

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

FILED
OCT 16 2025
CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

CENICOLA and KONOU, Plaintiffs, v. MIDB and HEINE Defendants, v. HIROMI KABUA, Intervenor.	CIVIL ACTION CASE NO. 2018-213 OPINION AND ANSWER OF THE TRC TO ADDITIONAL QUESTIONS ON REFERRAL
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MEMBERS OF THE PANEL: **Grace L. Leban**
 Presiding Judge, TRC

Nixon David
Associate Judge, TRC

Claire T. Loeak
Associate Judge, TRC

PLACE OF HEARING: **Majuro Courthouse**
 Majuro, Marshall Islands

DATE OF HEARING: **January 20-23, 2026**

I. INTRODUCTION

This case was referred back to the TRC to clarify and confirm its answers to the questions on referral from the High Court, as provided under Rule 9 of the Traditional Rights Court Rules of Procedures.

II. ADDITIONAL QUESTIONS

The questions are as follows:

- 1. Succession following extinction of Likilon's *bwij***

Under Marshallese customary law and traditional practice applicable in Bukonkur Weto, what customary rule or rules govern succession to the *Alap* and *Senior Dri Jerbal* rights after the extinction of Likilon's *bwij* and the succession of her son Selvenios Konou?

In answering this question, the TRC is respectfully requested to explain:

- a. the nature and duration of any patrilineal or *toor in botoktok* succession resulting from the extinction of Likilon's *bwij*;
- b. whether and under what circumstances such succession thereafter returns to a matrilineal line or results in the formation of a new *bwij*;
- c. at what generation and through which descendant or descendants of Selvenios Konou a new *bwij* arises in this case; and
- d. the customary status of the *Alap* and *Senior Dri Jerbal* rights on Bukonkur during the period between the extinction of Likilon's *bwij* and the formation of a new *bwij*.

2. Succession among Selvenios Konou's children

Applying the customary principles identified in response to Question 1, what customary rule or rules determine succession to the *Alap* and *Senior Dri Jerbal* rights among the children of Selvenios Konou?

In answering this question, the TRC is respectfully requested to explain the significance, if any, of:

- a. birth order and seniority;
- b. gender;
- c. matrilineal and patrilineal descent;
- d. prior exercise of the *Alap* or *Senior Dri Jerbal* rights;
- e. recognition or approval by an *Iroiylaplap*; and

f. the *Menmenbwij* identified as Exhibit I-7 and the other documentary evidence considered by the TRC.

3. Succession following the present generation

The parties' subsequent submissions raise a dispute concerning succession to the *Alap* and *Senior Dri Jerbal* rights after the present generation of Selvenios Konou's surviving children. To the extent that this question was not encompassed within the questions previously referred to, the Court now respectfully refers it as an additional question.

Under Marshallese customary law and traditional practice, after the interests of Selvenios Konou's present generation terminate, through which descendant or descendants do the *Alap* and *Senior Dri Jerbal* rights on Bukonkur Wetu thereafter descend?

In answering this question, the TRC is respectfully requested to explain:

- a. the customary rights, if any, that passed through Ronald Konou;
- b. the customary rights, if any, that Saan Konou acquires through Ronald;
- c. whether it is necessary under the applicable custom that Ronald himself have held or exercised the *Alap* or *Senior Dri Jerbal* title before Saan may succeed through him;
- d. the customary rights, if any, of the descendants of Hiromi Kabua, Evelyn Konou, or Rosalie Konou; and
- e. how the customary rule governing future succession relates to the TRC's determination concerning when a new *bwij* arises.

The Court requests an explanation of the applicable customary rule and its application to the descendants of Selvenios without regard to whether the resulting succession corresponds to the position advocated by any particular party.

4. Leroij Esther Zedkaia's proclamation

The TRC's Opinion discusses Lerioj Esther Zedkaia's proclamation, Exhibit I-13, and recognizes that an *Iroijlaplap* may possess customary authority, under appropriate circumstances, to divest or otherwise affect customary land rights. The parties' submissions present differing interpretations of both the factual circumstances surrounding the proclamation and the customary principles governing its effects.

The Court therefore respectfully requests the TRC to clarify:

- a. under Marshallese customary law and traditional practice, what conduct or circumstances may constitute a sufficiently serious customary breach to permit an *Iroijlaplap*, through *bwilok* or other customary authority, to divest, prohibit, suspend, or otherwise affect a person's *Alap* or *Senior Dri Jerbal* rights;
- b. whether the particular examples of serious customary breaches discussed by the witnesses at the hearing constitute the exclusive grounds for such customary action or are examples of a broader customary principle;
- c. what customary significance, if any, should be given to the circumstances surrounding Rosalie Konou's execution or use of Exhibit I-12 and *Iroij Lein*'s subsequent action concerning that document;
- d. whether, under the applicable custom and the facts found by the TRC, Exhibit I-13 constitutes a valid exercise of the *Iroijlaplap*'s customary authority; and
- e. if Exhibit I-13 constitutes a valid exercise of customary authority, what effect it has upon Rosalie Konou's present *Senior Dri Jerbal* rights, her possible succession to the *Alap* title, and the subsequent succession to those titles.

