

LINIDRIK v. MAIN

Counsel for Plaintiff-Appellant: CHARLES WHEELER
Counsel for Defendant-Appellee: BENJAMIN M. ABRAMS

WILLIAMS, *Associate Justice*

It appears the certification of record was filed and served on appellant and appellee on September 26, 1974, and pursuant to Rule 32(h) (2) Rules of Criminal Procedure, appellant's brief was due on November 26, 1974. It further appears no brief has been filed by appellant or appellee and that in accordance with Rule 32(d) Rules of Criminal Procedure, the appeal may be dismissed. After consideration of the record and file in this case, the Court finds the appeal should be dismissed in accordance with 5 TTC § 52 for failure to prosecute the appeal in accordance with the Rules. Now, Therefore,

It is hereby ordered, the appeal in the above entitled matter be and is hereby dismissed.

LINIDRIK, Plaintiff-Appellee

v.

MAIN, Defendant-Appellant

LINIDRIK, Plaintiff-Appellee

v.

LAJINA, Defendant-Appellant

Civil Appeal No. 83

Appellate Division of the High Court

Marshall Islands District

May 13, 1975

Dispute over *alab* and *leroi* rights. The Trial Division of the High Court, Williams, Associate Justice, held that *alab* rights could be lost where they were not asserted over a long period of time and another had exercised the rights during that time.

1. Marshalls Custom—Designation of Successor

Approval by *iroij* was sufficient to validate will designating successor *alab*.

2. Laches—Particular Cases

Person entitled to inherit *alab* rights could not assert the claim where, since Japanese times, the claim had not been asserted and person exercising the *alab* rights, and his predecessors, had exercised the rights during that time.

3. Laches—Particular Cases

Establishment of rights in land under the Marshallese system of land tenure, apparently accepted by those concerned, cannot be upset years later.

4. Marshalls Custom—Succession to Titles

Although according to Marshallese custom, the oldest member of a lineage usually represents a younger one, it is not uncommon for special arrangements to be made which are not in accordance with the custom, and where father designated younger daughter as successor *leroi*, the designation was registered with the Japanese administration, the successor was recognized by all interested persons, and there was no evidence that older sister ever asserted any claim to *leroi* rights, trial court's decision affirming the younger sister's rights would be affirmed.

<i>Counsel for Appellants:</i>	LAJINA
<i>Counsel for Appellee:</i>	TORJON

Before BURNETT, *Chief Justice*; HEFNER, *Associate Justice*; WILLIAMS, *Associate Justice*

WILLIAMS, *Associate Justice*

Civil Actions 346 and 347 in the Marshall Islands District were consolidated for the purpose of trial and this appeal.

Appellants appeal from a judgment in Civil Action 346, granting Appellee *alab* rights to land on Nontain Island, Mili Atoll, and from a judgment in Civil Action 347, granting Appellee *Leroij lablab* rights in land on Nontain Island, Mili Atoll.

The appeal was considered on the record; no written arguments were submitted after the Court had given notice to the parties herein that the Court would proceed to decide the appeal without argument and without

further notice in accordance with Rule 32(i) of the Rules of Criminal Procedure (also applicable in civil actions).

[1] First, concerning the *alab* rights in question in Civil Action 346, it appears that both parties acknowledged Neikojdrik held the *alab* rights prior to Japanese times. The record reveals Neikojdrik prepared a will designating Jibaru as successor *alab* to Neikojridrik's son, Lejedro, and that the will was approved by the *iroij*. The Trial Court held such approval was sufficient to make the will valid as far as the transfer of *alab* rights was concerned even though approval of the *bwij* was not obtained, citing *Limine v. Lainej*, 1 T.T.R. 231 (Trial Division, 1955); *Lazarus v. Likjer*, 1 T.T.R. 129 (Trial Division, 1954). We agree with the trial courts' ruling on this issue.

