

NENJIR v. LAIBINMIJ

Batinkio
Wetoweairik
Monkano
Jabonbar
Monkidren (also spelled Monkio)
Jebeten
Bikkirin
Aronwar (also spelled Arenar).

2. That the plaintiff and those claiming through him hold *iroij erik* rights in Komlal *Wato*, Majuro Atoll.

3. That James Maddison and the other children of Michael Maddison have no interest in the above-named parcels of land, listed in the will of Michael Maddison, and that the will is invalid and without effect.

4. That James Milne acquired no interest by purchase or otherwise from Mike Maddison in Komlal *Wato*.

LEROIJ NENJIR, Plaintiff

v.

LAIBINMIJ, Defendant

Civil Action No. 378

Trial Division of the High Court

Marshall Islands District

September 23, 1971

Action to determine right to hold *leroiij lablab* interests on four *wato* on Arno Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where party was entitled to hold *leroiij lablab* position by custom, an *alab's* refusal to recognize her as such would not bring into question her entitlement.

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

The Marshallese system of inheritance of land rights is through the matrilineal lineage starting with the oldest through the youngest of each generation, thus plaintiff, as a younger sister of the predecessor *iroij*, was entitled under the custom to succeed to the position and the fact that an *alab* refused to recognize her position did not preclude her holding the office.

2. Marshalls Land Law—"Iroij Lablab"—Succession

A female may hold the office of *iroij*.

3. Marshalls Land Law—"Alab"—Removal

Normally, failure to pay an *iroij* his share of copra sales is adequate grounds for removal of either *alab* or *dri jerbai*.

4. Marshalls Land Law—"Alab"—Removal

Court will decline to terminate *alab* rights in the absence of action under customary procedure by the *iroij lablab*.

Assessor:

KABUA KABUA, *Presiding*
Judge of the District Court

Interpreter:

JELTAN J. SILK

Reporter:

NANCY K. HATTORI

Counsel for Plaintiff:

MONNA B.

Counsel for Defendant:

PRO SE

TURNER, *Associate Justice*

This case involves four of many *wato* on Arno Atoll over which plaintiff claims *leroi j lablab* interests. The defendant is the *alab* of the following four *wato* and disputes plaintiff's claim of being *leroi j lablab* as to them: Eneaetok Island; Eneion Island; Enekiej Island; and Lojkar *Wato* on Pikarij Island, Arno Atoll.

Plaintiff previously brought suit against Rilan for his failure to recognize her as *leroi j lablab* and for refusal to pay the *leroi j* share of copra sales for three *wato*, not including the above four. *Nenjir v. Rilan*, 4 T.T.R. 277. Judgment was entered for Nenjir upon Rilan's stipulation that Nenjir was the *leroi j lablab*. The District Court awarded Nenjir judgment of one thousand eight dollars and twenty-nine cents (\$1,008.29) for copra sales shares withheld. Rilan brought an appeal in what was numbered 353, which was dismissed as being without merit.

Prior to Nenjir's troubles, the predecessor *iroij lablab*, Leben, also was required to bring actions to force his recognition and for the payment of withheld shares. *Leben L. v. Tibon*, Civil Action No. 90, and *Leben and*

Jiwerak v. Lajibli, Civil Action No. 91; neither judgment reported.

And as a footnote to the litigation over the rights here in question, the land powers pertaining to the western side of Arno Atoll all began more than a hundred years ago in a bloody civil war between the eastern and western sides of Arno. *Labina v. Lainej*, 4 T.T.R. 234, where the court at 261 refers to the Arno war. This case also mentions the western side succession of authority at 4 T.T.R. 241, 242 and 243.

FINDINGS OF FACT

1. Nenjir is the younger sister of Leben, who was *iroij lablab* until his death in 1966. He succeeded Tobo, who was *iroij lablab* until his death in 1957. His predecessors back to the civil war were Laelan, Deved and Leikman.

2. The defendant is the *alab* on the four parcels of land in question but has jeopardized his position and right to live on the land by refusing to recognize plaintiff as the successor *leroiij lablab* to Leben.

3. Defendant has withheld payment of the *leroiij lablab* share of copra sales from the land in question in the amount of three hundred twenty-seven dollars and seventy-five cents (\$327.75) for the four-year period commencing in 1968 to the present.

4. Contrary to defendant's assertions the plaintiff is not entitled to be *leroiij lablab* "because she is a female and no female has held the office on Arno", there have been at least two *leroiij lablab*. *Liwinrak v. Jiwirak T.*, 1 T.T.R. 394 and *Jetnil v. Buonmar*, 4 T.T.R. 420.

