Case Flashback - Miloli'i Fishing Village

Litigation Director Alan Murakami recently visited Miloli'i, Hawai'i’s last fishing village. In the early 1990’s, NHLC helped residents fend off the impact the proposed Hawaiian Riviera Resort would have on traditional fishing grounds south of Miloli'i. The Land Use Commission had approved redistricting to allow the resort to go forward, leaving the assessment of what would happen to the fisheries up to the developer to determine and ultimately mitigate. NHLC appealed to the Third Circuit Court. Judge Kimura reversed the LUC, based on the failure to determine in advance impacts on the fisheries before making any decision.

Visit our website, www.nhlchi.org, and Facebook page to see a video of former client and village kupuna, Willie Kaupiko, talk about the benefits that continue to today. See the front page picture for a Miloli'i sunset! •

Mahalo nui for the hospitality Miloli'i! •

From our Executive Director: . . .

On behalf of all of us at the Native Hawaiian Legal Corporation, mahalo nui to you for your support for Native Hawaiian justice. ‘A‘ohe hana nui ke alu ‘ia. No task is too big when done together by all. As we celebrate NHLC’s 40th year of service to the people of Hawai‘i, we recommit ourselves to our ka‘ala to seek and secure justice for the lands, resources, traditions, and customs of Hawai‘i’s indigenous people. Please join us to ensure our continuing capacity to be strong advocates for those in need by making a donation in the enclosed envelope or online at our website, www.nhlchi.org.

Mahalo nui for your support and commitment!

Moses K.N. Haia III

Hawai‘i Supreme Court Victories

Since our last newsletter, Native Hawaiian Legal Corporation and our clients have celebrated a few victories at the Hawai‘i Supreme Court. Here are highlights from these case victories:

Hall v. BLNR

A year after the Intermediate Court of Appeals concluded that Kawaiaha‘o Church should have undertaken an archaeological survey before starting construction—and disinterring burials—the Hawai‘i Supreme Court agreed. The appeals court had concluded that the State Historic Preservation Division violated its own historic preservation rules.

Kilikila ‘O Haleakalā v. BLNR

In December 2010, the Board of Land and Natural Resources voted to grant a permit to build a 142 foot tall building at the summit of Haleakalā—without hearing evidence from opponents of the project. Native Hawaiian Legal Corporation, representing Kilikila ‘O Haleakalā, appealed over the denial of the request for a contested case hearing by Kilikila ‘O Haleakalā. Three years later, the Hawai‘i Supreme Court made it clear that the requested contested case hearing should have been held before the Board voted on the permit. The decision should put to rest a recent practice of the Board to vote first and then hear evidence afterwards.

Blake v. County of Kaua‘i’s Planning Comm’n

When Ted Kawahinehelelani Blake sued to protect historic sites in Kīlolo on Kaua‘i, eighteen historic sites had already been destroyed—and portions of the walls of the Hapa Trail damaged. Nevertheless, the circuit court ruled that he had sued too soon. NHLC appealed. In December 2013, the Hawai‘i Supreme Court reversed the circuit court’s decision, ruling that it could not duck the issues Blake presented.

Hawai‘i Supreme Court Victories

NHLC 40th Anniversary Celebration

Please Save the Date!

Saturday, October 4, 2014

The Native Hawaiian Legal Corporation was incorporated on October 3, 1974 as the Hawaiian Coalition of Native Claims. In honor of our 40th anniversary, we will be celebrating with a fundraiser gala at the Ko‘olau Ballrooms on Saturday, October 4, 2014.

Please be on the look out for more information as we get closer to the date, but we are currently seeking event sponsors and silent auction donations. If you’d like to help, please email info@nhlchi.org or call (808) 521-2302! All proceeds benefit the Native Hawaiian Legal Corporation, a 501(c)(3) nonprofit organization. Mahalo nui for your support!

Board of Directors

Paul Nāhoa Lucas, Esq., President
Keith Lee, Esq., Vice President
Robert Mere, Secretary
Pua Burgess
Ray Cardani, Esq.
Patris Chuong, Esq.

The Honorable Walter Heen
Mike Hodson
Joe Murakami
Stacy Rezentes, Esq.
Teresa Tico, Esq.

