

L. LEVI and Others, Plaintiffs
v.
KUMTAK and Others, Defendants
Combined Civil Action No. 1
Trial Division of the High Court
Marshall Islands District
June 1, 1953
See, also, 1 T.T.R. 578

Action to determine *alab* and *iroij lablab* rights on Majuro Atoll. The Trial Division of the High Court, Associate Justice James R. Nichols, held that official act of previous administering authority, which is clear departure from Marshallese custom, constitutes change in customary law which Court is bound to uphold under T.T.C., Sec. 24.

1. Former Administrations—Redress of Prior Wrongs

It is not proper function of courts of present administration to right wrongs which may have for many years before been persisted in by former administration.

2. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Although decision of Japanese Government, not to have any *iroij lablab* for "Jebrik's side" of Majuro Atoll was departure from Marshallese custom, it was clear determination by administering authority, making exception to or change in customary law.

3. Former Administrations—Change in Custom

Clear departure by former administration from customary law will not be disturbed where change persisted for twenty years prior to United States administration.

4. Trust Territory—Land Law

Court is bound to uphold land law in effect in Trust Territory on December 1, 1941, until it is changed by express written enactment made under authority of Trust Territory of the Pacific Islands. (T.T.C., Sec. 24)

5. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Property rights formerly held by, and obligations due from, *iroij lablab* of "Jebrik's side" of Majuro Atoll, have passed to Government of the Trust Territory.

6. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Failure of American Administration to exercise *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, previously held by Japanese Government, does not constitute waiver of such rights.

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7. Former Administrations—Recognition of Established Rights—Marshalls Land Law—"Alab"—Succession

Heir of person recognized as *alab* by Japanese Administration is entitled to such rights pursuant to clear determination of Japanese Government.

8. Marshalls Land Law—Generally

When substantial number of persons in community question another's title and land rights under Marshallese custom, party is excused from his refusal to honor such rights until court rules on question.

NICHOLS, *Associate Justice*

FINDINGS OF FACT

1. At the close of the civil war on Majuro Atoll, when the atoll was divided between the *Iroiĵ Lablab* Jebrik Kapelle and *Iroiĵ Lablab* Kaibuke, it was agreed that people living in an area controlled by one *iroiĵ lablab* could not work on or acquire interests in land in the area controlled by the other *iroiĵ lablab* without the permission of both *iroiĵ*. Those people who were permitted to do so were called "two shoulders" or "roire". All the land in question was included in that assigned to Jebrik Kapelle in the division referred to above.

2. Upon the death of *Iroiĵ Lablab* Jebrik Lukotworok (who was the *iroiĵ lablab* of the portion of Majuro Atoll assigned to Jebrik Kapelle in the division referred to in the foregoing paragraph) in 1919, a representative of the Japanese Government supported Drele as Jebrik's successor. Drele had already become *iroiĵ lablab* of "Kaibuke's side". Under the Marshallese system of matrilineal succession, Drele was the proper person to succeed Jebrik Lukotworok as *iroiĵ lablab*, unless he was disqualified because he was related to Jebrik Lukotworok through *Iroiĵ Lablab* Kaibuke who had fought against *Iroiĵ Lablab* Jebrik Kapelle. Not more than six years later, upon representations made by two of Jebrik Lukotworok's former

retainers named Livia Jeremaia and Lazarus Simon, a Japanese policeman named Tanaka ousted Drele *iroij lablab* of Jebrik's side and approved a division of the property owned by Jebrik Lukotworok proposed by Livia Jeremaia and Lazarus Simon and represented by them to be in accord with Jebrik Lukotworok's desires. This was an official act of the administering authority. By the terms of this property settlement, the position of *iroij lablab* was left vacant and Likio was one of those recognized as an *iroij erik*. The land of which she was recognized to be *iroij erik* included all of the land in question in this action. Although this arrangement was slightly modified by a letter written by Juluit Jijojo (i.e., the Japanese Administrator stationed at Jaluit) to Jitiam, dated April 7, 1933, a translation of which is attached hereto, the Japanese Government consistently refused to bring the two sides together for more than twenty (20) years, right up to the time of the occupation by the United States Forces.

