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4. On August 24, 2004, Sarah was born. *Id.*
5. Sometime in 2011, Rungthip left Saipan and moved to Guam. *Id.* Francisco stayed in Saipan.
6. Sometime in 2015, Rungthip came to Saipan and took Sarah with her to Guam. *Id.*
7. Sometime in 2017, Rungthip filed for divorce in Guam. Mot. to Dismiss or Distribute at 2.
8. Francisco was allegedly served by mail at P.O. Box 8111SVRB on Saipan which is not Francisco’s address. The name listed on the mailbox was “Kubota, Thitiporn”. Administratrix’s Opposition at n.1.
9. Francisco never entered an appearance in the Guam divorce action. Administratrix’s Opposition to Motion for Dismissal or for Final Distribution at 2.
10. On December 13, 2017, the Guam Superior Court issued an Interlocutory Judgment of Divorce by Default and Final Decree of Divorce in *Kapileo v. Kapileo*, DM0416-17 (“Divorce Decree”) in which the Guam Superior Court awarded Rungthip with Francisco’s house, Lot No. 011 G 1038 located in Kagman, Saipan. Mot. to Dismiss or Distribute at 2.
11. Francisco died on August 14, 2021.
12. On October 29, 2021, this Probate Action was filed in the CNMI Superior Court.
13. On March 23, 2022, the DNA¹ test was taken pursuant to the Court’s Order Granting a Petition To Appoint an Administrator And For Letters Of Administration. One of Francisco’s brothers, Vicente Omar Kapileo’s (“Vicente”) DNA was utilized along with Sarah’s DNA to test Sarah’s biological relationship to Francisco. Motion To Strike Genetic Test Result at 2.

¹ The terms “DNA test” and “Genetic test” are used interchangeably. Deoxyribonucleic Acid is abbreviated as DNA.

1 14. On March 31, 2022, the results of the DNA test confirmed that it “was 1,000 times more
2 likely that the alleged uncle [Vicente] is unrelated to the child [Sarah] as opposed to
3 related.”

4 15. On December 19, 2022, Rungthip transferred her interest in Lot No. 011 G 1038 to Sarah
5 through a Quitclaim Deed.

6 16. On May 17, 2023, Sarah filed a Motion to Dismiss or Distribute, arguing Sarah is
7 Francisco’s heir and that Lot No. 011 G 1038 is not part of Francisco’s Estate. Mot. to
8 Dismiss or Distribute at 1.

9 17. On June 30, 2023, the Administratrix Vivian filed an Opposition to the Motion for
10 Dismissal or for Final Distribution and counter Motion to Dismiss the Heirship Claim of
11 Sarah Kapileo and to Amend the Petition to Identify the Heirs of the Decedent’s Estate.
12 In effect, the Administratrix objected to Sarah as an heir because Sarah was not the
13 biological daughter of Francisco.

14 18. During Sarah’s testimony at the July 20, 2023 hearing, Sarah testified that she had high
15 hopes the DNA test result would resolve the issue and put to rest any doubts. Sarah also
16 testified that she wanted both the house and the land.
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18 **III. PROCEDURAL HISTORY**

19 1. On October 29, 2021, Vivian Omar Kapileo filed the Petitioner for Letters of
20 Administration to probate the estate of her brother Francisco Omar Kapileo.

21 2. On November 10, 2021, Vivian filed Proof of Publication and Declaration of Mailing.
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23 3. During the hearing on Vivian’s Petition to Appoint an Administrator and for Letters of
24 Administration on December 2, 2021, Mr. Nutting informed the Court on behalf of Vivian
25 that she and her family would like Sarah to undergo a DNA test. Vivian and other family
26 members had some doubts that Sarah was Francisco’s biological child.

