

LALIK, Plaintiff
v.
ELSEN, Defendant
Civil Action No. 10
Trial Division of the High Court
Marshall Islands District
June 21, 1954

Action to determine *alab* and *dri jerbai* rights in certain *wato* on Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that Marshallese custom, whereby approval of *iroij lablab* is necessary to make a will of rights in land effective, still remains in force, and that even though certain limitations have been imposed from time to time, *iroij lablab* retain all their broad powers that have not been taken away from them.

1. Marshalls Custom—"Kallimur"

Marshallese word *kallimur*, frequently translated as "will," includes many things which would not ordinarily be considered wills in usual American sense.

2. Marshalls Custom—"Kallimur"

Marshallese word *kallimur* may mean a determination by *iroij lablab* of present rights in land, or promises by others that are to have present effect without waiting for death of person making promise.

3. Marshalls Custom—"Kallimur"

Marshallese word *kallimur* implies a determination within limits allowed by Marshallese custom.

4. Marshalls Custom—"Kallimur"

Analogies drawn from idea of a "will" under English Statute of Wills or similar statutes in United States may not apply to Marshallese term *kallimur*.

5. Marshalls Custom—"Kallimur"

Written *kallimur*, indicating who will succeed to one's land rights, lacks much of element of voluntary choice implied in American idea of a will.

6. Marshalls Custom—"Kallimur"

Japanese effort to have *kallimur* approved by magistrate and Japanese Administration was simply precaution to avoid arguments later, and wills so approved and filed could still be made and revoked in accordance with Marshallese custom.

7. Marshalls Custom—"Iroij Lablab"—Approval of Wills

Under Marshallese custom, approval of *iroij lablab* is necessary to make will of rights in land effective, although *iroij lablab* is expected to act within limits of law.

8. Marshalls Land Law—Use Rights

Under Marshallese custom, certain persons holding rights in land under an *iroij lablab* may choose who, among limited number of persons, may succeed them.

9. Marshalls Custom—"Iroij Lablab"—Approval of Wills

Under Marshallese custom, where certain persons are allowed to choose who shall succeed them in rights in land, *iroij lablab* is expected to give effect to wishes of person making choice, so long as successor named is allowed by custom and there is no strong reason why wishes should not be followed.

10. Marshalls Custom—"Iroij Lablab"—Approval of Wills

Except in few specific instances, *iroij lablab* under Marshallese custom is not expected to approve will unless satisfied there is good reason for disposition desired.

11. Marshalls Custom—"Iroij Lablab"—Approval of Wills

Under Marshallese custom, *iroij lablab* is one to decide whether, under all the circumstances, necessary people have been consulted about a will or have consented to it, and whether a will once made may be revoked.

12. Marshalls Custom—"Iroij Lablab"—Approval of Wills

Under Marshallese custom, *iroij lablab* may approve will in part and disapprove it in part, and his decision, if properly made, will be binding, no matter how clear it is that person making will desired something different.

13. Marshalls Land Law—"Iroij Lablab"—Obligations

An *iroij lablab*, in passing on land matters, must act with honest regard for welfare of his people and with reasonable consideration for rights of those having interests in land under Marshallese custom.

14. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, rights of those holding land under *iroij lablab* are distinctly subordinate to those of *iroij lablab*, and not so absolute as is common in case of land rights in United States.

15. Marshalls Land Law—"Iroij Lablab"—Powers

Within limits imposed by various foreign administrations and growth of custom, *iroij lablab* retain all of their broad powers that have not been taken away from them.

16. Marshalls Land Law—"Iroij Lablab"—Powers

In the control of land, *iroij lablab* in Marshall Islands are still entitled to exercise their best judgment with considerable freedom.

17. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, rights of *alab* and *dri jermal* are subject to power and obligation of *iroij lablab* to make reasonable determination in doubtful cases, so as to avoid controversies and secure constructive use of land.

