MAKRORO v. KOKKE

3. The defendant, Henos, holds alab interests in the wato.

4. Plaintiff is awarded such costs as are in conformity with law and allowable upon an itemized sworn statement filed within thirty (30) days from entry of judgment.

CLANCY MAKRORO, Plaintiff v.

JABLUR KOKKE, Defendant

Civil Action No. 406 Trial Division of the High Court

Marshall Islands District

September 14, 1971

Action to determine dri jerbal rights to Komlal Wato, Majuro Atoll, The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that an alab acting without the approval of the iroij lablab cannot terminate a dri jerbal interest in land and thus defendant's attempted action to cut off dri jerbal rights under those circumstances was invalid.

1. Marshalls Land Law—"Iroij Lablab"—Powers

A holder of land interests may not transfer those interests without first obtaining consent of the lineage and approval of the iroij lablab or the person or group exercising iroij lablab authority.

2. Marshalls Land Law—Generally

Where neither the defendant's bwij nor the droulul were informed of nor gave their approval to the attempted sale to another, such sale was invalid.

3. Marshalls Land Law—"Kitre"

Kitre is a gift by a husband to his wife.

4. Marshalls Land Law—"Dri Jerbal"—Revocation of Rights

An alab, acting without approval of the iroij lablab, or in the case of "Jebrik's side", the persons or group exercising such authority, cannot terminate a dri jerbal interest in land.

Interpreter: Reporter: Counsel for Plaintiff: Counsel for Defendant: J. JOHNNY SILK NANCY K. HATTORI JIMA ALIK JAMES MILNE

TURNER, Associate Justice

This action involves *dri jerbal* rights to Komlal *Wato*, Rairok Island, Majuro Atoll. Rights in this land are of no present significance, except as they determine entitlement to condemnation payments by the Trust Territory. The land has been condemned for a 25-year lease period for use as airport and water catchment system. Successor interest holders in all probability will be entitled to further payments from the then government on expiration of the present lease agreement. Presence of an assessor was waived by the parties for the trial.

FINDINGS OF FACT

1. The Trust Territory Land Title Office, in an attempt to establish a record of holders of land interests on Majuro Atoll held hearings in 1958 and published its determinations in 1959, showing in regard to Komlal *Wato*, the land in question, that the defendant, Jablur, also spelled Lijablur, held both *alab* and *dri jerbal* interests.

2. The hearings held by the land office were informal and all the claimants to land interests, including the plaintiff, did not participate.

3. Regardless of the land office listing of interests, defendant acknowledged plaintiff to be *dri jerbal* of the land in question, in litigation settling *alab* and *dri jerbal* rights for the land, decided by this court in 1964, *Jemba Beklur v. Lijablur*, 2 T.T.R. 556.

4. Defendant is the *alab* of Komlal *Wato* and Henry Muller is the *iroij erik*. Because the land was formerly controlled by *Iroij lablab* Jebrik Lukutwerak and there presently is no *iroij lablab* for this land or other land on "Jebrik's side" of Majuro Atoll, *iroij lablab* authority is exercised by the *droulul*, composed of *iroij eriks* and other land interest holders of former lands of *Iroij lablab* Jebrik.

5. Plaintiff is a blood relation of the defendant. They are brother and sister under the custom.

6. The land in question was given by Lebonju as *kitre* to his wife, Lijironean, with the understanding it should pass on her death to the defendant Lijablur.

7. After the 1918 or 1919 typhoon, Lebonju asked his *bwij*, of which Neiwan was the senior member, to return to the land to replant it. Neiwan declined and went to Laura to live. Lebonju appointed Makroro, plaintiff's father, as *dri jerbal*.

8. Makroro replanted after the typhoon and continued as *dri jerbal* until his death when he was succeeded by his son, the plaintiff Clancy.

9. Defendant did not exercise any rights on the land until she returned to Majuro from Arno in 1951. Although Jablur testified she did not recognize Makroro as *dri jerbal*, it is a fact he worked the land with Clancy after 1951 until his death and Clancy continued without objection from Jablur until the present dispute arose.

10. When the Trust Territory made condemnation payments for the land in question and adjacent lands for an airport and water catchment system now under construction, the plaintiff, defendant and the *iroij erik* agreed that the payment should be divided one-sixth for the *iroij erik*, one-sixth for the *alab*, one-sixth for the "Jebrik's side" hospital fund, and the remainder for the *dri jerbal*.

11. At that time it was disclosed to plaintiff that one acre of Komlal *Wato* had purportedly been sold by Mike Maddison, the predecessor *iroij erik* of Henry Muller, and by the defendant to James Milne for one thousand dollars (\$1,000.00).

12. Plaintiff had not been consulted and had not consented to the sale. Henry Muller, the present *iroij erik*,

also did not consent to the sale and sought to recover the *iroij erik* interest from Milne in *Henry Muller v. James* Milne, 5 T.T.R. 471.

13. Because of the dispute between plaintiff and defendant as to *dri jerbal* interests in Komlal *Wato*, the Trust Territory payment for that interest in the amount of eleven thousand one hundred eighty-eight dollars (\$11,188.00) is being held by the District Finance Office pending settlement of this case.

OPINION

Defendant raised issues of both Marshallese land tenure and decided law in an attempt to support her claim to *dri jerbal* interest in Komlal *Wato*. Her claims, however, were contrary both to applicable Marshallese custom and the prior decision of this court.