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4. On December 3, 2021, the Court issued an Order Granting Vivian’s Petition to Appoint an Administrator And For Letters Of Administration. The Court’s Order also authorized Administratrix Vivian’s request for a DNA test on Sarah.
5. On January 27, 2022, the Administratrix filed an Inventory of the Estate. There was one property under Francisco’s name: Lot No. 011 G 1038 located at Kagman, Saipan.
6. On March 23, 2022, the DNA test was taken pursuant to the Court’s Order Granting a Petition To Appoint an Administrator And For Letters Of Administration. One of Francisco’s siblings, Vicente, submitted his DNA along with Sarah’s DNA to test Sarah’s biological relationship to Francisco. Motion To Strike Genetic Test Result at 2.
7. On March 31, 2022, the result of the test confirmed that it “was 1,000 times more likely that the alleged uncle [Vicente] is unrelated to the child [Sarah] as opposed to related.”
8. On May 17, 2023, Sarah filed a Motion to Dismiss or Distribute, arguing that Lot No. 011 G 1038 is not part of Francisco’s Estate. Mot. to Dismiss or Distribute at 1. Francisco and Rungthip divorced in 2017. *Id.* at 2. The Guam Superior Court awarded Rungthip Lot No. 011 G 1038 in Kagman, Saipan, and Sarah argues that judgment is entitled to Full Faith and Credit under 28 U.S.C. § 1738. *Id.* Sarah also argues that she is Francisco’s heir and if Lot No. 011 G 1038 remains Francisco’s property, it becomes Sarah’s upon Francisco’s death. *Id.* Sarah finally adds that since Lot No. 011 G 1038 was given to Francisco from the Commonwealth as a homestead, it is not [Carolinian] family land and it descends to Sarah as Francisco’s daughter. *Id.*
9. On June 5, 2023, the Court set an Evidentiary Hearing and issued an Order for Parties To Provide Family Tree And Property Information, etc.
10. On June 30, 2023, the Administratrix filed an Opposition to the Motion for Dismissal or for Final Distribution and counter Motion to Dismiss the Heirship Claim of Sarah Kapileo and to Amend the Petition to Identify the Heirs of the Decedent’s Estate. The Administratrix argued that the “Decree of Divorce entered in Guam is void because the

1 Guam Court lacked jurisdiction to distribute property located on the island of Saipan,
2 especially when the Guam court lacked in personam jurisdiction over the decedent.”
3 Opposition at 4. The Administratrix argued that DNA testing had revealed that Sarah was
4 not Francisco’s biological child. *Id.* at 5. It is not clear if Sarah is NMD but Rungthip is
5 not NMD and awarding property to a non-NMD was *void ab initio*² under Article XII of
6 the CNMI Constitution. *Id.* at 5. The Quitclaim Deed from Rungthip to Sarah has no effect
7 and the property belongs to the Estate. *Id.* Sarah is not the biological or the adopted child
8 of Francisco, so Sarah is not an heir of Francisco.

9 11. On July 14, 2023, Sarah filed a Motion to Strike the Administratrix’s Declaration and a
10 Reply arguing that Lot No. 011 G 1038 is already Sarah’s Property through the judgment
11 of the Guam Superior Court. Mot. to Strike and Reply at 3. Francisco was served as
12 directed by the Guam Superior Court and so neither personal service nor personal
13 appearance was required for the Guam Superior Court to have personal jurisdiction. The
14 Administratrix has not presented evidence that rebuts jurisdiction or paternity. The
15 presumption that Sarah is Francisco’s child is not rebutted because the DNA test only
16 shows Vicente is not her paternal uncle. *Id.* at 6. The DNA test result is not “clear and
17 convincing evidence” that she is not Francisco’s daughter.

18 12. On July 20, 2023, the Evidentiary Hearing on the Motion to Dismiss or Distribute was
19 held. Four witnesses testified: Administratrix Vivian, Isa Bokuku Camacho, Enrico
20 Montano, and Sarah. Six exhibits were admitted.

21 13. During the July 20, 2023 Evidentiary Hearing, Administratrix Vivian testified that it was
22 her understanding that her brother could not physically have biological children. Francisco
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² Legally null from its inception. *See Faison v. Lewis*, 25 N.Y.3d 220, 222 (2015).

1 had not fathered any children in his past relationships before Rungthip. Further,
2 Administratrix Vivian did not believe Sarah was her brother’s biological child.

