

KONOU v. MAKRORO

the taker's own use. 11 TTC § 852; *Trust Territory v. Mick*, 4 T.T.R. 14 (1968); 50 Am. Jur. 2d, Larceny, Sec. 2.

It is difficult to conceive of a clearer case of permanent conversion than is found here, where the property was killed, carried away, cooked and eaten. The evidence at trial demonstrated that petitioners knew that the pig belonged to another, had a value of One Hundred (\$100.00) Dollars, had no right to take it, and that they took it without the knowledge or consent of the owner.

The record clearly supports the judgment of the trial court. The prosecution proved beyond a reasonable doubt all the elements of grand larceny; and Petitioners' reliance on *Trust Territory v. Mick*, supra, fails to recognize the very different factual situation there. In *Mick*, the record indicated that there was a reasonable doubt as to the guilt of the defendant. Here, the trial court properly found that there was no reasonable doubt.

The judgment of conviction is affirmed.

JANE KONOU, Plaintiff

v.

DAIMOND MAKRORO, Defendant

Civil Action No. 19-73

Trial Division of the High Court

Marshall Islands District

November 13, 1973

Dispute over *dri jermal* rights in Ronbar wato, Rairok Island, Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where two children had been adopted by *alab*, childrens' *dri jermal* interests were equal and the daughter of one of them could inherit his interest even though a member of his generation, the other adopted person, was still living, and the interest of daughter and the remaining adopted person were equal, though daughter was obliged by custom to show respect to the remaining adopted person.

1. Marshalls Land Law—"Alab"—Succession

Because *alab's* two children were adopted, the customary Marshallese pattern that the oldest member of a family, or *bwij*, should hold senior rights, either *alab* or *dri jermal*, did not apply, and the children were on the same level.

2. Marshalls Land Law—"Dri Jermal"—Succession

Where two children had been adopted by *alab*, childrens' *dri jermal* interests were equal and the daughter of one of them could inherit his interest even though a member of his generation, the other adopted person, was still living, and the interest of daughter and the remaining adopted person were equal, though daughter was obliged by custom to show respect to the remaining adopted person.

3. Marshalls Land Law—"Dri Jermal"—Establishment

That, under Marshallese custom, daughter inherited her father's *dri jermal* interest upon his death, was sufficient to establish her interest without reference to father's will, which named daughter as *dri jermal* but failed to comply with rule that the *droulul* must approve or acquiesce in a will to make it valid and effective on "Jebrik's side" of Majuro Atoll.

Assessor:

MORRIS W. JALLY, *Associate Judge,*
District Court

Interpreter:

OKTAN DAMON

Counsel for Plaintiff:

ELLAN JORKAN

Counsel for Defendant:

LUCKY R. LOKBOJ

TURNER, *Associate Justice*

Pretrial hearing, with the parties and representatives present, was held with defendant's motion for summary judgment. As result of the statements made and understandings reached the parties agreed the Court should enter judgment without proceeding to trial.

Because the parties and their predecessors have been litigating *alab* and *dri jermal* rights on the land in question and on similar adjoining *wato* since 1964 (the present case is the fourth suit filed in this Court) and because a serious misunderstanding apparently now has developed between plaintiff and defendant and their families which is in conflict with and contrary to Marshallese custom gov-

erning the relationship between land interest holders, the Court believes and the parties agree, the rights involved in this case should be spelled out and clarified in the hope it will avoid future disputes and problems.

The present suit relates to *dri jermal* interests in Ronbar wato, Rairok Island, Majuro Atoll. Plaintiff asserts a *dri jermal* interest inherited from her father, Arkilos. She claims defendant, through her family, has stopped her three times from cutting copra and gathering *iu* (sprouting coconut flower). Plaintiff also alleges she talked to defendant about her rights in the wato but that defendant insisted plaintiff had no interests in the land.

The status of the defendant and of plaintiff's father, Arkilos, with respect to Ronbar wato was decided in *Makroro v. Benjamin*, 5 T.T.R. 519, in which it was held "Daimond Makroro and all those, including her brother Arkilos, who claim through her are the *dri jermal* for Ronbod" (sic). Ronbar and Ronbod are the same. Arkilos also was held to be senior *dri jermal*, even though Daimond was older than her brother Arkilos. This result apparently was reached from the judgment in *Benjamin v. Arkilos*, Marshalls Civil Action No. 204, not reported, which was a dispute as to *alab* interests in Ronbar. The Court held Benjamin was the *alab* and that Arkilos was to account to Benjamin for the *alab's* share of all copra "cut by him or those acting under him on said wato since the death of Namin."

[1] Daimond and Arkilos were adopted children of Li-bojrak. Because they were adopted the customary pattern that the oldest member of a family or *bwij* should hold senior rights—either *alab* or *dri jermal*—do not apply. Because they were adopted they were on the same "level."

It is noted in passing that Daimond took the lead in disputing *alab* and *dri jermal* interests for the adjacent wato, Kinawe, against Benjamin in *Makroro v. Benjamin*, 4 T.T.R. 366 (1969) and was successful in establishing *dri*

jerbal rights whereas Arkilos was the litigant in Civil Action No. 204.

The problem in the present case, until it was resolved by the exchanges of views at the pretrial conference, was that defendant was named *dri jerbal* by decision of this Court while plaintiff has not been recognized by name in a Court judgment even though her father, Arkilos, was held to hold the interest.

[2] Now that Arkilos has died his daughter, the plaintiff, properly believes she has inherited his interests under the custom. The fact the *dri jerbal* interests were "equal"—because of the adoption permits the inheritance by plaintiff of her father's interest even though a member of her father's generation (the defendant) is still living. The rule applicable to *alab* interest, where there is only one titleholder, does not apply to *dri jerbal* interests where there may be and usually are more than one "equal" interest holder. Descent of the *alab's* title does not occur until all members of the oldest *bwij* died. The defendant agreed with this claim but asserted that under the custom because the plaintiff was of the next younger generation than her own, the plaintiff owed a duty of respecting and cooperating with the older person.

As far as their interests in the land are concerned plaintiff and defendant are equal. But as far as the relationship between the two is concerned the plaintiff is obliged under the custom to show respect to her elders. Both parties, holding equal land interest, are required under the custom to live and work harmoniously together. It appears from counsels' statements to the Court this has not been true in the recent past, with apparent errors of omission and commission on both sides.

However, as a result of the pretrial exchanges the parties agreed to resolve their difficulties and live in harmony in the future. Plaintiff, thereupon, agreed she would live in

cooperative harmony with the defendant and that the suit should be ended.

[3] Before entering a judgment in accordance with the agreements of the parties, the Court believes it desirable to note another point of Marshallese traditional land law applicable to this case. Plaintiff introduced her father's will naming her as *dri jermal* for Ronbar *wato*. The will was approved by the *Iroij erik*, Henry Muller, the *alab*, Benjamin L., and by Selvenious Konou. It was filed with the Clerk of Courts November 16, 1971. It was not necessary to test the validity of this will under the rule that the *droulul* must approve or acquiesce in a will before it is valid and effective on "Jebrik's side" of Majuro Atoll. The inheritance of her father's interest upon his death was sufficient to establish plaintiff's interest in the *wato* without reaching the effect of the will.

Ordered, adjudged and decreed:—

1. That plaintiff, Jane Konou and all parties claiming through her hold *dri jermal* interest in Ronbar *wato*, Rairok Island, Majuro Atoll, and that defendant, Daimond Makroro, and all parties claiming through her also hold *dri jermal* interest in the *wato*.

2. That under the custom plaintiff and defendant and their families are to work together and cooperate with each other.

3. No costs are allowed.