

1. For Publication

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4. **IN THE SUPERIOR COURT**
5. **OF THE**
6. **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7. **IN RE THE ESTATE OF**
8. **REMEDI0 MALITE,**
9. **Deceased.**

CIVIL ACTION NO. 06-0163

10. **ORDER CONFIRMING THE MWEI**
11. **MWEI ADOPTION OF JESUS SOMOL**
12. **AND RECOGNIZING THE ESTATE OF**
13. **JESUS SOMOL AS AN HEIR TO THE**
14. **ESTATE OF REMEDI0 MALITE**

15. This matter was last before the Court on May 17, 2006 and May 3—5, 2006 for a hearing on
16. the issue of whether Jesus Somol (“Jesus”), the father of claimant Juan Somol (“Juan”) was the
17. adopted child of Remedio Malite (“Remedio”) through the Carolinian custom of mwei mwei. The
18. case is closely related to *In re the Estate of Angel Malite*, No. 97-0369, which is currently pending in
19. the Superior Court. Remedio Malite was the daughter of Angel Malite (“Angel”), and ultimately,
20. claimant seeks a share in the Angel’s estate.

21. Jesus’ children have already been recognized as his heirs in the probate of Jesus’ estate. Juan
22. serves as the Administrator of Remedio’s estate, and has accepted the claim on behalf of Remedio’s
23. estate. The objectors in the instant case, the clients of counsel Steve Nutting, are the same as those in
24. *In re the Estate of Angel Malite*. Jesus Tudela, the Administrator of Angel’s estate officially
25. accepted Juan’s claim of heirship to Angel’s estate after initially rejecting it.

26. Appearing at oral arguments and/or on the briefs were: Steve Nutting for heirs Rosa Malite,
27. Lourdes Rangamar, and Rombert Sinounou; Victorino Torres and Joaquin Torres for claimant Juan
Somol; and Antonio Atalig for the Administrator.

1. The present probate of the Angel's estate has been going on for nine years. Several previous
2. attempts to probate this estate were abandoned. The Court only recently learned that all of Angel's
3. children were deceased, and that none of the estates had been probated. Following the May 3, 2006
4. hearing in *In re the Estate of Angel Malite*, counsel opened probate in the estate of each of Angel's
5. deceased children and grandchildren.

6. I. EVIDENTIARY REQUIREMENTS

7. In determining whether there was a mwei mwei adoption, the Court applies the
8. preponderance of evidence standard. *In re Estate of Rofag*, 2 NMI 20 (1991). Mwei mwei may be
9. proved by circumstantial evidence. *Id.*

10. In the instant case, there is little direct evidence regarding the circumstances of Remedio's
11. care for Jesus. Almost all of the witnesses who testified did not know Jesus when he was a child,
12. and therefore cannot shed light on the circumstances surrounding his childhood relationship with
13. Remedio. Further, many of the events are now foggy in the minds of the witnesses.

14. Documents containing admissible hearsay are not probative in this matter. First of all, the
15. essence of mwei mwei is an oral agreement, without the written formalities familiar to statutory
16. adoptions. Second, the documents presented to the Court are fraught with the many of the same
17. conflicts as those raised by the testimonies of the witnesses.

18. To resolve this matter, the Court must weigh the competing hearsay of the Olopai and Somol
19. family against that of the Malite heirs and witnesses. The Court assesses the credibility of each
20. witness' testimony and examines the motives of each party to testify as she or he did.

21. The Court asked counsel to provide expert testimony on Carolinian custom pertaining to
22. mwei mwei and inheritance, including the formula for division of estates (per stirpes or per capita);
23. the decision-making power over assets and matters of inheritance of the oldest female; and the
24. vesting of a mwei mwei adoptee's status. Melvin Faisao was the only witness qualified as expert to
25. testify. None of the counsel provided additional briefing on these matters.
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II. FINDINGS OF FACT

A. The Lives of Remedio and Jesus

Jesus was born to Carmen Olopai and Juan Somol on December 17, 1926. Carmen had already lost three children before having Jesus.

While Jesus was still young, Carmen gave him to Remedio Malite (“Remedio,” also known as Inetughuwa or Letughuwa). Remedio, a distant cousin of Carmen Olopai, was born on October 12, 1900. Remedio’s biological child, Prudencio M. Somorang, had died at the age of four in 1924.

Remedio, her husband Lamalour (a native of Satawaal), and Jesus went to Satawaal, Yap, while Jesus was still young. There they met Bibiana Lema. Bibiana’s parents took Remedio and Jesus in when Lamalour left them.

According to Bibiana, Remedio cared for Jesus as if he were her child. They ate from the same plate.