3 14. During July 20, 2023 Evidentiary Hearing, Sarah testified that she had high hopes the
4 DNA test result would resolve the issue and put to rest any doubts. Sarah also testified
5 that she wanted both the house and the land.

6 15. On October 12, 2023, Sarah filed a Motion to Strike the Genetic Test Result arguing that
7 the court-ordered DNA test was a “search within the meaning of the Fourth Amendment.”
8 *Id.* at 3. When the DNA test was done, Sarah was still a minor at seventeen years old and
9 could not consent. Mot. to Strike at 2. There was no record of Rungthip giving her consent
10 for Sarah to be tested. *Id.* As such, the results from the DNA test should be stricken from
11 the record. *Id.*

12 16. On October 13, 2023, the Court issued an Order setting an Evidentiary Hearing on Sarah
13 Kapileo’s Motion to Strike the Genetic Test and staying the under advisement of the
14 Motion to Dismiss or Distribute that was heard on July 20, 2023 until the Motion to Strike
15 Genetic Test Result is resolved.

16 17. On February 22, 2024, the Evidentiary Hearing was held regarding the Motion to Strike
17 the Genetic Test Results. Rungthip was the sole testifying witness, and no exhibits were
18 admitted into evidence.

19 18. On June 18, 2024, the Court issued an Order Denying the Motion to Strike the DNA Test
20 Result of Sarah Kapileo Because Her Claim as an Heir was Contested and the Probate
21 Court has the Jurisdiction and Authority to Order DNA Testing to Determine Heirs.
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IV. LEGAL STANDARD

Probate Court

“[T]he Commonwealth Trial Court³ shall have jurisdiction over all subject matter relating to estates of decedents, including construction of wills and determination of heirs and successors of decedents.” Title 8 CMC § 2202.

Article XII of the CNMI Constitution

“The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.” N.M.I Const. art. XII, § 1.

“Any transaction made in violation of Section 1 shall be void ab initio.” N.M.I. Const. art. XII, § 6.

V. DISCUSSION

Sarah filed a Motion to Dismiss or Distribute arguing that Lot No. 011 G 1038 does not belong to the Estate for two reasons: (1) She is Francisco’s heir as his only living biological child, and (2) The Interlocutory Judgment of Divorce by Default and Final Decree of Divorce in *Kapileo v. Kapileo* by the Guam Superior Court awarded Rungthip the House on Lot No. 011 G 1038 and Rungthip subsequently by Quitclaim Deed transferred her interest to Sarah. The Court will address these two reasons separately.

1. Heirship

“Heirs means those persons who are entitled under the chapter on intestate succession [8 CMC § 2901 et seq.] to the property of a decedent.” 8 CMC § 2107(o). “But ‘a third party cannot assert a claim to property alleged to be rightfully theirs without a determination that he or she is an heir possessing an interest in the property.’” *In re Estate of Pangelinan*, 2020 MP 19 ¶10 (citing *In re Estate of Mangabao*, 2019 MP 13 ¶ 12).

³ Commonwealth Trial Court was changed to the Commonwealth Superior Court per Section 4 of PL 6-25, the Commonwealth Judicial Reorganization Act of 1989.

1 “A man is presumed to be the natural father of a child if he and the child’s natural mother
2 are or have been married to each other and the child is born during the marriage[.]” 8 CMC §
3 1704(a)(1). Francisco and Rungthip had been married for four years when Sarah was born in
4 2004. There is a presumption that a child born during a marriage is the couple’s child, but it is a
5 rebuttable presumption. “A presumption under this section may be rebutted in an appropriate
6 action only by clear and convincing evidence.” 8 CMC § 1704(b). During the hearing on Vivian’s
7 Petition to Appoint an Administrator and for Letters of Administration on December 2, 2021,
8 Vivian and her family requested that Sarah undergo a DNA test. Vivian and other family members
9 had some doubts that Sarah was Francisco’s biological child. The March 31, 2022 DNA test result
10 showed it “was 1,000 times more likely that the alleged uncle [Vicente] is unrelated to the child
11 [Sarah] as opposed to related.”