In answering this question, the TRC is not requested to determine any constitutional, evidentiary, or other question of law reserved to the High Court. The referral concerns only

the customary authority of the Irojilaplap, the customary significance of the relevant conduct and circumstances, and the customary consequences, if any, of the proclamation.

III. FACTS UPON WHICH ANSWERS ARE BASED

1. Succession following extinction of Likilon's *bwij*

The Court finds that Bukonkur Weto is an *imon bwij*, as evidenced in A-3, attached to Intervenor's, I-7, or the *Menmenbwij* for Bukonkur Weto. According to the custom, after the death of Likilon, both titles of *Alap* and *Senior Dri Jerbal* were inherited by her son who was living at the time, Selvenios Konou. Under the custom, it is proper for Selvenios to inherit the *Alap* title from his mother, or that the matrilineal succession line of Likilon descends through to Selvenios, and because Selvenios was the sole heir having no siblings, he also became the successor to the rights and title of the *Senior Dri Jerbal*. Therefore, the Court finds that Selvenios who was a *bwij* descendant, rightfully held both titles of *Alap* and *Senior Dri Jerbal*.

Continuing on to the way in which the succession line descends for the descendants or children of Selvenios. Selvenios has five (5) children, three (3) females and two (2) males, as evidenced in A-2, attached to Intervenor's I-7. It can be said that Likilon's *bwij* became extinct with Selvenios because he had no sisters and he was the only son of Likilon. Therefore, the succession line continued through the children of Selvenios as patrilineal descendants, or in other words, Selvenios's children are *botoktok* because they are children of a male.

Proceeding now to the way in which the succession line continues after the children of Selvenios. Again, Selvenios has 3 daughters and 2 sons. Meaning these daughters are progenitors of a new matrilineal line for their children. The eldest, Hiromi, will be the first progenitor of a new matrilineal succession line after the extinction of Likilon's *bwij* with Selvenios. According to *Manit*, the children of these females, beginning with the eldest,

Hiromi, are matrilineal descendants, and likewise according to the *Manit*, with there being two sons of Selvenios, their children are patrilineal descendants. Accordingly, the Court finds that the children of these 3 females, Hiromi, Evelyn, and Rosalie, are successors to the *Alap* rights and title as matrilineal descendants, and any children from the two males, Ronald and Rona, are successors to the *Dri Jerbal* rights and title as patrilineal descendants or children of the male.

2. Succession among Selvenios Konou's children

In addition to the line of succession clarified in the above answer to Question 1, according to *Manit*, the Court finds that Selvenios exercised both the *Alap* and *Senior Dri Jerbal* rights and title, as shown in Intervenor, I-2. Exhibit I-2, which was executed in March 2, 1983, is a lease for a warehouse situated on Bukonkur Weto, confirms that *Iroiylaplap* Joba Kabua signed as an *Iroiylaplap*, and Selvenios signed as an *Alap* and *Senior Dri Jerbal* for Bukonkur Weto at that time.

According to the evidence submitted in this case, such as Intervenor's exhibits: I-1, I-3, I-4, I-5, I-8, and I-11, they all depict Selvenios signed as the *Alap* and Evelyn, his second daughter, signed on behalf of Hiromi as the *Senior Dri Jerbal*. This demonstrates to this Court that Selvenios did not just hold the two titles of *Alap* and *Senior Dri Jerbal* but also wanted instead so that whilst he was *Alap* for Bukonkur Weto, his eldest daughter Hiromi, would hold the rights and title of *Senior Dri Jerbal*. The succession line shown in I-7, (A-1), further confirms this Court's belief that this arrangement was made by Selvenios for the *Alap* and *Senior Dri Jerbal* for Bukonkur Weto, and that his children would succeed so that the eldest would hold and exercise the rights and title of *Alap* and the younger one, the *Senior Dri Jerbal*, and that if and when the eldest should pass away, the younger would then succeed as an *Alap* and the younger one or the third would succeed as *Senior Dri Jerbal* and so on and so forth until the youngest. It is illustrated in the exhibits listed here that the prior

Iroiylaplaps also agreed to this arrangement made by Selvenios, demonstrated by their signatures therein, or on exhibits for the Intervenor I1, I3, I4, I5, I8, and I11. The previous *Iroiyl* are *Iroiylaplap* Joba Kabua, *Iroiylaplap* Amata Kabua, *Leroij* Atma Zedkaia, *Iroiylaplap* Jurelang Zedkaia and *Iroiylaplap* Lein Zedkaia. This Court also finds that the exhibit for the Intervenor, I-12, shows Rosalie signed for both the rights and titles of *Alap* and *Senior Dri Jerbal* to Bukonkur Weto, and the *Iroiylaplap* at that time, *Iroiylaplap* Lein Zedkaia voided the document upon understanding the arrangement of the succession line for Bukonkur Weto depicted in the exhibit marked as I-7. When this matter came before this Court, the 2 sons (Ronald and Rona) passed away, as well as the second daughter (Evelyn). And today there is only Hiromi, the *Alap*, and Rosalie, who, at the passing of Evelyn, is the *Senior Dri Jerbal* for Bukonkur Weto.

