

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

RISTA BULELE,
Plaintiff-Appellee,

vs.

REMA MORELIK, RINTA MORELIK,
YOTA NYSTA, et al.,
Defendants-Appellants.

Supreme Court Cs. No. 2006-008

OPINION FILED

FEB 13 2009

CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

BEFORE Daniel N. Cadra, Chief Justice; J. Clifford Wallace, Associate Justice;
and Barry M. Kurren, Associate Justice.

OPINION by Cadra, C.J.

I. INTRODUCTION

Appellants Rema and Rinta Morelik appeal from a "Judgement & Order" of the High Court, determining that Appellee Toshiko Nuka is the proper person to hold the Senior Dri-Jerbal title to lands known as Northern Enalabkan (Carlos Island),¹ Tolen Ralik weto and Gea Island,² located on Kwajalein Atoll.

In arriving at its "Judgement & Order," the High Court accepted and gave substantial weight to a "Corrected Opinion" of the Traditional Rights Court, which

¹ Northern "Enalabkan" is also referred to and spelled as "Ennylebagan" throughout the parties' briefing.

² Also referred to and spelled as "Kio" Island throughout the parties' briefing.

determined that Toshiko was the proper person to hold the Senior Dri-Jerbal title to these lands.

Appellants contend that the High Court erred in accepting the findings of the Traditional Rights Court and awarding the Senior Dri-Jerbal title to Toshiko. Appellants seek reversal of the High Court's judgment and a determination by this Court that Rema holds the Senior Dri-Jerbal title to the above-referenced lands.

For the reasons set forth below, we affirm the High Court's judgment.

II. PROCEEDINGS BELOW

Toshiko commenced suit against Rema, claiming that she, not Rema, properly held the Senior Dri-Jerbal title to the three disputed lands. The High Court subsequently certified the following question to the Traditional Rights Court: "who is the proper and rightful person to hold the dri jerbal title on the three (3) islands in this case?" A joint hearing before the High Court and Traditional Rights Court was held on April 3 through April 7, 2006.

On July 18, 2006, the Traditional Rights Court issued a unanimous "Corrected Opinion" finding that Toshiko properly held the Senior Dri-Jerbal title to the disputed lands. In reaching this decision, the Traditional Rights Court gave great weight to a menmenbwij (genealogy chart submitted as Plaintiff's Exhibit 1b), which showed that Toshiko is "tor-in-botoktok" (flow of blood) from Nuka

(the father) and Bwilele (the grandfather).³ The Traditional Rights Court found that Kera Nuka, “the older male from Toshiko,” (i.e. Toshiko’s elder brother) held the Senior Dri-Jerbal title without any dispute from those in the menmenbwij. The court then concluded that Toshiko, as Kera Nuka’s younger sibling, properly assumed the title upon Kera Nuka’s death.

The Traditional Rights Court in its “Corrected Opinion” also gave great weight to the testimony of Irojlaplap Anjua Loeak. The court found that Iroj Loeak had “great knowledge of ean-jm-rak and greatly understood his lands, especially his people,” and that he had recognized Toshiko as holding the Senior Dri-Jerbal title to the disputed lands. The court stated that Iroj Loeak’s determination in this regard was “very different” from three certifications that he had signed, recognizing Rema as Senior Dri-Jerbal. But the court nevertheless resolved this inconsistency in favor of Toshiko, explaining, “custom change custom (sic). If the bwij becomes extinct, then the children of the botoktok will take their place. But if the botoktok extinct, the bwij will take their place.”

In crediting Iroj Loeak’s recognition of Toshiko over Rema, the Traditional Rights Court rejected Defendants’ (Appellants’) argument that the certifications discussed above proved Rema’s entitlement to the Senior Dri-Jerbal title. These

³ Bwilele is referred to and spelled as “Bulele” in some Exhibits.

documents show that Iroj Loeak had recognized Rema as the Senior Dri-Jerbal on the disputed lands at one point in time. However, the court found that Iroj Loeak signed these documents because he was caught in a dilemma (*ear loran ibweb*). He respected the “old ladies” (Jilo Lantir and Rema Morelik) and signed the documents because they told him to. But the court found the certifications “invalid” for three reasons: “(a). They did not seek other members of the family to obtain their opinion. They used force (power); (b). They thought they were the only family of Bwilele; and (c). They tried to manipulate Irojlaplap Anjua Loeak for their own interest.”

