

take any additional proper testimony either side wishes to offer on this charge of disturbing the peace, but the judge is also to consider the testimony already in the record without its being reintroduced.

b. After taking such additional testimony the judge shall finish the trial as if there had been no previous finding or sentence; shall allow the evidence; and, if the finding is guilty, allow the usual opportunity for hearing on the question of sentence and impose a new sentence.

JOAB J., Plaintiff

v.

LABWOJ, Defendant

Civil Action No. 125

Trial Division of the High Court

Marshall Islands District

February 9, 1961

Action to determine ownership of *iroij erik*, *dri jermal* and *alab* rights on certain *wato* on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that *iroij lablab* powers on "Jebrik's side" of Majuro Atoll are, as practical matter, vested in the *iroij erik* and the *droulul*, and therefore one's *dri jermal* rights can only be cut off by concurrence of all those having such powers, and not by *iroij erik* alone.

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

Under Marshallese custom, *dri jermal* rights which would otherwise continue indefinitely can only be cut off by *iroij lablab* or those having *iroij lablab* rights in land.

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

Under Marshallese custom, *dri jermal* rights which would otherwise continue indefinitely cannot be cut off by *iroij erik* alone.

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

Iroij lablab powers on "Jebrik's side" of Majuro Atoll belong to the government, the *iroij erik* on that "side," and the group (*droulul*) holding property rights there.

4. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro
As a practical matter, *iroij lablab* powers on "Jebrik's side" of Majuro Atoll are vested in the *iroij erik* on that "side" and group (*droulul*) holding property rights there.
5. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro
In regard to land on "Jebrik's side" of Majuro Atoll, same weight will be given to decisions of *iroij erik* on that "side" and *droulul* holding property rights there as to decisions of an individual *iroij lablab*, provided *iroij erik* and *droulul* develop fair and practical method of operation which will be clearly understandable, generally known to those concerned, and will take into consideration all factors individual *iroij lablab* is expected to and will result in responsible decisions at least as definite as those expected of individual *iroij lablab*.
6. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro
In attempting to exercise *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, statement signed by four of eight *iroij erik* and seven members of committee for *droulul*, stating that *dri jermal* has made many troubles, but making no mention of cutting off his rights, is insufficient to constitute exercise of the *iroij lablab* power to cut off such rights.
7. Marshalls Land Law—"Dri Jermal"—Revocation of Rights
Whether *dri jermal's* failure to fulfill his obligations is serious enough to warrant cutting off his rights should be considered in first instance by those having *iroij lablab* powers, and not by court.
8. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro
In exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, fair procedure should be established, including notice to all parties connected with exercise of these powers.

FURBER, *Chief Justice*

OPINION

This action involves the ownership of the *iroij erik*, *dri jermal*, and prospective *alab* rights in Berakwot *wato*, which is one of the *wato* on "Jebrik's side" of Majuro Atoll, for which side a special arrangement for exercising *iroij lablab* powers was set up by the Japanese government as explained in the opinion of the Appellate Division in *Kumtak Jatios v. L. Levi, et al.*, 1 T.T.R. 578.

The court finds no justification for the defendant Labwoj's claim that he may disregard the plaintiff Joab as *iroij erik*, since Joab is clearly the natural successor in the female line of the *iroij erik* shown to have been established and recognized in the time of the defendant's former *alab* Lowanbakoij through whom the defendant claims his rights in the land in question.

[1-4] This action raises clearly the question of just how the *iroij lablab* powers in land on "Jebrik's side" of Majuro Atoll may be exercised at the present time. The plaintiff Joab seeks to cut off the defendant Labwoj's rights and in effect to pass them on to the next senior member of Labwoj's *bwij*. The court is clear that such cutting off of rights which would otherwise continue indefinitely can be done only by the *iroij lablab* or those having the *iroij lablab* rights in the land and that an *iroij erik* alone cannot do so. The Appellate Division opinion in *Kumtak v. Levi et al.*, mentioned above, refers to these powers having been given to "the government, the *iroij erik* on that 'side', and the group ('*droulul*' in Marshallese) consisting of those holding property rights there." This court takes judicial notice, however, that the Marshall Islands District Administration has consistently failed or refused to supervise the exercise of these rights in the way the Japanese Administration did. This view has been confirmed by the High Commissioner by the following dispatch which has been widely circulated among the Marshallese:

"From: Hicomterpaciis Guam

To: Distad Marshalls

UNCLAS X REQ PASS IMMEDIATELY TO MARSHALLESE CONGRESS CLN THE TRUST TERRITORY GOVERNMENT HAS NOT ACTED AND WILL NOT ACT AS *IROIJ LAPLAP* IN MARSHALLESE CONGRESS OR ELSEWHERE X REQUEST YOU ELIMINATE ANY REFERENCE OR INFER-

