

ALEK S., Plaintiff  
v.  
LOMJEIK and BRANIS, Defendants  
Civil Action No. 200  
Trial Division of the High Court  
Marshall Islands District  
January 31, 1966

Action to determine *alab* and *dri jermal* rights in certain *wato* on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that *alab* on "Jebrik's side" of Majuro Atoll is bound to respect rights of others in land of which he is *alab*, and that his persistent disregard of such rights will result in temporary suspension of his *alab* rights until he demonstrates his readiness to fulfill his *alab* obligations.

1. Marshalls Land Law-"Alab"-Obligations

Under Marshallese custom, *alab* of land is obligated to cooperate with *leroj erik* and show normal respect for her wishes.

2. Marshalls Land Law-"Alab"

Under Marshallese custom, *alab* is not entitled to decide whether radical change in Marshallese system of land holding is desirable or not.

3. Marshalls Land Law-"Iroj Lablab"- "Jebrik's Side" of Majuro

In spite of uncertainties as to exercise of *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, *alab* on that "side" is bound under Marshallese custom to respect rights of others in land of which he is *alab*.

4. Marshalls Land Law-"Alab"-Obligations

If *alab* seriously and persistently disregards his obligations under Marshallese custom, court will in extreme cases enjoin him from exercising his *alab* rights and, after notice and opportunity to be heard, appoint someone else to exercise *alab* rights for him.

5. Marshalls Land Law-"Alab"

Where situation as to rights and obligations of *alab* is uncertain, and he promptly brings matter to court for determination, his *alab* rights will only be temporarily suspended until he demonstrates he is ready to fulfill his *alab* obligations.

6. Marshalls Land Law-"Alab"-Succession

Under Marshallese custom, where former *alab* attempts to have party made *alab* without necessary approval for changing order of inheritance of *alab* rights, his efforts are insufficient to accomplish their purpose.

7. Marshalls Land Law-"Dri Jerbal"-Establishment

Under Marshallese custom, establishment of *dri jermal* on particular piece of land can be stopped by *iroij lablab* of that land and is supposed to have his consent.

8. Marshalls Land Law-"Iroij Lablab"-Powers

Under Marshallese custom, establishment or reestablishment of *dri jermal* may be accomplished by those having lesser rights in land, without any affirmative act or express decision by *iroij lablab*, but merely with his acquiescence or implied consent.

9. Marshalls Land Law-"Dri Jerbal"-Establishment

Under Marshallese custom, where actions of previous *alab* are later approved by or on behalf of *leroj erik*, this is sufficient to vest *dri jermal* rights in land until some affirmative action to the contrary is taken by those entitled to exercise *iroij lablab* powers.

10. Marshalls Land Law-"Dri Jerbal"-Suspension of Rights

Under Marshallese custom, *dri jermals'* disregard of their obligations to *alab* may suspend their rights.

11. Marshalls Land Law-"Dri Jerbal"-Obligations

Under Marshallese custom, those who have *dri jermal* rights in land are under obligation to respect rights of acting *alab*, provided he in turn fulfills his obligations as *alab*.

12. Marshalls Land Law-"Dri Jerbal"-Suspension of Rights

Under Marshallese custom, where *alab* disregards parties' *dri jermal* rights, latter are justified in disregarding *alab's* rights pending judicial determination, and their *dri jermal* rights will not be suspended, although persistent refusal to recognize *alab's* rights in future, provided he fulfills his obligations, might give ground for such suspension.

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FURBER, *Chief Justice*

FINDINGS OF FACT

1. Emilaine is the person in the right relationship by blood to succeed Tomijwa as *alab* of the land in question under Marshallese custom.

2. Emilaine, being a woman, has authorized the plaintiff Alek S., as a close male relative in the female line, to act for her, and he is in a proper relationship by blood to do so under Marshallese custom

3. Lanjen, as *leroi erik* (the female equivalent of *iroij erik* and carrying the same rights), approved Alek S. as Tomijwa's successor, provided Alek acted agreeably to the people on the land.

4. The defendants' predecessors in interest in the female line were associated with and had rights in the land in question before the last civil war on Majuro. The result of that civil war put their rights in doubt and suspended their use of them for a time.

5. After the big typhoon of about 1918 or 1919, the defendant Lomejeik and his *bwij* were called back by those in charge of the land to assist in rehabilitating and working it and did so assist. Since then, Lomjeik and relatives of his in the female line worked or otherwise used the land from time to time up to World War II. (It is agreed that Lomjeik and Branis have worked on it since 1945 or 1946.) During much of the time Lomjeik worked the land, Alek S. was staying in the western chain of the Marshall Islands and did not assist in working or caring for the land in question.

