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News and Updates from the Native Hawaiian Legal Corporation

ke ala pono



Hawaiian Home Lands >>>

Using DNA Evidence to Establish Paternity

Pang Kee v. Masagatani

In August 2012, NHLC filed a lawsuit on behalf of Leighton Niakala Pang Kee, who unsuccessfully applied for a Department of Hawaiian Home Lands (DHHL) lease using DNA test results to prove his relationship to his biological father, who is not listed on his birth certificate.

Pang Kee was born out of wedlock to parents who were each at least 50 percent Native Hawaiian. His mother is at least 81.25 percent Native Hawaiian. He was adopted by his step-father, and his original birth certificate doesn't identify his birth father, who died in 1983.

Deemed ineligible for Hawaiian Home Lands benefits in 2000, Pang Kee tracked down his father's biological brother—a current homesteader in Nānākuli. A DNA test showed a 96.35 percent probability that Pang Kee and his uncle were related.

In 2012, Pang Kee applied for a DHHL lease and submitted his DNA results as evidence to prove his paternity. Denying his application, DHHL informed Pang Kee that it lacks a

SEE PANG KEE, PAGE 4

State Must Fund DHHL

Nelson v. Hawaiian Homes Commission

In 1978, Hawai'i voters ratified a Hawai'i Constitution amendment, which mandates that the State provide the Department of Hawaiian Home Lands (DHHL) "sufficient sums" to pay for homestead lot development, homestead loan funds, rehabilitation programs to improve the lives of homesteaders, and the administrative and operating budget of DHHL.

Despite this clear intention, the State failed to comply. Instead the Legislature called on DHHL to rely on commercial leasing to raise additional revenue.

With state funding evaporating, the waiting list for homestead land has more than quadrupled since the amendment passed in 1978 to over 25,000 today. Some of these applicants have waited 30 years or more, and many have died waiting for their awards.

Faced with this intractable state position, on October 19, 2007, five eligible native Hawaiian beneficiaries under the Hawaiian Homes Commission Act (HHCA) filed suit to seek declarations that the state breached its constitutional duty to adequately fund DHHL and its programs and forcing DHHL to lease its lands for revenue generation. It also targeted DHHL's failure to seek that

state funding as a breach of trust.

During the course of litigation, the State completely zeroed out appropriations to DHHL, requiring it to raise all of its reve-

nues by leasing out homestead lands for commercial purposes and using trust assets.

In May 2012, the Hawai'i Supreme Court held that the State could be sued for failing to provide suffi-

cient funds for DHHL's administrative and operating budget. The Court agreed that "the State has failed, by any reasonable measure, under the undisputed facts, to provide sufficient funding to DHHL." As a result, the Abercrombie administration has boosted its general fund budget requests for the next two fiscal years from \$0 per year to over \$22 million per year. The trial court will have to address any lingering issues. •

"the State has failed, by any reasonable measure, under the undisputed facts, to provide sufficient funding to DHHL."

Court Orders Protection of Iwi at Kawaiaha'o Church

"The public has a vital interest in the proper disposition of the bodies of its deceased persons, which is in the nature of a sacred trust for the benefit of all."

- 1990 Haw. Sess. Laws Act 306 § 1



Hall v. DLNR

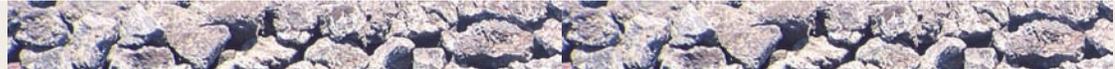
Kawaiaha'o Church proposed to build a multipurpose center on its grounds, an area that was once used as a cemetery. Even though Kawaiaha'o Church knew that it was likely that there were still burials there, it sought the State His-

toric Preservation Division's (SHPD) assistance in avoiding preparation of an archaeological inventory survey (AIS). SHPD complied. Administrative rules require that an AIS be prepared before a developer obtains a land use

approval. An AIS is the key tool used by citizens, the island burial councils, and government agencies to identify and protect burial sites. Soon after construction commenced, the Church uncovered 69 sets of iwi (Native Hawaiian burials).