The High Court held a Traditional Rights Court Rule 9 hearing on September 14, 2006. Appellees urged the High Court to accept the Traditional Rights Court’s opinion as it was based upon an undisputed genealogy chart and the testimony of Iroj Loeak. Counsel for Appellants urged the High Court not to accept the opinion because it misconstrues the testimony of Iroj Loeak and it would be against Marshallese custom for Toshiko, a member of the younger generation, to hold title in preference to Rema, who was the only surviving member of the older generation.

The High Court issued its “Judgement & Order” on September 22, 2006. The High Court stated that it “read the opinion of the Traditional Rights Court,

examined all admitted documentary evidence, especially the genealogy charts and read the transcript of testimony of Irojlaplap Anjua Loeak and Iroj Kotak Loeak.” The High Court then accepted the Traditional Rights Court’s determination that Toshiko was the proper person to hold the Senior Dri-Jerbal Title. The court concluded, “it is logical and proper for the title of Senior Dri-Jerbal to pass from Kera Nuka to his sister Toshiko Nuka.” This appeal followed.

III. STANDARD OF REVIEW

This Court reviews issues of law de novo. *Lobo v. Jejo*, 1 MILR 172, 174 (1991). Whether the High Court properly affirmed the Traditional Rights Court’s determination of a certified question is a purely legal issue. Therefore, this Court reviews the High Court’s decision to affirm the Traditional Rights Court’s determination de novo.

The Traditional Rights Court’s determination of a certified question of Marshallese custom shall be given substantial weight. RMI Const., Art. VI, section 4(5). Thus, the court’s decision on a certified question shall be upheld unless the decision is clearly erroneous or contrary to law. *Abija v. Bwijmaron*, 2 MILR 6, 15 (1994). “[A] finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Anderson v. City*

of Bessemer, 470 U.S. 564, 573, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985). The clearly erroneous standard does not entitle a reviewing court to reverse the findings of the trier of fact simply because it is convinced that it would have decided the case differently; the reviewing court's function is not to decide the factual issues de novo. *Id.* at 573-574. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous. *Amadeo v. Zant*, 486 U.S. 214, 226, 108 S. Ct. 1771, 100 L. Ed. 2d 249 (1988) (citing *Anderson*, 470 U.S. at 574).

The fact finder's factual findings need not be perfect or detailed as long as the appellate court can adequately review them. *See, e.g., Davis v. City & County of San Francisco*, 890 F.2d 1438, 1451 (9th Cir. 1989). Factual findings are sufficient if they provide the appellate court with an understanding of the basis of the fact finder's decision and the grounds upon which it reached that decision. *See, e.g., Keane v. Commissioner of Internal Revenue*, 865 F.2d 1088, 1091-92 (9th Cir. 1989).

IV. DISCUSSION

A. The Traditional Rights Court Did Not Clearly Err in Resolving the Inconsistencies in IroiJlapi Anjua Loeak's Testimony in Favor of Toshiko.

Appellants claim that the Traditional Rights Court erred in failing to give proper deference to the decisions of Irojilaplap Anjua Loeak, recognizing Rema as the proper holder of the Senior Dri-Jerbal title to these lands. Appellants argue that Iroj Loeak's decisions should be given great weight and assumed to be reasonable unless refuted by clear evidence. *Abner v. Jibke*, 1 MILR 3, 6 (1984) (holding that "determinations by an Iroj are presumed reasonable unless it is clear they are not").

In support of their argument, Appellants refer to certifications signed by Iroj Loeak that appear to recognize Rema as holding the Senior Dri-Jerbal title to the lands in dispute.⁴ Appellants also point to testimony by Iroj Loeak of a custom known as *Alap Alaj*, which dictates that "whenever a dispute or something arises, to the Alap, then its up to her or him to make a change or a decision."⁵ Appellants argue that under this custom, Rema, as Alap, has the authority to determine who the Senior Dri-Jerbal would be on the disputed lands, and she can properly exercise that right to appoint herself as Senior Dri-Jerbal.

