

LAZARUS S., Plaintiff

v.

LIKJER, Defendant

Civil Action No. 8

Trial Division of the High Court

Marshall Islands District

June 21, 1954

Action to determine ownership of *alab* and *dri jermal* rights on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that consent of *iroij lablab* is essential to transfer of *alab* rights by *alab* of land in which his *bwij* holds these rights.

1. Marshalls Land Law—"Alab"—Powers

Under Marshallese custom, *alab* of land in which his *bwij* holds *alab* rights has no power to give those rights away without consent of *iroij lablab* of the land, or those entitled to exercise *iroij lablab* powers over it.

2. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, an *iroij lablab* might for good reason permit a gift of *alab* rights without the consent of *bwij* of that land.

3. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, consent of person or persons entitled to exercise *iroij lablab* powers is essential to gift of *alab* rights, and attempted gift has only such effect as those concerned see fit to give it.

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

Under special arrangement for exercise of *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, consent to gift of *alab* rights there must be given either by *droulul* without objection of the administration, or by administration itself.

5. Marshalls Land Law—"Alab"—Succession

Where former *alab* tried to give *alab* rights to claimant and his *bwij*, it was of no legal effect when it lacked necessary consent of those exercising *iroij lablab* powers.

6. Marshalls Land Law—"Dri Jermal"—Revocation of Rights

Where status as to *iroij lablab* rights were in doubt in minds of many Marshallese in community, disregard by claimant and his *bwij* of their obligations to rightful *alab* will not result in termination of their *dri jermal* rights.

7. Marshalls Land Law—"Dri Jerbal"—Suspension of Rights

Where *dri jermal* rights of party and his *bwij* who disregarded their obligations to rightful *alab* are suspended, they may be regained by their recognizing rightful *alab* within reasonable time.

8. Marshalls Land Law—"Dri Jerbal"—Suspension of Rights

Under Marshallese custom, rightful *alab* and her *bwij* may themselves exercise *dri jermal* rights during such period as those otherwise entitled to hold these rights fail to recognize her as rightful *alab*.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The defendant Likjer is the present senior member of the *bwij* (extended matrilineal family) of Aea, and as such became *alab* (person in immediate charge of a piece of land) of the land in question on Aea's death.

2. The defendant Likjer's right to succeed Aea as *alab* was confirmed by a determination made by *Iroi Erik* (Lesser Chief) Moses with the approval of both *Iroi Lablab* (Paramount Chief) Jebrik Lukutwerak and the Japanese government.

3. The *bwij* of which plaintiff Lazarus is now the senior member, was clearly recognized by all of those concerned with the land as having *dri jermal* (worker) rights in the land in question for many years under the Japanese administration, and under the American administration until the death of Aea, about 1950.

4. Plaintiff Lazarus and his *bwij* have wrongfully refused to recognize the defendant Likjer as *alab* since the death of Aea, but their rights have not yet been cut off by or with the approval of either the *droulul* (society) of those holding rights in lands formerly under *Iroi Lablab* Jebrik Lukutwerak (now often referred to as the 20-20 group), or the American administration.

5. Any attempted gift of the *alab* rights by Aea to the plaintiff Lazarus or his *bwij* was not approved, either by the members of Aea's *bwij*, or by the *droulul* referred to above, or by the Japanese or the American administrations.

CONCLUSIONS OF LAW

1. This action concerns the ownership of the *alab* and *dri jermal* rights in certain land on "Jebrik's side" of Majuro Atoll. The special arrangement for the exercise of *iroij lablab* powers in that part of Majuro Atoll is discussed in the conclusions of law by this court in *L. Levi v. Kumtak*, 1 T.T.R. 36, and *Lazarus S. v. Tomijwa*, 1 T.T.R. 123.

[1-5] 2. Under Marshallese customary law an *alab* of land in which his *bwij* holds the *alab* rights, has no power to give those rights away without the consent of the *iroij lablab* of the land, or those entitled to exercise the *iroij lablab* powers over it. Ordinarily the *alab* is expected to talk the matter over with members of his *bwij* and get their consent too. For good reason, however, the *iroij lablab* might permit the gift without the consent of the *bwij*, but the consent of the person or persons entitled to exercise the *iroij lablab* powers is essential. Without it, the attempted gift has only such effect as those concerned see fit to give it. Under the special arrangement mentioned above for the exercise of *iroij lablab* powers over Jebrik Lukutwerak's former lands, that consent in the case of those lands would have to be given either by the *droulul* without objection by the administration, or by the administration itself. The evidence is in conflict as to whether Aea tried to give the *alab* rights to the plaintiff Lazarus and his *bwij*. Assuming however that he did try to make such a gift, the court holds it was of no legal effect because it lacked the necessary consent.

[6-8] 3. The defendant Likjer claims that the plaintiff Lazarus and his *bwij* have now lost any *dri jermal* rights they may formerly have had because they refused to recognize Likjer as *alab*. While it is probable that such refusal, if persisted in long hereafter, would justify those entitled to exercise the *iroij lablab* powers, in approving the termination of these rights, such termination has not been so approved. In 1933 the Japanese administration modified the original arrangement for control of Jebrik's former lands and had a portion of the proceeds from copra produced there paid to the administration to be used for medical expenses and other needs of the people. The details of this modification were set forth in a letter from the Jaluit Jijojo (i.e., the Japanese Administrator stationed at Jaluit) dated April 7, 1933, but are not material here. This court takes notice, however, that the American administration has failed to collect and handle this portion of the copra proceeds and has appeared, at least to date, unwilling to work as closely with the *droulul*—or with the *iroij lablab* generally—as the Japanese administration did. These facts, along with the others, have created great doubt in the minds of many Marshallese as to the status of *iroij lablab* rights in general and the *droulul* in particular. The plaintiff Lazarus brought this action fairly promptly to have the rights of his *bwij* determined by the court. Under all the circumstances, therefore, the court considers that the disregard by the plaintiff Lazarus and his *bwij* of their obligations to the defendant Likjer has not continued so long as to itself terminate their rights. The court holds that the *dri jermal* rights of the plaintiff Lazarus and his *bwij* are merely suspended, and that they may regain the future exercise of these rights by recognizing Likjer (or her successor) as *alab*, within a reasonable time hereafter. In the meantime, under Marshallese custom, the defendant Likjer and

her *bwij* may themselves exercise the *dri jermal* rights during such period as the plaintiff Lazarus and his *bwij* fail to recognize Likjer (or her successor) as *alab*.

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 Eomelan (formerly known as Eastern Monak) Wato, on Anil Island, Majuro Atoll, are as follows:—

(a) The *alab* rights are held by the *bwij* of which the defendant Likjer is the present senior member, and the defendant Likjer is the *alab*.

(b) The *dri jermal* rights are held by the *bwij* of which the plaintiff Lazarus is the present senior member, but are suspended, and may be exercised by the defendant Likjer and her *bwij* unless and until the plaintiff Lazarus and his *bwij* recognize the defendant Likjer (or her successor) as *alab* within three months after the entry of this judgment.

(c) The plaintiff Lazarus and his *bwij* may regain the future exercise of the *dri jermal* rights by recognizing the defendant Likjer (or her successor) as *alab*, and filing in this action written acknowledgment that they have done so, within three months after the entry of this judgment.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against either party.