

have filed the complaint which charged a wilful refusal to pay. It would be manifestly an injustice to place an onus upon defendant because the government unfortunately refused to accept the tendered sum; but later, and after a complaint had been issued, the government, without explanation, reversed its stand and accepted the sum tendered. The court cannot, and it does not regard this action by the government as a mere coincidence. At best, it can be regarded as imprudence.

Accordingly, it is the judgment of this court that defendant, Kyoshi Anderson, be, and he is hereby acquitted of all charges.

FRANK ANJOUIJ, Plaintiff

v.

WAME, as successor to LANJO, and MAIKEL, Defendants

Civil Action No. 338

Trial Division of the High Court

Marshall Islands District

May 28, 1971

Action to determine rights on Jidrakinej *Wato*, Mejit Island, Marshall Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the land in question was not given as *tolemour* but rather was *kotra* land and as such plaintiff had no right to it but rather use rights were given to the *iroij lablab*.

1. Marshalls Land Law—"Tolemour"

Tolemour is land given to a commoner for successful services in nursing an *iroij*.

2. Marshalls Land Law—"Tolemour"

Tolemour is not mentioned in connection with *jikin in kokabit*, land used as a special place in which to give magical medical treatment.

3. Marshalls Land Law—"Kotra" Lands—Generally

Kotra lands are solely owned by the *iroij* and include not only the *iroij* rights but also exclusive *alab* and *dri jermal* interests.

4. Marshalls Land Law—"Kotra" Lands—Use Rights

An *iroij* may, and usually does, assign someone to work *kotra* lands for him compensating the worker with the *dri jermal* share.

5. Marshalls Land Law—"Kotra" Lands—Use Rights

An *iroij* may give *kotra* land away or assign workers to it and a successor *iroij* may appoint new workers and is not bound to continue workers on the land previously appointed, although it is acknowledged that in compliance with general custom, a worker should not be removed without good cause.

6. Marshalls Land Law—"Kotra" Lands—Use Rights

Where land in question was *kotra* land and not given as *tolemour*, the *dri jermal* assignments made by a succession of *iroij lablabs* excluded an interest of plaintiff who claimed lands as descendant of one who had received land as *tolemour*.

Assessor:	PRESIDING JUDGE KABUA KABUA
Interpreter:	J. JOHNNY SILK
Reporter:	NANCY K. HATTORI
Counsel for Plaintiff:	MONNA B.
Counsel for Defendants:	BILIMON AMRAM

TURNER, *Associate Justice*

FINDINGS OF FACT

1. Jidrakinej *Wato*, Mejit Island, Marshall Islands, is *kotra* land, so-called in the Radak Chain and called *mo* in the Relik Chain.

2. Jidrakinej was not given by Takalur as *tolemour* to plaintiff's grandmother, Lijutok.

3. Lanjo, now deceased, was the last *iroij lablab* and whether Wame is his successor was not considered and is not determined.

4. Any claim plaintiff may have had to *dri jermal* rights were lost when Lakiwa, successor *iroij lablab* to Takalur, removed Lokle from the land. Lokle was successor *dri jermal* to his wife, Lijutok.

OPINION

The judgment in this case depends upon the determination of the classification of the land in question as to whether it was given as *tolemour* or whether it was and is *kotra*.

[1, 2] *Tolemour* is land given to a commoner for successful services in nursing an *iroij*. There was evidence Lijutok did nurse Takalur but that it was not successful and that he went to Jaluit for medical treatment. In any event, the land was given to Lijutok, according to the plaintiff, before she commenced her nursing services. The gift was made, the plaintiff said, because Lijutok employed magic to protect Takalur from punishment because he fought with and wounded another man. The court has been unable to confirm that under Marshallese custom land is given as *tolemour* for employment of magic in lieu of nursing services. *Tolemour* is not mentioned in connection with *jikin in kokabit*, land used as a special place in which to give magical medical treatment, described by Jack A. Tobin in Land Tenure Patterns, page 59.