Contact us at 808-521-2302 • www.nhlchi.org • like us on Facebook
In memoriam

Delbert Kaʻahanui Wainekonka
1944 - 2014

On January 9, 2014, one of our beloved clients, Delbert Kaʻahanui Wainekonka, passed away. He was 69 years old.

Delbert grew up in Mayor Wright Housing Project and in Wai'anae, Waimanalo, and Hawai'i island. In 1971 he was sentenced to life in prison without the possibility of parole for participating in a robbery in which a man was killed, even though he did not kill the man. While at the Oʻahu Community Correctional Center, Delbert became a vocal and highly visible advocate for prison reform and was promptly labeled as a troublemaker and shipped off to Folsom Prison in California under an interstate compact. Delbert challenged this transfer saying it amounted to "banishment" and took his case all the way to the United States Supreme Court. He lost in a 6-3 decision, but prison officials refused to grant him compassionate release. One of his long-time attorneys, Bob Merce, who is also a NHLC board member, approached NHLC for help. We agreed and succeeded in getting Delbert a hearing before the Hawaiʻi Paroling Authority. On October 28, 2011, the Authority voted unanimously to grant Delbert compassionate release and later that day he walked out of Hālawa Correctional Center as a free man after 41 years in prison. During his 27 months of freedom Delbert was able to reconcile with his family, marry his childhood sweetheart, and walk on the land and beaches he loved.

Delbert’s lifelong dream was to create a home on a place of refuge, where the inmates, the sick, dying, and those in trouble could find peace, love, and compassion. His wife, Lillian, recently said, “We, as the people of Hawai‘i, have a responsibility to mālama this dream for a better future for our families.”

Our heartfelt sympathy goes out to Delbert’s wife Lillian, his ‘ohana, and his many friends. We will miss him.

A few years ago, the Native Hawaiian Legal Corporation filed an amicus brief on behalf of Michelle Tomas to support the Land Use Commission’s refusal to re-classify a 217 acre parcel at ‘O‘oma from conservation to urban. The court upheld the LUC decision. On December 31, 2013, the County of Hawai‘i bought the 217 acres for $6.2 million, preserving the land in perpetuity. ‘O‘oma is nestled between the Natural Energy Laboratory of Hawai‘i Authority (NELHA) and Kohanaiki on Hawai‘i island. The land includes two burial sites, natural trails and a number of other significant archaeological features. The area’s cultural significance is highlighted by the fact that Kaumahana III was raised there.

Michael Tomas, our client’s husband, testified, “It’s the place we love. You know why, you turn around, you no can see the highway, no can see the cars. I guess not remember, but in your heart you feel you remember how our people went‘ live on these lands. They grow up on these lands. No take ‘em away.”

Our client, Michelle Tomas, testified, “This is what we see from the ocean. This is Hualalai. . . This is what we see when we go down to the ocean and we have fun with our kids, our families, our friends. That’s going to be blocked. The view is going to be blocked.”

In opposing the development proposed for the area, she said, “This is going to impact all of us. Yeah, say you guys, you know, reclusively, they build all their buildings, all that land is gone, gone all the caver use there, the living caves, the dwelling caves. It’s gonna be bulldozed. It’s gonna be mass ex. It’s gone.”

Today, it’s saved.

Appeal Win Reaffirms Legal Burden on Adverse Possession

Ka‘upulehu Land LLC v. Heirs of Pahukula

In early 2008, Ka‘upulehu Land LLC filed a quiet title action to claim ownership of an almost twelve acre parcel of land at Mahukona on Hawai‘i island. NHLC represented Na‘i Hoku Hawai‘i defendants who also claim to own part of the same land. In 2010, the circuit court granted summary judgment for Ka‘upulehu Land LLC, concluding that it owned the entire parcel through adverse possession.

The ICA ruled that: (1) If a co-tenancy exists, Ka‘upulehu Land had to show it acted in good faith toward its cotenants to win on adverse possession claim; (2) Breaks in chains of record title are reason to suspect one or more cotenancies; and (3) Bad faith may be inferred from evidence that the co-tenant in possession should have known that a co-tenancy existed.