It is significant that defendant's counsel purportedly purchased one acre of the land in question and that payment of a relatively large sum of money hinges upon the determination of *dri jerbal* interests.

[1] It is not difficult to clear up any question as to the purported buyer's interest before proceeding to settlement of the dispute between plaintiff and defendant. The custom is clear and has been emphasized in many decisions of this court that a holder of land interests may not transfer those interests without first obtaining consent of the lineage and approval of the *iroij lablab* or the person or group exercising *iroij lablab* authority.

An attempt to divide land with respect to alab and dri jerbal interests was held invalid because it was not approved by the *iroij elap* in James R. v. Albert Z., 2 T.T.R. 135. For the same rule, see: Lazarus v. Likjer, 1 T.T.R. 129. Limine v. Lainej, 1 T.T.R. 231.

[2] Since neither the defendant's *bwij* nor the *droulul* were informed of nor gave their approval to the attempted

sale to Milne, we have no hesitancy in holding it invalid. Milne may have claim against Jablur for the money he paid her but that is not a matter for decision in this case.

As to the dispute between plaintiff and defendant concerning *dri jerbal* rights, the defendant asserts a number of theories, not the least of which is that she received both *alab* and *dri jerbal* rights from her father who was the *iroij erik*, and therefore the land was *kitre*. She concludes that a holder of *kitre* may do with the land as she sees fit.

The statement as to the custom is approximately correct except that in this case the facts do not fit the custom relied upon. It was defendant's mother by adoption who received the *alab* and *dri jerbal* interests as *kitre*.

[3] Kitre is a gift by a husband to his wife. Defendant was the daughter, not the wife of Lebonju, the *iroij erik*. Lijironean, the wife of Lebonju, held the rights as kitre and the husband and wife agreed that Jablur should succeed to these interests. Jemba Beklur v. Lijablur, supra.

The defendant, during the litigation with *Jemba*, very clearly recognized plaintiff as *dri jerbal*. Indeed, she did not deny he held the rights when she testified in the present case.

In the *Jemba* case, the court held "Lijablur's blood relatives" held *dri jerbal* rights. Plaintiff is a blood relative and with his father has exercised the rights since Lijironean died and defendant succeeded to her interests. That decision is binding upon defendant.

However, defendant bases her present claim upon the reason that she "cut off" plaintiff from the land because "he did not render loyal services" to her. The grounds for terminating an interest is appropriate but the proof was utterly lacking that plaintiff withheld the *alab's* share of the copra cut and sold from Komlal.

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It appears defendant's justification for attempting to terminate plaintiff's interests was not that he withheld her share of copra sales but that he did not give her enough money. Whether this justifies termination of an interest, and we do not agree that it does, the attempted action was invalid under the custom anyway.

[4] It has been held many times that an *alab*, acting without approval of the *iroij lablab*, or in the case of "Jebrik's side", the persons or group exercising such authority, cannot terminate a *dri jerbal* interest in land. Approval of higher authority is mandatory. This court recently held in *Jabwe v. Henos*, 5 T.T.R. 458, that:—

"The law is well settled both by traditional land custom and by decisions of this court determining questions of Marshallese land tenure that an *alab* does not have authority to cut off interests in land by himself. Many cases hold neither the *alab*, nor the *iroij* erik for that matter, have the right to cut off dri jerbal interests in land without the consent or acquiescence of the *iroij* lablab." (Citing.)

Defendant's attempted action against plaintiff is contrary to the custom and the decisions of this court. Plaintiff's vested rights must be affirmed and in lieu of his right to work the land, he is entitled to the government's payment for the leasehold interest.

1. That plaintiff Clancy Makroro, and those claiming through him, hold the *dri jerbal* interest in Komlal *Wato*, Rairok Island, Majuro Atoll.

2. The District Finance Officer is directed to pay to Clancy Makroro in full satisfaction of plaintiff's claim against the Trust Territory Government the sum of eleven thousand one hundred eighty-eight dollars (\$11,188.00) now held by the Finance Office.

3. Defendant Jablur holds the *alab* interest for the land in question but does not hold *dri jerbal* rights in the land.

MULLER v. MADDISON

4. The purported transfer of *dri jerbal* rights to one acre of Komlal *Wato* by the defendant Jablur to James Milne is invalid, without force and effect, vests no interest in Milne, and deprives Clancy Makroro of no interest.

5. No costs are assessed.

HENRY MULLER, Plaintiff v. JAMES MADDISON, Defendant Civil Action No. 401 HENRY MULLER, Plaintiff v. JAMES MILNE, Defendant Civil Action No. 402 Trial Division of the High Court Marshall Islands District September 15, 1971

Action to determine title to twelve *wato* on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that purported transfer of lineage land without obtaining the proper consents was invalid.

1. Marshalls Land Law-Lineage Ownership-Transfer

A member of the lineage, even though he be the senior member and even though he also holds the title of *iroij crik*, may not give or transfer lineage land without first obtaining the approval of the adult lineage members and of the *iroij lablab*.

2. Marshalls Land Law-Lineage Ownership-Transfer

After consent of the lineage is obtained for a transfer, then approval of the *iroij lablab*, or person or group exercising those powers is essential to accomplish the transfer.

3. Marshalls Land Law-Lineage Ownership-Transfer

When the *iroij* lablab does approve a transfer of interest, it is assumed that the necessary consents have been given, however, if the transfer is without lineage consent and there is not good reason for the change, then the *iroij* lablab's consent may be upset by the court when it is challenged.