JELKAN LEBEIU, Plaintiff

v.

LITARBWIJ MOTLOCK, Defendant

Civil Action No. 444

Trial Division of the High Court

Marshall Islands District

April 12, 1973

Action to establish entitlement to *alab* interests in Uroken, Kieben and Monkawel *wato* on Airok Island, Maloelap Atoll and Tokanuo and Mejto *wato* on Enibin Island, Maloelap Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where three related *bwij* which began, as far as instant case was concerned, with three sisters, owned, as lineage land, land in which plaintiff, a male descendent in the matrilineal line of the youngest sister, claimed *alab* rights as against defendant, a female descendant in the patrilineal line of the oldest sister, and plaintiff and defendant were the only living members of their generation and all older generation members had died, and oldest sister's *bwij*, in her children's generation became extinct in the matrilineal line and the smaller *bwij* of the other two sisters were extinct in the generation of the two sisters' children but were not extinct in matrilineal descendants, the *alab* rights passed, upon the end of the oldest *bwij*, to the smaller *bwij*, and where there were no survivors in that generation to take, the rights passed down to the next generation to plaintiff as he was the oldest person in the matrilineal line.

1. **Marshalls Land Law—Lineage Ownership—Inheritance**

   Under traditional Marshallese custom, property rights are passed on at death from mothers, not fathers, until all matrilineal lines in all *bwij* having interest in the lands have been extinguished, at which point patrilineal inheritance begins.

2. **Marshalls Land Law—"Alab"—Succession**

   Where three related *bwij* which began, as far as instant case was concerned, with three sisters, owned, as lineage land, land in which plaintiff, a male descendant in the matrilineal line of the youngest sister, claimed *alab* rights as against defendant, a female descendant in the patrilineal line of the oldest sister, and plaintiff and defendant were the only living members of their generation and all older generation members had died, and oldest sister's *bwij*, in her children's generation became extinct in the matrilineal line and the smaller *bwij* of the other two sisters were extinct in the generation of the two sisters' children but were not extinct in matrilineal descendants, the *alab* rights passed, upon the end of the oldest *bwij*, to the smaller *bwij*, and where there were no survivors in that generation to take, the rights passed down to the next generation to plaintiff as he was the oldest person in the matrilineal line.

3. Marshalls Land Law—"Alab"—Powers

Alab could not give lineage land to his daughter in gift as *ninnin* land where there was another person entitled to inherit the land under the custom.

4. Marshalls Land Law—"Iroij Lablab"—Overturning Decisions

Where plaintiff was entitled to *alab* rights under custom, but defendant's claim to the rights had been approved by three *iroij lablab* extending back to 1948 and perhaps earlier, whether court would upset the three approvals depended upon the circumstances surrounding the approvals.

5. Marshalls Land Law—"Iroij Lablab"—Basis for Decisions

That *iroij lablab* recognized defendant as *alab* because his two predecessors had and he was not about to change any determinations they had made, was insufficient to explain why defendant was entitled to the right if defendant had been erroneously recognized as *alab* in the beginning and plaintiff had not "slept on his rights" and let too much time elapse before asserting his right to be *alab*.

6. Marshalls Land Law—"Iroij Lablab"—Overturning Decisions

In action over *alab* rights, where inheritance pattern under custom favored plaintiff and there was no evidence that *iroij lablab* since twice succeeded had good cause to remove plaintiff from position of *alab* and install defendant, court would reject the determinations of the three successive *iroij lablabs* that defendant was entitled to be *alab*.

7. Marshalls Land Law—"Iroij Lablab"—Weight of Decisions

An *iroij lablab's* determinations regarding his lands are entitled to great weight, and it is supposed that they are reasonable unless it is clear that they are not.

Assessor:	KABUA KABUA, *Presiding Judge of the District Court*
Interpreter:	OKTAN DAMON
Reporter:	Tape Recording
Counsel for Plaintiff:	JOHN R. HEINE
Counsel for Defendant:	ANIBAR TIMOTHY

TURNER, *Associate Justice*

Plaintiff seeks to establish his entitlement to the *alab* interests for the following five *wato* on Maloelap Atoll:

Uroken, Kieben and Monkawel, also called Jittoen, all on Airok Island; and Tokanuo and Mejto, on Enibin Island.

Entitlement to the *alab* interests has been a matter of dispute between the plaintiff and the defendant since the death of the last recognized *alab* soon after World War II. Plaintiff has brought two previous cases in this Court against the defendant, Civil Action No. 310 in 1966 and Civil Action No. 361 in 1969. Both the previous cases were dismissed when the parties were unable to reach Majuro Atoll in time for the High Court sitting. There was an even earlier case, Civil Action No. 156, brought in 1961 by the defendant against another claimant to the *alab* rights for two of the five *wato* involved in the present case. A pretrial memorandum was prepared in the 1961 case and some of the information brought to light then has significance in the present case. The Court takes judicial notice of the contents of the record of Civil Action No. 156 as mentioned hereafter. *Mendiola v. Quitagua*, 4 T.T.R. 314, 321.