3. Likio was also recognized as *iroij erik* by *Alabs* Lebelok and Likuplik.

4. When the defendant Kumtak and the plaintiff Levi discussed certain property rights with a Japanese Government official about 1935 on Rongrong, it was concluded that the Japanese would recognize Likuplik as *alab* of all the land in question, would recognize Elelan as ninnin land, and would recognize Levi and his brothers and sisters as the holders of the *dri jermal* rights to that *wato*.

5. Jitiam was an *iroij erik* in Japanese times. About 1944 a senior U.S. Naval Officer in a formal ceremony presented a medal to Jitiam and a medal to defendant Lainlen. This was construed by many to mean that Jitiam was recognized by the United States Government as *iroij lablab* of Jebrik's side, at least for ceremonial purposes. There was no showing that Jitiam ever attempted to exercise

the property rights associated with the position of *iroij lablab*.

6. Rubeik was never *alab* of any of the land in question.

7. In addition to being recognized by the Japanese Government, Likuplik was *alab* of the land in question in her own right.

8. Minikibwe is not *ninnin* land. Defendant Bolos and the *bwij* of which he is a member have surrendered whatever rights they had in this *wato* to plaintiff Levi and his *bwij*.

9. Defendant Konou and defendant Kumtak, as Konou's representative and prospective successor, are unwilling to permit plaintiff Levi and the members of his *bwij* to exercise *dri jermal* rights on Elelan and Minikibwe unless they recognize Konou as *alab* of these two *wato*. Levi's sister, Minia, worked this land for a period of about six months in 1941. Except for this period, Levi and the members of his *bwij* have consistently since 1935 refused to reside on or work these two *wato* under an *alab* outside of their *bwij*.

10. No evidence was introduced regarding how much money, if any, is due defendant Lainlen, or his successor, and plaintiff Hezekaia, or his successor, in the event their claims as *iroij lablab* and *iroij erik*, respectively, are upheld.

NOTE

Since the trial of this case, the court has been informed that defendant Lainlen and plaintiff Hezekaia have died and the court, upon written motion presented September 15, 1952, admitted Aisea Davis as Lainlen's successor in interest in this action.

CONCLUSIONS OF LAW

[1-4] 1. In connection with the defendant Lainlen's rights to the position of *iroij lablab*, it is not necessary

for this court to determine whether or not a wrong was committed in the ousting of Drele and in the re-distribution of the property rights held by the *iroij lablab* on Jebrik's side. The position of the present government of the Trust Territory of the Pacific Islands with regard to acts of the former administration is explained in the second paragraph of the conclusions of law by this court in the case of *Wasisang v. Trust Territory of the Pacific Islands and others*, 1 T.T.R. 14. As there stated, the general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have, for many years before, been persisted in by the former administration. See Vol. 30 of American Jurisprudence, page 207, paragraph 47 of the article on "International Law". The decision not to have any *iroij lablab* for Jebrik's side was undoubtedly a departure from Marshalllese custom, but it was a clear determination by the authority then administering the Marshall Islands making an exception to or change in the customary law. The Japanese Government consistently refused to bring the two sides together under one *iroij lablab* for more than twenty (20) years right up to the time of the occupation by the United States Forces. Section 24 of the Trust Territory Code provides as follows:—

"Sec. 24. Land Law not affected. The law concerning ownership, use, inheritance, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands."

This court is therefore bound to uphold the law in effect on December 1, 1941, until it is changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands.

