

ABIJA, Plaintiff
v.
LARBIT, BOLLONG, and LIAKMO, Defendants
Civil Action No. 46
LIAKMO, Plaintiff
v.
ABIJA and LEBEN, Defendants
Civil Action No. 74
Trial Division of the High Court
Marshall Islands District
March 31, 1958

Two actions to determine rights in same lands on Jabo Island, Arno Atoll, consolidated for trial. The Trial Division of the High Court, Chief Justice E. P. Furber, held that although *iroij lablab* has power to take away or transfer subordinate rights in land for good reason, previous determination which is proper under Marshallese custom is binding on parties, and sudden attempted change, with no good reason, is of no legal effect.

1. Marshalls Land Law—"Iroj Lablab"—Limitation of Powers

Power of *iroij lablab* over rights in land under him is more limited than it once was.

2. Marshalls Land Law—"Iroj Lablab"—Obligations

In passing on land matters, *iroij lablab* must act with honest regard for welfare of his people and with reasonable consideration for rights of all those having interests in the land.

3. Marshalls Land Law—"Iroj Lablab"—Obligations

Iroj lablab, in passing on land matters, must have good reasons for his decisions when these would upset rights that have been clearly established.

4. Marshalls Land Law—"Iroj Lablab"—Obligations

When law leaves matters to judgment of *iroij lablab*, he must act reasonably and as responsible official and not simply to satisfy personal wishes.

5. Marshalls Land Law—"Iroj Lablab"—Powers

Under Marshallese custom, *iroij lablab* has power to take away or transfer subordinate rights in land for good reason and in doing so may make practical compromises, without deciding on technical basis wholly in favor of or against particular claim.

6. Marshalls Land Law—"Iroij Lablab"—Limitation of Powers

Determinations of *iroij lablab*, when reasonable and proper under Marshallese custom, are binding on parties, but sudden attempted change of previous determination of *alab* rights, with no good reason and with representative of only one side of controversy present, is of no legal effect.

7. Marshalls Land Law—"Iroij Lablab"—Limitation of Powers

Under present Marshallese custom, determinations of *iroij lablab* must meet requirements imposed by succeeding administering authorities in order to have legal effect.

8. Marshalls Land Law—"Iroij Lablab"—Obligations

Taking away of subordinate rights in land in Marshall Islands is drastic matter which should be undertaken by *iroij lablab* only after thorough investigation and reasonable attempt to settle matters by negotiation.

9. Marshalls Land Law—"Iroij Lablab"—Obligations

Iroij lablab should exercise special patience in determining that subordinate rights in land have been lost or should be taken away because of failure to recognize someone as holding one of higher rights, when there is widespread doubt as to whether given person has in fact succeeded to that higher right.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Abija, who was then *alab* (person in immediate charge of a piece of land) of all seven *wato* (pieces of land) in question, committed a serious breach of his obligations in objecting so strenuously and persistently to *Iroij Lablab* (Paramount Chief) Tobo's establishing or re-establishing an *iroij erik* (lesser chief) over the lands in 1953, in refusing to recognize Larbit as *iroij erik* from then on, and in refusing to comply with proper instructions given him by Bollong as acting *iroij erik* for Larbit.

2. In discussing the matters referred to in the first finding of fact, Abija and *Iroij Lablab* Tobo both made statements they did not really mean and which should not reasonably have been understood to be taken literally; Abija did not actually surrender his rights and *Iroij Lab-*

lab Tobo did not actually establish Liakmo as *alab* of all seven *wato*.

3. As a result of certain inconsistent statements made by *Iroi**j Lablab* Tobo, a situation developed, which Tobo knew about and tolerated from 1953 to 1957, under which Abija physically exercised the *alab* rights over and collected the *alab*'s share from four *wato*—namely, Taruk, Mwejobnon, Jaeo, and Lomedro—and Liakmo did likewise as to the other three—namely Akariken, Jokar and Laruru.

4. On or about March 18, 1957, in the presence of Abija, Bollong, and Simon, as an impartial observer, as well as others, *Iroi**j Lablab* Tobo tried to effect a settlement of the *alab* rights, and indicated his determination that the *alab* rights should be divided on the basis on which they had been exercised since 1953, as shown in the third finding of fact, and the *dri jermal* (worker) rights in Jokar and Laruru transferred from Abija to Liakmo or such transfer confirmed; Tobo, on the same occasion, made statements about the *iroi**j erik* rights, the exact meaning of which it is hard to understand, but which indicated he had determined not to terminate Larbit's rights as *iroi**j erik*. Under all the circumstances these determinations were reasonable and proper under Marshallese custom.