According to Bibiana, Jesus had a child before they left Satawaal. The child did not live with Jesus.

Remedio and Jesus went to Pulusuk, Chuuk, and then back to Saipan in 1953.

Before Remedio and Jesus returned to Saipan, Juan Olopai, as a representative of Angel Malite’s mother’s family, took part in processing war claims. War claim No 67, filed May 14, 1952, did not list Remedio or Jesus as an heir of Angel Malite. Joaquina, Remedio’s sister, signed a claim stating that Remedio had been married with a child, but no longer had living children.

When Jesus and Remedio returned to Saipan, they stayed with Juan Olopai (the brother of Jesus’ biological mother), Juan’s wife Rosa, and their daughters Carmen Olopai (Taitano) and Concepcion Olopai (Igisomar).

Jesus and Remedio stayed with the Olopais until 1955, when Jesus got married and moved to Fellugulah (part of the Malite property). Jesus and Gregoria Litulumar had three children, Juan

1. Somol in 1958, Leonisa Somol in 1962, and Aurora L. Manglona (who, for unknown reasons, has
2. not been included in the instant case).

3. Remedio developed emphysema in later years.

4. Remedio moved from household to household until she died. At times she lived with her
5. sisters Joaquina or Jacoba. At one point she lived in a house built by Rosa's husband. Remedio lived
6. with Jacoba in the three years prior to her death.

7. Remedio died on September 22, 1973. Remedio Malite's death certificate says she "died
8. without issue." Inocencia Tudela, the granddaughter of Joaquina, provided this information.

9. Joaquina and Jacoba asked their sister Rosa to hold the rosary for Remedio's death at Rosa's
10. house, which was bigger than Jacoba's house.

11. In the late 1970s, surveying commenced on Lot 388 near Jesus' and Juan's house. David H.
12. Marciano had requested the surveying of this property pursuant to a June 10, 1976 order in Civil
13. Action No. 209. That case adjudicated the distribution of property belonging to the extended family
14. of Angel's mother, to which the Marcianos and Jesus' birth mother also belonged.

15. Jesus and Juan approached Rosa and asked if she had knowledge of the surveying. She
16. responded that she did not. Together, Rosa, Jesus, and Juan went to the site of the surveying. Rosa
17. instructed the surveyors to stop. Jesus and/or Juan, taking matters one step further, attempted to
18. attack the surveyors with a machete. Rosa stopped the violence and sent the surveyors away.

19. Rosa, Jesus, and Jesus Sinounou (another grandchild of Angel), representing themselves,
20. appeared at a June 25, 1979 hearing to object to the surveying. The Court ruled against the
21. objectors, and ordered them to allow the surveying.

22. On September 7, 1976 the Court noted an objection to distribution filed in the same matter
23. by "Joaquina Malite and Acoba Malite on behalf of themselves, Remedio Malite, and the heirs of
24. Elias Malite claiming they are the only lineal descendants of Angel Malite and therefore the only
25. 26. 27. 28.

1. persons who have an interest in Lot 388.”¹ Remedio’s name was included even though she was
2. deceased. The names of other deceased children of Angel were not included.

3. Jesus died on April 20th 1989. Jesus’ death certificate says that he is the child of Carmen and
4. Juan Olopai.

5. **B. Probate of Angel’s Estate**

6. The first probate of Angel’s estate, Probate Case No. 11, began in the late 1960s. The
7. petition for probate, filed by Joaquina on September 18, 1969, includes five of Angel’s children as
8. heirs, as well as an additional child, Maria. Maria and Elias (one of the five children) were listed as
9. deceased. The Court has discovered that there was an additional deceased child, Jose Malite, who
10. was not listed.
11.

12. Paragraph number 5 of the petition states: “Remedio Malite was married to a Trukese who
13. has long ago departed Saipan and is deceased. One (1) child was born to this marriage and is
14. deceased also. Remedio resides in Chalan Laulau.”

15. Apparently, Probate in Case No. 11 was never finalized.

16. The second probate of Angel estate, Civil Action No. 261, began in the late 1970s. This
17. probate was held in conjunction with the condemnation of family property to build the Marianas
18. High School. Joaquina was the petitioner in this case, and Rosa assisted in translation.
19.

20. A judgment entered November 9, 1978 in this matter is captioned, “In the Matter of the
21. Proceedings by the TTPI for the Condemnation of the Property of the Estate of Angel Malati, also
22. known as Angel Malite, Joaquina Malite, Remedio Malite, Ben Fitial, Abel Olopai, Juan Olopai,
23. and Unkown Others.” The heirs of Elias were not included. The same caption is used in various
24. motions to substitute the CNMI as a party for the Trust Territory.
25.