3. Succession following the present generation

According to the information reflected in the *menmenbwij* for Bukonkur Weto, after the death of Likilon, the rights and titles to both the *Alap* and *Senior Dri Jerbal* went to her only living son at the time, Selvenios Konou. After the death of Selvenios, the rights and title of *Alap* passed on to his eldest daughter, Hiromi, who is still living today and exercising the *Alap* rights and title over Bukonkur Weto. According to the exhibit for the Intervenor, I-7 (A-1), and given Evelyn's death, the rights and title for the *Senior Dri Jerbal* would go to the younger daughter who is alive today, Rosalie. After the extinction of Likilon's *bwij* with Selvenios, the succession line changed for Bukonkur Weto to a patrilineal line, and Hiromi and Rosalie, and their siblings who have died, live as *botoktok* as children of a male, or descendants of their father, Selvenios.

The Court finds, according to the custom, and since it is also illustrated in the *Menmenbwij* of Selvenios in I-7 (A-2), who had 3 daughters and 2 sons. And given that custom changes custom, when Selvenios fathered daughters, a new *bwij* arises and the

children of the eldest, Hiromi, will inherit the *Alap* rights and title first and then, in subsequent succession, on to Evelyn's children and lastly, to Rosalie's children. The descendants or children of the 2 sons, Ronald and Rona, will likewise inherit the *Senior Dri Jerbal* rights and title given that the bloodline flows from their father. As such, given that Rona fathered no children, but Ronald did, who is Saan, it is therefore proper, according to *Manit*, for Saan to succeed as *Senior Dri Jerbal* after Rosalie. The Court believes that it is proper according to *Manit* for the children of the daughters of Selvenios to inherit the rights and title of *Alap* as matrilineal descendants, and the children of the sons of Selvenios to inherit the rights and title of *Senior Dri Jerbal* as patrilineal descendants.

4. Leroij Esther Zedkaia's Proclamation

The Court respectfully acknowledges the statements made by *Leroij* Esther Zedkaia in her proclamation as a *iroij im jela*. The Court acknowledges her authority to make changes to the succession lines on *Bukonkur* Weto, if there are serious customary breaches as dictated by custom.

In the testimonial evidence given by Wilson Note, one considered by the Court as an elder of the community who is knowledgeable with a fair understanding of the custom, he stated that there are three serious breaches that authorize an *Iroijlaplap* to divest rights from an *alap* on his lands, and he named the three breaches as: 1) committing adultery against the *Iroij*; 2) betrayal or changing allegiance; and 3) murder. Amata's book also lists six (6) breaches considered serious grounds for the *Iroijlaplap* to divest the title or land rights of a person, and they are as follows:

- i. treason and sedition;
- ii. murder;
- iii. incest;
- iv. coveting;

- v. physical harm to superior;
- vi. negligence of land and customary responsibilities.

The Court acknowledges that *Iroiylaplap* Lein, when he voided and stopped the lease agreement Rosalie signed as both the *Alap* and *Senior Dri Jerbal*, illustrated in the exhibit for the Intervenor, I-12. *Iroiylaplap* Lein stopped and voided I-12 to demonstrate his adherence to the arrangement made by Selvenios and the preceding *Iroiylaplaps* for the children of Selvenios to become the successors of the two (2) rights and titles concurrently, in order of the succession line depicted in I-7, which was executed in June 2, 1996. It is the opinion of the Court that notwithstanding *Iroiylaplap* Lein's act of stopping and voiding I-12, he did not divest the rights or change the succession line for the children of Selvenios as depicted in the exhibit marked as I-7. Finally, Rosalie herself expressed before the Court more than once that she acknowledges Hiromi as the current *Alap* for Bukonkur Weto. Based on all these facts, the Court finds the statements in *Leroij* Esther's proclamation, do not clearly identify a breach considered serious enough to divest Rosalie of the rights and title of *Senior Dri Jerbal*, and to the subsequent succession to the *Alap* title over Bukonkur Weto.

IV. CONCLUSION

The Court finds and concludes that according to the custom, the two sisters, Hiromi and Rosalie, must cooperate and respect one another as they ought to likewise do for their *Leroij* on Bukonkur Weto, as this is the custom.

Date: 8 October 2026.

/s/
Grace L. Leban, Presiding Judge
Traditional Rights Court

/s/
Nixon David, Associate Judge
Traditional Rights Court

/s/
Claire T. Loeak, Associate Judge
Traditional Rights Court