

KARU LENEKAM, Plaintiff

v.

LIBAIE LIDRIK & LAJIL LIDRIK, Defendant

Civil Action No. 3-73

Trial Division of the High Court

Marshall Islands District

September 21, 1973

Complaint to recover from *dri jermal* the *alab's* share from Monbukwor and Lomej *Wato*, Ailinglaplap Atoll, Marshall Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that when *alab* died his nephew became *alab* and uncle's children were required under Marshallese custom to pay the nephew the *alab's* share of copra sale proceeds.

1. Marshalls Land Law—Lineage Ownership—Inheritance

Generally, under Marshallese custom, succession to title and interest in land proceeds horizontally within the *bwij*, not vertically, to the youngest member of the *bwij* in the same generation as the prior titleholder, and title does not descend to a titleholder's children until all members of one or more *bwij* have died.

2. Marshalls Land Law—"Alab"—Succession

Upon death of *alab*, his nephew was entitled to the title and to the *alab's* share of proceeds of copra sales made by decedent *alab's* children as *dri jermal*, who had refused to give nephew the *alab's* share.

TURNER, *Associate Justice*

RECORD OF HEARING

Plaintiff's complaint to recover from the Defendant *dri jermal* the *alab's* share from Monbukwor and Lomej Wato, Ailinglaplap Atoll, was served on Defendants, May 18, 1973. When Defendants failed to answer within thirty days, Plaintiff filed his motion for default judgment. This Motion was thereupon served upon Defendants in July 1973. At the call of the calendar, notice of which was given by district radio broadcast, the Defendants failed to appear. Hearing on the motion for judgment was set and held this date. Plaintiff appeared, with counsel, was sworn and testified in support of his entitlement to recovery as this court requires in any default proceeding. Defendants did not appear, although notice of the hearing had been sent out by district radio.

OPINION

Plaintiff testified he succeeded his uncle Lurik (Plaintiff's spelling), as *alab* on the land when his predecessor died late in 1968. The defendants are the children of Lurik and as *dri jermal* cut and sell copra from the two *wato*. The defendants, however, from the death of their father, the former *alab*, have not recognized plaintiff as the successor *alab* nor have they paid the plaintiff the *alab's* share of five mills (.005) per pound from the proceeds of the copra sales in accordance with Marshallese Custom.

[1] It also is Marshallese Custom that succession to title and interest in land proceeds horizontally within the *bwij* and not vertically. In other words, the younger member of the *bwij* in the same generation succeeds the older titleholder. As the claim of plaintiff in this case, as nephew of the predecessor *alab*, he is entitled to succeed his uncle. The title does not descend to a titleholder's children until all

members of one or more *bwij* have died. There are exceptions to this general rule arising from special circumstances not here applicable.

[2] It is clear from the testimony the plaintiff is entitled to an appropriate judgment order against the defendants. He is entitled to receive the *alab's* share of copra sales since the death of his predecessor. Receipts from future sales present no problem as the copra buyers in the Marshalls cooperate with court judgments when notified of their entry.

The difficult problem in the present case is allowance of the amount due from sales during the past four years. Plaintiff formerly worked the land in question as a *dri jermal* and was able to calculate with a degree of accuracy the normal average production from the two *wato*. Based upon plaintiff's calculations he is entitled to recover \$600.00 from the two defendants.

Although plaintiff did not ask removal of the defendants from the land, such a request appears to be reasonable, if made to the *iroij*, or if that is unavailing then to the court, if the defendants fail to cooperate in the future. The record shows that Kabua Kabua, is the *iroij elap* on Monbukwor *wato* and Lejelan Kabua, is the *iroij elap* on Lomej *wato*. The plaintiff appealed to both of these title bearers for enforcement of his rights before bringing this matter to court.

In accordance with 8 TTC § 55 et seq. and Rule 19b, Rules of Civil Procedure, collection of the judgment amount indicated above and the *alab's* share of future sales may best be accomplished through copra buyers withholding from future purchase payments the amounts prescribed in the judgment, the withholdings to be paid to the Clerk of Courts, Majuro, for the benefit of the plaintiff. It is, therefore,

Ordered, adjudged and decreed:—

1. That plaintiff, Karu Lenekam, is entitled to receive from the defendants the *alab's* share, in accordance with the custom, of copra sales from Monbukwor and Lomej *wato*, Ailinglaplap Atoll.

2. That plaintiff be and hereby is granted judgment against the defendants, jointly and severally, in the amount of \$600.00 for the *alab's* share from sales from the aforesaid *wato* made from January 1, 1969, to date.

3. That the *alab's* share and twenty-five percent of the net purchase price for purchase of copra from Monbukwor and Lomej *wato*, Ailinglaplap Atoll, shall be withheld from payment to defendants by all copra buyers and the amounts withheld shall be paid to the Clerk of Courts, Majuro.

4. All copra buyers shall be allowed a fee of five percent of each purchase deducted from defendants share of the purchase for services in enforcement of this judgment. Copies of this judgment shall be delivered to the copra buyers forthwith.