

JAMES R., Plaintiff
v.
ALBERT Z., Defendant
Civil Action No. 93
Trial Division of the High Court
Marshall Islands District
May 20, 1960

Action to determine *alab* and *dri jermal* rights on certain *wato* on Ailing-laplap Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that both parties claiming to be *alab* of land in question disregarded rights of *iroij elap* under Marshallese custom, since *alab* cannot cut off *dri jermal* rights or give away *alab* rights without approval of *iroij elap*.

1. Marshalls Land Law—"Alab"—Limitation of Powers

Under Marshallese custom, an *alab* acting alone cannot cut off *dri jermal* rights or give away *alab* rights.

2. Marshalls Land Law—"Iroij Elap"—Powers

Under Marshallese custom, disposition of *dri jermal* and *alab* rights are matters to be taken up with *iroij elap*, whose decision on the matter will control within wide limits.

3. Marshalls Land Law—"Iroij Elap"—Powers

Under Marshallese custom, even if *alab* agrees with another to divide up her rights in land over which she is *alab*, such agreement would not divide land unless and until approved by *iroij elap*.

4. Marshalls Land Law—"Alab"—Succession

Under Marshallese custom, although an *alab's* son may reasonably expect to serve as acting *alab*, he must act as *alab's* representative and in accordance with her wishes.

5. Marshalls Land Law—Use Rights

Under Marshallese custom, *alab* and *dri jermal* retain their respective positions pending action of *iroij elap*, and each is obligated to respect rights of the other in any buildings, trees or other property he may lawfully have on *wato*.

FURBER, *Chief Justice*

This action came on for hearing before me April 27, 1960, upon the master's report, and was argued by Last, counsel for the plaintiff. The defendant was neither pres-

ent nor represented at the call of the list on that day at the opening of the sitting and had not advised the Clerk of Courts whether he wished to be heard further. The court therefore proceeded without him. Associate District Court Judge Solomon, who had heard the case as master, was assessor and Tion Bikajle interpreter.

Last raised two main points on behalf of the plaintiff, namely: (1) that since the hearing by the master the defendant Albert had torn down a house and some trees located on the land in question and belonging to the plaintiff James, and (2) that the master's report was incomplete in that the summary of testimony attached to it did not contain the testimony of the plaintiff's witness Kare. Last stated that Kare was called by him and testified before the master briefly covering just three points, namely: (1) that her mother Minne was the *alab* of the land according to Marshallese custom, (2) that Kare didn't have any idea there had been a division of lands so claimed by Albert, and (3) that Kabua is the *iroij elap* of the land. Judge Solomon stated that he recalled Kare had testified before him as master substantially as stated by Last.

The master's report is accordingly amended by adding to it the summary of testimony attached to it, the substance of Kare's testimony as stated above, and as so amended is approved.

SUMMARY OF THE FACTS

In this action the plaintiff James is seeking a determination that he, as acting *alab*, is entitled to collect the *alab's* share from Mwijirabar *wato* in Airok Village on Ailinglaplap Atoll in the Ralik Chain of the Marshall Islands and has *dri jermal* rights on this *wato* along with the defendant Albert. The defendant Albert on the other hand seeks a determination that he is both *alab* and *dri jermal* and that James has no rights whatever in the *wato*. James is the son of Minne and Albert is the son

of Minne's deceased brother Zakios. It is practically admitted that Minne was at one time *alab* of the *wato* and there is no dispute but what Kabua Kabua is the *iroij elap*. James has been living on roughly one-half of the *wato* and Albert on the other half.

Albert claims that Minne and his father Zakios agreed in 1947 to divide up the lands of which Minne was *alab*, she taking for herself and her children Jitlokan *wato* and giving Zakios and his children Mwijirabar *wato* now in dispute. There is a conflict in the testimony as to whether any such division was agreed to by Minne and Zakios, and it is clear Minne has not demanded her *alab*'s share from this *wato* for some years, but there is no evidence at all that such a division as Albert claims was ever approved or consented to by the *iroij elap*.

CONCLUSIONS OF LAW

[1, 2] 1. Both sides appear to be trying to disregard the rights of the *iroij elap* under Marshallese customary law. As previously held by both this court and the Appellate Division of the High Court, an *alab* under Marshalllese system of land ownership cannot cut off *dri jermal* rights or give away *alab* rights all by himself. These are matters which should be taken up with the *iroij elap*, whose decision on the matter will control within wide limits. *Lazarus v. Likjer* 1 T.T.R. 129. *Lalik v. Elsen* 1 T.T.R. 134. *Kumtak Jatios v. Levi* 1 T.T.R. 578.

[3, 4] 2. Even if Zakios and Minne agreed on such a division as Albert claims, their agreement would not divide the rights in the lands unless and until it was approved by the *iroij elap*. Pending action by the *iroij elap*, Minne remains the *alab* and both the plaintiff James and the defendant Albert retain their *dri jermal* rights under Minne as *alab*. Each of them has an obligation to respect

the rights of the other in any buildings, trees, or other property he may lawfully have on the *wato*.

[5] 3. While the plaintiff James as Minne's son, may reasonably expect under Marshallese custom that Minne will allow him, being a man, to serve as acting *alab* and carry out many of the details of the work, all this is subject to his obligation to handle these matters as her representative and in accordance with her wishes. He has no right to demand the *alab's* share from Albert against Minne's wishes.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them:

a. Both the plaintiff James and the defendant Albert have *dri jermal* rights in Mwijirabar *wato* in Airok Village on Ailinglaplap Atoll, under Minne as *alab* and Kabua Kabua as *iroij elap*.

b. Both parties have an obligation to cooperate in the use of this land in accordance with Minne's general directions, and not to damage or unnecessarily interfere with any property of the other on the *wato*.

c. Neither of the parties may be put off the land without the approval of the *iroij elap* unless and until the *iroij elap* has been determined by the court judgment to have unreasonably refused such approval when it should have been granted for good reason.

2. No costs are assessed against either party.

3. Time for appeal from this judgment is extended to and including August 22, 1960.