In opposition, Toshiko points to evidence that Iroj Loeak in fact recognized her, not Rema, as the Senior Dri-Jerbal titleholder. When asked at trial whether,

⁴ See Defendants' Exhibits AL-2 and AL-3.

⁵ See Tr. Testimony of Iroj Anjua Loeak, pp. 44-45.

“under Marshallese custom [] Toshiko, being the younger sibling of Kera, is really the proper person to be the Senior Dri Jerbal on these lands today,” Iroj Loeak answered, “[t]hat is correct.”⁶

There is also evidence that casts doubt on the validity of the certifications signed by Iroj Loeak, recognizing Rema as the Senior Dri-Jerbal titleholder. At trial, he testified that he signed the certifications discussed above because that is what Rema told him to do, yet “under Marshallese custom, it’s not correct or proper to do that ...”⁷ He further testified that under Marshallese custom Toshiko, being the younger sibling of Kera, is really the person to be the Senior Dri-Jerbal on these lands today, but that “there was a change when their aunties (Jilo and Rema) came to me ... [T]hese two ladies, the alaps, came and made arrangements to the - regarding their family because they are the ones who are the alaps and the head of the family and I cannot argue with what they have to say.”⁸

The testimony of Iroj Loeak was conflicting and confusing. However, sufficient evidence supports the Traditional Rights Court’s finding that Toshiko properly holds the Senior Dri-Jerbal title to these lands. As just described, Iroj

⁶ See Tr. Testimony of Anjua Loeak, p. 40.

⁷ See Tr. Testimony of Anjua Loeak, p. 7.

⁸ *Id.* at p. 40.

Loeak testified that it was improper for him to have signed the various certifications under custom. He admitted that, “under Marshallese custom, it’s not correct or proper to do that, but I listened to what she said”⁹ Iroij Loeak explained that he may have been mistaken or wrong in signing the certifications.¹⁰ This testimony allows competing inferences as to who should be recognized as Senior Dri-Jerbal under Marshallese custom. The Traditional Rights Court did not clearly err in crediting one portion of Iroij Loeak’s testimony over another.

Appellants argue that the Traditional Rights Court’s stated reasons for rejecting the certifications are not supported by the record. Although we agree that there is no evidentiary basis for the Traditional Rights Court to have found that the Appellants used “force (power)” or somehow tried to “manipulate” Iroij Loeak for their own interests, this does not preclude us from giving the court’s determination the substantial weight required by the Constitution. The Traditional Rights Court was free to give what weight it felt appropriate to these exhibits. It is clear that the Traditional Rights Court considered, but gave no weight to these documents. There is no clear error justifying reversal.

⁹ Tr. Testimony of Anjua Loeak, pp. 6-7.

¹⁰ *Id.* at p. 16.

B. There is Evidence in the Record That, Historically, the Older Generation Would Hold the Alap Title and the Younger Generation Would Hold the Dri-Jerbal Title to These Particular Lands; the Determination that Toshiko Holds The Dri-Jerbal Title is Not Clearly Erroneous.

Appellants argue that the lower courts disregarded the legally established patterns of succession for Marshallese land rights. While the parties are in agreement that “the general rule is that the older generation ranks higher than the younger one and it applies to a bwij of the same jowi and not to another bwij of a different jowi,”¹¹ there is evidence that the general rule of succession was not followed on these lands.

There is no dispute regarding the history as to the parties’ predecessors on these lands. In 1959, Bulele was Alap, and Nuka (Bulele’s son, a member of the younger generation) was Senior Dri-Jerbal.¹² When Bulele died in 1967, the title of Alap passed to Abija, Bulele’s sister’s son.¹³ When Nuka died in 1974, the title of Senior Dri-Jerbal passed to his sister Jilo Lantir.¹⁴ When Abija died in 1988, the Alap title passed to Jilo, and Kera (Nuka’s son and Toshiko’s older brother)

¹¹ See, e.g., Customary Titles and Inherent Rights, Amata Kabua, p. 14.

¹² Tr. Testimony of Toshiko Nuka, p. 81; Plaintiff’s Exhibits 1a, 1b, and 2.

¹³ Tr. Testimony of Rinta Morelik, p. 64, and Toshiko Nuka, p. 83; Plaintiff’s Exhibits 3 (1986 Allocation Agreement) and 4 (Exhibit B to Allocation Agreement).

