

Annex 1

Napoleon Ohana
Mail Acceptor: 1568 Miller St.#1
Honolulu, Oahu

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2013 FEB -8 PM 1:22

In the Circuit Court of the First Circuit

State of Hawaii

J. KUBO
CLERK

HOVEY B. LAMBERT, TRUSTEE) Civil No. 09-1-2529-10 RAN
Under the HOVEY B. LAMBERT TRUST)
an unrecorded Revocable living Trust) Affidavit of Maltbie Napoleon,
agreement dated April 5, 2002, et.al.,) Exhibit "A". Certificate of Service.
)
vs.)
)
WAHA (K), et.al.,)
)
)

Affidavit of Maltbie Napoleon, Exhibit "A"

I am competent and have first hand knowledge of the facts listed herein; On or about September 1, 2010, I was notified by public advertisement of partition proceedings instituted by PHILIP J. LEAS, W. KEONI SHULTZ and LORI K. AMANO, Attorney's for Plaintiff, HOVEY B. LAMBERT, trustee under the Hovey B. Lambert Trust, an unrecorded Revocable Living Trust Agreement dated April 5, 2002, in the Circuit Court of the First Circuit, Island of Oahu, Civil No. 09-1-2529-10, before Judge RHONDA A. NISHIMURA, (Partition). As an heir of Charles Kanaina, Hawaiian subject, third party beneficiary under the Lili'uokalani assignment, I have a vested undivided 1/3 interest in this property.

1. On September 3, 2010, I filed an Answer for hearing on September 7, 2010.
2. Pursuant to an Order of Default of Defendants after service by publication and posting, I filed an Amendment to Answer on October 19, 2010.

RECEIVED
FEB -8 2013
LAW OFFICES OF
GARY Y. SHIGEMURA

Recd 2/8/13
Catherine Schaller
By: [Signature]

3. On January 3, 2011, plaintiff's moved for summary judgment regarding partition and title.
4. On February 22, 2011, I filed an opposition to plaintiff's motion for summary judgment. At hearing, HOVEY B. LAMBERT'S, attorney's, failed to respond to my amended Answer, thereby, agreed with my allegations, the Plaintiff's admit (1) I am an heir and native of the Hawaiian Kingdom, (2) these proceedings continue to injure and in violation of Hawaiian law, (3) Plaintiff's attorney's are not competent attorney's under Hawaiian law, (4) the Circuit Court, State of Hawaii, is not competent tribunal lawfully constituted under Hawaiian law, (5) Plaintiff's use of Circuit Court to claim title/administration to land is a violation of Hawaiian law, (6) Plaintiff's claim to title is a violation of my civil right's under the Lili'uokalani assignment, (7) the continuity of Hawaiian independence under international law.
5. On June 20, 2011, Judge RHONDA A. NISHIMURA granted plaintiff's motion for summary judgment.
6. On December 20, 2011, I filed a memorandum in opposition to the order granting Plaintiff's motion for summary judgment. Plaintiff's failure to respond admits that (1) the order is misleading and in violation of the Lili'uokalnai assignment, (2) the order denies my civil right to a fair and regular trial as a third pary beneficiary under the Lili'uokalani assignment, (3) Plaintiff cannot claim title as the property is open-bonded probate estate, (4) Plaintiff's admit title to the property is defective as the freehold estate of inheritance is vested in J. Lua Kahi.
7. On December 27, 2011, I filed an opposition to plaintiff's award of costs.

8. On June 14, 2012, I filed a notice of appeal and motion for leave to proceed in forma pauperis. My notice and motion was denied.
9. On July 27, 2012, I filed a denial of jurisdiction due to the usurpation of the court.
10. On Aug 3, 2012, I filed a second denial of jurisdiction due to the usurpation of the court.
11. On October 30, 2012, my Protest and Demand letter was received by Adm. Samuel J. Locklear III, USN, commander of the offending forces, informing him of the violations of international law in this case, a certified copy attached as Exhibit "A".
12. On Dec 10, 2012, I filed a motion to vacate, set-aside and/or reconsider the order of Oct 25, 2012, granting Plaintiff's motion to allow overbidding, to confirm sale, to account for direct reimbursement of expenses and attorney's fees and to disburse net proceeds, pursuant to the *Lili'uokalani assignment* and *Restoration agreement*, or in the alternative to move the Court to Dismiss Plaintiff's action. Hearing set for Jan 23, 2013.
13. On Jan 23, 2013, at hearing, I argued, (a) Plaintiff's opposition is fundamentally flawed, in light of the fact of the current U.S. occupation of Hawaii, the court is bound by treaty, possessing a *conditional* grant of territorial jurisdiction from Queen Lili'uokalani on January 17, 1893 under the *Lili'uokalani Assignment*, which is the administration and enforcement of Hawaiian Kingdom law until the Hawaiian Kingdom government is restored in accordance with the *Restoration Agreement*, (b) As such, U.S. laws are not only limited to U.S. territory but stand in direct violation of the *Lili'uokalani assignment* and *Restoration agreement*, the

