

LIMINE, Plaintiff
v.
LAINEJ, LITOWELAN, and JINET, Defendants

Civil Action No. 18
Trial Division of the High Court
Marshall Islands District

March 14, 1955

Action to determine *alab* rights in certain *wato* on Jabo Island, Arno Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under Marshallese custom, approval of *iroij lablab* is necessary to make will of rights in land effective, and that determination of former *alab* as to who should succeed him has no legal effect without such approval.

1. Marshalls Custom—"Iroij Lablab"—Approval of Wills

Under Marshallese custom, approval of *iroij lablab*, or those entitled to exercise *iroij lablab* powers, is necessary to make will of rights in land effective.

2. Marshalls Land Law—"Alab"—Succession

Under Marshallese custom, determination made by *alab*, with or without approval of his *bwij* as to who should succeed him as *alab*, has no legal effect without approval of *iroij lablab*.

3. Marshalls Land Law—"Ninnin"

Under Marshallese custom, there are special rules as to inheritance or transfer of rights in *ninnin* land.

4. Marshalls Land Law—"Ninnin"

Under Marshallese custom, *ninnin* rights may, under proper circumstances, pass on from generation to generation among descendants of person who originally gave them to his child or children.

5. Marshalls Custom—"Bwij"

Under Marshallese custom, just which people are referred to by term *bwij* in particular instance depends upon circumstances with regard to which it is used.

6. Marshalls Land Law—"Ninnin"

When a man gives his children, with all necessary consents, the *alab* rights in land as *ninnin* under Marshallese system of land ownership, presumption is that rights given are limited to his children and their descendants, and that gift fails to give any rights to that part of childrens' maternal lineage outside of these children and their descendants.

7. Marshalls Land Law—"Ninnin"

Under Marshallese custom, gift of *ninnin* land gives no rights to descendants of the mother's sisters, or descendants of one of mother's matrilineal ancestors.

8. Marshalls Land Law—"Ninnin"

Under Marshallese custom, children to whom *ninnin* rights have been given, and their descendants, may be considered to constitute new *bwij*, or their "smaller *bwij*."

9. Marshalls Land Law—"Ninnin"

Under Marshallese custom, fact that children and their descendants may permit *ninnin* rights to pass down among them in female line does not raise presumption of any rights outside of these children and their descendants.

10. Marshalls Land Law—"Ninnin"

Under Marshallese custom, when "smaller *bwij*" holding *ninnin* rights has run out in female line, children of last generation of male members of "smaller *bwij*" may be permitted by *iroij lablab* to succeed to *alab* rights, even though there are members in female line of other branches still living.

FURBER, *Chief Justice*

MEMORANDUM OF DECISION

1. This memorandum of decision is filed in accordance with Rule 17(a) of the Rules of Civil Procedure to assist the Appellate Division in a thorough understanding of the case.

2. At the trial of this action the plaintiff, Limine, appeared to place reliance primarily on the announcement of *Iroij Lalab* Tobo, set forth in the 5th finding of fact, to the effect that he then recognized Limine as *alab*. This announcement was made several years after Tobo had established the defendant Lainej as *alab*, and the Court, in its 5th conclusion of law, has held that the determination shown by that announcement was of no legal effect. In the grounds for appeal, the plaintiff Limine now, however, seems to claim first, that she is entitled to be *alab* because of a determination by Laniema, the former *alab*,

and his *bwij*, without regard to any action of the *iroij lablab*, and second, that it was beyond the power of the *iroij lablab* to establish Lainej as *alab*. To make clear the position of the Trial Court on these two points, I make the following additional finding of fact and conclusions of law:—

ADDITIONAL FINDING OF FACT

The plaintiff Limine has failed to prove that the *iroij lablab*, at any time prior to establishing Lainej as *alab*, had approved any determination that Laniema, or his *bwij*, or he and his *bwij*, may have made that Limine should succeed him as *alab* of any of the lands in question.

