

ORDER MODIFYING JUDGMENT

The judgment of the trial court is modified in conformity with this opinion as follows : -

1. As between the parties and all persons claiming under them, Lot No. 1206, located in Korol' (*Tochi Daichio* reference), is the property of the Ibuuch Clan and the appellants and appellees, as individuals, have no rights therein save such rights as may be accorded them by agreement of the majority of the clan members expressed through the clan lineages.
2. If the use and occupancy of the land by the appellees has not been resolved within six (6) months from the date of this decision, either party may apply to the Trial Division of the High Court for an order appropriate to the mandate of this decision.
3. This decision shall not affect any rights-of-way there may be over the land in question.
4. Costs are not awarded to any of the parties.

NEIMORO LAJUTOK, Appellant

v.

KABUA KABUA, Appellee

Civil Appeal No. 25

Appellate Division of the High Court

February 12, 1968

Appeal from action to determine ownership of land. The Appellate Division of the High Court, Per Curiam, held that the transfer of land from one *iroij lablab* to another may be conditional and that where land in question was transferred from *iroij* to another conditioned upon an adoption when the adopted child returns to her family the land reverts to the donor.

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

The donor of land with *iroij* authority over it may impose conditions upon the gift and when the condition for the gift fails it is within the power of the donor, or his successors to recover the land. :'

2. Gifts-Generally

Whether a transfer is a conditional or an irrevocable gift depends upon the interest of the donor and the understanding of the parties as to that intent, and evidence as to the intent and understanding must relate to the conduct of the parties, i.e., the objective manifestations of intent, when the parties themselves are no longer living.

3. Appeal and Error-Scope of Review-Facts

The findings of the trial court based upon the evidence will not be set aside unless there is manifest error.

4. Custom-Judicial Notice

If a local custom is firmly established and widely known the High Court will take judicial notice of it. (T.T.C., Sec. 21)

5. Custom-Burden of Proof

When there is a dispute as to the existence or effect of a local custom, and the court is not satisfied as to either its existence or its applicability such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the satisfaction of the court.

Counsel for Appellant: JETNIL FELIX
Counsel for Appellee: PRO SE

Before SHOECRAFT, *Chief Justice*, FURBER, *Temporary Judge*

PERCURIAM

This is an appeal from the second judgment in 'Civil Action No. 140, Trial Division of the High Court, Marshall Islands District.

Condemnation proceedings were brought by the Trust Territory Government against land in Ennugarrett Island (also known as Enekoran Island), Kwajalein Atoll, Marshall Islands. Trial was held in two parts, with judgment orders entered for each.

The first judgment fixed the value of the land condemned and left open the question of ownership and division of the money. The second judgment was entered upon the supplemental trial of the ownership question between appellant and appellee, both of whom were defendants in

the condemnation proceedings, each claiming to be the *iroij lablab* of the land in question.

The first judgment was entered June 24, 1963, and the judgment now on appeal, February 22, 1965.

The "Request Granted of Re-Hearing of the Civil Action No. 140", dated December 22, 1967, apparently intended by the appellant to be filed in the original Civil Action No. 140, and referred to the Appellate Division by the Chief Justice, was considered not timely and denied by the Appellate Division as a Motion for Re-Hearing, but was considered by the Court as a supplementary brief in this appeal in order that appellant would have full opportunity to present any matters considered pertinent to her appeal.

The evidentiary facts were generally not in dispute and the decision in the Trial Division turned largely, upon proof, or lack of proof, as to Marshallese custom relating to a gift of land by one *iroij* to another.

The land in question was found by the trial court to have been given by *Iroij* Laelan to *Iroij* Litokwa upon the adoption of Laelan's daughter, Jukkwe, by Litokwa. Laelan was the predecessor *iroij* to appellee, and Litokwa, the predecessor *iroij* to appellant.

When Litokwa died, the adopted daughter, Jukkwe, returned to live with her natural father. Appellee's contention, sustained by the Trial Division, was that the adoption status terminated when Jukkwe returned to her father and that the gift of lands in connection with the adoption also failed and that the land reverted to *Iroij* Laelan.

Appellant relies, upon appeal, on the assumption of *iroij lablab* power over the lands by the donee and argues from this that under Marshallese custom, lands given in support of an adoption do not carry *iroij lablab* rights. Such *iroij*

rights, appellant contends, may only be passed under the custom by three methods : –

1. *Bok-man-mare*, meaning victory in warfare and assumption of power over land taken from the defeated enemy.

2. *Jikin-aje*, or royal gift of land and kingship authority (*iroij lablab*) over it.

3. *Katleb*, gift by one *iroij* to another because of friendship or relationship.