1907 Hague Convention and 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV and therefore the Court's order of Oct 25, 2012, is construed as a grave breach of international law and therefore establishes a valid ground for reconsideration. Therefore, I request my motion be granted or move for motion to dismiss. Judge Nishimura denied my motion without cause.

14. After hearing I requested an audience with Judge Nishimura to present my Protest and Demand letter to Adm. Samuel J. Locklear III, USN, whereby the balif Kyleih F.K. Nakasone, stated I could not see her without the parties present. I then suggested, that, Plaintiff's attorney, Keoni Schultz accompany me but he stated he could not. As such, I shall enter the letter on the record by affidavit.

15. I believe as an injured belligerent, section 495 of the Army Field Manuel 27-10, provides remedies of injured belligerents. In the event of violation of the law of war, the injured party may legally resort to remedial action of the following types:

- a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent.
- b.* Protest and demand for compensation and/or punishment of the individual offenders. Such communications may be sent through the protecting, a humanitarian organization performing the duties of a protecting power, or a neutral state, or by parlementaire direct to the commander of the offending forces. As such, on October 30, 2012, my Protest and Demand letter was received by Adm. Samuel J. Locklear III, USN, commander of the offending forces, a certified copy attached as Exhibit "A".

I, Maltbie Napoleon declare under penalty of law to be true and correct to the best of my knowledge and belief. Executed on this ____ day of February, 2013.

Maltbie Napoleon

Subscribed and sworn to before me
this ____ day of February, 2013.

Notary Public, State of Hawaii
My commission expires:

Exhibit “A”

Maltbie Kame'eiamoku Napoleon
Mail Acceptor: 1568 Miller St. #1
Honolulu, Oahu
October 26, 2012

ADMIRAL SAMUEL J. LOCKLEAR III, USN
HQ USPACOM
Attn JOO
Box 64028
Camp H.M. Smith, HI 96861-4031

Re: VIOLATIONS OF INTERNATIONAL LAW: PROTEST AND DEMAND
Alleged War Criminal: Judge RHONDA A. NISHIMURA
War Crime Victim: Maltbie Napoleon

Dear ADMIRAL SAMUEL J. LOCKLEAR III, USN:

**NOTICE REQUIRED BY SECTION 495(b), SECTION I—REMEDIES
AND REPRISALS, CHAPTER 8—REMEDIES FOR VIOLATION OF
INTERNATIONAL LAW; DEPARTMENT OF THE
ARMY FIELD MANUAL 27-10**

The following information is provided to you as required by Section 495(b), Department of the Army Field Manual 27-10; Hague Convention No. IV, *Respecting the Laws and Customs of War on Land*, 18 October 1907; and the Geneva Convention *Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949.

Section 495 (FM 27-10). Remedies of Injured Belligerent.

In the event of violation of the law of war, the injured party may legally resort to remedial action of the following types:

- a. Publication of the facts, with a view to influencing public opinion against the offending belligerent.
- b. Protest and demand for compensation and/or punishment of the individual offenders. Such communications may be sent through the protecting, a humanitarian organization performing the duties of a protecting power, or a neutral state, or by parlementaire direct to the commander of the offending forces. Article 3, [Hague Convention] IV, provides in this respect:

A belligerent party, which violates the provisions of the said Regulations, shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Admiral Samuel J. Locklear III, USN
HQ USPACOM
Attn JOO
October 26, 2012
Re: Violations of International Law: Protest & Demand
Page Two

Section 502 (FM 27-10). Grave Breaches of the Geneva Conventions of 1949 as War Crimes. The Geneva Conventions of 1949 define the following acts as “grave breaches,” if committed against persons or property protected by the Conventions: *c. GC [Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949] Grave breaches to which the preceding Article relates shall be those involving...willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention...(GC, art. 147.)*

I represent myself and have been deprived of a fair and regular trial in a Civil proceedings in the Circuit Court of the First Circuit, State of Hawai‘i. I am an heir of William Charles Lunalilo and Hawaiian subject, a third party beneficiary under the Lili‘uokalani assignment and Restoration agreement.

