

LAINLIJ, Plaintiff
v.
LAJOUN, DIKON, LATANI, LATER and JIWIRAK, Defendants
Civil Action No. 23
Trial Division of the High Court
Marshall Islands District
June 7, 1954

Action to determine rights and duties of parties on Arno Atoll during period when successor to deceased *iroij lablab* remained uncertain. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where decision is made by various *alab* parties to support another as successor to deceased *iroij lablab*, they are obligated to support him as such until some other fairly definite determination is made, and that obligations of subordinate parties in rendering copra millage during this period are based upon such duty of support.

1. Marshalls Custom—"Iroij Lablab"—Recognition

Under Marshallese custom, once person recognizes another as his *iroij lablab*, he is expected to adhere to this selection unless and until some other firm determination is reached after period of stability, or unless and until *iroij lablab* so recognized permits some change.

2. Marshalls Custom—"Iroij Lablab"—Succession

Under *iroij lablab* system in Marshall Islands, no *iroij lablab* has absolute right to control selection of successor of another *iroij lablab*, although he may be able to influence views of others in the matter.

3. Marshalls Custom—"Iroij Lablab"

Under Marshallese custom, position of *iroij lablab* is primarily one of trust and responsibility, succession to which depends upon combination of birth and recognized ability.

4. Marshalls Custom—"Iroij Lablab"

Under Marshallese custom, position of *iroij lablab* is not merely personal right which can be given away or abolished at will by one holding it.

5. Marshalls Custom—"Iroij Lablab"—Succession

Under Marshallese custom, expressed wishes of *iroij lablab* as to his successor may have great influence with his people, but it cannot bind them in such a way as to relieve them from obligations assumed after his death.

6. Marshalls Custom—"Iroij Lablab"—Succession

Under present system of society and land ownership in Marshall Islands, there is obvious public interest in having question of succession of deceased *iroij lablab* determined as quickly and firmly as practicable.

7. Marshalls Custom—"Iroij Lablab"—Recognition

Under Marshallese custom, those who have undertaken to support individual as successor *iroij lablab* owe him obligation of loyalty until there is some other fairly definite determination.

8. Marshalls Custom—"Iroij Lablab"—Succession

Where previous Civil Administrator determined there was no successor to deceased *iroij lablab*, *iroij erik* was justified in disregarding any successor so long as this determination remained in force.

9. Marshalls Custom—"Iroij Lablab"—Recognition

Where *alab* parties were given express permission in 1950 from Civil Administrator to support a successor *iroij lablab*, they are justified in disregarding claimant as *iroij erik* so long as he refuses to recognize successor *iroij lablab* and there is no other definite determination on the matter.

10. Marshalls Custom—"Iroij Lablab"—Recognition

Where party wrongfully refuses to recognize successor *iroij lablab*, his rights as *iroij erik* are suspended, although not completely forfeited, and if he agrees to recognize successor *iroij lablab* within reasonable time, he may resume the exercise of his powers.

11. Marshalls Custom—"Iroij Lablab"—Recognition

Principles applied to one who has once recognized another as his *iroij lablab*, and then wrongfully withdraws his recognition, would have no application to one who has never so recognized another, and whose predecessors in interest have never done so.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Lainlij was established as *iroij erik* (lesser chief) of the land in question about 1937, and was originally recognized by the defendants Lajoun, Dikon, Latani and Later, or their predecessors in interest, as the *iroij erik* entirely apart from any question of his recognizing the defendant Jiwirak as *iroij lablab* (paramount chief). The other defendants, or their predecessors in interest, were urged by the plaintiff Lainlij to support Jiwirak as *iroij lablab*, and agreed to do so at his request.

2. The attempted establishment of defendant Jiwirak as the successor of Liwaito, as *iroij lablab*, at the public

meeting with an American military representative in 1944, was proper under Marshallese custom as a first step, but it has not received support of enough people on Liwaito's former lands, continued for a long enough time, to make it fully and firmly effective as yet, but it may later become so.

3. Cdr. Kenney, in 1950, while Civil Administrator of the Marshall Islands, modified Lt. Cdr. Herrick's determinations set forth in his letter of 28 May 1948, by expressly permitting at least those *alab* (persons in immediate charge of a piece of land) and their *dri jerbai* (workers) who desired, to recognize and support the defendant Jiwirak as *iroij lablab* on *Leroij Lablab* (Paramount Chieftess) Liwaito's former lands. This inferentially extended the same permission to the *iroij erik*.

4. The following amounts of copra were produced and sold between the determination by Lt. Cdr. Herrick and that by Cdr. Kenney, referred to in the foregoing finding of fact: On the land controlled by the defendant Lajoun, 4100 pounds; on the land controlled by the defendant Dikon, 10,000 pounds; on the land controlled by defendant Latani, 5,000 pounds; and on the land controlled by the defendant Later, 4,800 pounds; making a total of 23,900 pounds.