5. In view particularly of Abija's difficulty in understanding complicated matters and making up his mind quickly, there was no good reason for *Iroi**j Lablab* Tobo's shortly thereafter allegedly changing, or attempting to change, the above determination as to the *alab* rights, with the representative of only one side of the controversy present, and purporting to make Liakmo *alab* of all seven *wato*.

CONCLUSIONS OF LAW

1. These two actions were combined for pre-trial and trial and involve rights in the same lands. The principal questions of law presented relate to the present day powers of an *iroij lablab* in dealing with subordinate rights in land under him under the Marshallese system of land tenure. The matter of establishing or re-establishing an *iroij erik* is considered to be clearly one which should be decided, within the limits of the law, by those holding *iroij rights* in the land and which the *alab* has no right to control or stop.

[1-5] 2. An *iroij lablab's* present day powers over rights in lands under him, and the limitations of those powers, have already been considered by this court and discussed in its conclusions of law in *Limine v. Lainej*, 1 T.T.R. 107, *Lalik v. Elsen*, 1 T.T.R. 134, and *Lalik v. Lazarus*, 1 T.T.R. 143. The decision of this court in the *Limine* case, which was based on a holding that certain action of an *iroij lablab* was both unreasonable and contrary to Marshallese customary law and therefore of no legal effect, has been affirmed by the Appellate Division in *Limine v. Lainej*, 1 T.T.R. 595. The holdings of the Trial Division in the *Limine* case have shown that the power of an *iroij lablab* over rights in land under him is more limited than it once was; that, in passing on land matters, he must act with an honest regard for the welfare of his people and with reasonable consideration for the rights of all those having interests in the land; that there must be a good reason or reasons for his decisions, especially when these would upset rights that have been clearly established; and that where the law leaves matters to his judgment, he must act reasonably as a responsible official and not simply to satisfy his own personal wishes. On the other hand, the *Lalik v. Lazarus* case shows clearly that

an *iroij lablab* still has the power to take away or transfer subordinate rights in land for a good reason, and the *Lalik v. Elsen* case indicates that in doing so he may make practical compromises and does not have to try to decide on any technical basis wholly in favor of or wholly against a particular claim.

[6] 3. Applying the above principles to the facts in the case now under consideration, the court holds that *Iroij Lablab* Tobo's determinations set out in the fourth finding of fact are binding on the parties, and that his sudden change or attempted change of the determination as to *alab* rights, as referred to in the fifth finding of fact, is of no legal effect. Leben's attempt, as successor of *Iroij Lablab* Tobo, to upset Laikmo's *alab* rights and certain of her *dri jerbai* rights and Bollong's rights as acting *iroij erik*, on the ground that Leben does not know about Laikmo being given these *alab* and *dri jerbai* rights and that Bollong has not recognized Leben as Tobo's successor, is considered too hasty and abrupt to be reasonable or proper under existing circumstances. Some question has been raised in these actions whether Leben has succeeded or should succeed Tobo. The court does not attempt to decide that question here, but holds that even if he has become *iroij lablab*, his action referred to above is of no legal effect.

[7-9] 4. Perhaps such action as Leben has attempted here would have been all right under Marshallese custom in the days when disputes as to succession to the position of *iroij lablab* were often decided by war, but today an *iroij lablab's* determinations, in order to have legal effect, must also meet the requirements that have been imposed by the successive administering authorities. The taking away of subordinate rights is a drastic matter which should be undertaken only after thorough investi-

gation and a reasonable effort to settle matters by negotiation. Furthermore, as indicated by the Appellate Division in *Kumtak Jatios v. Levi*, 1 T.T.R. 578, and by the Trial Division in *Levi v. Kumtak*, 1 T.T.R. 36, special patience should be exercised in determining that rights have been lost or should be taken away because of failure to recognize someone as holding one of the higher rights in the land, when there is widespread doubt as to whether a given person has succeeded to that higher right. It is agreed that Tobo only died about June 27, 1957. Without going into the question at this time of whether there is any good reason for the uncertainty, the court takes notice that there is uncertainty in many minds as to whether Leben has succeeded Tobo, and that this question is one of the principal issues in two cases now awaiting trial in this court.

