

well have been fatal were it not for the evidence of efforts to assert her rights before Kolus, and my conclusion that defendant's entry was wrongful and his claim without merit.

It is, therefore, ordered, adjudged, and decreed:-

1. That as between these parties all rights of possession and ownership in and to that portion of the *taro* swamp Naputa designated on the Plat of Survey as Neutimas No.2, located in Mechitiw Village, Moen Island, Truk District, is in the plaintiff Kisina Konang.

2. No costs are assessed against either party.

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LABINA, Plaintiff

v.

LAINEJ, Defendant

Civil Action No. 197

Trial Division of the High Court

Marshall Islands District

January 31, 1969

Action to determine who is *leroj lablab* of certain land on the eastern side of Arno Atoll, Marshall Islands. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that court should not establish an *iroij lablab* where no definite choice had been made by the people concerned.

1. Marshalls Custom-Succession to Titles--Generally

The manner of succession as to *alabs* applies to the pattern followed in the succession to the *iroij lablabs* and *iroij eriks* among the nobility class in the Marshall Islands.

2. Marshalls Custom-Succession to Titles-"Kajur"

Under Marshallese custom it is widely held that a member of the commoner class-a *Kajur*-cannot succeed to the office of *iroij lablab* or *iroij erik*.

3. Marshalls Land Law-"Iroij Lablab"-Succession

Where there was a reasonable uncertainty as to the rightful successor or whether there was any successor at all to the position or office of *iroij lablab* in respect to certain lands as to make substantial numbers of owners or interested parties hesitate before declaring their recognition, the individual claiming such office in addition to proving that

he is entitled by birth and blood to succeed to that office, must also show that the persons having rights in such lands have recognized the claimant, either by words or conduct, in such fashion as to evince an unmistakable choice.

4. Marshalls Land Law-"Alab"-Succession

An adopted child possesses much the same rights as the biological children except that he may only become *alab* of land of the lineage into which he has been adopted upon the extinction of all lineage relatives.

5. Marshalls Custom-Succession to Titles-Generally

Action in appointing person out of normal line of succession to *leroj lablab* in effect extinguished idea of succession according to the ordinary pattern of inheritance.

6. Marshalls Custom-Succession to Titles-Generally

On the general question of inheritance under the custom as it existed in the Marshall Islands on December 1, 1941, it must be found that there was no automatic succession to the office or rights of an *iroij lablab*, no inflexible or undeviated rule or pattern that must be followed on the death of an *iroij lablab*.

7. Marshalls Land Law-"Iroij Lablab"-Succession

Even in a case where a person by birth and blood is unquestionably entitled to the office of *iroij lablab*, if there is substantial opposition by the persons owning rights in the lands in the Territory where there has occurred a vacancy in the office of *iroij lablab*, the High Court should not by order or decree establish the person as *iroij lablab*.

8. Marshalls Land Law-"Iroij Lablab"-Limitation of Powers

Most of the former functions of *iroij lablab* in relation to the protection and welfare of the people have been taken over by the government under the German and Japanese administrations and also under the American administration.

9. Marshalls Land Law-"Iroij Lablab"-Limitation of Powers

The powers of the *iroij lablabs* in relation to land tenure have been held to be limited or circumscribed; they are subject to the review of the courts as to whether they are reasonable and just.

10. Marshalls Land Law-"Iroij Lablab"-Succession

Court will not establish an *iroij lablab* where no definite choice has been made of the *iroij lablab* by the people concerned.

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CLIFTON, *Temporary Judge*

OPINION

This action and four other actions in which the plaintiff Bina (also known by the more formal name Labina) is

also the plaintiff were consolidated for trial. Each action involves land located on the eastern side of Arno Atoll in the Marshall Islands, and the plaintiff contends in regard to each parcel of land that she is the *leroiij lablab* of said land. (*Leroij lablab*, sometimes called *leroiij elap*, is the feminine of *iroij lablab*.) The defendants in each action deny that Bina is or is entitled to be the *leroiij lablab*. The defendants are the holders of *iroij erik*, *alab* or other rights in the lands involved.

For a description of the titles of nobility, etc., and the levels of land tenure in the Marshall Islands, see the opinion of the Appellate Division of the High Court in *Jatios v. Levi*, 1 T.T.R. 578.

The disputes reflected in the present actions are of long standing, dating back to the time of the death of Liwaito (f), the *leroiij lablab* of the eastern part of Arno Atoll, who died in 1932 during the Japanese administration. The plaintiff's claims that she, Bina, is the *leroiij lablab* may be divided roughly into four subdivisions:

1. That she by birth and blood as the daughter of Lijanbit, as evidenced by the genealogical chart which was received in evidence in Marshall Islands District Civil Action No. 23, 1 T.T.R. 113, is entitled to be recognized as the *leroiij lablab*. The parties to these actions have stipulated that said chart correctly depicts the genealogy involved in these actions.

2. That she was entitled to be *leroiij lablab* but allowed her brother Jiwirak to act for her and to be elected or selected to be the *iroij lablab* in 1956 and upon his death in 1964 she was entitled to succeed him.

3. That Lijanbit, the mother of plaintiff and Jiwirak, was adopted by Ujlan (also spelled Wijlan) and upon Liwaito's death and the dying out of the *bwi.is* of Ujlan and Liwaito that because of the adoption of Lijanbit the plaintiff and Jiwirak were entitled to succeed Liwaito.

4. That plaintiff and her brother Jiwirak have been recognized or accepted as *iroij lablab* by each of the defendants or their predecessors and this confirms plaintiff's rights to act as *leroj lablab*.

The factual or historical situation involved in the question of the right of succession to Liwaito has been mentioned in the reports of several actions in the Trial Division of the High Court. In the pre-trial order in the present action, No. 197, Chief Justice Furber said, "For background information reference may be made to *Lainlij v. Lajoun and Others*, Marshall Islands District Civil Action No. 23 [1 T.T.R. 113], and *Liwinrak v. Jiwirak T.*, Marshall Islands District Civil Action No. 82 [1 T.T.R. 107, 231, 595]. It is to be noted that in the present action the plaintiff does not claim that the defendant Lain.ej has ever recognized either Jiwirak or Bina as the *iroij lablab* of *thewato* in question."

The plaintiff claims that her rights have been settled by the decision in Action N0.23, 1 T.T.R. 113, heretofore mentioned. An examination of that decision, however, shows that actually it only held that the plaintiff in that action, Lainlij, having recognized Jiwirak as *iroij lablab* could not "turn his back" on Jiwirak and refuse to recognize him. This conclusion as to the effect of the decision follows partly because the decision in said case said in part, "It should be clearly understood that the court in this action is only passing judgment on the rights as between the parties in the particular lands involved in this action. Many of the principles relied upon would have no application to persons who have never recognized Jiwirak as *iroij lablab* and whose predecessors in interest have never done so." This view of the opinion by the then Chief Justice Furber is supported by the statement of Associate Justice Toomin in Action No. 82, 1 T.T.R. 107, 231, 595, (commenting on Action No. 23, 1 T.T.R. 113) as follows:-

"The theory of the court in temporarily, at least, confirming Jiwirak in his claim to the succession, was that there had been recognition of his claims by the plaintiff in that case, and that by virtue of plaintiff's such conduct (in that case) he was precluded from later 'turning his back' and joining the opposition. It was therefore upon the basis of acceptance and recognition that the *Lainlij* decision was based, and not upon an automatic accession bottomed upon birth and blood. This court therefore holds that where, as here, there is such reasonable uncertainty as to the rightful successor, or whether there is any successor at all, as to make substantial numbers of owners or interested parties hesitate before declaring their recognition, no valid claim to the succession can be effectively made with respect to any lands, unless and until the persons having rights in such lands have recognized the claimant, either by appropriate words or conduct, in such fashion as to evince an unmistakable choice. To hold otherwise would impose an onerous burden on innocent persons which the law should be chary to sanction."