5. After Liwaito's death, the Japanese administration had endeavored to have the people on the lands formerly under her agree upon the establishment of a successor to her. Several attempts had been unsuccessfully made to reach a general agreement on the matter and pending further determination the Japanese administration had undertaken to make at least the more important decisions that would normally be made by an *iroij lablab*, and had itself collected, at first the part of the *iroij lablab* share to be used for hospital and other medical expenses, and later the whole *iroij lablab* share, from her lands.

CONCLUSIONS OF LAW

1. This action raises the question of the rights of the parties during the period when there is serious question as to who should succeed or has succeeded a deceased *iroij lablab*. The plaintiff admits that in 1944 he joined in attempting to establish the defendant Jiwirak as *iroij lablab*. According to the facts agreed upon by all the parties, this attempted establishment in 1944 had the approval of all the *alab* and all but one of the *iroij erik* of the lands formerly under Liwaito. Opposition to it developed, however, in part at least from outside the group; as a result numerous persons, including the plaintiff after some years, withdrew their recognition, although there is no claim made in this action that this was due to any failure by the defendant Jiwirak to properly perform his duties. Others, including the *alab* defendants, stood by Jiwirak as consistently as possible. The American administration did not collect the *iroij lablab* share and appeared generally unwilling to exercise the *iroij lablab* powers as the Japanese administration had done. Widespread controversy developed, and Lt. Cdr. Herrick, as Civil Administrator, determined, as shown by his letter of 28 May 1948, that at that time there was no individual successor to Liwaito's titles and lands, and that each of the *iroij erik* under her should be independent of one another and have no power over the other and their respective lands and people except by common agreement between the *iroij erik* involved, and he recognized such an agreement between Jiwirak and Lujim.

[1] 2. In Marshallese history, before the arrival of any of the foreign administrations, these disputes as to succession to the position of *iroij lablab* were regularly settled by war, if no friendly solution could be reached. With the prohibition by the foreign administrations of war be-

tween the Marshallese, it became necessary for them to settle such disputes either by negotiation or appeal to the administering authority, which is naturally reluctant to get into the matter any further than necessary. Once a person had recognized someone as his *iroij lablab*, he was expected to stick to this selection unless and until some other firm determination was reached, and if reached by common consent, was continued at least long enough to give it some stability, or unless and until the *iroij lablab* who had been so recognized, permitted some change.

[2-6] 3. As justification for the plaintiff and others "turning their backs on" Jiwirak, it is claimed (1) that Tobo, who was the recognized *iroij lablab* on the part of Arno Atoll not under Liwaito, objected to Jiwirak's succeeding Liwaito, (2) that Liwaito had stated no one was entitled to succeed her, and her *iroij erik, alab*, and people should work together, and (3) that all the people on Liwaito's lands did not agree to Jiwirak's succeeding her and she had expressly told them that no one, acting by himself, should try to establish a successor, but that they should all agree. From the very nature of the *iroij lablab* system, it seems clear that no *iroij lablab* has any absolute right to control the selection of the successor of another *iroij lablab*, who was independent of him, though it is realized he might be able to influence the views of a number of people on the matter. It also seems clear that the position of *iroij lablab* is primarily one of trust and responsibility, the succession to which depends upon a combination of birth and recognized ability, and that it is not a merely personal right which can be given away or abolished at will by one holding it. The expressed wishes of one *iroij lablab* as to the selection of his or her successor may have great influence with his people, but it cannot bind them in such a way as to relieve them from obligations assumed after his or her death. So long as

this system of society and land ownership continues, there is an obvious public interest in having the question of who shall succeed to or exercise the powers of a deceased *iroij lablab* determined as quickly and firmly as practicable. Every reasonable opportunity should be accorded his people to develop the necessary public support for such a determination. The court therefore holds that none of these grounds claimed justified the plaintiff's change of position.

[7, 8] 4. In accordance with the principle explained above, those who had undertaken to support Jiwirak, owed him an obligation of loyalty, at least until there was some other fairly definite determination. The letter of Lt. Cdr. Herrick, while obviously intended only as a temporary measure, is believed to have given the plaintiff justification for disregarding defendant Jiwirak, and to have required the other defendants to give their support to the plaintiff Lainlij as *iroij erik* so long as this determination remained in force. The court therefore holds that each of the *alab* defendants owes the plaintiff Lainlij for the *iroij erik* share at the rate of five mills per pound on copra produced and sold from their respective lands, from the time between Lt. Cdr. Herrick's determination and that of Cdr. Kenney, and that since each of them has paid this to the defendant Jiwirak, he should turn these sums over to the plaintiff Lainlij.

