

LIEMA, Plaintiff

v.

LOJBWIL, Defendant

Civil Action No. 159

Trial Division of the High Court

Marshall Islands District

November 16, 1962

Action to determine *alab* of three *wato* on Bikarej Island, Arno Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where *iroij lablab* has recognized successor to deceased *alab*, and party who claims such decision was wrongful and unjust presents only unclear and inconsistent evidence, decision of *iroij lablab*, when reasonable and fair, will prevail.

Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, where there is doubtful situation as to land rights in which *iroij lablab* is expected to make reasonable determination, and his decision is reasonable and fair, it will prevail.

FURBER, *Chief Justice*

OPINION

This action involves the ownership of three *wato* in the Marshall Islands which are admittedly under *Iroij Lablab* Loben (sometimes spelled "Leben"). It is also admitted that Loben has recognized, or "crowned", the plaintiff Liema as *alab* of the three *wato* in question. The defendant Lojwil claims that this decision was wrongful and unjust.

The plaintiff Liema claims to be *alab* on the basis of a clearly established blood relationship to the former *alab*, which shows her to be senior by blood to the defendant Lojwil and his sister Libojin. The defendant Lojwil claimed at the pre-trial conference that his sister Libojin was the *alab* of all three *wato*, as shown in the pre-trial order which he agreed to before the trial started. At the trial, however, he changed his story as to Mejalto *wato*,

and made claim on a very different theory as to that *wato*, inconsistent with his sister Libojin's testimony, and now claims that he himself is the *alab* of that *wato*. His testimony as to the succession of *alabs* even for the other two *wato* varies in important respects from his sister's and from his claim as stated at the pre-trial conference. He relies in part on an alleged will of the former *alab* Likottar, which he says himself was later changed by Likottar and the *iroij lablab*, who was alleged to have approved it, and which the defendant admits was not carried into effect by that *iroij lablab* on Likottar's death. Neither the defendant, nor his sister, can satisfactorily reconcile the succession of *alabs* they allege with the theory as to the past ownership of *alab* rights on which they base their principal claims. If they are right at all there must have been a series of special arrangements, the details of which are not now at all clear.

It appears to the court that this is clearly one of those doubtful situations in which the *iroij lablab* is definitely expected to make a reasonable determination and that his determination in this instance was reasonable and fair and, therefore, should prevail in accordance with the principles discussed by this court in the Conclusions of Law in the case of *Lalik v. Elsen*, 1 T.T.R. 134.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the plaintiff Liema (whose name is sometimes written "Emma"), who lives on Bikarej Island, Arno Atoll, Marshall Islands District, is the *alab* on Mejalto, Bokeen, and Ajenlik *wato*, all located on Bikarej Island, Arno Atoll, Marshall Islands District, and the defendant Lojbwil, who also lives on Bikarej Island, has only *dri jermal* rights in these three *wato*.

2. The plaintiff Liema, however, is only entitled to collect the *alab's* share from these *wato* from the time she was recognized as *alab* by *Iroi Lablab* Loben in July 1961.

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

4. No costs are assessed against either party.

MOTTAN, Appellant

v.

LANJEN and TOMIWA, Appellees

Civil Action No. 181

Trial Division of the High Court

Marshall Islands District

November 16, 1962

Action brought to interpret lease agreement and for increased rental payments. The Marshall Islands District Court held that when nature of business conducted on rented property was changed during term of lease, amount of rental should reflect such change. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that although decision of District Court was correct, evidence was insufficient to establish amount of rent due.

Remanded with instructions.

1. Landlord and Tenant—Commercial Lease—Change in Nature of Business

Where business contemplated under lease agreement was usual type of retail store in Marshall Islands, with no mention of selling alcoholic beverages, sale of beer for consumption on premises changed nature of business to a "club."

2. Landlord and Tenant—Commercial Lease—Change in Nature of Business

Where lease agreement contemplated usual type of retail store in Marshall Islands, change in nature of business from retail store to club should not have been made without consent of lessors.

3. Landlord and Tenant—Commercial Lease—Change in Nature of Business

While business was operated as club instead of retail store as contemplated in lease agreement, rent should be appropriate for changed type of business unless and until new agreement is reached with lessors.

4. Judgments—Stay of Execution

Execution of judgment will not be stayed pending appeal unless either appellate or reviewing or trial court orders stay for cause shown and upon such terms as it may fix. (T.T.C., Sec. 201)