What is said here in relation to the right of inheritance to the office of *iroij lablab* or *leroj lablab* by blood, has been in the light of the inheritance pattern which existed in the Marshall Islands as described in "Land Tenure of the Marshall Islands", heretofore mentioned in the quotation from *Jatios v. Levi*, supra. Said anthropological work "Land Tenure in the Marshall Islands" has the following to say as to the inheritance pattern:-

(Page 16.)

#### "INHERITANCE PATTERN

"The Marshallese system of inheritance of land rights is principally matrilineal. Lineage (*bwij*) members trace descent from a common ancestress (*alab*) for the purpose of claiming land rights. The original lineage normally has been split into associate lineages descended from sisters. These associated lineages are known as the older lineages (*bwij errito*) or (*jioj*), middle lineage (*bwij iolab*), (all intermediate *bwij* are known as *bwij iolab* no matter how many there are) and younger lineage (*bwij eriklok*), according to the relative ages of the common ancestresses who belong to the same clan or '*jowi*'.

"Initially the senior sibling in the senior lineage is lineage head followed by all of the surviving brothers and sisters in chronological order. After all of these siblings have been *alab*, the next generation, personified in the oldest child of the oldest female, becomes *alab* and is in turn succeeded by his or her siblings in chronological order. This pattern of succession continues in one maternal line of descent until the line becomes extinct; in this case, the next associate lineage in order of seniority will inherit the '*alabship*' and rights in a particular piece of land or lands. Every Marshallese is, as may be seen, a potential *alab*.

"Although theoretically, relative age is the determining factor in succession to the position of leadership, in practice, a younger brother assumes all of the duties and responsibilities of the position from an older sister who by virtue of seniority is *alab*. He will become *alab* 'de facto' but she will remain *alab* 'de jure' and will be respected and deferred to as *alab*. Her brother will bring her the *alab(s)* share of the produce of the land but will relieve her of all of the burdensome duties connected with the position, for example, Kabua Kabua, a paramount chief of Relik, has three older sisters, but he assumed the *alab* position because he is a male. After he dies, his older sister remaining will assume the position of *alab*, followed by her eldest child, in the pattern previously described.

"Males assume this trusteeship position unless the women are very strong or have no male relatives to take over for them. **If** the male who inherits the *alab* position is too old, feeble or otherwise incompetent, the next in line of succession will assume the responsibilities of the *alab*; he will in effect be the representative or regent for the *alab*. The *alab* will be recognized and honored as such by his own people. However, if the females in the lineage become extinct, (*bwij elot*), which has happened in the case of the royal lineage of Relik, the *alab* or the chiefly positions may be inherited patrilineally for the one generation, from fathers to sons and daughters in chronological order as described previously, after which they pass in matrilineal line of succession which is the ideal pattern of inheritance and the one followed in the main. However, as in other cultures, the custom is sometimes honored in the breach. Deviation from the accepted custom has been and still is the basis of disputes."

[1,2] What has been thus described as to *alabs* applies to the pattern followed in the succession to the *iroij lablabs* and *iroij eriks* among the nobility class in the Marshall Islands. Under Marshallese custom it is widely held that a member of the commoner class-a "Kajur" cannot succeed to the office of *iroij lablab* or *iroij erik*.

Another anthropological work which sheds some light on inheritance patterns in the Marshall Islands is "Majuro, a Village in the Marshall Islands" which was also mentioned in the quotation from *Jatios v. Levi*, supra. The portion of said work which is of chief interest here is the portion headed "Class Structure" commencing on p. 74 and "Paramount Chiefs and Cleavage in Village Society" commencing on p. 82. Both the anthropological works mentioned indicate that there were occasional breaches or deviations from the "ideal" inheritance patterns-which caused *or followed* disputes or actual wars.

In relation to the first claim or contention of the plaintiff that she, by birth and blood as the daughter of Lijanbit, is entitled to be recognized as the *leroj lablab* of the eastern side of Arno Atoll, including the lands in question in this action, counsel for the defendants have not pointed out on the genealogical chart mentioned, anyone who might have a superior claim by birth or blood to that of the plaintiff. And in none of the actions involving Jiwirak was it shown that any named person at that time had a better right to be *iroij lablab* than Jiwirak.

The genealogical chart in Action No. 23, 1 T.T.R. 113, and the testimony shows that on Arno Atoll there were six *bwij*s. They were headed as follows:- (Starting with the "highest" or "oldest" *bwij*.)

1. Leikman (m) (also known as Tawij)
2. Likon (f)
3. Libo (f)
4. Lijuruwe (f)

5. Liwaito (f)

6. Lakieotak (m) (also known as Lajiwirak).

Lakieotak had five brothers and a sister as follows: Larilan, Lakiwa, Ujlan, Leoninmato, Lijolbo (f). None of these left any children so that this *bwij* died out (*bwij elot*) at the death of Lakieotak and his siblings. However, before their deaths this *bwij*, under Lakieotak, started a war against the highest *bwij* under Leikman and was victorious. As a result of the victory, Arno Atoll was in effect divided, Lakieotak, the victor, getting the eastern half and Leikman retaining the western half. On the death of Lakieotak, Larilan succeeded him to be in turn succeeded by Ujlan as the *iroij lablab* as to the eastern half. Ordinarily under Marshallese custom an *iroij lablab* cannot name or by will appoint or designate his successor, but because of the war and the victory of Lakieotak's *bwij*, finally headed by Ujlan, it seems to have been conceded that Ujlan had the "power" to name his successor and he did, naming Liwaito (f), the daughter of Liwaito, the head of one of the six *bwij*s mentioned, as *leroj lablab*. So she, without apparent question, succeeded Ujlan as the *leroj lablab* of the eastern half of Arno Atoll. It is important to note that, in making his choice, Ujlan did not go back to the ordinary inheritance pattern that might have existed before the war but chose Liwaito of a *bwij* lower than that of Leikman, Likon, Libo and Lijuruwe and their descendants. This included skipping over Lanitmur, the oldest daughter of Libo, and Lijanbit, the oldest daughter of Lanitmur. This, despite the fact that Ujlan had adopted Lijanbit, and had given her Kojbwe Island, making her an *iroij erik*. (Lijanbit was the mother of Jiwirak and Bina, the plaintiff.)

Meanwhile, back on the western half, the ordinary inheritance pattern was followed and Leikman (m) was succeeded by Deved (m) and Laelan (m) who in turn

were succeeded by Tobo (m), the son of Limetto (f). On the death of Tobo he was succeeded by Leben (m), the son of Lielbod (f) who was a daughter of Libo. (Leben died recently, leaving surviving him his sister Nenjir.)

From the testimony it would seem that after the war it was considered that the division of Arno Atoll mentioned had in effect changed the succession to the office of *iroij lablab* on Arno Atoll with the rights of those who would ordinarily succeed Leikman being curtailed or limited so that the groups, lineages, or members of *bwijis* which supported him would have rights as to the western side and the other groups, lineages, or members of certain *bwijis* would only have rights as to the eastern side.

(The genealogical chart from Action No. 23, 1 T.T.R. 113, does not show the deaths prior to and after its preparation nor does it show the effect of the split of the *bwijis* or lineages-that is, the division of Arno Atoll so that Liwaito was the *leroj lablab* of the eastern side and Leikman, and then Deved and Laelan of one generation and Tobo, the son of Limetto (see genealogical chart) of another generation, succeeding to the office of *iroij lablab* of the western side of Arno Atoll-with Leben (the son of Lielbod, also known as Lilbor) succeeding Tobo.)

