

Accordingly, it is ORDERED, ADJUDGED and DECREED as follows:

1. The judgment of the trial division that Lejer is the *alab* of Jikibdru lar *weto* of Wotje land is REVERSED, and the *alabship* is CONFIRMED to Capitol pursuant to the December 6, 1983 trial division's order.

2. The judgment of the trial division awarding the *dri jermal* rights of Jikibdru lar *weto* on Wotje Island to Lejer is AFFIRMED.

3. This opinion shall not affect any rights of way over, across, or upon the said parcel of land.

4. No costs are assessed in favor or against any party.

TOSHIWO SHIMA, et al., Plaintiffs-Appellees

v.

NAMO HERMIOS, et al., Defendants-Appellants

Civil Appeal No. 428

Appellate Division of the High Court

Marshall Islands District

July 8, 1988

Appeal from judgment of trial division holding that appellee was the *alab* of four *wetos*. The Appellate Division of the High Court, Munson, Chief Justice, affirmed the judgment of the trial division, since evidence abundantly supported its finding, that a *bwilok* existed, approved by the *iroij laplap*, and that all four of the *wetos* awarded were on the list of *wetos* in issue.

1. Marshalls Land Law—"Bwilok"

Trial court properly found that a *bwilok* existed and that the *iroijs* confirmed such *bwilok*, based on testimony determined to be reliable and documentary evidence.

2. Marshalls Land Law—"Alab"

On appeal from judgment of trial division holding that appellee was *alab* of four *wetos*, claim was rejected that one of the *wetos* awarded was not on the list of *wetos* in issue.

Counsel for Appellant: DAVID M. STRAUSS, *Chief Public Defender*, Republic of the Marshall Islands

Counsel for Appellee: LANGINMO JACOB, *Trial Assistant*

Before MUNSON, *Chief Justice*, KOZINSKI, *Associate Justice**, and TEVRIZIAN, *Associate Justice***

MUNSON, *Chief Justice*

Appellant Capitol Labwirrik appeals from the judgment of the trial division which held that appellee Kendall Lejon is the *alab*¹ for the four *wetos*² Awao, Monlomar, Tur, and Turko on Wotje island, Wotje Atoll, Republic of the Marshall Islands. Additionally, appellant asserts that one of the *wetos*, Tur, was not on the list of *wetos* in issue and therefore the trial division erroneously awarded the *alabship* of the *weto* to appellee. Because the trial division's findings of fact are not clearly erroneous and its evidentiary rulings are consistent with substantial justice, *Bina v. Lajoun*, 5 T.T.R. 366, 369-70 (1971), we affirm.

In or about 1917, Labwirrik (appellant's father) broke the arm of *Alab Keju* (appellant's great uncle) in a fight over a woman. As a result of this dispute, the trial division found that a *bwilok*,³ approved by the *iroij laplap*,⁴ occurred whereby the group of *wetos* controlled by *Alab Keju* was divided upon his death between two *alabs*, who were cous-

* Judge of the United States Court of Appeals, Ninth Circuit, designated as Temporary Associate Justice by the Secretary of Interior.

** Judge of the United States District Court, Central District of California, designated as Temporary Associate Justice by the Secretary of Interior.

¹ An *alab* is a person in immediate charge of a piece of land.

² A *weto* (sometimes spelled *wato*) is typically a strip of land stretching across the island from the lagoon side to the ocean side, varying in size from about one to five acres. The *weto* is the typical Marshallese land unit.

³ A *bwilok* is a cutting off, usually after an argument, resulting in loss or interruption of hereditary land rights.

⁴ An *iroij laplap* is the paramount male chief of certain lands (female, *leroj laplap*).

ins, Labrirrik (a member of appellant's *bwij*⁵) and Lojen (a member of appellee's *bwij*).

Under a strict application of the order of hereditary land rights in the Marshalls system, in the absence of a *bwilok*, Labwirrik would have held the *alabship* of all of the *wetos* controlled by *Alab* Keju. Lojen would have succeeded Labwirrik as the oldest living child of the oldest female in Labwirrik's generation. And at Lojen's death, appellant Capitol, acting for his older sister Limejit, would have succeeded Lojen as *alab* to all of the *wetos*.

The issue we are confronted with is whether a *bwilok* approved by the *iroij laplap*, as is required by law, did in fact occur.

The trial division received sworn testimony that former *iroijs* approved of and confirmed the *bwilok*. Specifically, the trial division heard from *Iroij Laplap* Rimios Hermios, the *iroij laplap* of the land in question, *Iroij Edrik*⁶ Hemmy Langmos, the *iroij edrik* of the same land, Mr. Ben Kiotak, who had lived on Wotje Island and who knew the history of Wotje, and appellee, who all testified that it was well known in the community that the *bwilok* which is the subject of this dispute did in fact take place. The trial division determined this testimony to be reliable. Furthermore, documentary evidence presented at trial established that the *iroijs* confirmed the *bwilok*. The trial division admitted a *kallimur*⁷ executed by *Leroij* R. Langmos on September 27, 1951, that was prepared long before the present dispute arose, which confirmed the *bwilok* by stating that Lojen was the *alab* of the four *wetos* at issue in this case. Second, a letter dated August 22, 1964, written by *Iroij* Namo Hermios on behalf of *Leroij Laplap* R. Limojwa, also confirms that the *iroij* and the *leroi*⁷ approved the *bwilok*.

⁵ *Bwij* means an extended matrilineal family or lineage.

⁶ An *iroij edrik* is a lesser male chief of certain lands (female, *leroi* *edrik*).

⁷ A *kallimur* is a means by which one disposes of his or her lands, analogous to a will.

[1] Based upon our review of the same evidence, this court is unable to conclude that the trial court made "clearly erroneous" findings of fact when it found that a *bwilok* occurred which resulted in a division of the *wetos* between *Alab* Labwirrik and *Alab* Lojen. The evidence which appellee submitted to the trial court abundantly supports the findings that a *bwilok* existed and that the *iroijs* confirmed the *bwilok*. The trial court did not abuse its discretion.

[2] It is undisputed that Tur is not among the *wetos* listed in *Leroij Laplap* R. Limojwa's letter dated August 22, 1964. However, the official court transcript reveals that appellant's counsel, prior to making his opening statement, asked for and received a stipulation from appellee's counsel that the court include the *weto* Tur with the other *wetos* that were in issue, in its determination of ownership. Based upon the record of the trial proceedings, it is clear that Tur was intended to be among the *wetos* included in Limojwa's letter and indeed was placed in issue by appellant. Accordingly, this court finds that the trial court did not err when it found that Tur was among the *wetos* over which appellee had *alab* rights.

Based upon the foregoing, the judgment of the trial court is AFFIRMED.

This opinion shall not affect any rights of way over, across, or upon the subject *wetos*.

No costs are assessed in favor of or against any party.