Dana Naone Hall, whose family members were buried in the area, sued in August 2009. Over the next three years, six hundred burials were uncovered. Her requests for injunctive relief were denied until the Intermediate Court of Appeals granted one in September 2012 and then issued its opinion in December 2012 holding that an AIS should have been prepared. The fate of the six hundred burials that were disinterred still must be resolved. •



Modern Hawai'i

Native Hawaiian traditional and cultural practices are often compromised or challenged by modern institutions.

In the last decade, NHLC has expanded its services to address contemporary challenges to the traditional Native Hawaiian way of life within Western institutions like prisons and hospitals.

For instance, NHLC challenged the failure of hospitals to recognize the cultural significance of 'iewe (placentas) in Native Hawaiian traditional and customary practice. Classified as toxic waste, 'iewe were destroyed by hospitals. This policy and practice was odious to the Native Hawaiian tradition of burying the placenta in a place of significance.

NHLC has also worked to secure the rights of Native Hawaiians serving their sentences in prisons on the continent to practice their indigenous religion. Our most recent prison case is *Davis v. Abercrombie*. •

Native Hawaiian Religious Practices in Incarceration



In 2005, NHLC, with the assistance of the Native American Rights Fund, filed its first lawsuit against the State of Hawai'i and its contractor, Corrections Corporation of America (CCA) to guarantee the rights of Native Hawaiian prisoners incarcerated in Oklahoma to observe Makahiki. That lawsuit resulted in a settlement that CCA now disavows.

Davis v. Abercrombie

NHLC was compelled to sue CCA and the State of Hawai'i again in 2011. NHLC represents eight Native Hawaiian religious practitioners who are presently serving prison sentences in for-profit prisons located in Eloy, Arizona, which are owned by the Corrections Corporation of America — the Saguaro Correctional Facility and a neighboring prison, the Red Rock Correctional Facility.

NHLC plans to seek court approval to treat the case as a class action so that the rights of all Native Hawaiians in all CCA-operated facilities will be protected.

NHLC is seeking to protect the rights of Hawai'i prisoners to:

- Meet as a group on a daily basis to conduct their religious protocol;
- Have access to an outside area to conduct their religious protocol;
- Have regular and frequent access to a kahu or spiritual leader;
- Have access to group and personal sacred items;
- Participate in Makahiki ceremonies; &
- Have access to a kahu and sacred items if they are placed in administrative segregation. •

Honolulu Rail Project Must Complete Full AIS

The Honolulu rail project involves the construction of a 20-mile fixed guideway rail system from West O'ahu to Ala Moana Center. To fast-track the rail project, the City and State agreed to postpone completion of an AIS for the whole project even though they acknowledged that they were likely to uncover burials in Kaka'ako.

Kaleikini v. Yoshioka

On January 31, 2011, Paulette Ka'anohiokalani Kaleikini, a recognized cultural descendant to the iwi in Kaka'ako, filed a six-count complaint for declaratory and injunctive relief to challenge the City's refusal to identify burial sites within the transit corridor. Soon after the complaint was filed, the trial court granted the City's motion for summary judgment. Kaleikini appealed.



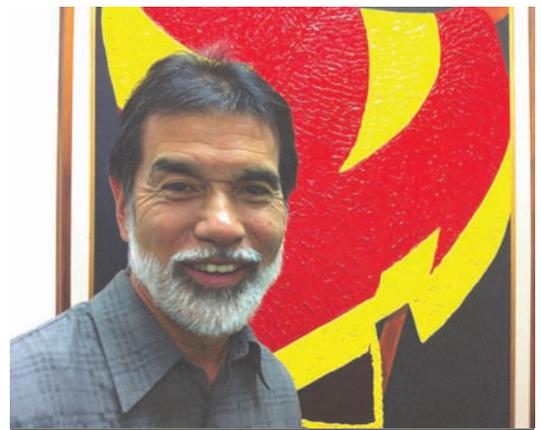
On August 24, 2012, a unanimous Hawai'i Supreme Court ruled that both the City and State Historic Preservation Division (SHPD) violated the law in approving the rail project before completing an archaeological inventory survey (AIS) for the entire transit route. The Court recognized that the historic review process is a sequential one and therefore requires that an AIS be completed for the entire project area before approval of a project.

According to the Court, phasing the AISs subsequent to approval of the project is impermissible because the rules require that historic properties in the "project area" be identified prior to approval. The broad definition of the term "project area" encompasses the entire rail project corridor, and the historic preservation review process was therefore required to identify significant historic properties in the entire rail project corridor prior to the SHPD

giving its concurrence.

