In his Notice of Appeal, appellant raised the issue of whether the trial court correctly ruled that Adalbert was entitled to the money. This issue was not, however, briefed by appellant and we can find no merit to the argument. Moreover, appellee, in his brief, provided us with persuasive arguments for upholding the trial court's determination.

The trial court found:

> It is clear that the monies appropriated by Public Law Nos. 7–1–4 and 7–3–37 were intended to be used to defray the actual costs and expenses of the members of the House of Chiefs of the Palau Legislature in the discharge of their official duties. They did not appropriate funds to be used by the traditional chiefs unconditionally.

[2] It was Adalbert who was acting in an official capacity in the House of Chiefs, it was Adalbert who incurred the actual costs in doing so, and it was Adalbert to whom the money should have been paid.

For these reasons, the judgment of the trial court awarding $4,500.00 to appellee, and ordering appellant to pay such amount to appellee, is confirmed.

ATIDRIK MAIE, Defendant-Appellant

v.

JILLO BULELE, Plaintiff-Appellee

Civil Appeal No. 370

Appellate Division of the High Court

Marshall Islands District

January 25, 1984

Appeal from trial court judgment declaring plaintiff to be the holder of *alab* rights to three *watos*. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that pre-trial motion to amend answer was properly denied, deposition of witness who lived several hundred miles away was properly admitted at trial, and trial court correctly found that *kallimur* was

entitled to great weight and presumed to be reasonable, and therefore trial court judgment was affirmed.

1. **Civil Procedure—Motion To Amend Answer**

   Pre-trial motion to amend answer, not filed until counsel made an oral request in court on the day of the trial, without any supporting affidavits, was properly denied by the trial court, where basis of the motion was a "notion of duress".

2. **Evidence—Depositions—Admissibility**

   There was no error in the admission at trial of a deposition, where the witness was situated several hundred miles from the site of the trial, the defendant waived his appearance in the deposition taken and was represented by counsel, and defendant's counsel had indicated he "might not object" to its admission.

3. **Marshalls Custom—"Kallimur"**

   Trial court correctly found that a *kallimur* was entitled to great weight and presumed to be reasonable and proper.

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Counsel for Appellee: BENJAMIN M. ABRAMS, ESQ., c/o P.O. Box 535, Saipan, CM 96950

Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and HEFNER[1], *Associate Justice*

MIYAMOTO, *Associate Justice*

This is an appeal from the judgment of the trial court declaring plaintiff-appellee to be the holder of *alab* rights to the three *watos* located on Kwajalein Island, Kwajalein Atoll, Marshall Islands, namely, Monturinbwol, Eoken, and Worlap.

Appellant claimed the trial court erred in:

1. denying appellant's pre-trial motion to amend his answer and raise the affirmative defense of duress;

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[1] Chief Judge, Commonwealth Trial Court, Northern Mariana Islands, designated as Temporary Justice by Secretary of Interior.

2. receiving the deposition of *Iroij Lablab* Kabua Kabua into evidence; and

3. giving credence to the *kallimur* dated September 26, 1980. On the first issue, Rule 15(a) of the High Court Rules of Civil Procedure provides:

> (a) *Amendments.* A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served. *Otherwise a party may amend his pleadings only by leave of court or by written consent of the adverse party.* (Emphasis added in text.)

The *kallimur* (or the will as described by the court) executed by *Iroij Lablab* Lejelan Kabua on September 19, 1980, which named the plaintiff as the *alab* of the three *watos*, was, as the trial court described it in the judgment, the "determining factor" in the case. Thus the defense of "duress," which the defendant wished to raise as an affirmative defense, was critical to the introduction of any such existing evidence. The motion to amend the answer was made in written form but was not filed until counsel made an oral request in court the very morning of the trial. There was no indication in the motion of the nature of this "duress." No affidavits were submitted to support the motion. Only in the brief is the alleged duress described:

> Appellant was prepared to present evidence as to the mental and physical condition of *Iroij lablab* Lejelan Kubua when he signed the paper. Such evidence would have been relevant to the *notion of duress* upon the signator *(Iroij lablab)* of the paper. (Emphasis added.)

[1] The proposition advanced was a "notion"—described in *Webster's Collegiate Dictionary*, Fifth Edition, as being "1. mental apprehension of whatever may be known or imagined; an idea; a conception; properly a general con-

ception. 2. A theory, belief or opinion. 3. An indication, whim." It had no substance. The court properly denied the motion to amend the answer.