18. Marshalls Land Law—"Iroij Lablab"—Powers

Iroij lablab, in their control over land, may consider what land various claimants already control, history of land, claimants' relationship to land in the past, and other matters which would not be material in system of fixed rules of inheritance and transfer of land.

19. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, *iroij lablab* may make practical compromises as to disposition of land, rather than determine on technical basis that one group or person is entitled to whole of land.

20. Marshalls Land Law—"Iroij Lablab"—Powers

Iroij lablab may change category of land or determine it when category is doubtful, and so long as he uses his honest best judgment as responsible official and complies with requirements of law imposed by various foreign administrations still remaining in force, his decision is entitled to control in accordance with Marshallese custom.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The alleged will, or written statement, of Lanimon dated April 6, 1935, was made under such pressure from agents of the *iroij lablab* (paramount chief), that it cannot be considered Lanimon's voluntary act. He clearly repudiated it shortly thereafter.

2. *Iroij Lablab* Lainlen approved the repudiation of the above mentioned will by disregarding it. His action in doing so was reasonable and proper under Marshallese custom.

3. The alleged will, or written statement, of Lanimon dated March 18, 1937, was made without express consultation with the plaintiff Lalik or his older brother Launit, and while they were not present, but Lanimon had previously made very clear, in discussions with both

Lalik and Launit and with agents of the *iroij lablab*, that he did not want Launit or Lalik or members of their family junior to them to succeed him. Launit and Lalik had repeated disagreements with Lanimon which the agents of the *iroij lablab* had tried to settle three times.

4. *Iroij Lablab* Lainlen approved this second will in part and disapproved it in part. Under all the circumstances his action in doing this was reasonable and proper under Marshallese custom.

5. Which of the various categories of land, under Marshallese custom the lands in question were in at the time of Lanimon's death, is very doubtful. Lanimon clearly considered the lands to be *ninnin* (that is generally, land given by a father to his child or children, the disposition of which is thereafter subject to special rules). Furthermore, it is clearly known that in the past three different establishments of rights had been made by various *iroij* as to lands that finally came under Lanimon as *alab*. Lanimon, who was the son of an *iroij lablab* had been permitted by later *iroij lablab* to divide up and dispose of his lands in such a way that the whole course of dealings appears to have involved a series of special arrangements having some regard for former rights in the lands, but not conforming to any set status for them.

6. Following Lanimon's death, the disposition of the land involved in this action was discussed by the Majuro Atoll Council. It submitted recommendations to *Iroij Lablab* Lainlen who determined that Likinkunen *wato* and Narik *wato* combined should be divided into two parts, equal in size, with the boundary line between the two parts running straight from the lagoon to the ocean; that the *alab* and *dri jermal* rights in the part containing most of Likinkunen *wato* should belong to the defendant Elsen's *bwij*, and the *alab* and *dri jermal* rights in the part containing most of Narik *wato* should belong to the plaintiff

Lalik's *bwij*; and that the *alab* and *dri jermal* rights in the whole of Jijokan Island should belong to Elsen's *bwij*. Under all the circumstances, *Iroiĵ Lablab* Lainlen's action in making these determinations was reasonable and proper under Marshallese custom.

CONCLUSIONS OF LAW

1. This action involves the question of the right of an *alab*, under the Marshallese system of land tenure, to dispose of *alab* rights by will, and the power of the *iroiĵ lablab* to determine the *alab* rights in land over which he is the *iroiĵ lablab*. The plaintiff Lalik is claiming both that the land in question is land of his *bwij* and he and his brother Launit are the present senior members of the *bwij*, and that their rights were confirmed by Lanimon's alleged will of April 6, 1935. The defendant Elsen claims that Lanimon held it as ninnin land, not as property of his entire *bwij*, that Lanimon's alleged will of April 6, 1935, was not his voluntary act and was repudiated by him, that the rights of Elsen's *bwij* were confirmed by Lanimon's alleged will of March 18, 1937, and later action of Lanimon and the *iroiĵ lablab*, but that *Iroiĵ Lablab* Lainlen, as *iroiĵ lablab* of the land in question, has settled the rights of the parties in it by making a division of part of it, and Elsen and his *bwij* are ready to abide by that settlement.