Apparently, in the minds of those concerned, the split or cleavage of the office of *iroij lablab* resulting in one for the eastern side and one for the western side has been accepted. When Liwaito died, Laelan was also dead and he had been succeeded by Tobo as to the western side, and during the 24 year period that followed Liwaito's death there apparently was no attempt to have Tobo succeed Liwaito.

There is no claim in this action on behalf of Nenjir, the sister of the deceased Leben who succeeded Tobo as *iroij lablab* on the western side of Arno Atoll. And as to the western side, apparently Bina makes no claim that

she has a right to be *leroi lablab* of that side as against Nenjir.

Nenjir, incidentally, at this sitting of the High Court was recognized by Rilán, also known as Larilan (who is the son of Limadre, who was a sister of Lijanbit) as having the *leroi lablab* rights as to the western side of Arno Atoll, as indicated in the judgment by consent entered today in Action No. 330, *Nenjir v. Rilán*, 4 T.T.R. 277.

Liwaito died in 1932 in the time of the Japanese administration. She left no children, and so her *bwij* died out and the *bwij* of Ujlan had also died out, so there arose the big question involved here—who should succeed Liwaito as *iroij lablab* of the eastern side of Arno Atoll? Neither the plaintiff Bina, nor her younger brother Jiwirak, immediately succeeded Liwaito as *iroij* (or *leroi*) *lablab* as to the eastern side of Arno Atoll. It was 24 years, in 1956, until Jiwirak was "elected", "accepted" or "recognized" as the *iroij lablab*. During the first part of this time, under the Japanese, no agreement was reached as to a successor to Liwaito. In 1944 and in 1950 the American administration unsuccessfully attempted to secure the selection of a successor to Liwaito. This is shown in Action No. 23, 1 T.T.R. 113, which was an action by an *iroij erik* who had supported Jiwirak's claims to succeed Liwaito. Part of the findings and judgment are as follows:—(There is also attached to this opinion a copy of the letter of 28 May 1948.)

"After Liwaito's death, the Japanese administration had endeavored to have the people on the lands formerly under her agree upon the establishment of a successor to her. Several attempts had been unsuccessfully made to reach a general agreement on the matter and pending further determination the Japanese administration had undertaken to make at least the more important decisions that would normally be made by an *iroii lablab*, and had itself collected, at first the part of the *iroii lablab* share to be used for

hospital and other medical expenses, and later the whole *iroij lablab* share from her lands.

"The attempted establishment of defendant Jiwirak as the successor of Liwaito, as *iroij lablab*, at the public meeting with an American military representative in 1944, was proper under Marshallese custom as a first step, but it has not received support of enough people on Liwaito's former lands, continued for a long enough time, to make it fully and firmly effective as yet, but it may later become so.

"Cdr. Kenney, in 1950, while Civil Administrator of the Marshall Islands, modified Lt. Cdr. Herrick's determinations set forth in his letter of 28 May 1948, by expressly permitting at least those *alab* (persons in immediate charge of a piece of land) and their *dri jermal* (workers) who desired to recognize and support the defendant Jiwirak as *iroij lablab* on *Leroij Lablab* (Paramount Chief-ness) Liwaito's former lands. This inferentially extended the same permission to the *iroij erik*."

The judgment in said case provided:-

"The defendant Jiwirak is entitled to act as *iroij lablab* until such time, if any, as there is some other clear establishment concerning the exercise of the powers of the former *Leroij Lablab* Liwaito."

It should again be noted, however, that the court in Action No. 23, 1 T.T.R. 113, in its conclusions of law stated:-

"It should be clearly understood that the court in this action is only passing judgment on the rights as between the parties in the particular lands involved in this action. Many of the principles relied upon would have no application to persons who have never recognized Jiwirak as *iroij lablab* and whose predecessors in interest have never done so."

Some of the testimony in these cases showed that much of the opposition to Jiwirak was headed by *Iroij Erik Felix*. The plaintiff's (Bina's) own testimony as to the reason why neither she nor Jiwirak became the *iroij lablab* right after Liwaito's death is as follows:-

"Mr. Bilimon: Do you mean that the *alabs* and the *iroij* that elected Jiwirak didn't elect him but they elected you?"

A: The *alabs* cannot elect an *iroij*. The *iroij* got the title of *iroij* since the time he or she was born.

Q: This is not the answer to my question. Are you testifying that they didn't elect Jiwirak, but they elected you?

A: As the previous witnesses have stated, the *alabs* and *iroij erik* elected Jiwirak, but when Judge Furber asked me why it is not me but Jiwirak, I told him that this was because he was my younger brother.

Q: Is it right that, if you were the *iroij laplap*, you wouldn't have to wait but could have taken this right just after Liwaito died?

A: Don't talk about Liwaito because during Liwaito's time everything was clear and all right. I am just talking about Jiwirak and myself because I am now the one to succeed him.

Court: I don't think you understand the question. You haven't answered it.

A: If I were one of those people at the time I could have succeeded.

Q: I don't understand your answer. What I understood Mr. Bilimon to ask you was: When Liwaito died, if you had the right to succeed Liwaito, why didn't you do something at the time right after Liwaito died? Why didn't you do something about it then?

A: No, I didn't do anything because what am I supposed to do?

Q: Well, doesn't a person who is *iroij laplap* usually do something as soon as he or she has the right to? Don't they go to the *iroij eriks* and the *alabs* and say "I want my share"? My question is, why didn't you go to the *iroij eriks* and the *alabs* and say: "I am now the *iroij laplap* and I want my share"?

A: Because Jiwirak was still alive and Liwaito had made a will that Jiwirak was the one who was going to succeed her, but they hid the paper.

Q: Do you know that there was a will after Liwaito died that made Jiwirak to succeed her?

A: Yes. I was with Liwaito when she made it. I grew up with Liwaito since I was a young child and until she died.

Q: Mr. Bilimon, I interrupted you to clarify some of these matters. You may continue with your questions.

Mr. Bilimon: Why did Liwaito make the paper if it was clear that you and Jiwirak were the ones to take her place? And where is the paper?

A: I don't know why Liwaito made the paper. I don't know where it is because they hid it. Besides that, I didn't even care to be concerned about these things because I didn't know that it might happen like this today.

Q: Did the *alabs* at this time know that there was a paper?

A: I don't know.

Q: Why didn't Jiwirak become *iroij* at the same time?

Court: Do you mean after Liwaito died?

Mr. Bilimon: Yes.

A: Because Felix didn't make him an *iroij*.

Q: Will you please clarify the relationship between Felix and Jiwirak?

A: His father.

Q: Those five *iroij intels* on the side of Liwaito at that time, didn't they recognize him as *iroij laplap* so they could elect him at that time?

A: Later on the *alabs* and the *iroij* elected him to be the *iroij*, but at the time of Felix I don't know why Felix didn't make him become *iroij*."

(Note: The witness obviously meant that Felix was the father of Jiwirak "under the custom". Other testimony showed that the real father of Jiwirak was Tobikle. As to the word "*intel*", its meaning was "collector", so that an *iroij erik* who performed the function of collecting the share for the *iroij lablab* and himself was called an "*iroij intel*".)

From plaintiff's own testimony, then, it would appear that Jiwirak's rights and her own depended on an alleged will of Liwaito, and not exclusively from a definite right

to succeed by blood, and that it was because of the alleged hiding of the will and also because of the failure of the *iroijs* to elect Jiwirak that he didn't immediately succeed Liwaito.

Some of the witnesses in this action also testified that as Lanitmur (the mother of Lijanbit who was the mother of Jiwirak and Bina) and her *bwij* were on the other side of the war between Lakieotak and Leikman that Bina and Jiwirak should not succeed Liwaito. Apparently this testimony reflected the reason Ujlan designated Liwaito as his successor instead of Lijanbit. Another of plaintiff's witnesses, Lian, stated that the reason why Jiwirak was not the *iroij lablab* for 24 years was "because the *iroij eriks* and the *alabs* didn't get together to have him take his right."