26. ¹ On page 12 of his closing memo, which quotes this document, counsel for the objectors omitted Remedio’s
27. name. Counsel wrote that an objection to the distribution was filed by “Joaquina Malite and Acoba Malite on behalf of
28. themselves and the heirs of Elias Malite claiming they are the only lineal descendants of Angel Malite and therefore the
only persons who have an interest in Lot 388.”

1. Counsel Michael A. White did not use the same caption. The motion he filed on behalf of
2. Inocencia Malite Tudela, which identifies the heirs of Angel Malite as of November 9, 1978, is
3. captioned, "In the Matter of the Proceedings by the TTPI for Condemnation of the Property of
4. Angel Malite." The only heirs listed were living descendants of Elias, Joaquina, and Jacoba.

5. An order dated January 10, 1979 in the same case lists Joaquina Malite, Acoba Malite and
6. Remedio Malite and the heirs of Elias Malite as the heirs of Angel Malite.

7. The second probate ended with a judgment that was never executed.

8. The third and current probate began in 1997, with Jesus Tudela serving as Administrator.
9. This probate might have gone the way of its predecessors but for the estate's \$3.45 settlement with
10. the Marianas Public Land Association. On March 22, 2006, following the publication of this
11. settlement, Juan Somol filed his claim.
12.

13. On March 23, 2006, Antonio Atalig, counsel for Administrator, sent a letter to other counsel
14. (Reynaldo Yana and Steve Nutting) on the subject of Juan's claim. Counsel stated that, based on his
15. personal knowledge, "the entire Malite clan never hear or mention any Somol as an adoptee to
16. Remedio Malite." Counsel sent a similar letter to Joaquin Torres, inviting him to share any
17. information he might have to resolve the claim. On April 7, 2006, Administrator through counsel
18. filed a rejection of the claim. Then, on May 3, 2006, Administrator through counsel filed a statement
19. indicating that he accepted the claim.
20.

21. At the hearings, Administrator suggested that he was initially under pressure by other family
22. members to deny the claim. He changed his mind after Juan visited him and asked for help in getting
23. a share in the family land.

24. Administrator did not speak with other heirs or review documents before approving the
25. claim. Administrator testified that Joaquina had told him about Jesus Somol's adoption just before
26. she died, and indicated that Juan should have some of the family land.
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1. **C. Testimonies**

2. 1. Claimant's Witnesses

3. Carmen Olopai Taitano, born in 1938, and her sister Concepcion Olopai Igisomar, born in
4. 1946, testified that they met Remedio and Jesus for the first time when they came back to Saipan
5. from Chuuk in 1953 and stayed at the Olopai home. They stated that Jesus visited his mother after
6. moving out, and brought food. According to these witnesses, Remedio said that Jesus was her son.

7. Dionesia Saralu, born in 1934, met Remedio and Jesus in 1954. She testified that Jesus' birth
8. mother told her in 1954 that Remedio had taken Jesus as a mwei mwei child.

9. Bibiana Lemaio was the only witness who knew anything about Jesus' life in the outer
10. islands. Bibiana testified that Jesus addressed Remedio as Nana. (Carmen Taitano also testified as
11. such.) Both stated that he also addressed other women as Nana ("mother"), in keeping with
12. Carolinian custom. Lay witnesses stated that addressing an elder female as "Nana" or "Mother" is a
13. common way to show respect.
14.

15. Maria Elameto, born in 1955, was the goddaughter of Jesus. She met Jesus' biological
16. mother, Carmen, when Maria was fourteen and they were both patients in Dr. Torres' Hospital.
17. Maria testified that Carmen had stated that she gave Jesus to Remedio to raise as his own.

18. Rita Salepeo was born in 1947. Her father married Jesus' biological mother when she was
19. five. Rita said that Jesus did not visit Carmen Olopai or care for her when she was sick. Jesus did
20. not inherit from Carmen Olopai. According to Rita, Carmen Olopai said that Jesus had been adopted
21. by Remedio.
22.

23. Melvin Faisao testified (as a lay witness) that Jesus brought Remedio to the house of
24. Melvin's father (a teacher) for assistance with formal documents.

25. Juan Somol stated that at the age of four, he lived at Fellugulah with Remedio. He said that
26. his parents and sister moved in with them when he was seven years old. They then moved to Susupe
27. in 1980.
28.

1. Leonisa Somol testified that she considered Remedio to be her grandmother, and that she
2. lived with Remedio from her earliest memory. She apparently did not move with the rest of her
3. family back to Susupe. When she was about ten years old, Jesus told her that Carmen Olopai was his
4. biological mother. She testified that Carmen Olopai did not visit the family.