[1-6] 2. It is believed that the Marshallese word "*kallimur*", which is frequently translated as "will", has caused a misunderstanding in the minds of many Americans as to the power of a person holding rights in land under the Marshallese system to dispose of these as he wishes on his death. The word "*kallimur*" obviously includes many things which would not ordinarily be considered as wills in the usual American sense. For instance, it is sometimes applied to a determination by an *iroiĵ*.

lablab of the present rights in land. It is also applied to promises or determinations by others that are to have present effect without waiting for the death of the person making the promise or determination. On the other hand, it implies a determination within the limits allowed by Marshallese custom. It is, therefore, very dangerous to apply to this term analogies drawn from the idea of a will under the English Statute of Wills or similar statutes in the United States. The Japanese administration very definitely urged people to make written *kallimur* indicating who would succeed to their land rights, but these lacked much of the element of voluntary choice that is implied in the American idea of a will. The Japanese endeavored to have these *kallimur* approved by the *iroij lablab*, the magistrate, and the Japanese administration, and filed with the administration. All of this was to make sure that the successor or successors indicated were those entitled to succeed under the law. Once this had been determined it presumably could not be changed unless there had been some change in circumstances. The person designated as successor had a certain present standing that was much stronger and more definite than that of a person named in the usual type of will in the United States. The court holds, however, that the Japanese effort to have these *kallimur* approved by the magistrate and the Japanese administration and filed with the administration, was simply an additional precaution to avoid arguments later, and that wills not so approved and filed could still be made and revoked in accordance with Marshallese customary law. No doubt the administration might, if it deemed best, authorize a will that did not comply with the customary law, or limit the power to revoke it, but no such question is raised in this action.

[7-12] 3. 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 this connection, see the conclusions of law by this court in *Lazarus S. v. Likjer*, 1 T.T.R. 129. The *iroij lablab* himself, as indicated in the following paragraph, must act in these matters, as in others, within the limits of the law. There are a few specific situations in which Marshallese custom allows a person holding rights in land under an *iroij lablab*, to choose who, among a limited number of relatives, shall succeed him. In those specific situations the *iroij lablab* is expected to give effect to the wishes of the person making the choice, so long as the successor named is one of those allowed by custom, unless there is a strong reason why the person's wishes should not be followed. For any other choice, the *iroij lablab* is not expected to give approval unless he is satisfied there is a good reason for the disposition desired. He is the one to decide whether, under all the circumstances, the necessary people have been consulted about a will or have consented to it. He is also the one to determine whether a will once made may be revoked, or "destroyed", to use a more exact translation of the usual Marshallese word. If he thinks it best, in the interests of all concerned, he may, as *Iroij Lablab Lainlen* did in the case of Lanimon's will of 1937, approve a will in part and disapprove it in part, and his decision, if properly made, will be binding no matter how clear it is that the person making the will desired something different.

[13-16] 4. As explained in the conclusions of law by this court in *Limine v. Lainej*, 1 T.T.R. 107, the power of an *iroij lablab* over rights in lands under him is more limited than it once was. The *iroij lablab*, in passing on land matters, must act with an honest regard for the welfare of his people and with reasonable consideration for the rights of those having interests in the land under Marshallese cus-

tom. There must be a good reason or reasons for his decisions, especially when these would upset rights that have been clearly established. On the other hand, the rights of those holding under an *iroij lablab* are distinctly subordinate to those of the *iroij lablab*, and are not nearly so absolute as is common in the case of land rights in the United States. It should be remembered that originally the *iroij lablab's* word was the highest law so long as he retained enough support from his people to carry out his wishes by force or threat of force if necessary. This power has been cut down from time to time by the growth of custom, by express action of the various foreign administrations, and by necessary implication from some of their actions in granting authority to other officials. But, within the limits thus imposed, the *iroij lablab* retain all of their broad powers that have not been taken away from them. In the control of land, they are still entitled to exercise their best judgment with considerable freedom.