This is similar to one part of the testimony of Bina, above quoted.

In 1956, however, Jiwirak was elected or selected as *iroij lablab* by most of the *iroij eriks* and by most of the *alabs*. Jiwirak then acted as *iroij lablab* until his death in 1964. However, his right to act as such was contested by a few *iroij eriks* and a few *alabs*. In Action No. 81, *Abijai v. Jiwirak*, 1 T.T.R. 389, Abijai, according to the findings of fact in that case, was the *iroij erik* of Korej and Lobol *watos* on Matollen Island. From the time of the death of Liwaito in 1932 no *iroij lablab* share of the copra production had been paid to Jiwirak although the *alabs* had, over the objection of Abijai, the *iroij erik*, recognized Jiwirak as having the *iroij lablab* rights. Associate Justice Toomin held in Action No. 81, 1 T.T.R. 389, that Jiwirak was the *iroij lablab* and entitled to a share as such, but that Abijai could continue as *iroij erik* without according to Jiwirak the "personal indications of esteem required of an *iroij erik* who has participated in promoting and recognizing the *iroij lablab's* accession." In the decision, Judge

Toomin refused to declare that Jiwirak was not the *iroij lablab* as the successor to Liwaito, saying that the court must follow the holding in Action No. 23, 1 T.T.R. 113. This was apparently because the *alabs* had recognized Jiwirak although Abijai had not recognized him.

However, in the next numbered case (which Chief Justice Furber referred to in his pre-trial order as heretofore stated), Action No. 82, *Liwinrak v. Jiwirak T.*, 1 T.T.R. 394, entered on March 31, 1958, the same day as the judgment in Action No. 81, 1 T.T.R. 389, the decision of Associate Justice Toomin was against Jiwirak. In regard to the *watos* in question in that case, the plaintiff's mother KIene had been the *alab* during the lifetime of her mother Limoron who died in 1946. There had been no *iroij erik* on this *wato* but Liwaito who died in 1932 had been the *leroj lablab* and received a share as such until her death. After the death of Liwaito no *iroij lablab* share was paid to anyone. In 1957 Jiwirak entered on said *watos* claiming that he was the rightful successor to Liwaito and removed 500 pounds of copra therefrom. Justice Toomin found that there never had been any recognition by either KIene or Limoron of Jiwirak as *iroij lablab* of the *wato* involved and in the conclusions on which were based the judgment holding that Jiwirak had no right to enter on said *watos* and prohibiting him with interfering with the plaintiff and requiring Jiwirak to pay plaintiff therein for the copra he had taken, Justice Toomin said:

"Defendant Jiwirak claims to be the true successor to Liwaito, the former *iroij lablab* over the subject *wato*. From the genealogical chart of the family of Liwaito heretofore received in evidence in *Lainlij v. Lojoun*, 1 T.T.R. 113, and from other evidence received in that case on behalf of defendant Jiwirak, it appeared that he was among the class of persons having the necessary relationship to Liwaito, which would entitle them and him to recognition as *iroij lablab* in succession to her with respect to the numerous *wato* over which she was admittedly enjoying *iroij lablab* rights at the

time of her death. Because of the possibility of others having an equal or better right, the court in *Lainlij*, supra, decreed that Jiwirak was entitled to act as *iroij lablab* over the properties involved in that case, until such time, if any, as there should be some other clear establishment of the proper person to exercise the powers of the former *Leroij* Liwaito.

"The theory of the court in temporarily at least confirming Jiwirak in his claim to the succession, was that there had been recognition of his claims by the plaintiff in that case, and that by virtue of plaintiff's such conduct (in that case) he was precluded from later 'turning his back' and joining the opposition. It was therefore upon the basis of acceptance and recognition that the *Lainlij* decision was based, and not upon an automatic accession bottomed upon birth and blood. This court therefore holds that where, as here, there is such reasonable uncertainty as to the rightful successor, or whether there is any successor at all, as to make substantial numbers of owners or interested parties hesitate before declaring their recognition, no valid claim to the succession can be effectively made with respect to any lands, unless and until the person having rights in such lands have recognized the claimant, either by appropriate words or conduct, in such fashion as to evince an unmistakable choice. To hold otherwise would impose an onerous burden on innocent persons which the law should be chary to sanction."

**[3]** An analysis of the testimony in the present cases as to the actions of all of the people concerned in the question of the succession to Liwaito, the testimony and other information concerning the custom in the Marshall Islands, and of the cases, shows the land law in effect on December 1, 1941, required that *where there is a reasonable uncertainty as to the rightful successor or whether there is any successor at all to the position or office of "iroij lablab" in respect to certain lands as to make substantial numbers of owners or interested parties hesitate before declaring their recognition, that the individual claiming such office in addition to proving that he is entitled by birth and blood to succeed to that office, must also show that the persons having rights in such lands have recog-*

nized the claimant, either *by* words or conduct, in such fashion as to evince an unmistakable choice.

An analysis, especially of the circumstances surrounding the delay of 24 years following the death of Liwaito until the acceptance of Jiwirak as *iroij lablab* and the sequence of events, supports this conclusion reached first by Justice Toomin in Civil Action No. 82, 1 T.T.H. 394. The controversy arose at the death of Liwaito in 1932 and was not resolved during the Japanese administration. The American administrators were unable to resolve the matter. It was not until 1953 in Civil Action No. 23, 1 T.T.R. 113, that the matter came before the courts in an action, not brought by Jiwirak or Bina, but by Lainlij against Lajoun and others. Neither Bina nor Jiwirak attempted to assert their alleged rights through court action and the matter was only resolved by agreement by the "election" of Jiwirak in 1956. (Note: One of the present actions, *Jiwirak v. Lainej*, No. 197, was commenced by Jiwirak on August 15, 1963, and after his death on March 31, 1964, his older sister Bina, the plaintiff, was substituted as plaintiff on June 14, 1965. Action No. 290 was brought by Bina on March 17, 1966).

As to the date of December 1, 1941, Section 24 of the Trust Territory Code provides:-

"The law concerning ownership, use, *inheritance*, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactments made under the authority of the Trust Territory of the Pacific Islands." (Emphasis the court's). See: *Limine v. Lainej*, 1 T.T.R. 595. *Lazarus S. v. Tomijwa*, 1 T.T.R. 123. *Lainlij v. Lajoun*, 1 T.T.R. 113.

As to the necessity of the recognition of the right of the *iroij lablab*, it may be observed that in no case did the High Court enforce the rights of the *iroij lablab* unless

there had been a recognition of the *iroij lablab* by the persons holding rights in the lands. In addition to Marshall Islands District Actions Nos. 23, 1 T.T.R. 113, 81, 1 T.T.R. 389, and 82, 1 T.T.R. 394, see: *Laibon v. Namilur*, 2 T.T.R. 52.

Neither the Japanese administration nor the American administration acted in relation to the determination of the question of the right of Jiwirak to succeed to the office of *iroij lablab* because the *alabs* and *iroij eriks* had not agreed that Jiwirak had the right to succeed Liwaito. And, finally, an analysis of the testimony of all the witnesses indicated the necessity of getting the recognition of the *alabs* and the *iroij eriks*. As has been noted, the plaintiff's witness Lian testified that the reason why Jiwirak was not the *iroij lablab* for 24 years was because the *iroij eriks* and the *alabs* didn't get together to have him take his right.