5. Leonisa testified that she and Jesus attended Remedio's funeral.

6. Leonisa testified that none of the Malite family had prevented her from building a house on
7. Fellugulah, the Malite land, where she still resides.

8.
9. 2. Objectors' Witnesses

10. Rosa Malite, born in 1936, is a niece of Remedio's and the oldest female relative in the
11. Malite family. She met Remedio for the first time in 1957 when Remedio was living with Joaquina.
12. She stated that she did not recall Jesus living with Remedio and was unaware of the relationship
13. between the two until the instant motion. Rosa testified that she was close to Remedio during her
14. final years, and that she helped care for Remedio. Rosa said that Remedio had never said anything
15. about adopting Jesus as a mwei mwei.

16. Rosa asked why Remedio's funeral was not held at Jesus' house, if he were really her son.
17. (Lay witnesses stated that funerals are typically held at the house of the child of the deceased.
18. Otherwise they are usually held at the house of a sibling of the deceased.) There was testimony that
19. Jesus did not have running water or electricity.

20.
21. Rosa did not see Jesus at the funeral. There was testimony that only women enter the house
22. during the funeral.

23. Lourdes Rangamar, the second-to-oldest surviving niece of Remedio, also testified that she
24. never heard Remedio say that Remedio had adopted Jesus. Lourdes spoke of a conversation with
25. Remedio where Remedio lamented having no children to take care of her in her old age. Lourdes
26. also testified that she worked with Jesus in the 1950s and that they rode together from their houses
27. in Susupe to Capitol Hill on a daily basis. Throughout all of this time, Lourdes never heard Jesus
28.

1. mention that he was the mwei mwei child of Remedio. Lourdes testified that she was a neighbor of
2. Jesus in Susupe and that she never witnessed Remedio coming to visit Jesus or his family at any
3. time throughout all of the years prior to Remedio's death in 1973.

4. Victoria Kapileo testified that she was a friend of Remedio, and that she and her mother
5. fished with Remedio and sometimes with Juan Olopai. They also tended to a garden together.
6. Victoria testified that although she often saw Remedio with Juan Olopai, she never saw Remedio
7. with a younger man of Jesus Somol's age. Victoria testified that Remedio never mentioned having
8. any children.
9.

10. Frances Camacho Keremius and Lourdes testified that Juan lived in Susupe all his life, and
11. that they lived across the street from the Somol house. They said that they never saw Remedio there.

12. No other witness supported the Somol children's claim that they lived with their Remedio in
13. the 1960s.

14. 3. The Expert Witness

15. Melvin Faisao, a lifelong resident of Saipan, was stipulated as expert witness in Carolinian
16. culture. He testified regarding the various types of guardianship. He emphasized that guardianship
17. must be considered on a case-by-case basis, and was governed by the understanding between the
18. adopting and the relinquishing parents.
19.

20. One type of guardianship, known as amuro, has not occurred in Saipan for over 150 years.

21. Another type of guardianship, fa'am, occurs when a relative raises a child in the absence of
22. the child's natural mother and father. It is not considered adoption, but is comparable to foster
23. parenting. Fa'am children normally go back to the natural parents after some time.

24. Fa'am ends at age eighteen. Unlike a mwei mwei adoptee, a fa'am child is not obligated to
25. care for the adopting parent in the parent's old age.
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1. Faisao testified that it would be uncommon for a guardian to take a fa'am child to live off-
2. island. On the contrary, children may be left in the care of a guardian as fa'am when their parents
3. leave the island for a short time.

4. Mwei mwei, the most honorable form of adoption, usually occurs while a child is still breast
5. feeding.

6. Although the oft-quoted book on Carolinian culture by Alexander Spoehr, SAIPAN: THE
7. ETHNOLOGY OF A WAR-DEVASTATED ISLAND (Chicago Natural History Museum, 1954), suggests
8. that mwei mwei takes place only between close relatives, Faisao said that it can also take place
9. between different families. Faisao also disagreed with Spoehr's finding that a mwei mwei adoptee
10. changes her last name to that of the adopting parent.
11.

12. Faisao testified that the entire community is made aware of the mwei mwei adoption.

13. Faisao testified that it is extremely rare for the natural parents of a mwei mwei adoptee to
14. reclaim the adoptee. Mwei mwei is not terminated unless the mwei mwei parent(s) die when the
15. child is still young. In such a case, the child could go back to the biological parents or be taken in by
16. the siblings of the mwei mwei parent.
17.

18. Although single parent adoption is rare (particularly when the adopting parent has no means
19. of support), it does occur. Faisao testified that his own mother adopted a child prior to getting
20. married.