Under the *Supremacy clause* (Art. VI, clause 2, U.S. Const.), “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.” According to the U.S. Supreme Court in *U.S. v. Belmont*, 301 U.S. 324 (1937), *U.S. v. Pink*, 315 U.S. 203 (1942), and *American Insurance Association v. Garamendi*, 539 U.S. 396, (2003), sole-executive agreements are treaties. In this case I have raised jurisdictional arguments centered on two sole executive agreements entered into in 1893 between President Grover Cleveland, representing the United States of America, and Queen Lili‘uokalani, representing the Hawaiian Kingdom. The first sole executive agreement, called the *Lili‘uokalani assignment*, is a temporary and conditional assignment by the Queen of her executive power under threat of war, and binds the President and his successors in office to administer Hawaiian law. The second sole executive agreement, called the *Agreement of restoration*, binds the President and his successors in office to restore the Hawaiian government, return the executive power to the Queen or her successor in office, and thereafter for the Queen or successor in office to grant amnesty to certain insurgents. The Congress politically prevented President Cleveland from using force to carry into effect these international agreements.

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (30 U.S. Stat. 750) as a war measure. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War. The occupation was justified as a military necessity in order to reinforce and supply the troops

Admiral Samuel J. Locklear III, USN
HQ USPACOM
Attn JOO
October 26, 2012
Re: Violations of International Law: Protest & Demand
Page Three

that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898 (30 U.S. Stat. 1754), U.S. troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law.

Article 6, 1863 Lieber Code, regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom. Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (36 U.S. Stat. 2227). Article 43 of the 1907 Hague Convention, IV, reinforces the 1893 *Lili'uokalani assignment* that mandates the President to administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1849, the United States signed and ratified the (IV) *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (6 U.S.T. 3516, T.I.A.S No. 3365, 75 U.N.T.S. 287). In July 1956, the U.S. Department of the Army published Field Manual 27-10—The Law of Land Warfare.

Furthering the illegal occupation, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900 (31 U.S. Stat. 141); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union* (73 U.S. Stat. 4). These laws, which include the 1898 joint resolution of annexation, have no extraterritorial effect and stand in direct violation of the *Lili'uokalani assignment* and *Agreement restoration*, being international compacts, the 1907 Hague Convention, IV, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV.

Section 509 (FM 27-10). Defense of Superior Orders

a. The fact that the law of war has been violated pursuant to an order of a superior authority, whether military or civil, does not deprive the act in question of its character of a war crime, nor does it constitute a defense in the trial of an accused individual, unless he did not know and could not reasonably have been expected to know that the act ordered was unlawful. In all cases where the order is held not to constitute a defense to an allegation of war crime, the fact that the individual was acting pursuant to orders maybe considered in mitigation of punishment.

Section 510 (FM 27-10). Government Officials

The fact that a person who committed an act which constitutes a war crime acted as the head of a State or as a

Admiral Samuel J. Locklear III, USN
HQ USPACOM
Attn JOO
October 26, 2012
Re: Violations of International Law: Protest & Demand
Page Four

responsible government official does not relieve him from responsibility for his act.

As the Commander of the U.S. Pacific Command, your office is the direct Admiral Samuel J. Locklear III, USN extension of the United States President in the Hawaiian Islands through the Secretary of Defense. As the Hawaiian Kingdom continues to remain an independent and sovereign State, the *Lili'uokalani assignment* and Article 43 of the 1907 Hague Convention IV mandates your office to administer Hawaiian Kingdom law in accordance with international law and the laws of occupation. The violations of my right to a fair and regular trial are directly attributable to the President's failure, and by extension your office's failure, to comply with the *Lili'uokalani assignment* and Article 43 of the 1907 Hague Convention, IV, which makes this an international matter.

STATEMENT OF FACTS

On or about September 1, 2010, I was notified by public advertisement of partition proceedings instituted by PHILIP J. LEAS, W. KEONI SHULTZ and LORI K. AMANO, Attorney's for Plaintiff, HOVEY B. LAMBERT, trustee under the Hovey B. Lambert Trust, an unrecorded Revocable Living Trust Agreement dated April 5, 2002, in the Circuit Court of the First Circuit, Island of Oahu, Civil No. 09-1-2529-10, before Judge RHONDA A. NISHIMURA, (Partition). As an heir of William Charles Lunalilo and Hawaiian subject, I have a vested undivided 1/3 interest in this property and I notified the court as such.