Chief Justice Furber, instead of setting these cases for trial, continued them to the next sitting of the High Court, suggesting that the persons interested in the question of who should be the *iroij lablab* on the eastern part of Arno Atoll should get together and elect or select the *iroij lablab*. There were some attempts to do this or to appear to do this. At the trial counsel for the plaintiff Bina offered in evidence Plaintiff's Exhibit #1 for identification with some 327 signatures over a statement reading as follows:

"Petition Agreement

Arno Marshall Islands. We recognize Bina Jetnel to be the right person to succeed *iroij laplap* Jiwirak Jetnel. We acknowledge this by our signatures below."

*There was no testimony offered as to who the persons were who signed the petition* and the court refused to receive the same in evidence. In addition, the court stated that it was not the idea of Chief Justice Furber to himself poll the persons involved. As the plaintiff did not offer any evidence in support of said proffered exhibit, no testimony

was received against it. However, counsel for the defendant stated as to said proffered exhibit that only 22 *alabs* had signed it and of these 5 had changed their minds and signed the defendant's proffered Exhibit B. That there were 106 *dri jermal* among the signers of plaintiff's proffered Exhibit No.1, 82 students of the age of 4 on up and 84 are persons who were not from Arno Atoll, and as to 30 signatures, the name is not clear.

There was testimony concerning defendant's Exhibit B for identification in Action No. 328. The defendant's witness Obet testified that all of the signers of this exhibit showing that they do not recognize Bina as *iroij lablab* are *alabs*. They total 29 in number. However, the court refused to receive this proffered exhibit in evidence for the reason that as with plaintiff's proffered Exhibit No. 1 that it was not the idea of Chief Justice Furber that the court should poll the persons involved.

It is clearly evident from the testimony in this case and the statements of counsel that there has been no choice of Bina as *leroj lablabby* the defendants in these actions or by a large percentage of the persons having rights in the lands on the eastern side of Arno Atoll. The situation now is very similar to the situation that existed during the 24 years that elapsed after the death of Liwaito until Jiwirak was "elected" as *iroij lablab*.

As to the plaintiff's claim, hereinbefore referred to as No.2, that she was entitled to be recognized as *leroj lablab* because her brother Jiwirak was elected, selected or recognized for her as the *iroij lablab* in 1956, the same rule or custom as that above mentioned applies, that is, that to entitle her to succeed to this office the persons having rights in the lands must recognize the claimant either by appropriate words or conduct in such fashion as to evince an unmistakable choice. In addition, the testimony showing the choice of Jiwirak clearly indicated that there was no

choice of Bina or members of her *bwij* as the rightful successor as *iroij lablab*, but only a choice of Jiwirak himself and not as representing Bina. As a matter of fact, the testimony indicated that the choice of Jiwirak was made *over* Bina—that it indicated that the persons involved did not want Bina as *leroj lablab*. And certainly all of the testimony negates the idea that Jiwirak was in any sense acting for Bina in holding the office of *iroij lablab*. There was much testimony that Jiwirak stated to Bina that he was acting because he had been selected and that Bina had no right to a share in the *iroij lablab's* share of the copra produced. The widow and the son of Jiwirak both testified to this. In the quotation contained herein from "Land Tenure Patterns in the Marshall Islands" it was said as to a brother acting for his sister: "Her brother will bring her the *alab's* share of the produce of the land but will relieve her of all of the burdensome duties connected with the position, for example, Kabua Kabua, a paramount chief of Relik . . . ." The plaintiff and her witnesses did not testify as to any sharing or division of the *iroij lablab's* share with Bina during the lifetime of Jiwirak so that her contention that Jiwirak was acting for her is without support in the testimony.

As to the plaintiff's contention numbered as claim No.3 herein, that the mother of plaintiff and Jiwirak, Lijanbit, was adopted by Ujlan and that upon Liwaito's death Jiwirak or plaintiff was entitled to succeed Liwaito because the *bwij* of Ujlan was extinct and the *bwij* of Liwaito was also extinct, in the anthropological work, "Majuro" by Spoehr, under the heading "Lineage" (*Bwij*), it is said on p. 156 as to Marshallese society, "Mason (1947, p. 25) also notes that adopted children of members of the lineage do not belong to the lineage by virtue of adoption alone. My own data are corroborative of this statement."

[4] In the work "Land Tenure Patterns" it is said on p. 22 in relation to land tenure in the Marshall Islands, "The adopted child possesses much the same rights as the biological children except that he may only become *alab* of land of the lineage into which he has been adopted upon the extinction of all lineage relatives. A case was recently heard on Majuro in which an adopted son of an *alab* now deceased, the last of her lineage, claimed to be lineage head of his foster mother's *bwij* lands. His claim was contested by other relatives of the deceased *alab*."

Judge Solomon, the assessor, has similarly stated that an adopted child can inherit through his or her adoptive parent after the members of the *bwij* of the adoptive parent have died out.

However, the action of Ujlan in appointing Liwaito to succeed him as *leroi lablab* clearly indicated that he did not want Lijanbit or her children to succeed him then, either as a representative of his *bwij* or otherwise, notwithstanding the adoption and the fact that Lantimur and Lijanbit may have been of a "higher" *bwij* than Liwaito.

[5] This action of appointing Liwaito in effect extinguished the idea of succession according to the ordinary pattern of inheritance. This view of the custom was supported by the testimony of a number of witnesses.

Finally, as to plaintiff's claim No.4 that plaintiff or her brother Jiwirak have been recognized or accepted by each of the defendants or their predecessors, the testimony shows that *Jiwirak* was recognized or accepted as the *iroij lablab* by the defendants or their predecessors in Actions Nos. 290, 291 and 324. In Action No. 328 it must be held that Mwejenwa did not accept or recognize Jiwirak as the *iroij lablab*. This follows because of the testimony to that by plaintiff's witness Aiulk. As to Action No. 197, as heretofore noted, the pre-trial order in said action states that the plaintiff does not claim that the defendant Lainej

has ever recognized either Jiwirak or Bina as the *iroij lablab* of the *wato* in question in that action.

With relation to the situation in regard to the lands in Actions 290, 291, and 324, where Jiwirak was recognized, there is no showing that under the custom this acted to confirm the rights of Bina, the plaintiff herein. It might be persuasive as to persons who were considering the question of the recognition of Bina, but it is very evident from the testimony that in selecting Jiwirak as *iroij lablab* the *alabs* and *iroij eriks* were not considering Bina in relation to in the future acting as *leroj lablab*. Under all of the circumstances it could not be considered that the election of Jiwirak had the effect of settling the future line of succession but as a matter of fact it showed an intention that Bina should not in the future be the *leroj lablab*.

**[6]** On the general question of inheritance under the custom as it existed in the Marshall Islands on December 1, 1941, it must be found that there is no automatic succession to the office or rights of an *iroij lablab*, no inflexible or undeviated rule or pattern that must be followed on the death of an *iroij lablab*.

In the work "Majuro" heretofore mentioned, this is discussed and an example relating to an *iroij lablab* is given, as follows:-

"The system of succession to lineage headship is also sufficiently flexible so that the incompetent or incapacitated can be by-passed. Normally the succession follows the rules of generation and age as just described, but occasionally an *alab* dies whose successor is physically disabled, incompetent, or otherwise unable to carry out the responsibilities of his office. In such case, the successor may recognize his incapacity and voluntarily give up his claim in favor of the next in line. On the other hand, an incompetent successor may not recognize his own shortcomings and insist on being *alab* regardless. The other members of the lineage may then object and refuse to recognize him as their *alab*. A dispute over the lineage headship results. In the old days such a dispute seems to have

been settled by the lesser or paramount chief to whom the lineage owned allegiance. Today, the authority of the chiefs is weakened, the individual commoners have more to say, and such disputes can go on indefinitely. Two examples involving deviations from the normal succession of lineage headship are given below. One refers to a noble, the other to a commoner lineage.