[1] The third method of transfer of *iroij* authority over land is applicable to the lands in question according to the appellant. The weakness of this position is that these methods of transferring land and authority over them are not the only ways transfers may occur under Marshallese custom. The record in this case clearly shows, and the trial court so held, that the donor of land with *iroij* authority over it may impose conditions upon the gift. When the condition for the gift fails, it is within the power of the donor, or his successors, to recover the land.

[2] Whether the transfer is conditional or an irrevocable gift depends upon the intent of the donor and the understanding of the parties as to that intent. Evidence as to intent and understanding must relate to the conduct of the parties, i.e., the objective manifestations of intent, when the parties themselves are no longer living. The trial court held the great weight of the evidence showed that appellee's predecessor gave the land and transferred *iroij* powers to appellant's predecessor conditioned upon the adoption. When the adoption ended, the gift and the accompanying powers failed because the donor so intended.

[3] The findings of the trial court based upon the evidence will not be set aside unless there is manifest error. The function of the Appellate Division in its review of the record has been stated in this court in prior cases. Most

recently, in the case of *Hasumi Osawa and Kintoki Joseph v. Ernest Ludwig*, 3 T.T.R. 594, we find the following:—

"It is believed the function of the Appellate Division in considering appeals from the Trial Division should be re-emphasized, and the following language is quoted from *Kenyul v. Tamangin*, 2 T.T.R. 648:—

'Superior appellate courts are, primarily, constituted for the purpose of dealing with questions of law; the consideration of any question of fact by such a court involves a decision on the record without any opportunity being afforded for judging as to the credibility of witnesses except insofar as discrepancies may appear in the testimony in the record. . . . If a judicial mind could, on due consideration of the evidence as a whole, reasonably have reached the conclusion of the court below, the findings must be allowed to stand. Such findings will not be disturbed when supported or sustained by competent evidence, especially where the evidence is conflicting or where different inferences can reasonably be drawn therefrom.'"

The trial judge had evidence before him that transfer of *iroij lablab* powers over land may occur in other ways than the three suggested by appellant. The material trial evidence not only related to ascertaining the intent of the parties to the transfer, but also to the bearing Marshallese custom had upon the transfer.

[4, 5] As to how the trial court may ascertain traditional law and custom and apply it to the conclusions to be drawn from the record, reference is made to *Teitas v. Trust Territory*, Truk District Criminal Case No. 146, Trial Division of the High Court, as cited in Civil Appeal No. 16 [2 T.T.R. 648], in which it was said:—

"If a local custom is firmly established and widely known, this court will take judicial notice of it. (Trust Territory Code Section 21.) When, however, as in this case, there is a dispute as to the existence or effect of a local custom, and the court is not satisfied as to either its existence or its applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the satisfaction of the court."

In this case the trial court called its own expert witness on Marshallese custom. The court asked the following hypothetical questions, based upon the trial evidence, and received the following answers.

"Q: Supposing a man has a child adopted by another man and . . . gave the other man land in connection with or because of the adoption-then the man who adopted the child dies, the child returns to her true family, then the man who originally conveyed the land to the adopted father-supposing he dies without doing anything about it-what is the situation then,

A: **If** there was a will that the land should be kept by the one who was receiving the land, then he should retain it. Otherwise, it should be returned to the original owner. . . .

Q: Well, would the situation be any different if there were two *iroij* involved?

A: **It** is a little different in the case of *iroij* . . . , the *iroij* does not need any talk among his followers and neighbors about giving land to one of them. **It** is in his own right to do as he please with the land so the *dri-jerbal* there are not the ones to change the *iroij* land."

And, in the defendant's examination of this same witness:-

'A: The *iroij* giving the land on account of an adoption and says that 'I give you this land, that is for you and your adopted daughter'-if that is the case, then there is reason that the land is to be returned to the original owner, but (if) . . . , the *iroij* giving the land says to the other *iroij*, 'I give you this land',-then that is another case, then that land is not to be returned since there was nothing about returning the land." (Parenthetical matter added)

The trial court's judgment stated:-

"From the testimony offered at the trial and from available authorities, the court is unable to find confirmation of Neimoro's contention concerning '*Katleb*', that a gift from an *iroij* to an *iroij* is always irrevocable."

The trial court was satisfied as to both proof as to Marshallese custom and proof as to the intent of the parties in connection with the transfer.

On appeal, we will not disturb the trial court's findings as to Marshallese custom relating to a gift of land in connection with an adoption. Nor do we find any error, nor lack of support in the evidence, to the conclusion the gift was intended to be conditioned upon the continuation of the adoption.

Appellant and appellee both agree that Lometo, *alab* of part of the land in question, is now deceased and that Abija succeeded to the interest of Lometo.

The judgment of the Trial Division is modified by substituting Abija for Lometo in that portion of the Order of the Trial Division which states : —

"Pay to the order of Kabua Kabua, in trust for Kabua Kabua, Lometo and Samuel as their respective interests may appear."

and as so modified, the judgment of the Trial Division is affirmed.