6. Lomjeik and members of his *bwij* worked the land not only because they were requested to, but also because of the rights their predecessors had had in it. They were so far recognized as *dri jermal* by Titikus, as *alab* or acting *alab*, that shortly before his death, he directed that Lomjeik should become *alab* after the death of Titikus' brother, Tomijwa, but this was not approved by anyone on behalf of the *iroij lablab* powers.

7. About 1958, Tomijwa as *alab*, in a meeting with various representatives of *Leroij Erik* Lanjen, purported to give and confirm in Lomjeik definite *dri jermal* rights in the land, and this was approved by or on behalf of Lanjen.

8. Owing to numerous complaints about Alek's alleged interference with the rights of others on this and nearby *wato*, Lanjen's latest decision, after repeated attempts to

settle the matter, has been that this and three other nearby *wato* should be worked separately by the people on them, and that Lomjeik and Branis should stay on the *wato* in question. Alek S. stepped out of a meeting called by Lanjen's grandson and representative to try to settle matters.

## OPINION

This action involves the ownership of the *alab* and *dri jermal* rights in a piece of land on "Jebrik's side" of Majuro Atoll in the Marshall Islands. For an explanation of the special arrangement which had been set up by the Japanese Government for exercising the *iroij lablab* powers on that "side", see the opinion of the Appellate Division in *Kumtak Jatios v. L. Levi*, 1 T.T.R. 578. For an indication of the uncertainty and practical difficulties about the exercise of *iroij lablab* powers under this arrangement in American times, see opinions of this court in *Joab J. v. Labwoj*, 3 T.T.R. 72, and *Lojob and others v. Albert and Others*, 2 T.T.R. 338.

The plaintiff Alek S. claims he is not only acting *alab* but also *dri jermal*, that the defendants have no property rights in the land, are on it solely as his representatives, and may stay only on such terms as he chooses to impose. The defendants' basic claim is that they and their *bwij* have normal *dri jermal* rights in the land, but they also claim that since the *leroj erik* has directed that they stay on this *wato* and that this and three nearby *wato* be worked separately, Lomjeik, as the senior member of the *bwij*, is entitled to act as *alab* until Lanjen decides who is to be *alab*.

[1,2] There would apparently be no dispute at all about the *alab* rights if the plaintiff Alek S. were willing to restrict himself to exercising the normal rights of an *alab*. He has, however, not only expressly denied the defendants' *dri jermal* rights, but while acknowledging in

words that Lanjen is the *leroi erik*, he has seriously failed in his obligation to cooperate with her and show normal respect for her wishes. It would appear that he is trying to establish something approaching the rights of absolute ownership. Whether any such radical change in the Marshallese system of land holding as to give an *alab* anything like absolute ownership, is desirable or not is for the law-making authorities to consider, but it is certainly something the *alab* himself is not entitled to take into his own hands and the courts should not endeavor to decide.

[3-5] In spite of the uncertainties as to the exercise of *iroij lablab* powers on "Jebrik's side" and the practical difficulty about obtaining a decision by those entitled to exercise such powers, the court is clear that an *alab* on "Jebrik's side" is bound to respect the rights of others in land of which he is *alab*. If he seriously and persistently disregards his obligations, the court will be ready in an extreme case to enjoin him from exercising his *alab* rights and will, after notice to and opportunity to be heard by all those immediately concerned, appoint someone else to exercise the *alab* rights for him. In view, however, of the uncertainty of the situation and the fact that Alek S. has brought this matter to court fairly promptly for a determination of his rights, the court considers that his exercise of *alab* rights should not be enjoined at this time, that the arrangement worked out by the *leroi erik* as set forth in the eighth finding of fact is a reasonable temporary one, and that while this could not actually cut off Alek's *alab* rights, they should be considered suspended until he demonstrates that he is ready to fulfill his *alab's* obligations.

[6] In accordance with the rulings of the court in earlier cases, it is clear that Titikus' efforts to have Lomjeik made *alab* after Tomijwa's death, were insufficient to accomplish their purpose since they did not have

the necessary approval for changing the normal order of inheritance of *alab* rights. The court considers their only significance is as an indication of Titikus' recognition that Lomjeik and his *bwij* had rights in the land. *Lazarus S. v. Likjer*, 1 T.T.R. 129.

