

LIKINONO, and SOLOMON, Appellants

v.

NAKO, and JAMON, Appellees

Civil Appeal No. 28

Appellate Division of the High Court

July 3, 1968

Trial Court Opinion—3 T.T.R. 120

Appeal from judgment of Trial Division affirming *alab* rights in defendant-appellee. The Appellate Division of the High Court, Per Curiam, affirmed Trial Division's judgment holding that where there was no showing of an exception to succession to *alab* rights according to custom then ordinary custom prevailed.

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

There is no indication that *iroij lablab* had rights under law in effect to change *alab* rights at will.

2. Marshalls Land Law-"Alab"-Succession

If appellee was the successor *alab* in accordance with Marshallese custom, then the recognition given to another by the *leroj lablab* exceeded her authority.

Before SHOECRAFT, *Chief Justice*, TURNER, *Associate Justice*

PER CURIAM

This is an appeal from the Marshall Islands District involving *alab* rights over five *wetos* on Wotje Atoll. Appellants were plaintiffs below. The trial court held that the *alab* rights over the lands in question are held by the *bwij* of which the appellee-defendant, Nako, was the senior member at the time of trial.

Following the Trial Division judgment, February 3, 1966, Nako died. Both the appellants and appellees agreed at the time of the argument on appeal that Lokoboj, who was counsel for the defendant-appellees, has succeeded to the rights of Nako.

The appellants base their claim to *alab* rights upon two circumstances which the trial court held to be "quite out of the ordinary course" of land rights descent under Marshallese custom. The first of these events was a meeting in 1932 concerning the successor to Latlan, the then *alab*. As a result of this meeting, Lobekwor became *alab* and served until his death in 1957. He was succeeded by Nako. Limojwa, the *leroi lablab*, designated appellant Likinono as *alab* at a meeting in 1958 instead of Nako. Upon appellees' refusal to be replaced by the *leroi lablab*, appellants brought this action, claiming the *alab* rights.

Appellants claim Lobekwor was, at the 1932 meeting, designated *alab* only for life and that upon his death, the right reverted to Likinono, whose predecessor, Motlok, they claim, was in line to be *alab* upon the death of Latlan. In support of this theory, appellants introduced evidence that both the *leroi erik* and *leroi lablab* recognized appellant Likinono as *alab* as senior member of Motlok's *bwij*.

[1] If under the custom the succession of *alab* rights was in accordance with the trial court's finding, and we hold they were, then this second circumstance upon which appellants base their claim-recognition of appellant as *alab* by the *leroi lablab* at the 1958 meeting-is without effect. The reason for this is given in some detail in *Limine v. Lainej*, 1 T.T.R. 595, in which the court said, in part:-

"Stability of tenure is essential to economic development, and while Sec. 24 of the Trust Territory Code requires the court recognize the land law in effect on December 1, 1941, unless or until changed by express written enactment made under authority of the Trust Territory, there is no indication in the instant case that on or prior to that date the *Iroi Lablab* had the authority to change *alab* rights at will."

[2] Nor, of course, has such authority been demonstrated in this case. Therefore, if Nako, the appellee, was

the successor *alab* in accordance with Marshallese custom, then the recognition given to Likinono by the *leroiij lablab* exceeded her authority.

The evidence that the succession of *alab* rights went to Nako as a member of the *bwij* of which Lobekwor, his predecessor was a member, was contested by appellants on the theory Lobekwor was only "appointed" for his life. The trial court found, and we agree, this claimed special arrangement was not sustained by the evidence. The trial court held in effect the rights descended in accordance with custom and that there was no arrangement contrary to or as an exception to the custom warranting reversion of *alab* rights to someone other than Lobekwor's successors by blood. Of particular significance is that Motlok, from whom appellants claim *alab* rights by succession, recognized Lobekwor's exercise of the rights and made no effort to assert any rights of his own.

JUDGMENT

It is ordered, adjudged, and decreed :-.

1. That the *alab* rights are held by the *bwij* of which appellee was the senior member and in which Lokoboj is now the senior member for the following *wetos* in Wotje Atoll, Marshall Islands District:-

- 1. Monwa)
- 2. Kejmarar)
- 3. New York) On Enibin Island
- 4. Tuaklokan)
- 5. The whole of Eneaur Island

2. In all other respects, the judgment of the Trial Division is affirmed.