

6. Copy of this judgment shall be filed with the District Land Management Office.

7. No costs are allowed.

REAB and JELTAN LANKI, Plaintiffs

v.

HELKENA LANIKIEO, Defendant

Civil Action No. 445

Trial Division of the High Court

Marshall Islands District

November 23, 1973

Action to declare plaintiff *leroi j erik*, and co-plaintiff her successor *iroij erik*, for Alwal Wato and Bikelan Island, Rita, "Jebrik's side" of Majuro Atoll, and to decide plaintiff's right, if found to be the *leroi j erik*, to remove defendant *alab* and *dri j erbal* and terminate his interests. The Trial Division of the High Court, D. Kelly, Associate Justice, held that plaintiffs were the *leroi j erik* and successor *iroij erik*.

1. Marshalls Land Law—"Troij Lablab"—Approval of Transfer

Any transfer or termination of any land interest, including interest in *ninnin* land, by any title bearer below the *iroij lablab*, including an *iroij erik*, must be approved by the *iroij lablab*.

2. Marshalls Land Law—"Alab"—Removal

Alab and *dri j erbal* interests of person who failed to recognize and cooperate with his *iroij erik* could not be terminated by the court in the first instance; such decision was for the holders of *iroij lablab* authority to approve or acquiesce in, after which the court would enforce the decision.

Assessor: KABUA KABUA, *Presiding Judge*,
District Court

Interpreter: OKTAN DAMON

Counsel for Plaintiffs: ANIBAR TIMOTHY

Counsel for Defendant: JACK HELKENA and ELLEN JORKAN

TURNER, *Associate Justice*

The principal issue in the present case involves the question whether or not the plaintiff, Reab, is the *leroi j erik*, and

the plaintiff, Jeltan Lanki, is to be her successor *iroij erik*, for Alwal *Wato* and Bikelan Island, also referred to as Loene *Wato*, Rita, Majuro Atoll. Corollary issues to the principal question include whether or not the plaintiffs, if they prevail in their claim for *iroij erik* interests in the land in question, are entitled to remove the defendant from the land and terminate his *alab* and *dri jermal* interests because of his failure to perform his obligations under the custom to the plaintiff Reab as *iroij erik*.

The land is on "Jebrik's side" of Majuro Atoll and there is no *iroij lablab* except that the authority belonging to that title is held under a special arrangement established by the Japanese administration nearly forty years ago.

The *iroij lablab* powers are presently held by the *droulul*, all the *iroij eriks*, or the Trust Territory Government. The government has declined at all times during the American administration to exercise *iroij lablab* authority over "Jebrik's side". *Joab J. v. Labwoj*, 2 T.T.R. 172. *Lojob v. Albert*, 2 T.T.R. 338.

The controversy over who held *alab* and *dri jermal* interests for the land in question was settled in favor of the defendant in the present case and also the defendant in *Baulol and Neptali v. Helkena Lanikieo*, 5 T.T.R. 147. In the *Baulol* decision, the land referred to was the same as in the present case except Bikelan Island was called Loene *Wato*. The parties stipulated they are the same.

The defendant entered the land in question in 1951 when Baulol and Kotonlok (whose successor was Neptali of 5 T.T.R. 147) were ordered removed and their interests were terminated because they refused to recognize Tel as *iroij erik*. Defendant was *dri jermal* under Julios, the *alab*. When Julios died in 1959, Tel designated defendant as both *alab* and *dri jermal*. The propriety of Tel's will, as to whether or not it was approved by the *droulul*, was not challenged by plaintiffs in the decision in 5 T.T.R. 147.

The corollary question for decision, granting the decision in 5 T.T.R. 147 is not to be disturbed (even though the record shows room for some doubt as to the propriety of the result) and because plaintiffs in the present case did not challenge defendant's entitlement to hold *alab* and *dri jermal* interests, then a determination must be made whether or not the plaintiff *leroi j erik* may terminate defendant's interests because of his refusal since June, 1970, to recognize Reab as *leroi j erik* and to meet his obligations to her as title bearer in accordance with traditional Marshallese practice. The refusal to recognize Reab and to meet his obligations to her began in 1970 when Loton, the predecessor *iroi j erik* made a will (which defendant filed with the Clerk of Courts and which was an exhibit in evidence in *Amon v. Makroro*, 5 T.T.R. 436) which provided in part:—

“1. That the rights of *iroi j erik* shall not be passed on to anyone on the lands nor any of my relatives.”

This attempted termination of *iroi j erik* interests by Loton caused defendant to refuse to recognize or cooperate with plaintiffs. Defendant's theory that Loton's right to terminate the interests was because the land in question was *ninnin* and that Loton, therefor, could do with it as he pleased without consulting his *bwij*.