21. It is also rare for a parent to give up her only child for adoption. There was some question as
22. to why a child would be taken from a woman who had already lost so many children and given to a
23. woman without a steady job or home of her own. Faisao testified that Carmen's loss of children
24. could have been the very reason for taking the baby away from her. He used the term
25. "vwiischka'ar," and referred to the need to protect the clan from bad luck and ensure the survival of
26. its children.
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1. Official documents generally address the adopted parents of a mwei mwei adoptee as if they
2. were the biological parents. However, the death certificate generally has to mirror the information
3. contained in the birth certificate. If mwei mwei does not occur just after birth, then the death
4. certificate might not reflect mwei mwei status.

5. Faisao referred to the female trustee of family land as the telap. The telap is generally the
6. oldest female of the clan. Faisao stated that it would be up to the telap to include the adoptee as an
7. owner of the family land. At the same time, Faisao testified that the heirship of a mwei mwei child is
8. automatic. The adoptee can even have more influence than a natural child. This conflicts slightly
9. with Spoehr's finding that, although an adoptee may be treated better, she does not necessarily
10. inherit. *See* Spoehr, *supra*. According to Spoehr, the adopting parent decides whether the adoptee
11. will inherit. *Id*.

13. Faisao testified that property was divided among generations according to the number of
14. children in the family.

15. Faisao testified that the care provided by Remedio's sisters at the end of her life was
16. consistent with Carolinian custom, as it would be unlikely for a male (such as Jesus) to care for a
17. woman during an illness.

19. III. LEGAL ANALYSIS

20. A. Inconsistencies in the Testimonies of Claimants' Witnesses Do Not Weigh Heavily in 21. Favor of Objectors.

22. Objectors point out several inconsistencies in the testimonies of witnesses for the claimants.
23. For instance, both Carmen Taitano and Concepcion Igisomar testified that Remedio and Jesus lived
24. with the Olopais until Jesus moved out in 1955. But while Carmen testified that after Jesus moved
25. out, Remedio continued to live with the Olopais until 1972, Concepcion testified that Remedio
26. stayed with the Olopais only a few years longer.

1. Objectors also note the lack of evidence supporting the Somol children's claim that they
2. lived with Remedio in the 1960s, as there is evidence that the Somols lived in Susupe. Objectors
3. suggest that the Somols' testimonies are heavily biased, as they each stand to gain several hundred
4. thousand dollars if this litigation is resolved in their favor. The Court observes that objectors stand
5. to gain even more if the litigation is resolved in their favor.

6. The Court does not place much emphasis on who saw Jesus with Remedio at what time, or
7. whether he was seen at the funeral in 1973. Not does the Court consider important the
8. inconsistencies with regard to the tenure of Remedio and the Somols at various locations. The
9. objective of the hearing was not to establish the dates of events that took place more than thirty
10. years ago.

12. **B. The Lack of Mention of Jesus and Remedio in Official Documents is Not Probative**

13. The inaccuracy of the court documents presented by objectors speaks for itself. Sometimes
14. Remedio's name is included, even though she had already died. Other deceased children of Angel,
15. including Pedro, Maria, and Juan, were generally not mentioned.

16. The War Claim that failed to include Jesus also failed to include Remedio, who was still
17. alive and should have been just as entitled to a share as her siblings. *See In Re Estate of Isaac*
18. *Kaipat*, No. 05-0247D (Supr. Ct. Apr. 25, 2006) Order Following Evidentiary Hearing and Denying
19. Heirship Claim on Behalf of the Estate of Dolores K. Pelisamen (rejecting the use of a record of the
20. War Claims Commission payout to determine heirship).

22. In Probate 11, the government had no incentive to determine all the heirs, as it was trying to
23. obtain title to the property as quickly as possible. This Court will not penalize those who did not
24. receive notice of this probate and were not included as heirs.

25. The documents associated with Civil Action No. 209 indicate a lack of awareness of that
26. court regarding the heirs in the Malite family. Remedio was referred to as being alive although she
27. had been dead for five years. Pedro, Maria, and Juan, the deceased children of Angel, were not
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1. referred to at all. The Court takes notice that the firm who prepared the probate documents
2. excluding Remedio and Jesus included a member of the Malite clan who stood to gain by leaving
3. Remedio and Jesus out.

4. While the November 9, 1978 judgment authored by the Court includes Remedio and
5. “Unkown Others,” it excludes the heirs of Elias. On the other hand, Counsel Michael A. White’s
6. motion captions the case as “In the Matter of the Proceedings by the TTPI for Condemnation of the
7. Property of Angel Malite” and excludes Remedio’s name from the list of heirs.