The plaintiff introduced a carefully prepared genealogical chart which defendant and her witnesses did not dispute. By applying the traditional Marshallese custom of transfer and inheritance of interests in land to the plaintiff's chart the controversy almost determines itself. However, the defendant's primary claim raises an issue not as readily solved. It relates to the legal effect of approval of defendant's claim by the present and two predecessor *iroij lablab* extending back in time to at least 1948 and perhaps earlier. Before examining this issue raised by defendant the Court first considers the plaintiff's claim based upon the genealogical record.

Three related *bwij*, which began as far as this case is concerned, with three sisters—Mandrik, Libernan and Limauu—owned the land in question as lineage land. Plaintiff is a descendent in the matrilineal line of the youngest sister, Limauu. Defendant is a descendant in the patrilineal line of the oldest sister, Mandrik.

Plaintiff and defendant are the only living members of their generation and all older generation members also have died.

The plaintiff testified defendant's father, Lokajitok, was the last *alab*. He died during World War II. Lokajitok's younger sister, Lijuen died before he did according to plaintiff and she therefore never was an *alab*.

Defendant did not take the stand in her own behalf but in Civil Action No. 156, in which she was plaintiff, she made the claim, set forth in the pre-trial memorandum as follows:

"b. On Lokajitok's death, his sister Lijuen succeeded him as *alab* and exercised *alab* rights without any difficulty until her death about 1952 . . . ."

It is immaterial which of the two died first but it does clearly indicate the land in question was considered and treated by defendant in the earlier suit as lineage land. There also is no question that Mandrik's *bwij* in her children's generation became extinct in the matrilineal line. Also the two smaller *bwij* were extinct in the generation of Libernan's and Limauu's children. They were not however, extinct in matrilineal descendents and that is the important difference in the claims of the two sides.

[1, 2] Defendant claimed she inherited *alab* rights from her father Lokajitok. This is, however, contrary to Marshallese traditional land law. Under the custom property rights are passed on from mothers, not fathers. This is true until such time as all matrilineal lines in all *bwij* having interests in the land have been extinguished. At that point, but not until then, patrilineal inheritance begins. When Lokajitok, or Lijuen died (that ended the oldest *bwij*) the *alab* rights then passed under the custom to the smaller *bwij*. But there were no survivors in that generation to take so the rights passed down to the next generation, to the oldest person in the matrilineal line. This was the plain-

tiff and he was entitled to inherit even though he was the youngest member of the smallest *bwij*. His older sister had died leaving a survivor, Jorban, who is now *dri jerbal* on the land and will eventually be entitled to be *alab*.

Defendant's witnesses had two theories why the traditional pattern of inheritance of lineage land was not followed in this case. Two witnesses suggested, without any information to support it, that Lokajitok had given the land to his daughter the defendant and the land therefore was *ninnin*, which is subject to different patterns of inheritance. *Korabb v. Nedrele*, 6 T.T.R. 137; *Limine v. Lainej*, 1 T.T.R. 231.

[3] The quick answer to this theory is that lineage land is not subject to transfer by an *alab* when there are others entitled to inherit. Thus Lokajitok could not have given the land to defendant when plaintiff was next in line under the custom.

Another witness, to avoid this conflict with Marshallese custom, inferred that the three *bwij* had separated and divided the land thus permitting Lokajitok, as the surviving matrilineal member of Mandrik's *bwij* to give this land to his daughter. We reject the theory as being without any support in the record. Defendant herself, in her claim in her prior case that she inherited from Lijuen in 1952, rejects the separation of the three *bwij* theory. If Lijuen succeeded Lokajitok, as defendant once claimed, then Lokajitok had no right to give land to his daughter as it was not his to give.

[4] The only issue which raises any question in favor of defendant's entitlement to *alab* rights is that her claim has been approved by three *iroij lablab*. Whether this court should upset the decisions of the *iroij* depends upon the circumstances surrounding their approval of defendant's claim. *Lolik v. Elsen* 1 T.T.R. 134.

In a case not unlike the present one, this court said in *Likinono v. Nako* 3 T.T.R. 120, 124:

"The strongest thing in favor of the plaintiff's claim is that both the *leroij erik* and the *leroij lablab* of the land have recognized the plaintiff Likinono as *alab*."