5. Cdr. Kenney's determination appears to have made no express provision for the situation where the *alab* wished to support Jiwirak as *iroij lablab* and the *iroij erik* did not, but since he gave express permission to the *alab* to follow Jiwirak as *iroij lablab* the court considers that the necessary inference is that they could disregard their *iroij erik* if he continued disloyal to the *iroij lablab*. Neither Lt. Cdr. Herrick's determination nor Cdr. Kenney's was embodied in a formal District Order, and all Civil

Administration Orders, except District Orders, which are not contained in the Trust Territory Code, were expressly repealed by the High Commissioner's Executive Order No. 32, and Section 26 of the Trust Territory Code, effective December 22, 1952. The court therefore considers that the situation, at least since that date, is controlled primarily by the land law as it was in effect on December 1, 1941, in view of the provisions of Section 24 of the Trust Territory Code.

[9, 10] 6. The court holds that the defendants Lajoun, Dikon, Latani and Later have the right to recognize Jiwirak as the *iroij lablab* of the lands under their control, and to disregard claims of the plaintiff Lainlij as *iroij erik* from the time of Cdr. Kenney's determination referred to above, so long as the plaintiff Lainlij refuses to recognize the defendant Jiwirak as *iroij lablab* of this land and there is no other fairly definite determination on the matter. During this period of negotiation for position as *iroij lablab*, however, conditions have been and still are so fluid and uncertain that the court considers that the plaintiff Lainlij has not yet completely forfeited his rights, but that they are suspended, and that if he again recognizes defendant Jiwirak as *iroij lablab* of these lands within a reasonable time, he is entitled thereafter to resume the exercise of his powers, and the defendants have indicated that they will be happy to again recognize him as *iroij erik* under those circumstances.

[11] 7. It should be clearly understood that the court in this action is only passing judgment on the rights as between the parties in the particular lands involved in this action. Many of the principles relied upon would have no application to persons who have never recognized Jiwirak as *iroij lablab* and whose predecessors in interest have never done so.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the rights in those lands on Mallel and Drebeoen Islands on Arno Atoll, which are under the control of the defendants Lojoun, Dikon, Latani and Later, as *alab* or acting *alab*, are as follows:—

(a) The defendant Jiwirak is entitled to act as *iroij lablab* until such time, if any, as there is some other clear establishment concerning the exercise of the powers of the former *Leroij Lablab* Liwaito.

(b) The plaintiff Lainlij' rights as *iroij erik* are suspended, and the defendants may disregard them unless and until there is either some other clear establishment, as referred to above, or the plaintiff Lainlij, within a reasonable time hereafter, recognizes the defendant Jiwirak as *iroij lablab* of the land in question.

(c) The plaintiff Lainlij may recover the future use of his rights as *iroij erik* by recognizing Jiwirak as *iroij lablab* of the land in question within a reasonable time hereafter.

2. The defendants owe the plaintiff Lainlij the following sums:—

(a) Jiwirak and Lojoun	\$20.50
(b) Jiwirak and Dikon	50.00
(c) Jiwirak and Latani	25.00
(d) Jiwirak and Later	24.00
	Total \$119.50

Each defendant is responsible for the whole sum owed by him even though he owes it to another defendant, but each of the sums need be paid only once regardless of whether they are paid by one or the other of the persons owing them, or partly by one and partly by the other.

3. This judgment shall not affect any rights of way there may be over the land in question.

4. No costs are assessed against any party.

ELISA, Plaintiff

v.

KEJERAK, Defendant

Civil Action No. 24

Trial Division of the High Court

Marshall Islands District

June 7, 1954

Action brought by acting *alab* to determine rights to land on Matollen Island, Arno Atoll, upon which defendant worked at least since 1932 under claim of right and with knowledge of *alab*. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where situation was tolerated by plaintiff without apparent protest from at least 1932 until about 1949, and no effort was made to have Japanese Administration correct situation, Court will not attempt to upset it, particularly where plaintiff fails to show anything wrong with rights which defendant previously was allowed to exercise.

1. Equity—Laches

Where party seeks aid of courts of present administration to upset situation which continued for many years under Japanese Administration, and made no effort to have this corrected by Japanese Administration, inference is strong that there was nothing she could legally do about it at that time.

2. Former Administrations—Recognition of Established Rights

It is not proper for court to upset situation which continued for many years under Japanese Administration, particularly where party seeking to do so fails to show anything clearly wrong with rights which adverse party was permitted to exercise during that administration.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The defendant Kejerak has been working the land in question at least since 1932 under claim of right with the knowledge of the plaintiff and in frankly and clearly