"The oldest son of the oldest sister of one of the paramount chiefs is so seriously crippled that he must be carried from place to place and is a complete invalid, taking no part in village affairs. He is the successor of the paramount chief, but there appears to be no doubt that the chieftainship will pass to his brother instead, who has an extensive knowledge of events in the Marshallese world and takes an active part in village politics."

And, in "Land Tenure Patterns" the text under the section headed "Inheritance Patterns" concludes this section with a statement which indicates that there are deviations : -

"Deviation from the accepted custom has been and still is the basis of disputes."

To summarize or reiterate what has been said before, that here although Bina was one of the persons of a class entitled to succeed to the office of *iroij lablab* on the eastern side of Arno Atoll or even if she was by blood and birth the one who would under the custom ordinarily succeed to this office, the court cannot find that she has succeeded or is entitled to the office because the persons having the rights in the lands in question, and in addition a good percentage of those having rights in other lands on the eastern side of Arno Atoll, have not recognized the rights of Bina either by appropriate words or conduct.

[7] In addition to what has been held above, it also must be held that even in a case where a person by birth and blood is *unquestionably* entitled to the office of *iroij lablab*, that if there is substantial opposition by the persons owning rights in the lands in the territory where there has occurred a vacancy in the office of *iroij lablab*, the High

Court should not by order or decree establish the person as *iroij lablab*. This position or office and the rights to share in the proceeds from the land, as has been noted herein, passes from individual to individual through matrilineal lines from generation to generation. On the extinction of a *bwij* the office passes to members of other *bwij*s, that is, other groups. There may be great disparities between the ages of a deceased *iroij lablab* and persons who might be in line to succeed him. And the absence or neglect of a person to concern himself in the welfare of the persons who would hold "under" the putative heir to the office might make his succession of doubtful value. As the anthropological works have indicated, infirmities of various kinds may lead to a passing over of a person who by birth and blood might be considered to have the right to succeed to the office of *iroij lablab*. Automatic succession is also negated by the tendency to in effect pass over a female to a male, a younger brother, unless the female claimant is "strong". Furthermore, by December 1, 1941, the general powers of the *iroij lablabs* had been diminished so as to in effect weaken claims to automatic succession. Although at one time the *iroij lablab* had almost unlimited power in many areas concerning land and its use and over the lives of the people, in German and Japanese times and during the American administration, the powers have been greatly circumscribed or limited. Spoehr in "Majuro", supra, says as to **this**:-

"With the assumption of political control of the Marshalls by Germany and later by Japan, the relative positions of paramount chief, lesser chief, and *alab* and commoners have been changing with respect to land rights. The authority of the paramount chief has steadily diminished. Under the Japanese an attitude developed that the land belonged to the paramount chief, but the trees and products of the land belonged to the commoners. Where the lesser chiefs fitted in is not quite certain, though they seem to have been lumped with the paramount chiefs as nobility. Today, con-

cepts regarding the nature of land rights are decidedly in a state of flux. Several villagers remarked that the people themselves are not sure of the extent of the rights of chiefs and commoners."

Tobin in "Land Tenure in the Marshall Islands" says on p. 8:-

"A small anti-chief sentiment exists today, largely composed of younger men, most of whom have been closely associated with Japanese and Americans. These individuals (none of whom are organized as a group) are anti-chief only in the sense that they are opposed to deferring to certain individual chiefs. They are not against the institution of chieftainship *per se*. In fact, the desire to retain the economic prerogatives of the chiefs for themselves is the principal motivation of their deviation from the norm.

"At the other end of the pole, of course, are the chiefs and their adherents, most of whom are the older and more conservative element. It is anticipated that the chief's position, where disputed, will become correspondingly weaker as this older and more conservative element dies out, as it has been doing. The several current disputes as to succession to the title and prerogatives of recently deceased chiefs will probably hasten this process."

What the situation boils down to in relation to the office of *iroij lablab* is this: The decision as to who will be the *iroij lablab* when a vacancy occurs because of the death of an *iroij lablab* involves more than the question of who shall get the share of the *iroij lablab*. The designation *iroij lablab* has been translated into English as "Paramount Chief". (See *Jatios v. Levi*, supra). In the very recent past the *iroij lablab* or *leroj lablab* had tremendous power in many aspects of a community including the power over life and death or banishment of an offender against the royal prerogatives, and to make decisions concerning who should hold land. Although somewhat circumscribed under various administrations, as indicated, the *iroij lablab*, "paramount chief" still has functions that may seriously affect individuals or the community as a whole, so that all of the people are concerned in the selection of an *iroij lablab*.

The administrative officers of the American administration have refused to administratively determine who should be *iroij lablab* of an area. In *Joab J. v. Labwoj*, 2 T.T.R. 172, the High Court took cognizance of the refusal of the High Commissioner to act in relation to the selection of a person or group to perform the functions of an *iroij lablab*. In the decision the court said:-

"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 Marshallese:-

"From Hicomterpaxis Guam

To: Distad Marshalls

"UNCLASS X REQ PASS IMMEDIATELY TO MARSHALLESE CONGRESS CLN THE TRUST TERRITORY GOVERNMENT HAS NOT ACTED AND WILL NOT ACT AS *fROU LAPLAP* IN MARSHALLESE CONGRESS OR ELSEWHERE X REQUEST YOU ELIMINATE ANY REFERENCE OF INFERENCE THE TRUST TERRITORY GOVERNMENT REPRESENTS THE 20-20 OR ANY OTHER GROUP AS *fROU LAPLAP* IN THE MARSHALLESE CONGRESS X THE NAMING OF AN *fROU 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 *fROU LAPLAP* CMM *fF* ANY CMM IS FOR THE PEOPLE CONCERNED TO ACCOMPLISH WITHIN THEIR LOCAL CUSTOMS *fF* THEY WANT SUCH WITHIN THEIR SOCIAL ORGANIZATION X HICOM NUCKER SENDS

DTG 172540Z August 1960"

(Emphasis the court's)

The decisions in Actions Nos. 23, 1 T.T.R.113, 81; 1 T.T.R. 389, and 82, 1 T.T.R. 394, all indicate an unwillingness of the court to act to support *aniroij lablab* unless he was recognized as such.

It is true that Chief Justice Furber in *Lojob v. Albert*, 2 T.T.R. 338, said in relation to a controversy concerning the exercise of the *iroij lablab* powers on Majuro Island:-

"On the other hand, there seems to be a desire by the appellants, or some of their supporters, to be permitted to throw off entirely all *iroij lablab* controls over their land or pick a new *iroij lablab* of their own choosing for their lands. The court considers that such "going out" of Jebrik's side and carrying their land rights with them would be clearly contrary to Marshallese customary law and inconsistent with the entire system of Marshallese land ownership. In discussing the Marshallese system of land ownership, this court stated in paragraph number 5 of its Conclusions of Law in *Lalik v. Elsen*, 1 T.T.R. 134:-

'The rights of *alab* and *dri jermal* are subject to the power, and in fact the obligation, of the *iroij lablab* to make reasonable determinations in doubtful cases, with a view to avoiding controversies and securing a constructive use of the land.'

However, for 24 years there was no *iroij lablab* after the death of Liwaito. During this time the functions of the *iroij lablab* were apparently carried on by the *iroij eriks* in their respective territories, at least under the proclamation of 24 May 1948, copy of which is attached hereto. This did not, however, give the right to the *iroij eriks* to themselves collect or keep the *iroij lablab* share of the products of the land. Abbios Lamon, the plaintiff's first witness, testified that the will of Liwaito stated that the share of the *iroij lablab* "will be with the *alabs* and who will take the place of Liwaito." The act of the Japanese government, in taking the *iroij lablab's* share, was not followed by the American administration.