[5, 6] 2. This court takes judicial notice of the letter from Jaluit Jijojo (i.e., the Japanese Administrator stationed at Jaluit), to Jitiam, dated April 7, 1933. Since there is no *iroij lablab* on Jebrik's side, the property rights formerly held by, and the obligations formerly due from, the *iroij lablab* have passed to the Government of the Trust Territory of the Pacific Islands, the *iroij eriks* on Jebrik's side, and the group consisting of those holding property rights on that side. The exact division of authority and obligation between these interests is not clear, but does not have to be decided in this case. Since the occupation of Majuro by the United States Forces in 1944, the United States Naval Military Government and later the government established in accordance with the terms of the Trusteeship agreement, failed to assert some rights formerly exercised by, and to do some things formerly done by the Japanese Government in this connection. This court holds that this does not constitute any waiver of the rights of the Government of the Trust Territory of the Pacific Islands.

[7] 3. All parties are agreed that Likio was recognized as *iroij erik* by the Japanese Government. They are similarly agreed that her son, the plaintiff Hezekaia, is the one entitled to inherit whatever *iroij erik* rights she had. Under the principles of law expressed in paragraph 1 above, Hezekaia's rights, now vested in Joab, to the position of *iroij erik* are not subject to question.

[8] 4. Likewise, defendant Konou was recognized as *alab* of the land in question by the Japanese Government. Due to the fact that a substantial number of people on Jebrik's side questioned Likio's and later Hezekaia's rights as *iroij erik*, Konou's past refusal to pay them the *iroij erik's* share except under pressure by the Japanese Government is not considered to have deprived him of his

rights as *alab*, although a continuation of this refusal would do so. Since the evidence shows that it is now relatively common practice for people to hold rights in land on both sides of Majuro Atoll, the fact that Konou's ancestors lived on Kaibuke's side does not prevent him from acting as *alab* of the land in question.

5. Applying one of the principles expressed in the preceding paragraph, Levi's past refusal to recognize defendant Konou as *alab* and to reside on and work the land under Konou's supervision is not considered to have deprived him and the members of his *bwij* of the *dri jermal* rights in Elelan and Minikibwe, although a continuation of this refusal would do so.

6. Similarly, the failure of Jeko and the members of his *bwij* to reside on and work Kemen Island is not considered to have deprived them of their *dri jermal* rights, although a continuation of such failure would do so.

JUDGMENT

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

1. As between the parties and all other persons claiming under them, property rights in Dririj and Kemen Islands on the northeasterly side of Majuro Atoll (with the exception of the *wato* on Dririj Island known as Wajutak, which it is agreed is mission land), are as follows:—

a. The rights formerly vested in the *iroij lablab* are now vested in the Government of the Trust Territory of the Pacific Islands, the *iroij eriks* on Jebrik's side, and the group consisting of those holding property rights on that side. No determination is made in this action as to the division of these rights between these three interests.

b. The *iroij erik* rights are vested in the plaintiff Joab as successor to plaintiff Hezekaia. If the parties involved are unable to agree upon the amount, if any, which is due *Iroij Erik* Joab from *Alab* Konou and the *dri jermal*,

any of the parties concerned may apply to this court for a determination on this matter.

c. The defendant Kumtak Jatios is *alab* of the land in question under the plaintiff Joab as *iroij erik*. However, his right to continue in this capacity is contingent upon his willingness to recognize Joab as *iroij erik*. If he fails to recognize Joab within a period of three months, his rights to the position of *alab* are to be forfeited and the position is to be filled by some person chosen in accordance with Marshallese custom as modified by the act of the Japanese Government described in the second finding of fact.

d. Elelan Wato on Dririj Island is *ninnin* land. The *dri jermal* rights in this *wato* are owned by the plaintiff Levi and the members of his *bwij* under the defendant Konou as *alab*. If they fail to recognize Konou and his possible successor within six months, their *dri jermal* rights will be forfeited and transferred to whatever *bwij* would be next entitled to these rights in accordance with Marshallese custom as modified by the action of the Japanese Government described in the second finding of fact.