8. The Court is alarmed by the failure of some heirs to include other heirs in these matters. The
9. Administrator of an estate has a responsibility to seek an efficient and prompt resolution of probate
10. matters. *In Re Estate of Rita Kaipat*, No. 90-0840, (Supr. Ct., Jan. 19, 2006) Order Re Accounting,
11. Claims of Surveyors, and Carmen Guelles’ Heirship Claim. This should involve the identification of
12. and provision of notice to *all* potential heirs, even where there may be doubt as to a claim for
13. heirship. *Id.* As the present case indicates, it is a disservice to the Estate to leave out potential heirs
14. and risk future litigation.

15.
16. **C. The Malite Clan’s Alleged Lack of Knowledge of the Mwei Mwei Is Not Compelling**

17. There are unanswered questions regarding Remedio’s departure from Saipan. While it was
18. suggested that Remedio left to avoid World War II, this could hardly be the case if Remedio left in
19. the late 1920s.

20. Remedio’s status as an “outsider” seems to have influenced the family’s treatment of her
21. share of the family property. No one made an effort to include her in the war claims, which were
22. filed in her absence. When Remedio returned to Saipan, she was not given a piece of the family
23. property on which to build her own house. Instead, she moved from home to home until her death.

24. The Court closely scrutinizes the objectors’ claim that they had never known the Somols to
25. be part of the Malite clan. For instance, the Court is puzzled as to why Rosa would claim that no
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1. Somol was part of the family, when Rosa had joined with Jesus in Civil Action No. 209 to object to
2. surveying on what they both considered family property.

3. The Court speculates that there may have been distance between the family members. The
4. Court takes notice that the objectors in this case are not the descendants of Angel's wife Ana
5. Maleal, who bore Pedro, Remedio, and Joaquina. Elias, the father of Rosa and Lourdes, and Jacoba,
6. the mother of Rompert Sinounou, were the children of Antonia Olopai. If relations between family
7. members were frosty, Jesus may not have sought interaction with the Malites after his mother's
8. death. This, and the fact that Jesus was off-island for the duration of his childhood and young
9. adulthood, may explain the lack of awareness of the mwei mwei on the part of immediate Malite
10. family members. The fact that objectors did not see Jesus with Remedio in her later years may be
11. because the Malites did not see much of either Remedio or Jesus.

13. At the same time, there is a great deal of testimony that Jesus' birth mother discussed the
14. mwei mwei with her family and with community members. This evidence is consistent with
15. Faisao's testimony that mwei mwei is a public event.

16. **C. There is a Preponderance of Evidence Suggesting that Jesus was Adopted Pursuant to**
17. **Mwei Mwei.**

18. Although all of the evidence is circumstantial, there is enough evidence for the Court to find
19. that Jesus was adopted pursuant to Carolinian custom.

20. The undisputed fact that Remedio took Jesus to the outer islands at a young age and lived
21. with him throughout this time is one of the most conclusive facts in this case. It is unlikely that Jesus
22. would have been fa'am under such circumstances.

24. The Court finds the testimony of Bibiana Lemaos most compelling. Of all the witnesses, she
25. was the only one with firsthand knowledge of the relationship between Jesus and Remedio in Jesus'
26. early years. As an outsider, she had no incentive to fabricate her testimony.

1. The Court is not swayed by the objectors' arguments regarding the unlikelihood of a single,
2. unemployed woman adopting a baby. The Court agrees with Faisao's testimony that mwei mwei
3. must be considered on a case-by-case basis, according to the understanding between the adopting
4. and the relinquishing parents. The Court also agrees with Faisao's analysis with respect to the
5. family's belief in vwiischka'ar. The idea of there being a curse on Carmen Olopai, a woman who
6. had lost three babies, could explain why Remedio was entrusted with Jesus.

7. **D. Jesus' Estate is entitled to inherit as if Jesus were a natural child of Remedio.**

8. Objectors claimed that Jesus had little interaction with Remedio after he moved out of the
9. Olopais' home, and that he did not attend the funeral. Even if this were the case, objectors presented
10. no evidence to suggest that these actions could have divested Jesus of his mwei mwei status or right
11. to inherit.
12.

13. In the absence of such evidence or argument, the Court sees no reason why Jesus' right to
14. inherit would not vest upon his adoption. This is consistent with 8 CMC § 2908: "Unless the family
15. consents or agrees otherwise, a person adopted by law or custom into a Carolinian family shall be
16. treated under this law as if he were born into the Carolinian family." *See also Rofag, supra*: "Once
17. the child is adopted under this custom, he/she is treated and considered as a natural child **for all**
18. **purposes.**" (Emphasis added). *See also* REST 3D PROP-WDT § 2.5: "For purposes of intestate
19. succession . . . An adopted individual is a child of his or her adoptive parent or parents."
20.