**[7-9]** The exact status of rights of the defendants and their *bwij* as *dri jermal* or some sort of tenants, presents a more difficult problem. Clearly, the establishment or reestablishment of *dri jermal* on a particular piece of land can be stopped by the *iroij lablab* of that land and is supposed to have his consent. The court takes notice, however, that such establishment or reestablishment of *dri jermal* is often done by those having lesser rights in the land without any affirmative act or express decision by the *ir'oj lablab*, but merely with his acquiescence or implied consent. Under all the circumstances, the court holds that the actions of Titikus and Tomijwa, when finally approved by or on behalf of *Leroij Erik* Lanjen as indicated in the seventh finding of fact, gave Lomjeik and his *bwij* normal *dri jermal* rights in the land until some affirmative action to the contrary is taken on the matter by those entitled to exercise the *iroij lablab* powers.

**[10-12]** The court has previously held that the *dri jermal's* disregard of their obligations to an *alab* may suspend their rights. The defendants Lomjeik and Branis are under obligation to respect the rights of Alek S. as acting *alab*, provided he in turn fulfills his obligations as such. *Lazarus S. v. Likjer*, 1 T.T.R. 129. In this instance, however, the defendants have been put in a very awkward position by the *alab's* disregard of both their *dri jermal* rights and his obligation to cooperate with the *leroj erik*, while the defendants have endeavored to carry out the wishes of *theleroij erik*. The court therefore considers that the defendants had sufficient justification for their actions pending a judicial determination of the rights in-

volved, so that their rights should not be considered suspended at this time, although a persistent refusal to recognize the plaintiff Alek's *alab* rights in the future, provided Alek S. fulfills his obligations, might give ground for such suspension.

#### JUDGMENT

It is ordered, adjudged, and decreed as follows : —

1. As between the parties and all persons claiming under them, the *alab* and *dri jermal* rights in Jenrok *Wato* proper (exclusive of other *wato* in the Jenrok area, sometimes referred to as parts of Jenrok), located on Djarrit Island, Majuro Atoll, Marshall Islands District, are held as follows:-

a. Emilaine, who lives on Djarrit Island, Majuro Atoll, is the *alab*, and the plaintiff Alek S., who also lives on Djarrit Island, is entitled, subject to the provisions of paragraph 3 of this judgment, to be the acting *alab* for her provided he demonstrates that he is willing in good faith to fulfill his obligations as acting *alab* and cooperate thoroughly and respectfully with *Leroij Erik Lanjen*.

b. The defendant Lomjeik who lives on Dalap Island, Majuro Atoll, the defendant Branis who lives on Djarrit Island, and their *bwij*, have normal *dri jermal* rights, subject to possible termination of them by action of those having *iroij lablab* powers over the land.

c. Until such time as the plaintiff Alek S. demonstrates that he is willing in good faith to fulfill his obligations as acting *alab* and cooperate thoroughly and respectfully with *Leroij Erik Lanjen*, the defendant Lomjeik is entitled, subject to the provisions of paragraph 3 of this judgment, to act temporarily as acting *alab*, but he is to cease doing so promptly if Alek S. demonstrates the willingness set forth above.

2. The plaintiff Alek S. is permanently enjoined and prohibited from interfering with the normal exercise of the defendants Lomjeik and Branis' *dri jermal* rights in the land in question unless they seriously fail to fulfill their obligations in the future or have their rights terminated by affirmative action of those entitled to exercise the *iroij lablab* powers over the land in question.

3. Pending further order of this court, *Leroij Erik Lanjen* is authorized to determine whether or not and when Alek S. has demonstrated his willingness to fulfill in good faith his obligations as acting *alab* and cooperate thoroughly and respectfully with *Leroij Erik Lanjen*. If there is dispute between the parties as to whether Alek S. has done so, or if Alek S. fails to so demonstrate within four (4) months after the entry of this judgment, any party or *Leroij Erik Lanjen* may by motion in this action request a determination by the court as to the future exercise of the *alab* powers.

4. The rights of all the parties are subject to the Marshallese system of land law and nothing in this judgment shall prevent either *Leroij Erik Lanjen* or those entitled to exercise *iroij lablab* powers over *Jenrok wato* from exercising their respective normal rights over the land under the Marshallese system of land law.

5. No costs are assessed against any party.

6. Time for appeal from this judgment is extended to and including March 31, 1966.