It appears Lejedro predeceased Neikojdrik and, by custom, upon the death of Neikojdrik, Jibaru became entitled to the *alab* rights in question. However, Jibaru did not assume the *alab* rights upon Neikojdrik's death. The record is not clear as to the person who actually assumed the *alab* rights upon Neikojdrik's death. At one point in the record, it appears Ruji assumed the *alab* rights immediately upon Neikojdrik's death; elsewhere it appears Bujanor exercised the *alab* rights upon Neikojdrik's death and Ruji succeeded to the *alab* rights upon the death of Bujanor. Also, the record is not clear as to the claim of right or authority under which Ruji or his predecessor exercised the *alab* rights. In any event, the record is clear that Jibaru never exercised the *alab* rights nor has Appellee, as successor to Jibaru, asserted her rights until the commencement of this action. It is also clear Ruji or his predecessor exercised the *alab* rights from Japanese times until Ruji's death in 1962. Prior to Ruji's death, he transferred the *alab* rights to the land in question by oral will to Appellant Main. This will was not approved by the *bwij* or the *iroij* as required by the Marshallese custom.

[2] The trial court held that Appellant Main and his predecessor's exercise of the *alab* right, although not contested by Jibaru, may not continue indefinitely in face of a claim by a member of the *bwij* entitled to inherit the rights.

We believe this holding to be error. The record shows Appellant Main or his predecessors have been exercising *alab* rights since Japanese times, and the exercise of these *alab* rights has been accepted by all concerned until this action was instituted.

It appears this challenge to Appellant Main's long standing exercise of the *alab* rights is a result of his contention in Civil Action 347, that Appellee's sister is the *leroi* on Nontain Island.

[3] It has been long recognized in the Courts of the Trust Territory that establishment of rights in land under the Marshallese system of land tenure apparently accepted by those concerned cannot be upset years later. *Wener v. Maddison*, 4 T.T.R. 194 (Trial Division, 1968); *Jibor v. Tibiej*, 2 T.T.R. 38 (Trial Division, 1959). Therefore, Plaintiff-Appellee is now precluded from asserting any claim to *alab* rights which have been clearly exercised by Appellant Main or his predecessors since Japanese times.

The trial court's decision in Civil Action 346 is hereby reversed, and Appellant Main is hereby recognized as the holder of the *alab* rights to the land in question on Nontain Island, Mili Atoll.

In Civil Action 347, Appellee claimed *leroi lablab* rights to Nontain Island, Mili Atoll and further claimed Appellants Lajina and Main owe her \$337.57 which represented the *leroi* share of copra sales. Appellant Lajina or Main claimed the *leroi* rights are vested in Plaintiff's older sister, Neijen and further claimed to have paid the *leroi* share to Appellee's sister Neijen.

Appellee and Neijen are half-sisters having the same father, *Iroi* Loklo. During Japanese times, Loklo, after

consultation with his *alabs*, designated Lakomer and Appellee Linidrik as successor *leroi*. The designation of Appellee as *leroi* was registered with the Japanese administration. Appellee has been recognized by all persons having an interest in the land except Appellants Lajina and Main. Appellee was selected by the Atoll Council, comprised of other *iroi* and *alabs* of Mili, to sit in the Nitijela, the Marshall Islands Legislature.

Appellants assert that Appellee is not entitled to *leroi* rights, and according to Marshallese custom, the *leroi* rights are vested in Appellee's older sister, Neijen; however, there is no evidence in the record Neijen has ever asserted any claim to *leroi lablab* rights.

[4] Although, according to the Marshallese custom, the oldest member of the lineage usually represents the younger, it is not uncommon, as in this case, for special arrangements to be made which are not in accordance with the custom. Exceptions to the general custom have been previously recognized by this Court. *Adelbai v. Ngircho-teot*, 3 T.T.R. 619 (App. Div. 1968). Sufficient evidence appears in the record to support the decision of the trial court in Civil Action 347, and it is hereby affirmed.