¹⁴ Plaintiff’s Exhibit 4.

became Senior Dri-Jerbal.¹⁵ Upon the death of Jilo, Rema became the undisputed Alap.

Willy Mwekto, an expert in Marshall Islands' custom, testified that when Jilo was Alap, Kera from the younger generation was Senior Dri-Jerbal.¹⁶ Kera is in the same generation as Toshiko, which is the younger generation from Rema. Mwekto has never seen a case where the Senior Dri-Jerbal title went from someone in the younger generation back up to someone in the older generation.¹⁷ He testified that according to Marshallese custom, when Kera died in 2003, Toshiko should have become Senior Dri-Jerbal on these lands.¹⁸ When asked whether Rema, as the last survivor of her generation, can be both Alap and Senior Dri-Jerbal at the same time, Mwekto testified that she can only be Alap. The Senior Dri-Jerbal title, according to Mwekto, "goes to the botoktok."¹⁹

Reviewing this evidence, the Traditional Rights Court did not clearly err in finding that Toshiko is the proper holder of the Senior Dri-Jerbal title. The expert testimony confirms that on these lands, the Alap title should be held by the elder

¹⁵ Tr. Testimony of Anjua Loeak, pp. 19-20.

¹⁶ Tr. Testimony of Willy Mwekto, pp. 110, 121.

¹⁷ *Id.* at pp. 121-22.

¹⁸ *Id.* at pp. 121, 124.

¹⁹ *Id.* at p. 134.

member of the older generation, and the Senior Dri-Jerbal title should be held by the elder member of the younger generation. Although the Traditional Rights Court did not explicitly make this finding, it appears that the court implicitly adopted this view of the succession pattern in this case. The court's decision to follow this rule of succession, as opposed to the general rule of succession, was not clearly erroneous. In any event, even if the general rule applied, it would not change the outcome of this case because there is no evidence brought to our attention that Toshiko and Rema are of the same bwij, much less the same jowi.

C. A Review Of The Record In Its Entirety Indicates The Traditional Rights Court Was Aware That Rema Was Botoktok, A Child of the Male.

Appellants argue that the Traditional Rights Court clearly erred in ignoring the "plain and obvious" fact that Rema was the senior living botoktok/child of the male. The Traditional Rights Court did state (or appears to have stated) that it would have been correct and proper for the Defendants (Appellants) to hold the Senior Dri-Jerbal title if there were no children of the male. This statement is problematic because it is clear that Rema was of the botoktok, she is a child of the male Bulele.

While Appellants' argument has facial appeal, the record indicates that the Traditional Rights Court was well aware of Rema's status as botoktok/child of the

male. The Traditional Rights Court specifically relied on the *menmenbwij* (genealogy chart) admitted as Plaintiff's Exhibit 1b. That chart clearly shows that Rema is a child of the male Bulele, as does Defendants' Exhibit D-1. There was also testimony to that effect.²⁰ This plain, obvious and undisputed fact could not have possibly been lost by the Traditional Rights Court. In its "Corrected Opinion," the Traditional Rights Court also states that "there are children of the botoktok that are still alive today." This statement evidences a realization that there are members of the botoktok alive today. While we cannot explain what the Traditional Rights Court meant by its statement that it may have been proper for Defendants to be Dri-Jerbal if there were no children of the male, we hold there was no error justifying reversal.


V. CONCLUSION

There is sufficient evidence in the record to support the Traditional Rights Court's ultimate determination that Toshiko Nuka is the proper person to hold the Senior Dri-Jerbal title to these lands under custom. We do not hold that the Traditional Rights Court committed clear error in its findings of fact.

The High Court "Judgement & Order" is affirmed.

²⁰ See, e.g., Tr. Testimony of Iroj Anjua Loeak, p. 3, and Willy Mwekto, pp. 115-16.

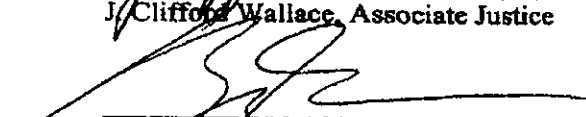
Dated this 3rd day of February, 2009.



Daniel Cadra, Chief Justice



Clifford Wallace, Associate Justice



Barry Kurren, Associate Justice