In this instance, the ICA ruled that it was premature to grant Ka‘upulehu Land LLC’s adverse possession claim. Instead, the ICA reaffirmed the high legal burden: the title plaintiff must meet to prevail on summary judgment, noting that the absence of documentary proof of a recorded conveyance by the true owner prior to death during his probate, together with the recorded conveyances of interests in the same property after his death by his heirs, left the lower court with genuine issues of material fact regarding the existence of a co-tenancy. “We cannot conclude that Ka‘upulehu Land has a right to judgment with such clarity as to leave no room for controversy, nor has Ka‘upulehu Land established affirmatively that Defendants cannot prevail under any circumstances.” In January 2014, the ICA issued its final judgment vacating the 2010 circuit court decision and remanded the case back to the circuit court. Ka‘upulehu Land LLC applied for an appeal to the Hawai‘i Supreme Court and the case was accepted for review on March 27, 2014.

‘O‘oma Land Preserved

In 1944, Mayor Wright Housing Project was dedicated. He was 69 years old.

In December 2013, the County of Hawai‘i bought a 217 acre parcel at ‘O‘oma from conservation to urban. The court upheld the LUC decision. On December 31, 2013, the County of Hawai‘i bought the 217 acres for $6.2 million, preserving the land in perpetuity. ‘O‘oma is nestled between the Natural Energy Laboratory of Hawai‘i Authority (NELHA) and Kohanaiki on Hawai‘i island. NHLC appealed.

The ICA ruled that: (1) If a co-tenancy exists, Ka‘upulehu Land had to show it acted in good faith toward its cotenants to win on its adverse possession claim; (2) Breaks in chains of record title are reason to suspect one or more cotenancies; and (3) Bad faith may be inferred from evidence that the co-tenant in possession should have known that a co-tenancy existed.

In this instance, the ICA ruled that it was premature to grant Ka‘upulehu Land LLC’s adverse possession claim. Instead, the ICA reaffirmed the high legal burden: the title plaintiff must meet to prevail on summary judgment, noting that the absence of documentary proof of a recorded conveyance by the true owner prior to death during his probate, together with the recorded conveyances of interests in the same property after his death by his heirs, left the lower court with genuine issues of material fact regarding the existence of a co-tenancy. “We cannot conclude that Ka‘upulehu Land has a right to judgment with such clarity as to leave no room for controversy, nor has Ka‘upulehu Land established affirmatively that Defendants cannot prevail under any circumstances.” In January 2014, the ICA issued its final judgment vacating the 2010 circuit court decision and remanded the case back to the circuit court. Ka‘upulehu Land LLC applied for an appeal to the Hawai‘i Supreme Court and the case was accepted for review on March 27, 2014.

New NHLC Board Member

Mike Hodson

In late 2013, NHLC proudly welcomed Mike Hodson to join our Board of Directors. Mike is a former Hawai‘i County police officer and a current DHHL lessee on Hawai‘i island. His family owns and operates Wow Farm in Waimae growing amazing vine-ripened tomatoes. Visit the Wow Farm website at www.wowfarms.com to learn more about the great work that Mike and his ‘ohana are doing! Mahalo Mike for guiding NHLC into 2014!

New NHLC Staff Attorney

Summer Sylva

Summer Sylva joined the NHLC ‘ohana as a staff attorney earlier this year. She previously worked for NHLC as a summer law clerk in 2005, an experience that motivated her efforts to organize Cornell University’s first native water law and public policy symposium. Her published note chronicling Nii Moku Aupuali O Ko‘olau Hui’s legal struggle to access traditional sources of water to sustain taro cultivation and to perpetuate their traditional way of life was inspired by NHLC’s commitment to this important work. Before returning to NHLC in 2014, she worked at private law firms in both New York and Honolulu.

* Note: While you may make an anonymous request for government records, due to privacy
In memoriam  

>>>

Delbert Kaʻahanui Wakinékoná  
1944 - 2014

On January 9, 2014, one of our beloved clients, Delbert Kaʻahanui Wakinékoná, passed away. He was 69 years old.