[17-20] 5. The rights of *alab* and *dri jermal* are subject to the power, and in fact the obligation, of the *iroij lablab* to make reasonable determinations in doubtful cases, with a view to avoiding controversies and securing a constructive use of the land. In this connection the *iroij lablab* may properly consider what other lands the various claimants concerned already control, the back history of the land, what the various claimants have had to do with it in the past, and other matters which would not be material under a system of absolutely fixed rules concerning inheritance and transfer of land. It is definitely in accord with Marshallese custom for him to make practical compromises when he deems best, rather than trying to determine on any technical basis that one claimant or group is necessarily entitled to the whole of the deceased's holdings, or of his holdings of any one category. In making such compromises, the *iroij lablab* may, when he reasonably deems best,

change the category of the land or definitely determine it where the category is doubtful. In these doubtful situations he must use his honest best judgment as a responsible official, but so long as he does that and complies with any other requirements of law imposed by the various foreign administrations and still remaining in force, his decision is entitled to control in accordance with Marshallese custom.

6. Under all the circumstances, the court holds that the determination of the rights of the parties made by *Iroi Lablab Lainlen* was properly within his powers and his determination is binding upon the parties.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the *alab* and *dri jermal* rights in Likinkunen and Narik *wato* on Majuro Island, Majuro Atoll, and in Jijokan Island, Majuro Atoll, are as follows:—

(a) Likinkunen and Narik *wato* combined are divided in two equal parts by a straight line running from the lagoon to the ocean. The *alab* and *dri jermal* rights in the part which contains most of Narik *wato*, are held by the plaintiff Lalik's *bwij*, his older brother Launit is the *alab* of it, and the plaintiff Lalik is the acting *alab*. The *alab* and *dri jermal* rights in the part which contains most of Likinkunen *wato*, are held by the defendant Elsen's *bwij*, and the defendant Elsen is the *alab* of it.

(b) The *alab* and *dri jermal* rights in Jijokan Island are held by defendant Elsen's *bwij*, and the defendant Elsen is the *alab* of it.

(c) The plaintiff Lalik and his *bwij* have no rights of ownership in the part of these lands in which the defendant Elsen's *bwij* hold the *alab* and *dri jermal* rights, and the defendant Elsen and his *bwij* have no rights of

ownership in the part of these lands in which the plaintiff Lalik's *bwij* hold the *alab* and *dri jermal* rights.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against either party.

LALIK, Plaintiff

v.

LAZARUS S. and JATIOS, Defendants

Civil Action No. 11

Trial Division of the High Court

Marshall Islands District

June 21, 1954

Action to determine *alab* and *dri jermal* rights to land on Delap Island, Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where acting *alab* and *dri jermal* could not get along peaceably together on their land, *iroij lablab* acted reasonably in taking away their subordinate rights, pursuant to his duty to make reasonable effort to maintain peace and order on his lands.

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

Under Marshallese custom, power of *iroij lablab* to take away subordinate rights in land is time-honored.

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

Where *iroij lablab* took away *alab* and *dri jermal* rights in land due to fact acting *alab* and *dri jermal* could not get along peaceably together, his action was reasonable.

3. Marshalls Land Law—Use Rights

Under Marshallese system of land tenure, there is strong obligation on all those holding various rights in piece of land at same time to cooperate in reasonable and friendly manner.

4. Marshalls Land Law—Use Rights

Under Marshallese system of land tenure, there is obligation on all those holding various rights in piece of land at same time to be loyal to those up the line and to protect welfare of those down the line.

5. Marshalls Land Law—"Iroij Lablab"—Obligations

Under Marshallese custom, *iroij lablab* is expected to make reasonable effort to maintain peace and order on his lands.