

INOK LAJEAB, Plaintiff

v.

LUKELAN, Defendant

Civil Action No. 203

Trial Division of the High Court

Marshall Islands District

April 24, 1964

Action by adopted son to recover *dri jermal* share of compensation paid by Trust Territory Government for use rights in certain *wato* on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where adopted son failed to fulfill obligations to adopting father, latter could effectively cut off adopted son's rights in land by execution of valid will.

1. Marshalls Land Law—"Iroj Lablab"—Powers

Under Marshallese custom, *iroij lablab* have power to take away rights in land under them for good cause.

2. Marshalls Land Law—"Dri Jermal"—Revocation of Rights

Under Marshallese custom, party's sustained disregard of his obligations as adopted son constitutes good cause for cutting off his rights as *dri jermal* of land in question.

3. Marshalls Custom—"Iroj Lablab"—Approval of Wills

Under Marshallese custom, where will was approved under system then in force for exercise of *iroij lablab* powers for approval of wills of rights in land on "Jebrik's side" of Majuro Atoll, it effectively cut off adopted son's rights in land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Inok left his family by adoption and seriously failed for many years to fulfill his obligations as an adopted son of Jekion.

2. Jekion by a written will made August 10, 1937, and duly approved under the system then in force for the approval of wills of rights in land on Jebrik's "side" of Ma-

juro Atoll, gave the *dri jermal* rights in the land now in question to his daughter Lukelan and his adopted son Ebesos, to the exclusion of the plaintiff Inok.

OPINION

This is an action in which the plaintiff seeks to recover a portion of the *dri jermal's* share of the compensation paid by the Government of the Trust Territory for permanent use rights in a *wato* (parcel of land) on Jebrik's "side" of Majuro Atoll, Marshall Islands District, on the theory that he was still a *dri jermal* at the time of the granting of these use rights by agreement dated August 4, 1959. The defendant Lukelan as senior *dri jermal* on the land has admittedly received 70% of the total payment for these use rights as the *dri jermal* share.

[1] This court has already held that under the Marshallese system of land law *iroij lablab* have the power to take away rights under them for good cause. *Lalik v. Lazarus*, 1 T.T.R. 143.

[2, 3] The plaintiff Inok's sustained disregard of his obligations as an adopted son is considered to clearly constitute good cause for cutting off his rights and the will of Jekion referred to in the second finding of fact above, having been duly approved under the system then in force for the exercising of *iroij lablab* powers under the Japanese Administration for approval of wills of rights in land on Jebrik's "side" of Majuro Atoll, effectively cut off Inok's rights in the land in question. For an explanation of the very special situation prevailing on Jebrik's "side" of Majuro Atoll, see opinion of the court in *Kumtak Jatios v. L. Levi*, 1 T.T.R. 578.

JUDGMENT

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

1. The defendant Lukelan owes the plaintiff Inok nothing.

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2. The defendant Lukelan is awarded such costs, if any, as she may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided she files a sworn itemized statement of these within 10 days after the entry of this Judgment. Otherwise no costs will be allowed.

BERNARDO OPISPO, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 72

Trial Division of the High Court

Ponape District

May 8, 1964

Defendant was convicted in Ponape District Court of assault and battery with a dangerous weapon, in violation of T.T.C., Sec. 377-A. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that trial judge is in better position to determine credibility of witness than appellate court and that appellate court will not weigh evidence anew or pass on credibility of witness where trial judge is supported in his decision by substantial evidence.

Affirmed.

1. Appeal and Error—Scope of Review

It is not function of appellate court to weigh evidence anew or pass on credibility of witnesses when trial court's findings are supported by substantial credible evidence, even though there is evidence to contrary.

2. Courts—Witnesses

Fact that witness in criminal case had been drinking *kava* before giving testimony does not necessitate disregard of his testimony.

3. Criminal Law—Appeals—Scope of Review

Trial judge who hears witness in criminal case is in better position to judge witness credibility on basis of whole testimony than appellate court can be by reading transcript of evidence.