



Hui Mālama leaders Charles Kauluwehi Maxwell, Edward Halealoha Ayau and Pualani Kanaka'ole Kanahēle — shown here with Hawaiian studies professor Lilikalā Kame'eleihiwa (in red) — may face a contempt of court charge over their refusal to follow a federal judge's order.

Photo: Sterling Kini Wong

Burial group resists court order

By Sterling Kini Wong
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The Hawaiian burial repatriation group Hui Mālama I Nā Kūpuna O Hawai'i Nei has refused to comply with a federal judge's order requiring the group to disclose the precise location of 83 artifacts it had reburied in two Hawai'i island caves.

After a Dec. 20 court hearing in which U.S. District Judge David Ezra demanded that the items be returned to Bishop Museum, Hui Mālama executive officer Edward Halealoha Ayau said he would rather go to jail than desecrate the burials of kūpuna by complying with the order.

"If there is anything in our lifetime that we would consider losing our freedom over, it's this," Ayau said. "I would be honored to go to jail to show my dedication to our kūpuna. We are responsible to them. This is part of the commitment."

Ayau called Ezra's order "unconscionable," adding that he would not violate "kānāwai," or traditional Hawaiian law.

On Dec. 21, Ayau and other members of Hui Mālama filed declarations stating that the group's board voted to not reveal the names of those involved with the reburial nor the precise location of the items within the caves. The group, however, did provide the court with the GPS coordinates of the Kawaihae cave and an inventory of the items.

But Ezra said that that didn't satisfy his order, and as *KWO* went to print, Hui Mālama members Ayau, Pualani Kanaka'ole Kanahēle, Kahu Charles Kauluwehi Maxwell, William Aila and Antoinette Freitas had been ordered to appear at a contempt of court hearing on Dec. 27.

At the Dec. 20 hearing, Ezra had warned that he would impose substantial fines or even jail time if his order was not followed.

"Anyone who knows me knows that I will not hesitate to uphold the law," he said.

Hui Mālama now seems to have exhausted all of its legal options to prevent the removal of the objects, which were originally taken from the caves a century ago by an expedition led by amateur archaeologist David Forbes. Shortly thereafter, the artifacts were transferred to Bishop Museum.

The controversy started in February 2000, when Bishop Museum loaned the artifacts to Hui Mālama. At the time, the group was one of four claimants recognized by the museum under the federal repatriation process. Hui Mālama subsequently reburied the artifacts in two Kawaihae caves.

In August 2005, the Royal Hawaiian Academy of Traditional Arts and Nā Lei Ali'i Kāwānanakoa, two of the 14 current claimants recognized by the museum for the artifacts, filed a lawsuit demanding the return of the items, claiming that Bishop Museum and Hui Mālama had violated federal burial repatriation laws.

On Sept. 7, Ezra issued an order mandating the return of the artifacts to the museum until the lawsuit is resolved, and on Dec.

12 the 9th U.S. Circuit Court of Appeals upheld that ruling.

During the subsequent hearing on Dec. 20, Ezra directed Hui Mālama to provide a sealed affidavit containing an inventory of the artifacts, the exact location of each item and the names of each person who knew the objects' whereabouts. He then instructed all the parties involved to submit a list of reputable structural engineering firms that could conduct a risk assessment for opening the sealed caves. Ezra ordered that the cost of retrieving the items be split between Bishop Museum and Hui Mālama, because, he said, they were both at fault. The timetable and cost of the retrieval remain unclear.

Ezra was emphatic that the retrieval of the artifacts be carried out in a manner that is sensitive to all the parties, saying that he would respect anyone's wishes not to participate in the physical removal of the objects. Ezra also ordered Hui Mālama to provide the location of the artifacts in relation to the human remains also in the cave, so that the bones aren't inadvertently disturbed during the removal. Once the artifacts are returned to the museum, Ezra said, they are not to be displayed, and federal marshals will monitor the entire process to ensure that the objects are safe.

LindaLee Farm, the attorney representing Bishop Museum, said that the museum is pleased with Ezra's sense of urgency and sensitivity. "Ezra really strives to equally treat everyone's beliefs," she said.

La'akea Sukanuma, president of the Royal Hawaiian Academy of Traditional Arts, said he thought that Ezra "bent over backwards to accommodate all sides. He could've been harsher, but he's been fair."

Sukanuma said it was "sad" and "unfortunate" that Hui Mālama didn't comply with Ezra's order. "This was all unnecessary. It should have never gone this far," he said. "[Hui Mālama] should not have ignored everyone else. It's because of what they did, it was their choice."

OHA's role in the Forbes caves dispute

Although OHA is one of the four original claimants in the Forbes caves dispute, the full OHA Board of Trustees has never taken an official position on the issue, said OHA Administrator Clyde Nāmu'o.

OHA has been involved with the dispute since 1994, when it first requested the repatriation of the human remains and artifacts to the Kawaihae caves. In 1999, OHA's then culture officer supported the transfer of the objects from Bishop Museum to the Kanahēle family, which founded Hui Mālama.

In March 2000, however, after hearing beneficiary concerns regarding the museum's loan and Hui Mālama's subsequent reburial of the items in the Kawaihae caves, OHA wrote to the director of the National Park Service, requesting an investigation into possible violations of federal burial law stemming from the repatriation.

In June 2000, OHA's now defunct board Land Committee voted to support the recall of the loan, based on the recommendation of the agency's Hawaiian historic preservation advisory council. However, when the full Board of Trustees considered the issue, it failed to adopt a position, with four trustees voting to support the recall and four voting against it. One trustee was absent.

Nāmu'o said it was unclear whether the Land Committee's vote alone could determine the agency's position. "At this point I think that our comment is that whatever the court decides is the appropriate action, then all of the parties need to comply with whatever directive the court issues," he said.

Nāmu'o added that for now the board members will continue to monitor the developments in the dispute and consider taking an action on the issue when they feel it's appropriate.

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