Reab was held to be the *iroi j erik* successor to Loton in the *Makroro* decision for all of the land over which Loton had authority, including the land in question. Loton's 1970 will by which he purportedly terminated *iroi j erik* interest on the land in question, thereby cutting off Reab from succession to the title, was not approved by the *droulul* or the *iroi j* of “Jebrik's side” of Majuro Atoll.

Defendant argued such approval was not necessary because the land was *ninnin* and did not require approval. Defendant agrees with Loton's assertion in his will that:—

"1. The inheritance of my title as *iroij erik* passed on to me to these lands as my *ninnin* and does not effect the entire *bwij*. This same right conferred upon Tel and he held such right until the time it passed on to me. While such right of *ninnin* have been in existence and strictly not to the entire *bwij*, I have the right and power to transfer the right of *iroij erik* which I would like to transfer it to him with the exclusion of my relatives and also those members of my *bwij*."

Loton also declared in the will that if he failed to appoint anyone, then the *alabs* and *dri jermal* on the land involved should select an *iroij erik*. Loton did not designate a successor and the "*alabs* and *dri jermal*" of this land, namely the defendant, has not attempted to select a title bearer.

The trouble with both Loton's and defendant's theory is that it is contrary to the custom. Both of them would have been in conformity with the custom if Loton had been an *iroij lablab*. He was not the principal title bearer, only the subordinate titleholder, and the ultimate authority of the *iroij lablab*, since the death of Jebrik, has been either the committee of land interest holders known as the *droulul*, or all of the *iroij eriks* or the government, the Japanese or the successor American Administration.

[1] The custom holds that any transfer or termination of a land interest by a lesser title bearer must be approved by the *iroij lablab* whether or not the land is *ninnin* or lineage or has some other designation.

Without referring to the nature of the land, this court settled the question by its decision in *Joab v. Labwoj*, 2 T.T.R. 172, 174, which held:—

"The plaintiff Joab seeks to cut off the defendant Labwoj's rights and in effect pass them on to the next senior member of Labwoj's *bwij*. The court is clear that such cutting off of rights which would otherwise continue indefinitely can be done only by the *iroij lablab* or those having the *iroij lablab* rights in the land and that an *iroij erik* alone cannot do so."

Another decision, earlier than the *Joab* case and not relating to "Jebrik's side" of Majuro but which was very similar to the present case because it involved *iroij lablab* approval of a will cutting of interests in *ninnin* land, was *Lalik v. Elsen*, 1 T.T.R. 134, (1954).

The court upheld the *iroij lablab* determination as to rights in *ninnin* land and 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."

Under the custom then, Loton did not terminate *iroij erik* succession on this *ninnin* land because he could not make the decision alone. Approval was required by the *iroij lablab* or in this case the group holding *iroij lablab* authority. This he did not have. The court must hold, therefore, that Reab succeeded to *iroij erik* interests for the land in question as well as to all other lands over which Loton held *iroij erik* rights.

The record is clear that the defendant recognized and cooperated with both Reab and Jeltan as the successor *iroij erik* until Loton made his will intended to terminate the title upon his death. Defendant from that time to the present has refused to cooperate with the plaintiffs.

[2] Normally, under the custom, the wilful failure of an *alab* or *dri jermal* to recognize or cooperate with an *iroij erik* is sufficient cause to require their removal from the land and termination of their interests. The *iroij lablab*, or persons holding that authority, must either affirmatively demonstrate their approval or their acquiescence in the decision. It is, however, a decision to be made by the land interest holders in the first instance and after it has been made the court will enforce it, in a proper case, when asked to do so.

In the present case, the court believes that the defendant should be given an opportunity to acknowledge the *leroi j erik* and perform his obligations to her in the light of this decision. If he fails to promptly do so, the matter may be brought to the court for enforcement of the approved decision of the *leroi j erik*.

Ordered, adjudged and decreed:—

1. That the plaintiffs are the *iroij erik* and successor to that title for Alwal *Wato* and for Bikelan Island (Loene *Wato*) Rita, Majuro Atoll.

2. That defendant as *alab* and *dri jerbak* for the land owes the obligations required under the custom to the plaintiffs. If defendant fails to promptly recognize and cooperate with plaintiffs, they may bring the matter to the court's attention for appropriate action.

3. Defendant is granted sixty days within which to bring an appeal.

HENRY IYAR, INNOCENCIO KUZUMA, JOHN C. SANTOS,
Petitioners

v.

MARIANA ISLAND DISTRICT CHIEF OF POLICE, Respondent

Civil Action No. 82-73

Trial Division of the High Court

Mariana Islands District

November 26, 1973

Petition for habeas corpus. The Trial Division of the High Court, Burnett, Chief Justice, held that petition would be denied where there was an adequate remedy at law.

1. Habeas Corpus—Availability of Writ

Habeas corpus is not a substitute for trial, and petition for habeas corpus by person awaiting criminal trial, on ground certain statements were taken from him by police in violation of his rights and erroneously admitted at preliminary examination to determine whether he would be