21. If Jesus were born to Remedio, he would have had a right to inherit no matter what happened
22. after his birth (unless Remedio disinherited him). Here, from the testimony of Bibiana alone, the
23. Court can find that Jesus was adopted mwei mwei at a young age. Even if years later, the rest of the
24. Malites failed to acknowledge the adoption, and even if the relationship between Jesus and Remedio
25. changed in later years, Jesus' status as a child of Remedio had already vested.
26.
27.
28.

1. **E. The mechanism of inheritance of Angel's estate will be decided by Carolinian custom,**
2. **pursuant to agreement among all the heirs, or by equity and common law in the**
3. **absence of an agreement.**

4. In its drafting of the CNMI Code, the Legislature went to great lengths to preserve the
5. traditional methods of inheritance among Carolinians and Chamorros. However, traditional
6. Carolinian custom cannot account for the award of money to an estate some sixty years after the
7. decedent's passing.

8. The statute that speaks most closely to this situation is 9 CMC § 2906, which deals with
9. personal properties. The statute reads as follows:

10. Unless the family consents or agrees otherwise:

11. (a) If the father predeceases the mother, the personal properties of the
12. decedent pass to the mother in fee simple.

13. (b) If the mother predeceases the father, the personal properties of the
14. decedent pass in the following manner:

15. (1) To the father an estate for life, with the remainder to their issue by
16. representation, with preference being given to daughters and sons for those items
17. normally passed to them under custom;

18. (2) If there are no children of the decedent, the personal properties pass after
19. the death of the surviving spouse to the brothers and sisters of the decedent by
20. representation.

21. (c) If the decedent was unmarried and without issue at the time of death, to
22. the decedent's parents, if living; if not living, to the decedent's brothers and sisters
23. and their issue by representation.

24. Although 9 CMC § 2906 provides for inheritance by representation, it leaves a family with a
25. great deal of discretion as to how to actually divide the property. The Court would like to see the
26. Malite family come to an agreement, in keeping with Carolinian custom, on the mechanism for
27. dividing their inheritance. However, the Court recognizes that the very fact that parties are litigating
28. this matter in court represents a departure from traditional custom.

29. The Court was faced with a similar situation in *In Re Estate of Isaac Kaipat, supra*. The
30. Court found that the parties' serious departures from customary law (in addition to the lack of clear
31. law governing the matter) make adherence to the purported customary law impractical. The Court
32. resolved the parties' inheritance dispute by resorting to equity. *See also Diaz v. Taylor*, Civ. No. 97-

1. 0879D (Super. Ct. 1998) (because the parties had already departed from Chamorro custom, the
2. Court found that the petitioner could not rely on the custom that would have given her the right to
3. remain in the residence until she died).

4. Before adjudicating the dispute over inheritance from Angel's estate, the Court will provide
5. parties with an opportunity to agree upon (or argue for) a particular mechanism of inheritance. To
6. assist the parties, the Court has set forth below the alternatives it is considering. The discrepancy
7. between these mechanisms demonstrates that there is no fixed formula for resolving this matter. For
8. this reason, the Court again urges the parties to come to an agreement in accordance with their
9. custom.
10. custom.

11. 1. Per Stirpes

12. As stated above, 9 CMC § 2906 refers to inheritance by representation (per stirpes). Title 8,
13. Sections 2902, 2903, and 2912 also call for inheritance by representation for Chamorros and those
14. not of Northern Marianas descent. According to 8 CMC § 2915, "the estate is divided into as many
15. shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same
16. degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving
17. one share and the share of each deceased person in the same degree being divided among his issue
18. in the same manner."
19. in the same manner."

20. Under the "pure" per stirpes mechanism, the Court divides the inheritance between the heirs
21. of Angel's children as follows:

22. 1. Inocencia Tudela (representing Joaquina Malite through Marcella) is entitled to a
23. one-fourth share.
24. 2. Rosa Malite and Lourdes Rangamar (representing Elias Malite) are entitled to a one-
25. eighth share.
26.
27.
28.

1. 3. Aurora, Juan, and Leonisa (representing Remedio through Jesus) are each entitled to
2. a one-twelfth share, assuming Aurora is still alive. If Aurora is deceased with no
3. issue, Juan and Leonisa are each entitled to a one-eighth share.

4. 4. Domaita Sablan, Stan Sablan, Rosinto Sablan, Presenta Sablan, Lucy Sablan,
5. Caroline Sablan, Grace Sablan, James Sablan, Jacoba Sablan, Merlyn Sablan,
6. Gregorio Sablan, Jr., and Memorina Sablan (representing Jacoba Malite through
7. Gregorio Sablan) are each entitled to a one-eighty-fourth share.