[3-5] The evidence is quite conclusive that this *wato* was *kotra* land. *Kotra* lands are solely owned by the *iroij* and includes not only the *iroij* rights but also exclusive *alab* and *dri jermal* interests. The *iroij* may, and usually does, assign someone to work the land for him compensating the worker with the *dri jermal* share. The *iroij* may give the land away or assign workers to it. A successor *iroij* may appoint new workers and is not bound to continue workers on the land previously appointed, although it is acknowledged that in compliance with general custom, a worker should not be removed without good cause. As to the general rule, see *Limine v. Lainej*, 1 T.T.R. 107 at 111.

Kotra or *mo* lands are discussed in Land Tenure Patterns, pages 57, 58. As a sidelight, the assessor in this

case, Presiding Judge Kabua Kabua, who is an *iroij lablab*, holds nineteen parcels of *kotra* lands.

[6] It is evident in this case that Takalur, who held the land as *kotra* and also lived on it, assigned Lijutok to work on it. When Lijutok died, her husband Lokle continued working under authority of the successor *iroij lablab*, Lakiwa. During Lakiwa's tenure, Lokle got in trouble in connection with the *iroij* share of copra and was cut off from the land. Kotral was assigned to the land after Lokle. Takinej, successor *iroij lablab* to Lakiwa, assigned Jerilon and Nema to the land. Lanjo succeeded Takinej and he assigned Jamloj until Maikel took over the land and Wame was then assigned to the land by Lanjo. This series of *dri jermal* assignments clearly excludes any interest of plaintiff Frank.

Wame now claims to be the successor *iroij alab*. Granted that it is in the interest of all concerned for the successor *iroij* to Lanjo to be quickly determined, *Lainlij v. Lajoun*, 1 T.T.R. 113 at 117, 118, this case cannot resolve that question because no evidence was heard on the point except Wame's assertion that he was the successor. Maikel, who may or may not be a claimant of the title, did not appear, although named as a defendant. This question of succession also is raised in other recent decisions. *Lijon Ishoda v. Bellu Jejon*, Civil Action No. 381, and *Wame v. Bellu*, Civil Action No. 358. If the parties themselves cannot settle the question of succession, this court will consider the matter when it is asked to make a decision and all claimants are present to support their claims. Until that time we decline to rule on the successorship to Lanjo and such ruling is not required in the disposal of plaintiff's claim in this case.

Ordered, adjudged and decreed:—

1. That the plaintiff holds no right, title or interest in Jidrakinej *Wato*, Mejit Island.

KAMINANGA v. SYLVESTER

2. That the *wato* is *kotra* land and therefore all interests attached to it are solely held by the successor to *iroij lablab* Lanjo, deceased, when the successorship is finally determined.

KIOMASA KAMINANGA, Plaintiff

v.

TEKERENG SYLVESTER, YOSIWO RENGUUL and ERETA

RENGUUL, Defendants and YOSIWO RENGUUL AND

ERETA RENGUUL, Cross-complainants

v.

TEKERENG SYLVESTER, Cross-defendant

Civil Action No. 478

Trial Division of the High Court

Truk District

June 1, 1971

See, also, 5 T.T.R. 312

Motion for new trial on the ground of newly discovered evidence. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, denied the motion holding that the testimony was available before the trial and that even if it were received in evidence it would not change the judgment.

1. Civil Procedure- Motion for New Trial Newly Discovered Evidence

To warrant the granting of a new trial on the ground of newly discovered evidence, it must appear that the evidence is such as will probably change the result if a new trial is granted, that it has been discovered since the trial, that it could not have been discovered before the trial by the exercise of due diligence, that it is material to the issue, and that it is not merely cumulative or impeaching.

2. Reformation of Instruments- Mutual Mistake

A written instrument may be corrected when both parties are mistaken as to its effect, but not when there is a mistake by only one party.

TURNER, Associate Justice

Plaintiff filed motion for new trial on the ground he would produce newly discovered evidence to the effect the