On the issue that it was error for the trial court to receive the deposition of *Iroij Lablab* Kabua Kabua into evidence, the appellant claims that because he was not present for the taking of the deposition, the deposition was hearsay and could not be received into evidence. The deposition was taken in Majuro, the declarant's residence, and the defendant-appellant, who was situated several hundred miles away on Ebeye, was not able to be present.

Rule 32 of the Federal Rules of Civil Procedure, made applicable in the Trust Territory High Court by amendment of Rule 26, dated December 27, 1977, provides:

(a) Use of Depositions. *At the trial* or upon the hearing of a motion or an interlocutory proceeding, any part or all of the deposition, *so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof*, in accordance with any of the following provisions:

(1) . . . .

(2) . . . .

(3) *The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds*: (A) . . . . (B) *that the witness is at a greater distance than 100 miles from the place of trial or hearing. . . .* (Emphasis added.)

The facts show that the defendant-appellant was represented by counsel at the taking of the deposition. Further, page 2 of the deposition shows the following:

MR. OKENY [sic]: That's correct . . . I might note for the record that the defendant Atidrik Maie resides in Ebeye, Kwajalein Atoll, and that I have recently conferred with him in that he waves [sic] appearance during these proceedings.

The defendant-appellant, having waived his appearance in the deposition taken, has no reason to complain now that

that deposition was a hearsay statement. Further, on page 36 of the transcript, the following discourse is noted:

MR. OKNEY: By way of explanation, I'm not trying to go back on my word, but my client was not present at the taking of this deposition because he was on Ebeye. I didn't have the benefit of his responses at the time of the taking of the deposition. Secondly, the genealogy chart offered today was not made available to this witness, the Honorable Judge Kabua, at the taking of this deposition. *If the court read the deposition with these facts in mind and gave weight to it in accordance with those two developments, I might not object.*

THE COURT: *I will take the objection under advisement until I read the deposition.* (Emphasis added.)

And the court received the deposition, saying, at page 57 of the transcript:

I have read the deposition. I know your objections to it, counsel, and *with those objections in mind, I am going to admit the deposition* and I believe the other matters have been admitted already for a limited purpose; the genealogy chart. I will admit the deposition and attachments, noting your objections. *I also note it was given by Judge Kabua who resides in Majuro,* so in that light, I will admit it. (Emphasis added.)

Thus, counsel for the defendant-appellant having indicated he "might not object," had weakened his stance on the question of admission of the deposition. Also the court's reference to the witness as "Judge Kabua" lends credence to the idea that the court admitted the deposition on the basis of the credibility of Judge Kabua as well as recognizing that Judge Kabua was situated in Majuro and not on Ebeye, the situs of the trial.

[2] Accordingly, the court finds no error in the court receiving Judge Kabua's deposition as evidence in the case.

[3] On the third issue that the court erred in giving credence and weight to the *kallimur* dated September 26, 1980, the court finds that there is nothing in the record or the transcript to overcome the trial court's finding that the

kallimur is "entitled to great weight" and presumed to be "reasonable and proper."

In view of the foregoing, the judgment of the trial court is AFFIRMED.

MELON LOEAK, Defendant-Appellant

v.

ANJUA LOEAK, Plaintiff-Appellee

Civil Appeal No. 381

Appellate Division of the High Court

Marshall Islands District

September 5, 1984

Appeal of final judgment of trial court, which held that plaintiff, not defendant, was eligible for a seat in the Legislature, as the *Iroij Lablab*. The Appellate Division of the High Court, Munson, Chief Justice, held that finding of trial court, that no Marshallese custom exists allowing devolution of the *Iroij Lablab* title to a non-blood son of the deceased *Iroij*, was supported by some evidence, and that trial court which took case on remand properly construed mandate of first opinion of the Appellate Division, and therefore trial court judgment was affirmed.

Marshalls Custom—"Iroij Lablab"—Succession

Trial court properly made finding that no Marshallese custom exists allowing devolution of the *Iroij Lablab* title to a non-blood son of the deceased *Iroij*, and that for purpose of succession to the title of *Iroij Lablab*, there is no customary equivalent to a natural born blood heir.

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