ENCE THE TRUST TERRITORY GOVERNMENT REPRESENTS THE 20-20 OR ANY OTHER GROUP AS *IROIJ LAP-LAP* IN THE MARSHALLESE CONGRESS X THE NAMING OF AN *IROIJ LAPLAP* OF THE 20-20 OR ANY OTHER GROUP HAS NOT BEEN DONE IN THE PAST NOR IS IT INTENDED TO BE DONE IN THE FUTURE X THE NAMING OF AN *IROIJ LAPLAP* CMM IF ANY CMM IS FOR THE PEOPLE CONCERNED TO ACCOMPLISH WITHIN THEIR LOCAL CUSTOMS IF THEY WANT SUCH A WITHIN THEIR SOCIAL ORGANIZATION X HICOM NUCKER SENDS

DTG 172540Z August 1960".

The court considers that the effect of this is to leave the *iroij lablab* powers as a practical matter in the *iroij erik* and the *droulul*.

[5] Under these circumstances the court is ready, in regard to lands on Jebrik's side, to give the same weight to decisions of the *iroij erik* and the *droulul* that it would to decisions of an individual *iroij lablab*, provided the *iroij erik* and the *droulul* develop a fair and practical method of operation which will be clearly understandable, generally known to those concerned, and will take into consideration all the factors an individual *iroij lablab* is expected to and will result in responsible decisions at least as definite as those expected of an individual *iroij lablab*.

[6, 7] In this case the plaintiff has offered as evidence of approval of the cutting off of the defendant's rights, a statement signed by four of the *iroij erik* (of which there would appear to be eight) and seven others who purport to be members of the 20-20 (presumably consisting of twenty men and twenty women, constituting a committee for the *droulul*), stating that Joab is the *iroij erik* and that Labwoj has made many troubles but making no mention whatever of cutting off his rights. The

court holds that this, even with the evidence in support of it, is clearly insufficient to constitute an exercise of the *iroij lablab* power to cut off rights. It is clear that the defendant has seriously failed to fulfill his obligations but no opinion is expressed as to whether that failure has been serious enough to warrant cutting off his rights. That is something which the court believes should be carefully considered and decided in the first instance by those having the *iroij lablab* powers.

[8] In the hope of clarifying the matter of the exercise of these powers in such a situation—and in the approval of wills changing the normal order of inheritance, which is believed to involve similar considerations—the court offers the following suggestions. It is the present belief of the court that before action is taken on these matters in the exercise of *iroij lablab* powers on Jebrik's side, the following should be done:—

1. Reasonable notice should be given to all those having *iroij erik* rights on Jebrik's side and an honest attempt made to get them together to discuss the matter.

2. If action is to be taken by the whole *droulul*, there should be reasonable notice sent to all of the *alab* of land on Jebrik's side and to the senior *dri jermal* of those *wato* on which the senior *dri jermal* is not a member of the *alab's bwij*. This notice should be sent in such a way that it may reasonably be expected to reach all of these who are staying on their lands on Majuro Atoll or those representing them under Marshallese custom on the land. Those under each of the different *iroij erik* should be encouraged to participate on the same basis and afforded a fair opportunity to do so if they so desire.

3. If action is to be taken by some committee on behalf of the whole *droulul*, that committee must be reasonably representative and have clear authorization from the *droulul* as a whole. The membership of the committee

must be publicly known and there must be reasonable notice sent to all of its members and all must be given an opportunity to participate before action is taken.

4. If the present 20-20 is to be used as such a committee, the mystery as to just who the members are must be removed and the status of the women members as to land matters must be clarified.

5. Who may vote and what kind of vote is required to constitute action must be determined.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the plaintiff Joab, who lives on Darrit Island, Jajuro Atoll, is the *iroij erik* of Berakwot *wato* on Darrit Island and the defendant Labwoj, who also lives on Darrit Island, is *dri jermal* and is in line to succeed the present *alab* Tomijwa on the latter's death.

2. The rights of both parties are subject to the Marshallese system of land law and nothing in this judgment shall prevent those having the *iroij lablab* powers over Berakwot *wato* from considering any change in these rights which should be made for good cause in accordance with Marshallese customary land law.

3. The defendant Labwoj is to account to the plaintiff Joab through the *alab* Tomijwa for all sums from the defendant on that *wato*.

4. The defendant Labwoj and all persons claiming under him are permanently enjoined and prohibited from destroying or otherwise interfering with the property of anyone else which is lawfully on this *wato*, unless they obtain in advance all the consents required under Marshallese customary law including that of the *alab* Tomijwa and the *iroij erik* Joab.

5. No costs are assessed against either party.