

LEROIJ REAB AMON, Plaintiff

v.

TOBEKE MAKRORO and NEIBOL, Defendants

Civil Action No. 412

Trial Division of the High Court

Marshall Islands District

September 2, 1971

Action to determine right to *iroij erik* and *alab* rights to Lokalik Wato, Majuro Atoll, Marshall Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that defendant, adopted son of former titleholder, did not hold such rights as they had reverted to the lineage after titleholder's death.

1. Marshalls Custom—Succession to Titles—Order of Priority

The strongest priority, in the order of priority to succession to land interests under Marshallese custom, is the descendant in the female line of the lineage, the second is the *ajri*, defined as the children of the male line of the matrilineal lineage, and the third and weakest priority is the adopted child whose interest in land is primarily the right to work on and receive benefits from the land belonging to the lineage of the adoptive parents.

2. Marshalls Land Law—Use Rights

The right of an adopted child to work on and receive benefits from land belonging to the lineage of the adoptive parents after the death of the parents must be with the permission of the lineage of the adoptive parent and of the *alab*.

3. Marshalls Land Law—"Ninnin"

Had decedent had children surviving him, his *ninnin* interest, being the *alab* rights, would have descended to his child or children, a will would not have been necessary except to pass *iroij erik* right, but where the only survivor was an adopted child, the *ninnin* interests reverted to decedent's father's lineage and could properly be claimed by the oldest of that lineage.

Assessor:

SOLOMON L., Associate Judge
of the District Court

Interpreter:

J. JOHNNY SILK

Reporter:

NANCY K. HATTORI

Counsel for Plaintiff:

ANIBAR TIMOTHY

Counsel for Defendants:

HENRY SAMUEL

TURNER, *Associate Justice*

FINDINGS OF FACT

1. *Iroij erik* Laton Eoedik received *alab* interests as *ninnin* from his father, Eoedik, and he inherited *iroij erik* interests from his older brother, Tel.

2. *Iroij erik* Laton had no children and no living brothers and sisters. The defendant Tobeke was his adopted son.

3. *Iroij erik* Laton's will whereby he attempted to transfer his *alab* and *iroij erik* interests to his adopted son was not approved by the *droulul* of "Jebrik's side" of Majuro Atoll nor by his lineage.

4. The plaintiff, Reab, inherited *iroij erik* interests, upon the death of Laton, as Laton's niece, i.e., the daughter of the older sister of Laton's mother. Such inheritance is in accord with customary succession of Marshallese land interests.

5. Plaintiff is the surviving child of Lijoblin, who was the sister of Tel, who was the older brother of Laton.

6. Lantok, father of Tel, and Eoedik, father of Laton, were brothers and they gave their *alab* interests as *ninnin* to their sons, Tel and Laton. Neither Tel nor Laton had children and because there were no descendants of the *ninnin* or "new lineage" the rights reverted to the lineage of the fathers and plaintiff succeeded to these rights as the oldest of the successor generation of the lineage.

7. Plaintiff's *alab* rights descended in the *bwij* through her mother, Lijoblin.

8. Plaintiff's blood relationship entitled her to priority over the defendant Tobeke whose only entitlement was as an adoptive child.

OPINION

Since this case involves a conflict between a blood claimant and an adopted claimant to *iroij erik* and *alab*

rights to Lokalik *Wato*, Rairok Island, Laura Municipality, Majuro Atoll, Marshall Islands, we will consider the claims to the interests separately because they depend on different patterns of inheritance under Marshallese custom. First, we consider the defendant Tobeke's status as an adopted child of *Iroi erik* Laton who also held *alab* interests as *ninnin* to the *wato* in question.

[1, 2] An adopted child is the third and lowest in order of priority to succession to land interests. The strongest priority, of course, is the descendant in the female line of a lineage. The second is the *ajri*, defined as the children of the male line of the matrilineal lineage. The third and weakest priority is the adopted child whose interest in land is primarily the right to work on and receive benefits from land belonging to the lineage of the adoptive parents. This right, particularly after the death of the adoptive parent, must be with permission of the lineage of the adoptive parent and of the *alab*. (See J. A. Tobin, "Land Tenure Patterns", p. 21.)

In short then, the claim of defendant Tobeke to *iroij erik*, *alab* and *dri jermal* interests cannot be maintained as a right of succession as against the plaintiff, the oldest surviving blood member of the lineage. The defendant's only entitlement necessarily depends upon the will of his adoptive father, Laton, purportedly transferring the interests to him.

Laton's will, introduced in evidence by defendant, leaves no doubt the *iroij erik* wanted to pass on his land interests to his adopted son. The will was not approved, however, by the *bwij* nor by the *droulul*, which since Japanese times has held the *iroij lablab* power on "Jebrik's side" of Majuro Atoll. The land in question is on Jebrik's side.