While Chief Justice Furber has said in *Loeak v. Albert*, supra, that it was "contrary to Marshallese customary law" to throw off entirely all *iroij lablab* controls or pick a new *alab* of their own choosing, it must be observed that when the Marshallese were dissatisfied with an *iroij lablab*

and did not want to be under him, they started a war and many persons were killed in such wars.

**[8,9]** The genesis of the dispute before the court in these cases was a war in which the *Iroij Lablab* Leikman was deposed as to his powers in relation to the eastern side of Arno Atoll. The Japanese and American administrations prohibited such settling of dissatisfaction over land holding or the "rule" of an *iroij lablab*. The administration, that is, the executive power of the Trust Territory government has in several instances failed or refused to select an *iroij lablab* when there was a dispute over the holding of the office. It must be recognized that most of the former functions of *iroij lablab* in relation to the protection and the welfare of the people have been taken over by the governments under the German and Japanese administrations and also under the American administration. And the powers of the *iroij lablabs* in relation to land tenure have been held to be limited or circumscribed—they are subject to the review of the courts as to whether they are reasonable and just. However, their determinations are ordinarily upheld so that it is possible for them to make determinations of great concern to the people "under" them. See: *Jatios v. Levi*, supra. *Limine v. Lainej*, supra. *Lalik v. Elsen*, 1 T.T.R. 134. *Lalik v. Lazarus S.*, 1 T.T.R. 143. *Lainlij v. Lajoun*, supra. *Abija v. Larbit*, 1 T.T.R. 382. *Liakmo v. Abija*, 1 T.T.R. 382. *Emoj v. James*, 2 T.T.R. 48. *Abijai v. Jiwirak T.*, supra. *Liwinrak v. Jiwirak T.*, supra. *James R. v. Albert Z.*, 2 T.T.R. 135. *Likinono v. Nako*, 3 T.T.R. 120. *Liema v. Lojbwil*, 2 T.T.R. 345.

While it is true that during the often comparatively short time of the holding of the office of *iroij lablab*, the *iroij lablab* is entitled to the perquisites thereof, principally a share of the copra produced, as against this temporary right which ordinarily does not include the right to alienate the land, are to be considered the rights of all of those

"under" him. Under all of the above circumstances, where there is substantial dissatisfaction with a person claiming the right to succeed to the office of *iroij lablab*, it is doubtful whether the court has the power or should exercise it to establish the claimant in the office. Determinations of this nature in relation to the holding of an "office" are sometimes held to be "political matters or disputes" with which the courts are loth to enter into. Some disputes, therefore, have been held to be "not justiciable". See: 16 Am. Jur. 2d 470.

It is possible for a court to provide for an election, but in order to do this some machinery, plan or scheme would have to be set up or adopted to decide upon who could vote or select-their qualifications, land holding, etc. A determination would have to be made as to who would be candidates and some criteria would have to be set up to determine who was elected, that is, by a plurality, a majority or a greater number. In relation to Jiwirak, it was only after he was elected by practically all of the *iroij eriks* and the *alabs* that he was recognized as the *iroij lablab*. It may be noted that the court in *Joab v. Labwoj*, supra, did attempt to set up rules or guide-lines for the exercise of *iroij lablab* powers where there was no *iroij lablab* and the powers of such were being exercised by the *droulul* and *iroij eriks*. However, this was done after those who had interests in the land had determined that an *iroij lablab* would not be chosen and after a *droulul* was organized and attempting to function, and from the cases above cited, it is evident that the court has never acted or intended to act until it was shown that the people concerned had selected or elected-made an unmistakable choice-as to who they intended should have the *iroij lablab* powers.

[10] The Court does not believe that it should at this time in effect set a precedent by establishing an *iroij lab-*

*ldb* where no definite choice has been made of the *iroij lablab* by the people concerned.

## FINDINGS OF FACT

1. After the war between Lakieotak and Leikman, in which Lakieotak was victorious, Lakieotak took from Leikman and the *bwij*s which supported Leikman in the war, the power of the *iroij lablab* on the eastern side of Arno Atoll, and Lakieotak became the *iroij lablab* of the eastern side of Arno Atoll, including the lands in controversy in this action, and Leikman continued to be the *iroij lablab* of the western side of Arno Atoll.

2. On the death of Lakieotak he was succeeded as such *iroij lablab* by Larilan, his brother, and on the death of Larilan, his brother Ujlan succeeded him. Ujlan, who had the power to do so, appointed Liwaito, the daughter of Liwaito, to succeed him as *leroj lablab*, and upon Ujlari's death, his *bwij* being extinct and because of her appointment by Ujlan, Liwaito became the *leroj lablab* of the eastern side of Arno Atoll succeeding Ujlan. That in so appointing Liwaito as *leroj lablab*, Ujlan purposely did not appoint either Lanitumur or Lijanbit (of the *bwij* of Libo) the grandmother and mother of Jiwirak and Bina, although Liwaito was of a *bwij* lower than that of Libo, Lanitumur and Lijanbit. Ujlan, likewise, purposely did not appoint anyone from the *bwij*s of Leikman, Likon, Libo or Lijuruwe, although said *bwij*s were higher than the *bwij* of Liwaito and based on the line of inheritance as it existed before said war between Leikman and Lakieotak by blood the members of said *bwij*s of Leikman, Likon, Libo or Lijuruwe had a superior right to be *iroij lablab* or *leroj lablab* than Liwaito. That thereby by reason of said war and said actions of Ujlan the line of inheritance by blood of the office of *iroij lablab* or *leroj lablab* of the eastern side of Arno Atoll was set aside and the answer to the

question of who should succeed Liwaito or if anyone should succeed her to said office was not determined and was not clear.

3. That it is true that Lijanbit was adopted by Ujlan, but he did not indicate that Lijanbit should succeed him as a member of the *bwij* of Ujlan, but instead chose Liwaito to succeed him. That this action of Ujlan indicated that said adoption did not establish Lijanbit in the line of succession to the office of *iroij lablab* or *leroi lablab* as a member of the *bwij* of Ujlan. Under the custom, this (or any) adoption of itself does not establish the adoptee in the line of succession.

4. That Liwaito left no will or other designation as to who should succeed her.

5. That upon the death of Liwaito that a very large percentage of the *iroij eriks* and *alabs* on the eastern side of Arno Atoll refused to recognize Jiwirak or the plaintiff Bina as *iroij lablab* or *leroi lablab*, and for 24 years there was no *iroij lablab* for the eastern side of Arno Atoll. That in 1956 almost all of the *iroij eriks* and *alabs* on the eastern side of Arno Atoll elected Jiwirak as the *iroij lablab*, but elected him personally and not as the representative of Bina and they did not recognize Bina as having any power or right as *leroi lablab*.

(Note: The pre-trial order in Action No. 197 states: "In the present action the plaintiff does not claim that the defendant Lainej has ever recognized either Jiwirak or Bina as the *iroij lablab* of *thewatos* in question.")

6. That Jiwirak after his election in 1956 was generally recognized as the *iroij lablab* on the eastern side of Arno Atoll by the *iroij eriks* and *alabs* and other persons having interest in the lands on the said eastern side.

7. That the defendant and his predecessors did not pay Jiwirak or Bina any share of the copra produced on the land in question in this action.

8. That under the custom in the Marshallese Islands there is no one who has a right by birth or blood to act as *iroij lablab* or *leroj lablab* superior to that of the plaintiff under the pattern of inheritance or line of succession as it existed before said war. However, due to the fact that Lakieotak and Ujlan by the said war and the appointment of Liwaito altered the inheritance pattern or line of succession as to the office of *iroij lablab* on the eastern side of Arno Atoll that on the death of Liwaito here was a reasonable uncertainty as to the said inheritance pattern or line of succession as to who should thereafter be entitled to act as *iroij lablab* or if anyone was thereafter to hold such office.