Delbert grew up in Mayar Wright Housing Project and in Waiau, Waimanalo, and Hawai‘i island. In 1971 he was sentenced to life in prison without the possibility of parole for participating in a robbery in which a man was killed, even though he did not kill the man. While at the O‘ahu Community Correctional Center, Delbert became a vocal and highly visible advocate for prison reform and was promptly labeled as a troublemaker and shipped off to Folsom Prison in California under an early parole transfer saying it amounted to “banishment” and walk on the land and beaches he loved.

Delbert’s lifelong dream was to create a homesteader corner at ‘O’oma. Our client, Michelle Tomas, testified, “This is what we see when we go down to the ocean and we have fun with our kids, our families, our friends. That’s going to be blocked. The view is going to be blocked.”

In opposing the development proposed for the area, she said, “This is going to impact all of us. Yeah, say you guys, you know, reclassify, they build all their buildings, all this land is gone, gone all the caver use. You know, but in your heart you feel you remember how our people wen’ live on these kids, our families, our friends. That’s going to be blocked.”

In late 2013, NHLC proudly welcomed Mike Hodson as a staff attorney earlier this year. She presented eighteen Native Hawaiian defendants who also claim to own part of the same land. In 2010, the circuit court granted summary judgment for Ka‘upulehu Land LLC, concluding that it owned the entire parcel through adverse possession. That court presumed, without documentary evidence, that a verbal mention of an unrecorded prior sale of the land during a probate of the true owner’s estate was enough to deprive our clients of any co-tenancy in the parcel. NHLC appealed.

In December, the Hawai‘i Intermediate Court of Appeals (ICA) agreed with NHLC and vacated the circuit court’s summary judgment. The ICA ruled that: (1) If a co-tenancy exists, Ka‘upulehu Land had to show it acted in good faith toward its cotenants to win on its adverse possession claim; (2) Breaks in chains of record title are reason to suspect one or more cotenancies; and (3) Bad faith may be inferred from evidence that the co-tenant in possession should have known that a co-tenancy existed.

In this instance, the ICA ruled that it was premature to grant Ka‘upulehu Land LLC’s adverse possession claim. Instead, the ICA reaffirmed the high legal burden the title plaintiff must meet to prevail on summary judgment, noting that the absence of documentary proof of a recorded conveyance by the true owner prior to his death during his probate, together with the recorded conveyances of interest in the same property after his death by his heirs, left the lower court with genuine issues of material fact regarding the existence of a co-tenancy: “We cannot conclude that Ka‘upulehu Land has a right to judgment with such clarity as to leave no room for controversy, nor has Ka‘upulehu Land established affirmatively that Defendants cannot prevail under any circumstances.”

In January 2014, the ICA issued its final judgment vacating the 2010 circuit court decision and remanded the case back to the circuit court. Ka‘upulehu Land LLC applied for an appeal to the Hawai‘i Supreme Court and the case was accepted for review on March 27, 2014.

New NHLC Board Member

Mike Hodson

In late 2013, NHLC proudly welcomed Mike Hodson to join our Board of Directors. Mike is a former Hawai‘i County police officer and a current DHHL leasee on Hawai‘i island. His family owns and operates Wow Farm in Waimae growing amazing vine-ripened toma-toes. Visit the Wow Farm website at www.wowfarms.com to learn more about the great work that Mike and his ‘ohana are doing! Mahalo Mike for guiding NHLC into 2014!

New NHLC Staff Attorney

Summer Sylva

Summer Sylva joined the NHLC ‘ohana as a staff attorney earlier this year. She previously worked for NHLC as a summer law clerk in 2005, an experience that motivated her efforts to organize Cornell University’s first native water law and public policy symposium. Her published note chronicling Nii Moku ‘Aupuni O Ko‘olau Hu‘u’s legal struggle to access traditional sources of water to sustain tano cultivation and to perpetuate their traditional way of life was inspired by NHLC’s commitment to this important work. Before returning to NHLC in 2014, she worked at private law firms in both New York and Honolulu.

Slow Ripening Fruit  
A few years ago, the Native Hawaiian Legal Corporation filed anamicus brief on behalf of Michelle Tomas to support the Land Use Commission’s refusal to re-classify a 217 acre parcel at ‘O‘oma from conservation to urban. The court upheld the LUC decision. On December 31, 2013, the County of Hawai‘i bought the 217 acres for $6.2 million, preserving the land in perpetuity.