It has been long established that the *iroij lablab* must approve a transfer of land interests by "kallimur", which loosely translated means "will".

In *Lalik v. Elsen*, 1 T.T.R. 134 at 139–140, this Court said:—

“Under Marshallese customary law, the approval of the *iroij lablab*, or those entitled to exercise the *iroij lablab* powers, is necessary to make a will of rights in land effective, and is one of the most important things about it.”

In another decision on the same date as *Lalik*, this Court said in *Lazarus S. v. Likjer*, 1 T.T.R. 129:—

“Ordinarily the *alab* is expected to talk the matter over with members of his *bwij* and get their consent too. For good reason, however, the *iroij lablab* might permit the gift without the consent of the *bwij*, but the consent of the person or persons entitled to exercise the *iroij lablab* powers is essential.”

As to land on “Jebrik’s side” of Majuro where there is no *iroij lablab*, the power is exercised by the *droulul*. See the discussion as to change of land law over lands formerly under *Iroij Lablab* Jebrik Lukutwerak in the *Lazarus S.* case, *supra*, at 1 T.T.R. 126–127, and also *Levi v. Kumtak*, 1 T.T.R. 36.

As this Court explained in *Lojob v. Albert*, 2 T.T.R. 338, changing the control now of Jebrik’s former lands is for the legislative branch to accomplish, not the judicial. The Court said at 2 T.T.R. 342:—

“. . . unless and until the system is changed either by general legislation or special legislation as to ‘Jebrik’s side’, those having land rights there cannot transfer their lands to any individual *iroij lablab* without the consent of those holding the *iroij lablab* powers. . . .”

And appropriate to Laton’s attempt to transfer his interests to Tobeke is this statement at 2 T.T.R. 343:—

“. . . the court does not mean to imply in any way that the *iroij erik* alone can permanently change rights in land on ‘Jebrik’s side’. To do that the *iroij erik* have an obligation to consult the *droulul* or some one or body properly authorized to represent the *droulul*.”

The defendant indicated his recognition of these principles of law but argued they did not apply to this case because the land in question was *ninnin* and that once land becomes *ninnin*, it always remains *ninnin*, passing down in the lineage of the children. The father's *bwij*, defendant adds, has no interest in *ninnin* and therefore its consent is not necessary.

The argument is true, as far as it goes, but the circumstances here that there were no brothers and sisters nor children of either Tel or Laton surviving in the new "children's lineage" having the *ninnin* interests caused it to expire and the land interests reverted to the lineage of Tel and Laton's fathers—who gave the lands to their sons as *ninnin*. It then descended in that lineage to the plaintiff Reab.

This Court described the succession of *ninnin* interests in *Jatios v. Levi*, 1 T.T.R. 578 at 588:—

" . . . we hold that *ninnin* rights are not necessarily limited to one generation but, may, under proper circumstances, and regularly do, pass on from generation to generation among the descendants of the person who originally gave . . . them to his child or children."

[3] In this case had Laton had children surviving him, his *ninnin* interest, being the *alab* rights, would have descended to his child or children and a will would not have been necessary except to pass *iroij erik* rights to his children. But there were no further "generations" descendant of Laton. The adopted son did not qualify as a "descendant". The *ninnin* interests reverted for descent to Laton's father's lineage and is thus properly claimed by plaintiff as the oldest of that lineage.

The necessity for the "*droulul*", or its representative, to approve transfers of land interests on "Jebrik's side" of Majuro Atoll invalidated Laton's will and Tobeke obtained nothing from it. Because he was Laton's adopted

son, he could not have inheritance priority as against Reab, the oldest member of the lineage.

Tobeke and his adoptive mother, the defendant Neibol, have occupied and worked the land in question since Laton's death but they have failed to meet their obligations to Reab as *iroij erik* and *alab*. Normally, this is sufficient grounds for the plaintiff to remove the defendants from the land. However, since the defendants claimed the interests held by the plaintiff, their refusal to recognize her was done in good faith and they should not be penalized at this time. If, however, they continue to fail in their obligations of respect and in payment of copra sale shares to Reab, then she will have every right under the custom to remove the defendants from the land in question.

Ordered, adjudged, and decreed:—

1. That the plaintiff Reab is entitled to and holds the interests of *iroij erik* and *alab* in Lokalik *Wato* (also spelled Lelikkalik), Rairok Island, Laura Municipality, Majuro Atoll, Marshall Islands.

2. That the defendant Neibol is the *dri jermal* on the land and she and the defendant Tobeke have no other interests in the *wato*.

3. The plaintiff Reab is denied the right to remove the defendants from the *wato* at this time for previous failure to meet their obligations under the Marshallese custom to the plaintiff. If the defendants' failure continues after this judgment is issued, the plaintiff shall be entitled to proceed in accordance with Marshallese custom.

4. No costs are allowed.