineal line of succession.

APPLYING THE CUSTOM TO FACTUAL FINDINGS:

In addition to reviewing the evidence brought before it in this case, the Panel also looked at the custom in light of the information obtained from the parties’ submissions. The Panel acknowledges this fact that Libojrak adopted Litaimon Makroro and Arkilos Konou as *kanin lujen* in two distinct ways. First, she adopted Litaimon as a child from within the bwij and subsequently, adopted Arkilos, who was already a grown man, as her son. After Arkilos was treated with traditional medicine by Libojrak, he took Libojrak as if she were his own mother. Libojrak considered Litaimon and Arkilos as her own or *kanin lujen*, and *ukot boka* did not take place.

Libojrak bequeathed Litaimon and Arkilos with equal rights on lands she owned, including Ronbad weto. However, Arkilos was at the helm and served as the head even though he was younger in age. The Panel acknowledges that Arkilos was the *maan manronron* for Litaimon according to the customary practice of *ejelok drik in emaan*. This arrangement also took place during the time of Clancy Makroro, Plaintiff Clary Makroro’s father, and Jane Konou, Defendant Johnny Mack’s mother. During that time, there was also a dispute as to who, between the two of them, should be the head, and the Alab at the time, Benjamin L., when he signed the agreement, confirmed and endorsed the Senior Dri Jermal interest should go to Clancy first, as *maan maronron* for Jane at the time according to custom. In this instance and under the same custom, this Panel acknowledges and recognizes the Senior Dri Jermal rights should go to Plaintiff Clary Makroro as the patrilineal descendant, whereas Defendant Johnny Mack is from the matrilineal

line. The line of succession continues through the blood line or patrilineal line, and the successor today is Clary Makroro.

PLAINTIFFS' WITNESSES:

1. Naomi Makroro
2. Hilton Lakior
3. Belmar Graham
4. Joe Lomae

DEFENDANT'S WITNESSES:

1. Percy Laieb
2. Caritha Lani
3. Johnny Mack

PLAINTIFFS' EVIDENCE:

1. Plaintiffs' Exhibit A – Family Genealogy Chart
2. Plaintiffs' Exhibit B – Civil Action 2018-159, Makroro v. Tomeing
3. Plaintiffs' Exhibit B1 – Genealogy for Jorlikiep Makroro
4. Plaintiffs' Exhibit C – Civil Action 204, Benjamin v. Arkilos
5. Plaintiffs' Exhibit D – Civil Action 410, Daimon v. Benjamin
6. Plaintiffs' Exhibit E – Civil Action 19-73, Konou v. Makroro
7. Plaintiffs' Exhibit F – Civil Action 2003-054, Joe v. Makroro

DEFENDANT'S EVIDENCE:

1. Defendant's Exhibit A – Lease Agreement, Margaret Muller
2. Defendant's Exhibit B – Lease Agreement, Dwight Heine
3. Defendant's Exhibit C – Excerpts, Amata Kabua
4. Defendant's Exhibit D – Excerpts, Jack Tobin

OTHER FACTS CONSIDERED BY PANEL:

Plaintiff asserts that this court should or ought to consider invalidating the prior decisions in *Benjamin v. Arkilos*, *Diamond Makroro v. Benjamin L.*, and *Konou v. Makroro*. If there were errors made with respect to these cases, the parties had ample time to appeal the decisions, however no appeal was filed. With respect to the question or claim of *res judicata*, the Panel shall refer this to the High Court to answer as it is a question of law and therefore should be answered by the High Court in accordance with Rule 7(f) of the Traditional Rights Court Rules of Procedure. Finally, in consideration of the fact that the parties in this case are from the same family of Libojrak, it is our unique culture and traditional practices of mutual respect and understanding that have sustained us and helped us maintain a quiet and peaceful life within our families and our communities.

Dated: 16 June 2021.

/s/
Hon. Grace L. Leban
Presiding Judge, TRC

/s/
Hon. Nixon David
Associate Judge, TRC