‘O‘oma is nestled between the Natural Energy Laboratory of Hawai‘i Authority (NELHA) and Kohanaiki on Hawai‘i island. It includes two burial sites, historic archaeological features. The area’s cultural archaeological features. The area’s cultural...
Case Flashback - Miloli'i Fishing Village

Litigation Director Alan Murakami recently visited Miloli'i, Hawai'i’s last fishing village. In the early 1990’s, NHLC helped residents fend off the impact the proposed Hawaiian Riviera Resort would have on traditional fishing grounds south of Miloli'i. The Land Use Commission had approved redistricting to allow the resort to go forward, leaving the Miloli'i Fishing Village to fend off the impact the proposed Hawaiian Riviera Resort would have on traditional fishing grounds south of Miloli'i. The Land Use Commission had approved redistricting to allow the resort to go forward, leaving the Miloli'i Fishing Village.

To determine and ultimately mitigate, NHLC appealed to the Third Circuit Court. Judge Kimura reversed the LUC, based on the failure to determine in advance impacts on the fisheries before making any decision. Visit our website, www.nhlchi.org, and Facebook page to see a video of former client and village kupuna, Willie Kaupiko, talk about the benefits that continue to today. See the front page picture for a Miloli'i sunset! •

Mahalo nui for the hospitality Miloli'i! •

Moses K.N. Haia III

Contact us at 808-521-2302 • www.nhlchi.org • like us on Facebook

Native Hawaiian Legal Corporation
1164 Bishop Street, Suite 1205
Honolulu, Hawai'i 96813

The Native Hawaiian Legal Corporation is an Aloha United Way Partner Agency!
Our AUW Designation Number is 72280

From our Executive Director:

On behalf of all of us at the Native Hawaiian Legal Corporation, mahalo nui to you for your support for Native Hawaiian justice. 'A'ole hana nui ke ala 'ia. No task is too big when done together by all. As we celebrate NHLC’s 40th year of service to the people of Hawai‘i, we recommit ourselves to our kupuna to seek and secure justice for the lands, resources, traditions, and customs of Hawai‘i’s indigenous people. Please join us to ensure our continuing capacity to be strong advocates for those in need by making a donation in the enclosed envelope or online at our website, www.nhlchi.org.

Mahalo nui for your support and commitment!

North Shore Lights Out: Celebrating 40 Years of Service to Native Hawaiian Communities

The Native Hawaiian Legal Corporation was incorporated on October 3, 1974 as the Hawaiian Coalition of Native Claims. In honor of our 40th anniversary, we will be celebrating with a fundraiser gala at the Ko‘olau Ballrooms on Saturday, October 4, 2014.

Since our last newsletter, Native Hawaiian Legal Corporation and our clients have celebrated a few victories at the Hawai‘i Supreme Court. Here are highlights from these case victories:

Hall v. DLNR

When Ted Kawahinehelelani Blake sued to protect historic sites in Kīlo‘o on Kaua‘i, eighteen historic sites had already been destroyed—and portions of the walls of the Hapa Trail damaged. Nevertheless, the circuit court ruled that he had sued too soon. NHLC appealed. In December 2010, the Board of Land and Natural Resources voted to grant a permit to build a 142 foot tall building at the summit of Haleakalā—without hearing evidence from opponents of the project. Native Hawaiian Legal Corporation, representing Kilakila ‘O Haleakalā, appealed over the denial of the request for a contested case hearing by Kilakila ‘O Haleakalā. Three years later, the Hawai‘i Supreme Court made it clear that the requested contested case hearing should have been held before the Board voted on the permit. The decision should put to rest a recent practice of the Board to vote first and then hear evidence afterwards.

Blake v. County of Kaua‘i’s Planning Comm’n

Since our last newsletter, Native Hawaiian Legal Corporation and our clients have celebrated a few victories at the Hawai‘i Supreme Court. Here are highlights from these case victories:

Hall v. DLNR

A year after the Intermediate Court of Appeals concluded that Kawaiaha‘o Church should have undertaken an archaeological survey before starting construction—and disinterring burials—the Hawai‘i Supreme Court agreed. The appeals court had concluded that the State Historic Preservation Division violated its own historic preservation rules.

