

JUDGMENT

It is ordered, adjudged, and decreed:—

1. That the judgment and sentence imposed upon the accused Benemang in the District Court of Yap District in its Criminal Case No. 2040 be and the same is hereby vacated and set aside.

2. That the motion of Benemang to withdraw his plea of guilty heretofore made in the District Court be granted and that the plea of guilty be and the same hereby is withdrawn and vacated to the complaint filed against him.

3. That in lieu of remanding the case for further proceedings to the District Court, it is ordered retained in this Court and that the District Attorney file an information in lieu of the complaint heretofore filed and that the defendant Benemang be arraigned upon such information and be given the opportunity to plead thereto.

4. That Benemang be released from imprisonment upon posting bail in the sum of \$50.00.

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LOKAL, Plaintiff

v.

LOLEN, Defendant

Civil Action No. 357

Trial Division of the High Court

Marshall Islands District

March 3, 1970

Action to determine *alab* rights on Utrik Island, Marshall Islands District. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that where the *Iroij Lablab* had made a determination as to *alab* rights and it was not shown that such determination was not reasonable, such a decision would be upheld by the court.

1. Marshalls Land Law—"Alab"—Succession

The consent of the *Iroij* is essential to a gift or transfer of *alab* rights.

**2. Marshalls Custom—"Iroij Lablab"—Approval of Wills**

Where an *Iroij Lablab* did not give his consent or approval to will in question, such will had no force and effect.

**3. Marshalls Land Law—"Iroij Lablab"—Powers**

A determination by those exercising *Iroij Lablab* powers is entitled to great weight and it is supposed that they are reasonable, unless it is clear that they are not.

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<i>Assessor:</i>	JUDGE KABUA KABUA
<i>Interpreter:</i>	JELTAN SILK
<i>Reporter:</i>	ELSIE T. CERISIER
<i>Counsel for Plaintiff:</i>	ANIBAR TIMOTHY
<i>Counsel for Defendant:</i>	KONAME YAMAMURA

SHOECRAFT, *Chief Justice*

## OPINION

This action concerns the *alab* rights on Monbole *wato*, located on Utrik Island, Marshall Islands District. The complaint filed by the plaintiff claims that he is entitled to the *alab* rights and indicates that plaintiff has discussed the matter with *Iroij Lablab* Limojwa and that the *Iroij* stated if the plaintiff and the defendant were unable to get together, the plaintiff must file the case in court. The answer filed by the defendant admits that the *Iroij Lablab* has determined that the plaintiff is the rightful *alab* of Monbole *wato*. However, the defendant claims that this determination by the *Iroij Lablab* is not correct.

The sole issue in this case is whether or not the determination of the *Iroij Lablab* is correct, in accordance with the law and Marshallese custom. The evidence in this case shows conclusively that the *Iroij Lablab* made a determination of the *alab* rights under litigation in this action. There was testimony that a former *Iroij Lablab* was asked to approve the will of Lanime, the prior *alab* on Monbole *wato*, and that this matter was discussed between the *Iroij Lablab* and the *Iroij Erik* but that the

*Iroi* *Lablab* refused to approve the will. Namu Hermios, who is presently exercising the *Iroi* *Lablab* powers over the subject *wato*, testified that twice he has notified the parties of the determination of the *Iroi* as to the *alab* rights. He notified both parties once personally and the second time by letter that his determination is that Lokal is entitled to the *alab* rights on the subject *wato*.

[1, 2] There was also testimony concerning a will made by Lanime, the former *alab*, now deceased, and although no will was actually produced at this trial we believe that such a will was made and also that this alleged will attempted to transfer or give the *alab* rights in Monbole *wato* to the defendant, Lolen. However, this purported will must be examined in the light of Marshallese custom and already established law. It has already been established in *Lazarus v. Likjer*, 1 T.T.R. 129, that the consent of the *Iroi* is essential to a gift or transfer of *alab* rights. All of the testimony in the present action on the point of *Iroi* consent is to the effect that the *Iroi* did not give his consent or approval to the will made by Lanime. Therefore, under established Marshallese custom we must hold that the purported will of Lanime had no force and effect.

[3] It has also been established in previous cases that a determination by those exercising *Iroi* *Lablab* powers is entitled to great weight and it is supposed that they are reasonable, unless it is clear that they are not (*Limine v. Lainej*, 1 T.T.R. 107). Certainly there has been no testimony whatsoever on either side that the determination of the persons exercising *Iroi* *Lablab* powers in this case was unreasonable, and on the evidence received in this case this Court cannot reverse or overturn the decision of the *Iroi* *Lablab*. The crucial point in this case was the effect of the will allegedly made by Lanime, and under

established Marshallese custom it is clear that this alleged will failed for lack of approval of the *Iroi j Lablab*. Therefore, it is the opinion of this Court that the plaintiff has indeed established his claim and that the plaintiff is the rightful *alab* of *Monbole wato* on Utrik Island.

#### JUDGMENT

It is ordered, adjudged, and decreed:—

1. As between the parties and all persons claiming under them:—

(a) The plaintiff, Lokal, is the *alab* of *Monbole wato*, Utrik Island, Marshall Islands District.

(b) The defendant, Lolen, shall cease, as of this date, to exercise the rights of *alab* on *Monbole wato*. However, any rights defendant may have as *dri jermal* on said *wato* are not affected by this judgment.

(c) This judgment shall not affect any rights-of-way there may be over the land in question.

2. No costs are assessed to either party.

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**TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff**

v.

**BENEMANG, Defendant**

**Criminal Case No. 123**

**Trial Division of the High Court**

**Yap District**

**March 9, 1970**

*See, also, 5 T.T.R. 22, 42*

Judgment on charge of assault and battery with a dangerous weapon and attempted assault and battery with a dangerous weapon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the charge of attempted assault and battery with a dangerous weapon was invalid, but found defendant guilty of the charge of assault and battery with a dangerous weapon and held also that defendant's claim of self-defense was unfounded.