8. 5. Anastacia Malite and Jimmy Sablan (representing Jacoba Malite through Jesus
9. Sinounou) are each entitled to a one-sixteenth share.

10. 2. Per Capita by Representation

11. The Court recognizes that per capita distribution is generally favored over per stirpes and
12. will be presumed absent explicit per stirpes direction or intent. *Dew v. Shockley* 243 S.E.2d 177
13. (N.C. App. 1978). It has been held that the rule of representation applies only from necessity, such
14. as if there are heirs of different degrees. *In re Martin's Estate*, 120 A. 862 (Vt. 1923). Thus, a per
15. capita distribution among grandchildren is required if no children survive, even under a statute
16. providing for distribution in equal shares "to the children of said deceased person or the legal
17. representatives of the deceased children." *Id.* Under this scenario, which follows the pre-1990
18. Uniform Probate Code, the Court looks to the first generation in which there are survivors. This
19. generation includes the grandchildren of Angel. This division results in six branches, one for each
20. living grandchildren of Angel as well as one for each deceased grandchild with issue. The
21. representatives of each branch divide a one-sixth share as follows:

22. 1. Great-grandchild Inocencia Tudela (representing Grandchild Marcella) is entitled to a
23. one-sixth share.

24. 2. Grandchild Rosa Malite is entitled to a one-sixth share.

25. 3. Grandchild Lourdes Rangamar is entitled to a one-sixth share.

1. 4. Great-grandchildren Aurora, Juan, and Leonisa (representing Grandchild Jesus) are
2. each entitled to a one-eighteenth share, assuming Aurora is still alive. If Aurora is
3. deceased with no issue, Juan and Leonisa are each entitled to a one-twelfth share.

4. 5. Great-grandchildren Domaita Sablan, Stan Sablan, Rosinto Sablan, Presenta Sablan,
5. Lucy Sablan, Caroline Sablan, Grace Sablan, James Sablan, Jacoba Sablan, Merlyn
6. Sablan, Gregorio Sablan, Jr., and Memorina Sablan (representing Grandchild
7. Gregorio Sablan) are each entitled to a one-seventy-second share.

8. 6. Great-grandchildren Anastacia Malite and Jimmy Sablan (representing Grandchild
9. Jesus Sinounou) are each entitled to a one-twelfth share.

10. 3. Per-Capita-at-Each-Generation

11. A third scenario, and the one which results in the most equitable division, is that used by the
12. Uniform Probate Code (1990). This system, known as the per-capita-at-each-generation system,
13. provides equal shares to those equally related to the intestate. U.P.C. (1990) § 2-106 Comment.
14. Under this scenario, like the pre-1990 Uniform Probate Code scenario, the Court looks to the first
15. generation in which there are survivors. Rosa and Lourdes each get a one-sixth share. However, the
16. Court does not use this generation to divide the family into six branches. Each great grandchild must
17. inherit equally. This means that the remaining four sixths of Angel's estate (after Lourdes and Rosa
18. each take their share) is divided equally between the eighteen great grandchildren—Inocencia
19. Tudela, Aurora Somol, Juan Somol, Leonisa Somol, Domaita Sablan, Stan Sablan, Rosinto Sablan,
20. Presenta Sablan, Lucy Sablan, Caroline Sablan, Grace Sablan, James Sablan, Jacoba Sablan, Merlyn
21. Sablan, Gregorio Sablan, Jr., Memorina Sablan, Anastacia Malite, and Jimmy Sablan. Each gets a
22. one-fifty-sixth share.
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1. **IV. CONCLUSION**

2. Claimant's motion to confirm the mwei mwei adoption of Jesus Somol by Remedio Malite
3. and recognize Jesus' estate as an heir to Remedio's estate is hereby GRANTED. Jesus' estate is
4. entitled to inherit from Remedio's estate (and from Angel's estate) as if Jesus were a natural child of
5. Remedio.

6. The instant decision does not resolve the mechanism of inheritance from Angel's estate.
7. Parties should come to an agreement among themselves, or submit briefs (in Case No. 97-0369) in
8. support of a particular method.
9.

10. Likewise, the instant decision does not resolve how Jesus' estate will be split among his
11. heirs. The Court cautions the parties that all of Jesus' children (or the issue of any deceased
12. children) must be included in this distribution.
13.

14. SO ORDERED this 25th day of May 2006.
15.

16. /s/ _____
17. Juan T. Lizama
18. Associate Judge, Superior Court
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