[5] So in the present case the *iroij lablab* and the *iroij erik* of one of the parcels testified as to their recognition of the defendant as *alab*. Neither one of them were able to explain why the defendant was entitled to the right. The *iroij lablab* said he recognized the defendant as *alab* because his two predecessors had recognized her and that he was not about to change any determinations they had made. The reason is insufficient if defendant had been recognized in the beginning erroneously, and also, if, the plaintiff has not "slept on his rights" and let too much time elapse before asserting his rights.

The evidence shows he has been reasonably diligent in attempting to protect his interests. Clearly, at one time he held *alab* rights and Jorban, the *dri jerbal*, made payment to him in accordance with the custom. *Iroij lablab* Namdrik, who died in 1948, removed plaintiff and installed defendant. Why this was done, because it clearly was contrary to custom, no one now knows.

Before Namdrik died his nephew and successor went to him with plaintiff in plaintiff's behalf. Namdrik summarily rejected the plea. It is evident, Andrew (also spelled Andro and Anro) at one time believed plaintiff should continue as *alab*. After Andrew became *iroij lablab* as successor to Namdrik, something changed his mind, because in 1964 there was filed in Civil Action No. 156 the following statement by Andrew:

"In the case of *Litarbwij v. Akku*. With regard to Uroken and Mejto *wato*, I, as *Iroij lablab* hereby make my statement to wit; the case be dismissed because Litarbwij is the proper *alab* and entitled to receive the *alab's* share from the said *wato* on Airok, Maloelap."

What brought about this change was not explained by any of the witnesses. If defendant knew, she didn't take the stand to enlighten the court.

Thus it appears three *iroij lablab* from World War II to the present have recognized defendant as *alab*. Why this was done, except for the insufficient reason the last *iroij* didn't want to upset the determination of their predecessor, the court is unable to learn from the evidence.

[6] Because the inheritance pattern under Marshallese custom favors the plaintiff and there is no evidence showing good cause why Namdrik rejected plaintiff and recognized defendant the court is compelled to reject the determinations of the *iroij lablabs*.

[7] The authoritative case on the power of an *iroij lablab* to change *alab* rights, as apparently was done in the present case by Namdrik, is *Limine v. Lainej*, 1 T.T.R. 107, which was cited by counsel for both sides. The court said:

> "Determinations made by an *iroij lablab* with regard to his lands are entitled to great weight, and it is supposed that they are reasonable unless it is clear that they are not."

The judgment of this court in *Kaiko v. Henos*, not reported, was taken to the Appellate Division on the grounds the *leroij lablab* had made an unreasonable determination of *alab* interests. The appeal court found the appeal well taken in *Henos v. Kaiko*, 5 T.T.R. 352 and the court said at 5 T.T.R. 354:

> "The court will recognize and uphold these determinations of the *iroij* unless successfully challenged as unreasonable and arbitrary."

On the retrial of the case in the trial division, *Jabwe v. Henos*, 5 T.T.R. 458, the facts developed have direct bearing on defendant's claim in the present case that her father gave the *alab* rights to her and thereby cut off matrilineal descendants in the younger *bwij* from inheriting those rights. The court said at 5 T.T.R. 462:

"The consent of the *iroij lablab* to an *alab's* action removing *dri jerbal* from land must be given only after thorough investigation and upon a finding that good cause exists for cutting off land interests in accordance with the law and custom."

The evidence in the present case does not disclose that an investigation was made by any of the three *iroij lablabs* that approved defendant's claim. Also there was no showing that *Iroij lablab* Namdrik had good cause for cutting off plaintiff and recognizing defendant. As to the two successor *iroij lablabs*, their reason for recognizing the defendant, as far as the evidence shows, is that they followed the determination of the predecessor *iroij lablab*. This is not good cause justifying cutting off land interests.

The present case is not, of course, the first time the court has reversed an *iroij lablab's* decision when it exceeded his authority under the custom and the law. The statement of the appellate division in its determination of the appeal of *Likinono v. Nako*, 4 T.T.R. 483 at 484, is most appropriate to the present case:

"Therefore, if Nako, the appellee, was the successor *alab* in accordance with Marshallese custom, then the recognition given to Likinono by the *leroij lablab* exceeded her authority."

The court, accordingly, holds Namdrik, Andrew and Menasse all exceeded their authority in recognizing defendant as *alab*. It is, therefore, ordered, adjudged and decreed:

1. That plaintiff is entitled to the *alab* interests in the five *wato* named and located on Maloelap Atoll as follows: *Uroken*, *Kieben* and *Monkawel*, also known as *Jittoen*, on Airok Island; and Tokanuo and Mejto on Enibin Island.

2. That plaintiff shall have costs in accordance with the law.

3. That this decision shall be filed with the District Land Office.