Kilikila ‘O Haleakalā v. DLNR

In December 2010, the Board of Land and Natural Resources voted to grant a permit to build a 142 foot tall building at the summit of Haleakalā—without hearing evidence from opponents of the project. Native Hawaiian Legal Corporation, representing Kilakila ‘O Haleakalā, appealed over the denial of the request for a contested case hearing by Kilakila ‘O Haleakalā. Three years later, the Hawai‘i Supreme Court made it clear that the requested contested case hearing should have been held before the Board voted on the permit. The decision should put to rest a recent practice of the Board to vote first and then hear evidence afterwards.

Blake v. County of Kaua‘i’s Planning Comm’n

When Ted Kawahinehelelani Blake sued to protect historic sites in Kīlo‘o on Kaua‘i, eighteen historic sites had already been destroyed—and portions of the walls of the Hapa Trail damaged. Nevertheless, the circuit court ruled that he had sued too soon. NHLC appealed. In December 2013, the Hawai‘i Supreme Court reversed the circuit court’s decision, ruling that it could not duck the issue Blake presented. •

Please Save the Date!
Saturday, October 4, 2014

NHLC 40th Anniversary Celebration

The Hawai‘i Supreme Court agreed. The appeals court had concluded that the State Historic Preservation Division violated its own historic preservation rules.

Kilikila ‘O Haleakalā v. DLNR

In December 2010, the Board of Land and Natural Resources voted to grant a permit to build a 142 foot tall building at the summit of Haleakalā—without hearing evidence from opponents of the project. Native Hawaiian Legal Corporation, representing Kilakila ‘O Haleakalā, appealed over the denial of the request for a contested case hearing by Kilakila ‘O Haleakalā. Three years later, the Hawai‘i Supreme Court made it clear that the requested contested case hearing should have been held before the Board voted on the permit. The decision should put to rest a recent practice of the Board to vote first and then hear evidence afterwards.

Blake v. County of Kaua‘i’s Planning Comm’n

When Ted Kawahinehelelani Blake sued to protect historic sites in Kīlo‘o on Kaua‘i, eighteen historic sites had already been destroyed—and portions of the walls of the Hapa Trail damaged. Nevertheless, the circuit court ruled that he had sued too soon. NHLC appealed. In December 2013, the Hawai‘i Supreme Court reversed the circuit court’s decision, ruling that it could not duck the issue Blake presented. •

Please Save the Date!
Saturday, October 4, 2014

NHLC 40th Anniversary Celebration

The Native Hawaiian Legal Corporation was incorporated on October 3, 1974 as the Hawai-ian Coalition of Native Claims. In honor of our 40th anniversary, we will be celebrating with a fundraiser gala at the Ko‘olau Ballrooms on Saturday, October 4, 2014.

Please be on the look out for more information as we get closer to the date, but we are currently seeking event sponsors and silent auction donations. If you’d like to help, please email info@nhlchi.org or call (808) 521-2302! •

All proceeds benefit the Native Hawaiian Legal Corporation, a 501(c)(3) nonprofit organization. Mahalo nui for your support! •

From our Executive Director:
On behalf of all of us at the Native Hawaiian Legal Corporation, mahalo nui to you for your support for Native Hawaiian justice. ‘A’ole hana nui ke ala ‘ia. No task is too big when done together by all. As we celebrate NHLC’s 40th year of service to the people of Hawai‘i, we recommit ourselves to our kupuna to seek and secure justice for the lands, resources, traditions, and customs of Hawai‘i’s indigenous people. Please join us to ensure our continuing capacity to be strong advocates for those in need by making a donation in the enclosed envelope or online at our website, www.nhlchi.org.

Mahalo nui for your support and commitment!

Contact us at 808-521-2302 • www.nhlchi.org • like us on Facebook

Board of Directors
Paul Nāhoa Lucas, Esq., President
Paul Nāhoa Lucas, Esq., President
Paul Rezentes, Esq.
Robert Mercia, Secretary
Mike Hodson
Jon Matsuoka
Stacy Rezentes, Esq.
Teresa Tico, Esq.