OPINION

[1] The Marshallese system of inheritance of land rights is through the matrilineal lineage starting with the

oldest through the youngest of each generation. The plaintiff, as younger sister of Leben, the predecessor *iroij*, is entitled under the custom to succeed to the position.

That the defendant, as *alab*, refuses to recognize her position does not preclude her holding the office when she is clearly entitled to it under the custom. We are bound by the holding in *Lojob v. Albert*, 2 T.T.R. 338, where the court said:—

“ . . . there seems to be a desire by the appellants (substitute defendant in the present case) . . . 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. . . . (This) would be clearly contrary to Marshallese customary law and inconsistent with the entire system of Marshallese land ownership.”

We note that the several cases involving succession on the eastern side of Arno Atoll may appear to be to the contrary but they are distinguishable because in neither *Lainlij v. Lojoun*, 1 T.T.R. 113, *Liwinrak v. Jiwirak*, 1 T.T.R. 394, and the *Bina* cases, *Labina v. Lainej*, 4 T.T.R. 234, and *Bina v. Lajoun*, 5 T.T.R. 366, was there any clear and definite genealogical right of inheritance. *Labina* claimed the office as the younger sister of *Jiwirak*, who was not recognized by the court as lawfully entitled to the office. *Liwinrak v. Jiwirak*, supra. At most, he held office by election and not necessarily in conformity with inheritance under the custom.

Because these eastern side decisions are distinguishable from the present case, we hold that the refusal of the defendant *alab* to recognize the plaintiff as *iroij lablab* does not in any way bring into question her entitlement under the custom by inheritance.

[2] The court would be bound to make this decision even if it were willing to grant there was any merit in defendant's conduct. This we do not do because the facts

and the traditional land tenure law of the Marshalls are completely contrary to his theory a female may not hold the office of *iroij*.

Actually, the last female *leroi j lablab* concerning whom there was no dispute was *Leroij lablab* Liwaito on Arno Atoll. *Labina v. Lainej*, supra. There are at present and have been in the past many *leroi j lablab* in the Marshall Islands.

Defendant's theory that the custom on the western half of Arno is different from that which prevails in the Marshall Islands is rejected as having no factual basis and without merit.

We also reject as being without merit defendant's chart of *iroij* succession on Arno Atoll. He combined both eastern and western titleholders and included one person, Rilan, who admitted in this court he was not entitled to the office as against Nenjir. It also is noted that defendant's indicated successor to Leben, plaintiff's predecessor, was Jiwirak, who was held to have been "elected" *iroij lablab* on the east side of Arno. *Liwinrak v. Jiwirak*, supra, and *Jetnil v. Buonmar*, supra. Also the fact Jiwirak has been dead for a number of years, at least as long as Leben, apparently was given no significance by the defendant. His roster of successors from Lomade to the present is contrary to facts decided by this court and is, therefore, not persuasive.

[3] In addition to establishing her right to the position of *leroi j lablab*, the plaintiff also sought to have the defendant removed from the land and his *alab* rights terminated because he failed in his obligations to her. Normally, failure to pay to an *iroij* his share of copra sales is adequate grounds for removal of either *alab* or *dri jermal*.

[4] The court considers defendant's statement at trial that he will acknowledge plaintiff as *leroi j lablab* if the

court holds she is entitled to that office is sufficient justification for not taking action at this time. This court has declined in the past and does so now to terminate rights in the absence of action under customary procedure by the *iroij lablab*.

If, however, the defendant fails to recognize plaintiff and to perform his obligations to her after he has received this judgment, the court will have no hesitancy in taking appropriate action on plaintiff's motion for order in aid of judgment.

Finally, plaintiff seeks recovery of and demonstrated entitlement to the sum of three hundred twenty-seven dollars and seventy-five cents (\$327.75) from defendant. The defendant admitted withholding the plaintiff's share of copra sales since 1968. Since he did not challenge the amount claimed by plaintiff we must grant judgment for that amount.

It is ordered, adjudged, and decreed:—

1. That plaintiff, Nenjir, holds *leroi lablab* rights to the following *wato*: Eneaetok Island; Eneion Island; Enekiej Island; and Lojkar *Wato* on Pikarj Island; Arno Atoll, Marshall Islands.

2. That the defendant shall pay the plaintiff the sum of three hundred twenty-seven dollars and seventy-five cents (\$327.75) due and owing as the *leroi lablab* share of copra sales by defendant from the above *wato* from 1968 to date.

3. That defendant shall continue as *alab* only if he immediately acknowledges plaintiff as *leroi lablab*, that he performs his obligations to her under the custom and that he shall pay without delay the *leroi lablab's* share of copra sales.

4. Plaintiff shall be allowed costs in accordance with law upon filing verified claim.