9. That under the custom of the Marshall Islands and Arno Atoll as it existed on December 1, 1941, and now there was and is no automatic succession by birth or blood to the office of *iroij lablab* but that in addition to the claimant being eligible to succeed to the office by birth and blood, the persons having rights in the lands affected by the said office of *iroij lablab*, must recognize the claimant by appropriate words or conduct as to evince an unmistakable choice, so that the claimant is generally recognized as the *iroij lablab*. That unless a claimant is so recognized as *iroij lablab*, the office remains vacant and the *iroij eriks* of the lands under them and which were under the *iroij lablab* prior to the occurring of the vacancy, in that case perform the functions of *iroij lablab* as to the lands under the respective *iroij eriks*, but that the *iroij lablab* share of the proceeds of said lands need not be paid by or to anyone, but shall be considered as part of the *dri jermal's* share.

10. That it has not been proved that Bina either before or after the death of Jiwirak was generally recognized as *leroj* by the persons holding interests in the land on the eastern side of Arno Atoll, but instead a substantial number, that is a very large percentage of the said persons and

their *alabs* have and are now opposed to Bina becoming *leroi lablab*.

11. That, under the stipulation of counsel, the genealogical chart in the file of Action No. 23, 1 T.T.R. 113, of the Marshall Islands District correctly depicts the genealogy involved in this action, and is made a part of these findings of fact.

#### CONCLUSIONS OF LAW

1. That the plaintiff is not and never has been the *leroi lablab* of Monbal *wato* or Akariken *wato* on Arno Island, Arno Atoll, Marshall Islands District, and that the plaintiff shall take nothing by this action.

2. The local law and custom is a mixed question of law and fact and is included in the Findings of Fact (See: *Lajutok v. Kabua*, 3 T.T.R. 630.)

#### JUDGMENT

It is hereby ordered, adjudged, and decreed that the plaintiff is not and never has been the *leroi lablab* of Monbal *wato* or Akariken *wato* on Arno Island, Arno Atoll, Marshall Islands District and that the plaintiff shall take nothing by this action.

The time for filing a notice of appeal is extended to sixty (60) days after the date of entry of this order.

#### *Copy*

FF12 (9)/NI-13

28 May 1948

CEH:wn

Serial: 317

From: Civil Administrator, Majuro District

To: Chief Magistrate, Council, and People of Arno Atoll

Subj: Abisai, Felix, Juriak, Lainlij, and Lujim as successors to Liwaito

1. Since the time of *Iroi Liwaito's* death in 1931, there has been a question as to her successor. As the years have passed the natural

determination of her successor within Marshallese custom has failed to materialize. Instead, the five [*roij Erik*--Abisai, Felix, Juriak, Lainlij, and Lujim--recognized by all as rightful [*roij Erik* under Liwaito have drawn apart rather than together, until today trouble is constantly occurring between one group and another.

2. During the past year and a half, Civil Administration has made an extensive study of this situation in an endeavor to arrive at a solution within the culture that would be fully understood by all the people, and sound enough culturally to warrant the continued support of all the people. Unfortunately, investigation has failed to establish a single solution that is agreeable to and acceptable to all concerned. The reasons behind this failure lay partly in the realm of controversial fact for which no accurate proofs can be found and partly in selfish motives that prevent the development of clear, expressed truths.

3. The following information has come to light during the investigation:

- (a) Abisea, Felix, Juriak, Lainlij, and Lujim are the rightful [*roij Erik* under Liwaito.
- (b) As there is no normal heir or successor recognized within the culture at the time of Liwaito's death, the five [*roij Erik* have carried on in charge of her lands rightfully and well within the culture.
- (c) The supposed will of Liwaito's devising all her lands and titles to Tobo, [*roij* of another part of Arno, has never been proven or established as authentic.
- (d) That Juriak's mother was adopted by Liwaito, and through this established Juriak's claim to be Liwaito's successor has failed of acceptance by the people in general due to a cultural factor as to whether it included title and lands, as to Juriak's mother's eligibility, and as to whether it actually happened at all.
- (e) That there apparently was peaceful and cooperative relationships between all five [*roij Erik* up to approximately 1944. The stories relative to Juriak pressing his claim with the Japanese and his brutal punishment therefor are subject to doubt and lie rather within the category of falsehoods.
- (f) That the culture provides for the distribution of her lands among her [*roij Erik* according to their established posi-

tions. And further that her titles cease with her death. The recreation of the kingdom of Liwaito is now possible in respect to land only by agreement and wills among the *[roij Erik]*. Also each *[roij Erik]* has now become an independent sub-regency with no rights or authority over any of the other.

- (g) That the attempt to secure unbiased, clear, and complete statements of truth in respect to this situation remain beyond all possibility. Individualism is rampant and as characteristic of human nature, each individual desires to present only those facts which will shed a favorable light on his own interests. Add to this, the normal tendency to possibly color the truth a bit and it is quickly recognized why a simple solution has not been found. Compromise in matters of state or personal interest is not indigenous to the culture. This case is no exception; on the contrary it is now distorted in basically five different directions.
- (h) A will has been sighted and verified by *[roij Tbo]*, transferring all land rights to Abisai from his father.

4. The Civil Administrator of the Majuro District having consulted with *Kabua*, *[roij Laplap]* of Jaluit Atoll and native affairs advisor to Civil Administration has met with the five *[roij Erik]*, namely Abisai, Felix, Juriak, Lainlij, and Lujim in an endeavor to arrive at a solution to the problem of trouble and disorder accruing among the people represented by these *[roij Erik]* over a firm determination of the status of Liwaito's titles and lands. These meetings were held on 20, 21 and 22 May 1948. Unfortunately, no decision was arrived at that had the concurrence of each and every *[roij Erik]*. As a result of the *[roij Erik]* failing to find an answer to the problem, and indicating that they had no hope of ever arriving at a common agreement, the Civil Administrator has this date, 24 May 1948, proclaimed the following:

- (a) The rights of each *[roij Erik]* in respect to their individual and respective positions, land rights, and titles are recognized.
- (b) As *[roij Erik]*-Abisai, Felix, Juriak, Lainlij, and Lujim are recognized as the leaders and spokesmen of all people having land rights on their respective properties as defined within the Marshallese culture.
- (c) As of the present date there is no individual successor to Liwaito's titles and lands recognizable as such within the culture.

LIKOP v. ANIPICH

- (d) The culture provides and recognizes the right and act of distribution of an *Iroij's* lands amongst the *Iroij's* chiefs or *Iroij Eriks* and as such the *Iroij Eriks* are independent of each other in their acts and operations.
- (e) From this date on Abisai, Felix, Juriak, Lainlij, and Lujim will operate independent of one another. No one *Iroij Erik* shall have power over another or their respective lands and people except by common agreement between the *Erioj* (sic) *Erik* involved. Such an agreement between Juriak and Lujim is now recognized.
- (f) Each of all the people over which cultural jurisdiction is recognized and shall maintain order and peace therewith.
- (g) **If** at a later date accurate information may arise to warrant a redetermination of the principals of this proclamation, such consideration shall be had only in the presence of all pertinent *Iroij Erik* as previously mentioned.

/s/ C. E. HERRICK  
Civil Administrator  
Majuro District

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KASPARA LIKOP (Successor to **PIO** L. Deceased), Plaintiff

v.

ANIPICH, NIKOCHON, WESEN, and KURUR, Defendants

Civil Action No. 318

Trial Division of the High Court

Truk District

January 31, 1969

Action to determine boundaries. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that Master's Findings were supported by the weight of the evidence and the Master's Report was approved.

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BURNETT, *Associate Justice*

This matter comes before the court upon Master's Report entered by the Honorable Olaf W., Associate Judge