12 Sarah filed a Motion to Strike the Genetic Test Result. Sarah argued the DNA test result
13 was not “clear and convincing evidence” that she was not Francisco’s daughter. Further, the result
14 only showed that Sarah was unrelated to the paternal uncle, Vicente.
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16 However, the DNA test result shows there is no close genetic relationship between Sarah
17 and Vicente. Even if Francisco and Vicente were only half-siblings through their biological
18 mother the DNA test would have shown some familial relationship between Sarah and Vicente.
19 Also, there is no evidence to suggest that Francisco or Vicente were adopted. If Sarah is
20 biologically related to Francisco, the DNA test result would suggest a higher likelihood of a
21 genetic relationship between Sarah and Vicente, even accounting if Francisco and Vicente were
22 half-siblings through their mother. However, based on the DNA test result, Sarah and Francisco
23 (via his brother Vicente) are more likely unrelated than related. The presumption—that a child
24 born during a marriage is the couple’s child—was rebutted by Clear and Convincing Evidence of
25 the DNA test result that Sarah is not Francisco’s biological daughter⁴.
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⁴ The Court denied Sarah’s Motion to Strike the Genetic Test Result, finding, that while the DNA test does implicate the Fourth Amendment there was sufficient justification for the Court to order a DNA test because the

1 Given that the Court has determined the DNA test result to be necessary and proper
2 evidence, therefore the Court finds by Clear and Convincing Evidence that Sarah is not the
3 biological daughter of Francisco, therefore Sarah cannot inherit Lot No. 011 G 1038.

4 **2. Decree of Divorce**

5 On December 13, 2017, the Guam Superior Court issued the Divorce Decree in *Kapileo*
6 *v. Kapileo*, in which the Guam Superior Court awarded Rungthip with Francisco’s house on Lot
7 No. 011 G 1038 located in Kagman, Saipan. Rungthip subsequently transferred her interest in Lot
8 No. 011 G 1038 to Sarah through a Quitclaim Deed. Rungthip is of Thai ancestry and is not a
9 person of Northern Marianas Descent so Rungthip is not eligible to own land in the CNMI.
10 Administratrix’s Opposition at 5. Rungthip cannot own land in the CNMI; therefore, Rungthip
11 cannot deed land to Sarah because Rungthip never owned the land in the first place.

12 “Article XII of the Commonwealth Constitution restricts land ownership within the
13 Commonwealth to people of ‘Northern Marianas descent.’” *Roberto v. Roberto (In re Roberto)*,
14 2003 MP 16 ¶18 (citing N.M.I Const. art. XII, § 1). This “includes acquisition by sale, lease, gift,
15 inheritance or other means.” N.M.I Const. art. XII, § 2. An NMD “is a person who is a citizen or
16 national of the United States and who has at least some degree of Northern Marianas Chamorro
17 or Northern Marianas Carolinian blood or a combination thereof.” N.M.I Const. art. XII, § 4. The
18 primary objective of this constitutional provision is to safeguard the land for NMD. “Restrictions
19 on land alienation are necessary to preserve the character and strength of the communities that
20 make up the Commonwealth.” *Estate Of Alexander Deleon Guerrero Borja*, Civil Action No. 19-
21 0292 (NMI Super. Ct. Jun 6, 2022) (Order Denying Non-northern Marianas Descent Surviving
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26 Court has the jurisdiction and authority to determine heirs and the results of the DNA test are necessary evidence to determine Francisco Omar Kapileo’s heirs. *Estate of Francisco Omar Kapileo*, Civil Action No. 21-0295 (Super. Ct. June 18, 2024) (Order Denying the Motion to Strike the DNA Test Result of Sarah Kapileo Because Her Claim as an Heir was Contested and the Probate Court Has the Jurisdiction and Authority to Order DNA Testing to Determine Heirs).

1 Spouse Dinah Borja’s Claim To Land ... at 11) (citing Analysis of the Constitution of the
2 Commonwealth of the Northern Mariana Islands 165, 166 (1976)).