5. Larbit has been living away from Arno Atoll since about 1938. Bollong, who is a man, claims the right to act as *iroij erik* for Larbit, both on the basis of relationship and of express directions given by Larbit about 1949. Lijoj, who is a woman living on Arno Atoll, who is more closely related to Larbit than Bollong is, has stated in open court that she wishes to leave the determination of Larbit's rights entirely to Leben. Bollong, Lijoj, and Leben all state they have had no word from Larbit about this matter since Tobo's death; and Leben states he has not decided what he wants to do about Larbit's rights. Before Tobo's death, Bollong and Lijoj appear to have cooperated in representing Larbit in accordance with Marshallese custom and Larbit's directions, express and implied. Under these circumstances, the court makes no determination in these actions as to whether good reason does or does not exist for terminating Larbit's *iroij erik* rights, but merely decides that they have not yet been terminated or surrendered.

JUDGMENT

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

1. This judgment applies to both of the above entitled actions combined.

2. As between the parties and all persons claiming under them, rights in the *wato* named below, all of which are located on Jabo Island, Arno Atoll, in the Marshall Islands District, are held as follows:—

a. Abija, who lives on Ine Island, Arno Atoll, is the *alab* of Taruk, Mwejobnon, Jaeo, and Lomedro *wato*; Liakmo, who lives on Jabo Island, has no rights of ownership in these 4 *wato*.

b. Laikmo is *alab* of Akariken, Jokar, and Laruru *wato*, and also has *dri jermal* rights in all 3 of these; Abija has no rights of ownership in these 3 *wato*.

c. Larbit, who lives on Namorik Island, Namorik Atoll, is *iroij erik* of all 7 *wato* referred to above.

d. Bollong, who lives on Ine Island, is the acting *iroij erik* for Larbit, but he has only the right to act in this capacity in accordance with Larbit's directions, and so long as Larbit remains *iroij erik*; Bollong has no right to interfere, except by respectful, peaceful persuasion, with Larbit's surrendering his *iroij erik* rights if he so desires and the *iroij lablab* approves.

3. Laikmo and Bollong are permanently enjoined and prohibited from interfering with the normal exercise of Abija's *alab* rights on Taruk, Mwejobnon, Jaeo, and Lomedro *wato*, and any *dri jermal* rights he may have in these 4 *wato*, unless Abija seriously fails to fulfill his obligations in the future.

4. Abija and Leben, who also lives on Ine Island, are permanently enjoined and prohibited from interfering with the normal exercise of Laikmo's *alab* and *dri jermal* rights in Akariken, Jokar, and Laruru *wato*, unless Laikmo seriously fails to fulfill her obligations in the future.

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

6. No costs are assessed against any party.

ABIJAI, Plaintiff

v.

JIWIRAK T., Defendant

Civil Action No. 81

Trial Division of the High Court

Marshall Islands District

March 31, 1958

Action to determine *iroij lablab* rights in certain *wato* on Matollen Island, Arno Atoll. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that under Marshallese custom, recognition of another as *iroij lablab* by *alab* in possession of land is effective to constitute him as such, despite objection of *iroij erik*.

1. Marshalls Custom—"Iroij Lablab"—Recognition

Under Marshallese custom, *alab* has right to recognize another as *iroij lablab* against opposition of *iroij erik*, and to withhold share due *iroij erik* until he recognizes *iroij lablab*.

2. Judgments—Res Judicata

Court will not consider same contentions and evidence offered in previous case, although now offered by other parties, and arrive at opposite conclusion, but will consider new matter involving other parties not privies of those in former case, and pertaining to other property.

3. Judgments—Res Judicata

Where no new matter is offered in opposition to *iroij lablab* rights determined in previous case, such opposition will fail.

4. Marshalls Custom—"Iroij Lablab"—Recognition

Under Marshallese custom, where an *iroij erik* has consistently refused to recognize another as *iroij lablab*, he is not required to recognize him as such nor to perform various personal services implicit in the relationship.

5. Marshalls Custom—"Iroij Lablab"—Recognition

Under Marshallese custom, where *iroij erik* consistently refuses to recognize another as *iroij lablab*, he may, without danger of loss of position, refrain from according to *iroij lablab* those personal indications of esteem required of an *iroij erik* who has participated in promoting and recognizing the *iroij lablab's* accession.