e. The *dri jermal* rights on Minikibwe Wato on Dririj Island are owned by the plaintiff Levi and the members of his *bwij* under the defendant Konou as *alab*. If they fail to recognize Konou and his possible successor within six months, their *dri jermal* rights will be forfeited and transferred to whatever *bwij* would be next entitled to these rights in accordance with Marshallese custom as modified by the action of the Japanese Government described in the second finding of fact.

f. The *dri jermal* rights in Kemen Island are owned by the defendant Jeko and the members of his *bwij* under the defendant Konou as *alab*. If they fail to recognize Konou and his possible successor within six months, their *dri jermal* rights will be forfeited and transferred to

whatever *bwij* would be next entitled to these rights in accordance with Marshallese custom as modified by the action of the Japanese Government described in the second finding of fact.

g. Defendant Neika and the members of her *bwij* retain the *dri jermal* rights in Jitlokkan and Dremjelan *Wato* on Dririj Island.

2. No costs are allowed or taxed in this matter.

April 7, 1953

To Jitiam:

The confirmation of the establishment of copra division.

The way of the copra division between *iroij erik* and *kajur* on Jebrik's land was already established by the office (Jijo) and submitted to you some years ago. Some time later the *iroij erik* with the *Kajur* failed to divide the share of Jebrik, but they started to collect together to establish a capital and use for up-keep the doctor bill and for some other things, same as those on such land being under *iroij elap*. These were done for many times. To my consideration right now you don't know how to handle it and this was done by you very badly most of the time and some times in proper way. I know that none of you is happy under such condition of management.

So with many considerations and observations of the Jijo, we tried to seek another way to satisfy all of you. Now with this act of constitution submitted to you and Jebrik's people, all of you should obey this establishment.

The magistrate will see to it, that anyone who denied to follow this settlement to take notice of such action and to inform the Jijo of such person.

The following provisions are effective

1. From one kilo of copra produced on Jebrik's land, to collect one sen for the establishment of a capital (funds) for the benefit of all of you. This will be used for the hospital treatment and your needs. At such times the copra price drops to less than 6 sen per kilo you will collect $\frac{1}{8}$ of the copra price for the fund (capital).

2. The copra share of the *iroij erik* at such times sold at 8 sen or more per kilo you will collect two sen and if less than 8 sen the *iroij erik's* share will be $\frac{1}{4}$.

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3. The share of the kajur from the copra will be the amount of the remainder after the collection of the funds has been made and for the *iroij erik* (see 1 to 2).

4. The capital (funds) will be collected by a collector from the copra buyer and put aside for the important matters to a certain time until you know how to handle it, but at the present time the office (Jijo) will keep it safe for all of you.

5. So that no overseeing is done on the collection, everyone of you should follow this provision:

a. After a kajurchas sold his copra, he should send notice of this to the *iroij erik* on what month this was done with the date and the land and the weight with the buyer's name.

b. The *iroij erik* should take the notice of the weight made by the seller and notify the magistrate on such matters every month.

c. The magistrate should take all the weights taken by the *iroij erik* and notify the office (Jijo) every month. If a kajur or *iroij erik* fails to inform the magistrate on such dealings, he should advise him and if he doesn't obey his command to notify the office, his name, age and the evidence of not doing this.

d. The Kajur should know not to sell his copra to any firm who is not able to pay immediately one sen for the funds to the collector.

6. This provision will become effective June 1st 1933.

7. The money still with the Droulul of Jebrik and in the possession of the *dri jermal* is not to be used any more. Such money will be sent to Jijo with all the information issued by the keeper.

8. Those who are still in credit with the Droulul and all money which has been drafted anywhere should be drawn out and sent to Jijo. Those people withhold the fund and don't want to deliver to inform the Jijo his name, age and the amount of funds still in his hand.

9. The Droulul should be aware of this new establishment which is put out to follow and to destroy the Droulul at present.

/s/ Jaluit Jijojo