3 The Guam Superior Court does not have the jurisdiction and authority to bypass laws
4 regarding land ownership rights in the CNMI. Rungthip, as a non-NMD ex-spouse of Francisco,
5 cannot be granted land ownership of Lot No. 011 G 1038. Even though Francisco acquired the
6 land as a homestead, it does not change the fact that Rungthip is not eligible for land ownership
7 under Article XII. The key issue here is the violation of the CNMI Constitution by the Guam
8 Superior Court in granting land ownership rights to someone who is not an NMD. Pursuant to the
9 CNMI Constitution, Article XII, § 6 states that any transfer in violation of Article XII is void ab
10 initio. The Guam Superior Court’s Divorce Decree as to the portion of the transfer of ownership
11 of Lot No. 011 G 1038 was void ab initio. The Guam Superior Court does not have jurisdiction
12 and authority to circumvent the CNMI Constitution, Article XII, and award Rungthip Lot No. 011
13 G 1038. Article XII is not merely a statute or a well-crafted policy; it is a provision enshrined in
14 the CNMI Constitution, which holds a higher legal authority. Statutes are measured against the
15 Constitution to determine their constitutionality. The Constitution is the higher authority. *See*
16 *Estate Of Alexander Deleon Guerrero Borja* at 12.
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18 The Court cannot give legal significance to the part of the Guam Superior Court’s Divorce
19 Decree that awards land ownership of Lot No. 011 G 1038 to Rungthip. The Guam Superior
20 Court’s judgment contradicts Article XII of the Commonwealth Constitution and the Covenant to
21 Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United
22 States of America⁴ by attempting to grant Rungthip with land ownership rights when she is not an
23 NMD.
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⁴ *See* The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Section 805 (“[R]egulate the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent[.]”)

1 The Court cannot enforce the portion of the Guam Superior Court’s Divorce Decree
2 awarding Rungthip Lot No. 011 G 1038 because it would require this Court to violate Article XII
3 of the CNMI Constitution. The original intention of Article XII was to protect land ownership
4 rights for those of Northern Marianas Descent. Article XII has been litigated and found
5 constitutional. *See Wabol v. Villacrusis*, 958 F.2d 1450, 1462 (1992) (“Accordingly, Congress
6 acted within its power in enacting sections 501(b) and 805 of the Covenant, and Article XII is not
7 subject to equal protection attack.”)

8 Article XII prohibits Rungthip, a non-NMD, from acquiring ownership in land in the
9 CNMI. Further, Rungthip never had legal ownership of Lot No. 011 G 1038 to transfer her interest
10 to Sarah through a Quitclaim Deed.

11 VI. CONCLUSION⁵

12 Sarah Kapileo claims inheritance rights of Lot No. 011 G 1038. The March 31, 2022
13 DNA test result showed that Sarah was not Francisco Omar Kapileo’s biological daughter. Thus,
14 Sarah is not Francisco’s heir and cannot not inherit Lot No. 011 G 1038.

15 Sarah also claims ownership of Lot No. 011 G 1038 since it is not part of the Francisco’s
16 Estate because the Guam Superior Court’s Divorce Decree awarded the ex-spouse Rungthip
17 Sartklong Lot No. 011 G 1038, and Rungthip subsequently transferred Lot No. 011 G 1038 to
18 Sarah through a Quitclaim Deed. However, the Guam Superior Court’s Divorce Decree awarding
19 Rungthip Lot No. 011 G 1038 violates Article XII of the CNMI Constitution. Thus, the Divorce
20 Decree as to the portion of awarding Rungthip Lot No. 011 G 1038 is void ab initio. Rungthip’s
21 Quitclaim Deed transferring Lot No. 011 G 1038 to Sarah is also void ab initio as Rungthip is not
22 an NMD and cannot transfer land by deed that Rungthip does not own.
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26 ⁵ The Court need not address the issue of personal jurisdiction. The Guam Superior Court found a tangible representation that Francisco was served. This Court need not disturb the Guam Superior Court’s ruling on the dissolution of the marriage. To the extent that the *Kapileo v. Kapileo* DM0416-17 Divorce Decree attempts to transfer land ownership to a non-NMD ex-spouse, that portion of the Guam Superior Court Divorce Decree is unenforceable in the CNMI as it violates Article XII of the CNMI Constitution and void ab initio.