1. On September 3, 2010, I filed an Answer for hearing on September 7, 2010.
2. Pursuant to an Order of Default of Defendants after service by publication and posting, I filed an Amendment to Answer on October 19, 2010.
3. On January 3, 2011, plaintiff's moved for summary judgment regarding partition and title.
4. On February 22, 2011, I filed an opposition to plaintiff's motion for summary judgment. At hearing, HOVEY B. LAMBERT'S, attorney's, failed to respond to my amended Answer, thereby, agreed with my allegations, the Plaintiff's admit (1) I am an heir and native of the Hawaiian Kingdom, (2) these proceedings continue to injure and in violation of Hawaiian law, (3) Plaintiff's attorney's are not competent attorney's under Hawaiian law, (4) the Circuit Court, State of Hawaii, is not competent tribunal lawfully constituted under Hawaiian law, (5) Plaintiff's use of Circuit Court to claim title/administration to land is a violation of Hawaiian law, (6) Plaintiff's claim to title is a violation of my civil right's

Admiral Samuel J. Locklear III, USN
HQ USPACOM

Attn JOO

October 26, 2012

Re: Violations of International Law: Protest & Demand

Page Five

- under the Lili'uokalani assignment, (7) the continuity of Hawaiian independence under international law.
5. On June 20, 2011, Judge RHONDA A. NISHIMURA granted plaintiff's motion for summary judgment.
 6. On December 20, 2011, I filed a memorandum in opposition to the order granting Plaintiff's motion for summary judgment. Plaintiff's failure to respond admits that (1) the order is misleading and in violation of the Lili'uokalnai assignment, (2) the order denies my civil right to trial as a third party beneficiary under the Lili'uokalani assignment, (3) Plaintiff cannot claim title as the property is open-bonded probate estate, (4) Plaintiff's admit title to the property is defective as the freehold estate of inheritance is vested in J. Lua Kahi.
 7. On December 27, 2011, I filed an opposition to plaintiff's award of costs.
 8. On June 14, 2012, I filed a notice of appeal and motion for leave to proceed in forma pauperis. My notice and motion was denied.
 9. On July 27, 2012, I filed a denial of jurisdiction due to the usurpation of the court.
 10. On Aug 3, 2012, I filed a second denial of jurisdiction due to the usurpation of the court.

I have been deprived of my right to a fair and regular trial by a court that does not have subject matter jurisdiction and stands in direct violation of the 1893 *Lili'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law. An appropriate court with subject matter jurisdiction is an Article II Federal Court, which is a military court established by the President through executive order which would administer the civil and penal laws of the Hawaiian Kingdom under the international laws of occupation. However, Judge RHONDA A. NISHIMURA of the District Court of the First Circuit would have jurisdiction if your office established a military government that utilizes the infrastructure of the State of Hawai'i government to administer Hawaiian Kingdom law.

PROTEST AND DEMAND

In light of the aforementioned, I am formally lodging a protest and demand, that your office:

1. Comply with the 1893 *Lili'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law;
2. Establish a military government, to include tribunals, to administer and enforce the civil and penal laws of the Hawaiian Kingdom pursuant to

Lili'uokalani assignment and Article 43 of the 1907 Hague Convention, IV;
Admiral Samuel J. Locklear III, USN
HQ USPACOM
Attn JOO
October 26, 2012
Re: Violations of International Law: Protest & Demand
Page Six

3. Compensate me for War Crimes committed against me and *restitutio in integrum* of my property that was the subject of the Civil proceedings.

Due to the large volume of pages, I'm attaching a CD that has PDF/WORD files of the present case.

Dr. Keanu Sai gave a presentation of the prolonged occupation of the Hawaiian Islands to the Officer's Corps of the 25th Infantry Division in 2001 at the invitation of Brigadier General James M. Dubik, Commander. Dr. Sai also gave a presentation of the prolonged occupation of the Hawaiian Islands to Colonel James Herring, Staff Judge Advocate for the Army's 8th Theater Sustainment Command and his staff of officers at Wheeler Court House on February 29, 2009.

Dr. Sai also served as lead agent for the *acting* government of the Hawaiian Kingdom in arbitral proceedings at the Permanent Court of Arbitration, The Hague, Netherlands, in *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001), and filed a complaint with the United Nations Security Council on July 5, 2001 regarding the prolonged occupation of the Hawaiian Kingdom. International law journal articles on the international arbitration and the Security Council complaint were published in the *American Journal of International Law*, (95 American Journal of International Law 927-933), and the *Chinese Journal of International Law*, (2(1) Chinese Journal of International Law 655-684).

It is clear that notice, regarding the prolonged U.S. occupation of the Hawaiian Kingdom, has been provided to this office. I now respectfully demand that your office comply with your obligations and provide me with the relief I am entitled to under international law.