Thus, "[b]ecause an AIS was not completed before the SHPD gave its concurrence in the rail project, the SHPD's concurrence in and the City's commencement of the project were improper."

The City has halted work on the project pending completion of an AIS and review of its initial decision authorizing the project. As of time of printing, the City has yet to complete its final AIS. •



Alan Murakami celebrates 30 years!

Litigation Director Alan Murakami celebrates 30 years of service at NHLC on October 1, 2013! We will recognize Alan's commitment to the protection of Native Hawaiian rights at a pau hana event. We hope you will join us!

Email info@nhlchi.org for more information.

Native Hawaiian Advocate Awardees

For the past nine years at the Council for Native Hawaiian Advancement's Annual Convention, NHLC has presented the Native Hawaiian Advocate Award recognizing outstanding individuals with a personal contribution to Native Hawaiian rights and leadership. In commemoration of what will be the tenth year of this award, we recognize our esteemed list of past awardees:

- * 2012 Edward Wendt
- * 2011 Dana Naone Hall
- * 2010 Beatrice Kekahuna and Marjorie Wallett
- * 2009 James Akiona, Sr.
- * 2008 Puhipau & Joan Lander
- * 2007 Eric Enos
- * 2006 Pele Hanoa and Sonny Kaniho
- * 2005 Kina'u Boyd Kamali'i and Adelaide "Frenchy" DeSoto
- * 2004 Agnes K. Cope



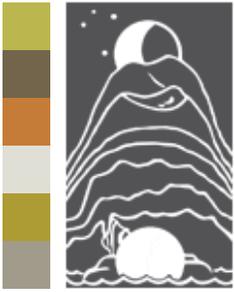
homesteader corner >>>

> Have you designated a successor to your lease?



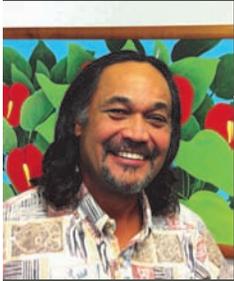
- Check with DHHL that your "Designation of Successor" form is on file to ensure that your lease (or net proceeds) will go to your chosen successor after your passing.
- Submit supporting documents to prove your successor's necessary blood quantum.
- Remember to get all of your documents file-stamped.
- Request a copy of all documents (with the file-stamp) for your records.

This year's Annual Native Hawaiian Convention will be September 3 - 5, 2013, at the Hawai'i Convention Center, for more information, email info@hawaiiancouncil.org.



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

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From our Executive Director. . .

On behalf of the board of directors and staff of the Native Hawaiian Legal Corporation, mahalo nui for your continued support. Your belief in our work confirms for us the value and authenticity of our core mission — the protection, preservation, and perpetuation of the Native Hawaiian identity. As evidenced by the case summaries provided to you in this newsletter, your support affects life in Hawai'i in very real and important ways. Your active and overwhelming support inspires us to holomua with the knowledge that we do so with you at our side. Again, mahalo.

Moses K.N. Haia III

PANG KEE, FROM PAGE 1

policy about whether to accept DNA results as genealogical evidence for the purpose of qualifying applications for a DHHL lease.

This case alleges a violation of the Hawaiian Homes Commission Act, breach of trust, and violation of due process. It also compels DHHL to adopt more specific rules on what types of evidence applicants must provide to qualify for Hawaiian Home Lands benefits.

Over the years, NHLC has had a number of clients who, like Pang Kee, are unable to demonstrate biological links to their fathers

due to, among other things, illegitimacy, adoption, or the non-existence or incompleteness of vital records. These record gaps pose problems for those applying for DHHL leases as well as other Native Hawaiian programs. In February 2013, NHLC filed a lawsuit on behalf of Pang Kee, and two other Hawaiians, to challenge the Department of Health's refusal—despite overwhelming evidence—to amend their personal records to accurately reflect their natural fathers and ultimately, their Hawaiian genealogy. •



save the date! >>>

November 23, 2013

NHLC will hold its 3rd Annual Movie Fundraiser at the Mamiya Theatre on the St. Louis / Chaminade campus. We hope you will join us on the evening of November 23, 2013!

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