ADDITIONAL CONCLUSIONS OF LAW

[1,2] A. As explained in the conclusions of law by this Court in *Lalik v. Elsen*, 1 T.T.R. 134, under Marshall-ese customary law the approval of the *iroij lablab*, or those entitled to exercise the *iroij lablab*'s powers, is necessary to make a will of rights in land effective, and is one of the most important things about it. See also conclusions of law by this Court in *Lazarus S. v. Likjer*, 1 T.T.R. 129. The Court therefore holds that any determination that Laniema may have made, either with or without the approval of his *bwij*, as to who should succeed him as *alab* would have no legal effect without the approval of the *iroij lablab*.

[3-7] B. As noted in the opinion of the Appellate Division in the case of *Kumtak Jatios v. L. Levi*, 1 T.T.R. 578, there are special rules as to the inheritance or transfer of rights in *ninnin* land. In that case the Appellate Division held that "*ninnin* rights . . . may, under proper circumstances, and regularly do, pass on from generation to generation among the descendants of the person who originally gave (as commonly understood in this connec-

tion in the Marshalls) them to his child or children.” Much confusion has been caused in discussions of this subject by the indefinite meaning of the word “*bwij*”. As explained in the third paragraph of the Appellate Division’s opinion in *Kumtak Jatios v. L. Levi*, cited above, “just what people are referred to by the term ‘*bwij*’ in a particular instance depends on the circumstances with regard to which it is used.” This Court holds that when a man gives his children, with all necessary consents, the *alab* rights in land as *ninnin* under the Marshallese system of land ownership, the presumption, in the absence of a clear showing to the contrary, is that the rights given are limited to his children and their descendants, and that the gift fails to give any rights to that part of the children’s maternal lineage outside of these children and their descendants. In other words, such a gift gives no rights to the descendants of the mother’s sisters, or what might be called the children’s “larger” *bwij* (referring to the *bwij* consisting of descendants of one of their mother’s matrilineal ancestors).

[8, 9] C. It is sometimes stated that *ninnin* rights belong to the *bwij*, but the Court holds that in the normal situation this is only true in the sense that the children to whom the *ninnin* rights have been given and their descendants may be considered to constitute a new *bwij*, or what might be called their “smaller” *bwij*. The fact that the children and their descendants may permit the rights to pass down among them in the female line does not raise any presumption of any rights in the part of the children’s “larger” *bwij* outside of these children and their descendants.

[10] D. While it is often stated that in the case of *kabijukinen* land (that is, ancestral land holdings of a maternal *bwij*), *ajri* (that is, children of male members of

the *bwij*) are not entitled to succeed to *alab* rights of the *bwij* unless the entire *bwij* and all those associated with it become extinct, the Court holds that in the case of *ninnin* land, when the "smaller" *bwij* holding the *ninnin* rights has run out in the female line, the children of the last generation of male members of that "smaller" *bwij* may be permitted by the *iroij lablab* to succeed to the *alab* rights of the "smaller" *bwij*, even though there are members in the female line of other branches of the "larger" *bwij* still living.

3. For a further explanation of the commoner Marshallese terms used in this action, attention is invited to the introductory paragraphs in the opinion of the Appellate Division in *Kumtak Jaios v. L. Levi*, cited above. The terms "juluburin ne" and "mo" usually refer to personal land of an *iroij*, but are used in this action to describe the personal land of the *alab* Laniema. "Kajur" means commoner. "La" and "Le" are prefixes often affixed or omitted from the name of a male according to the choice of the speaker. "Li" and "Le" are similarly used in the case of names of women. The man shown on the geneological chart in this action as "Leboene" is the same man referred to in the testimony as "Boene". Similarly, the defendant "Litowelan" is the same person referred to at numerous points in the testimony as "Towelan." The spelling of Marshallese names is not strictly standardized. The plaintiff's first witness, whose name is shown in the record of trial and transcript of testimony as "Taridrik" is the same person shown in the geneological chart as "Taririk", and the plaintiff's second witness, whose name is shown in the record of trial and transcript of testimony as "Kinebal" is the same person shown on the geneological chart as "Kebal". On the other hand, the defendant's last witness, Abija, is a different person from the "Abijai" referred to in Lajible's opening statement.