Maltbie Kame'eiamoku Napoleon

cc

Certified Mail No. 7007 0710 0001 4974 6120
Return Receipt Requested
BARRACK OBAMA, President
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Certified Mail No. 7007 0710 0001 4974 6144
Return Receipt Requested
LEON PANETTA, Secretary of Defense
U.S. Department of Defense
1400 Defense Pentagon
Washington, D.C. 20301-1400

Certified Mail No. 7007 0710 0001 4974 6106
United Nations Security Council
Via DR. KEANU SAI, Chairman
Acting Council of Regency, Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194

PROOF OF POST AND MAIL VERIFICATION

I, Maltbie Napoleon, over the age of twenty-one years, competent to witness, do say, that, on the 30th day of October, 2012 CE, I did post or cause to be mailed to the above, NOTICE, as required by Section 495(b), Department of the Army Field Manual 27-10; Hague Convention No. IV, *Respecting the Laws and Customs of War on Land*, 18 October 1907; and the Geneva Convention *Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, to the listed parties within the occupied nation of the Hawaiian Kingdom, certified mail, postage prepaid.

Certified Mail No. 7007 0710 0001 4974 5567
Return Receipt Requested
ADMIRAL SAMUEL J. LOCKLEAR III, USN
Attn: JOO
PO Box 64028
Camp H.M. Smith, HI 96861-4031

Certified Mail No. 7007 0710 0001 4974 6144
Return Receipt Requested
LEON PANETTA, Secretary of Defense
U.S. Department of Defense
1400 Defense Pentagon
Washington, D.C. 20301-1400

Certified Mail No. 7007 0710 0001 4974 6120
Return Receipt Requested
BARRACK OBAMA, President
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500

Certified Mail No. 7007 0710 0001 4974 6106
United Nations Security Council
Via DR. KEANU SAI, Chairman
Acting Council of Regency, Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194

Napoleon Ohana
Mail Acceptor: 1568 Miller St.#1
Honolulu, Oahu
Maltbie K. Napoleon

In the Circuit Court of the First Circuit

State of Hawaii

HOVEY B. LAMBERT, TRUSTEE)	Civil No. 09-1-2529-10 RAN
Under the HOVEY B. LAMBERT TRUST)	
an unrecorded Revocable living Trust)	Certificate of Service.
agreement dated April 5, 2002, et.al.,)	
)	
vs,)	
)	
WAHA (K), et.al.,)	
_____)	

Certificate of Service

I, Maltbie Napoleon, certify that a true and correct copy of the foregoing instrument, Affidavit of Maltbie Napoleon, Certificate of Service, Exhibit "A", was duly delivered by hand or sent in the United States Post Office, postage prepaid and sent to the following:

CADES SCHUTTE LLP
PHILIP J. LEAJ 1467-0
LORI K. AMANO 8194-0
1000 BISHIP ST. SUITE 1200
HONOLULU, OAHU 96813-4216
TELE:808-521-9200

ATTORNEYS FOR PLAINTIFF
HOVEY B. LAMBERT TRUSTEE

Pauline Thornton aka Pauline Lua
41-209 Iauhole St. #10
Waimanalo, Oahu 96744

GARY Y. SHIGEMURA #1007-0
JOYCE M. BROWN #5530-0
700 Fort Street Town
745 Fort Street
Honolulu, Oahu 96813
Telephone: 531-9711
Fax: 531-9430

Attorneys for certain Heirs of William
Charles Lunalilo and Defendants
Rose Kolowana Lua and Ingrid Maile

Geraldine Roberts
15-154 Pu'uluana Place, #39
Kahuku, Oahu 96731

Joanna Thompson
418 E. 1730 North
Orem, Utah 84097-2217

Janice L. Kai
3372A Kilauea Ave.
Honolulu, Oahu 96816

Grayce Dean
172A Wahikuli Road
Lahaina, Maui 96761

Dawn K. Wasson
P.O. Box 512
Laie, Oahu 96762

Etuate S. Fa, also known as
Edward S. Fa
Joelene N. Fa
55-164 Kamehameha Highway
P.O. Boc 273
Laie, Oahu 96762

Sanford Ujimori
94-674 Farrington Highway
Waipahu, Oahu 96797
Commissioner

Daphne E. Barbee, Esq.
Attorney at Law
1188 Bishop St., Suite 1909
Honolulu, Oahu 96813

Attorney for Defendant Lesieli Teisina
And Intervenor Penisimani Teisina

Dated _____

Maltbie Napoleon