

Renguul, recorded with the Clerk of Courts, Truk District, February 10, 1968.

2. That plaintiff Kiomasa Kaminanga holds no interest in the above described land and the deed from Tekereng Sylvester to Kiomasa Kaminanga, recorded with the Clerk of Courts, Truk District, December 27, 1967, is without force and effect and is hereby cancelled and declared void.

3. That plaintiff shall have and hereby is granted judgment against the defendant Tekereng Sylvester in the sum of Two Hundred Dollars (\$200.00), together with interest thereon from April 28, 1967, at the rate of six percent (6%) per annum until paid.

4. That plaintiff shall have sixty (60) days, or such further time as defendants Renguul shall allow, within which to remove his house on the above-described land.

5. That this judgment shall not affect any rights-of-way there may be over said land.

BETWEL CHILLI, Plaintiff

v.

LANADRA, and LIJATDRIK, Defendants

Civil Action No. 385

Trial Division of the High Court

Marshall Islands District

May 5, 1971

Action to determine *dri jermal* rights to Monkobob *wato*, Utrik Atoll, Marshall Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that a *dri jermal* could not designate his successor to the exclusion of other members of the *bwij* particularly when another person had been recognized by the predecessor *alabs*, and the present *alab*, as the senior *dri jermal* and that an *alab* could not name someone as *dri jermal* and thereby cut off another's vested rights unless he could demonstrate good cause.

1. Marshalls Land Law—"Dri Jermal"—Establishment

A *dri jermal* cannot designate his successor *dri jermal* to the exclusion of the other members of the *bwij*, particularly when another person

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was recognized by predecessor *alabs* and the present *alab* as the senior *dri jermal* on the land.

2. Marshalls Custom—"Kallimur"

A Marshallese will or *kallimur* is distinguished from the American concept of "will".

3. Marshalls Custom—"Kallimur"

A *kallimur* is defined as a determination of land rights within the limits allowed by Marshallese custom.

4. Marshalls Land Law—"Alab"—Powers

The right to designate a *dri jermal* on land, without cutting off previously vested rights without good cause, is one of the powers of an *alab*.

5. Marshalls Land Law—"Alab"—Limitation of Powers

An *alab* cannot name certain persons exclusively as *dri jermal* and thereby cut off others' rights unless he can demonstrate good cause.

For Plaintiff:

BILIMON AMRAM

Counsel for the Defendants:

LEVI LAUNIT

TURNER, *Associate Justice*

RECORD OF HEARING

Hearing was held on the report of the Master, Presiding Judge Kabua Kabua, before D. Kelley Turner, Associate Justice, at the Courthouse, Uliga Island, Majuro Atoll, April 21, 1971, with Bilimon Amram, representing the plaintiff and Levi Launit, counsel for the defendants. Counsel had filed written memoranda prior to oral argument. Plaintiff approved the Master's findings of fact and the defendants rejected them.

OPINION

This action arises out of a family (lineage) dispute over *dri jermal* rights to Monkobob *wato*, Utrik Atoll, Marshall Islands. Plaintiff Betwel and defendant Lijatdrik each claim *dri jermal* rights. Defendant Lanadra is the *iroij erik* and testified in behalf of defendant Lijatdrik. Grace is the present *alab*. Lakimia was the former *alab* who established plaintiff's rights as *dri jermal*. Lakimia was

succeeded by Chilli (also spelled Lajilla) and his sister Jila succeeded him. She was followed by Limeia and the present *alab*, Grace, succeeded Limeia. *Leroij* Limojwa is the *iroij lablab*.

Settlement of this dispute depends upon Marshallese customary land law and the relationship between the parties. There is little, if any, dispute as to either the traditional land law or the relationship between the parties.

The parties are the son and daughter, respectively, of brothers. Both plaintiff and defendant claimed exclusive *dri jermal* rights by inheritance from their fathers. Plaintiff does not dispute the Master's conclusion that both parties are entitled to share the *dri jermal* rights. Defendant Lijatdrik objects to this conclusion and insists she is entitled to exclusive rights under her father's will.

[1] The Master held there was insufficient evidence to establish proof of the oral will of defendant's father, Labni. We do not disturb that finding because the evidence is clear that Labni had no authority to name a successor *dri jermal*. Labni was the younger brother of Chilli, plaintiff's father. Chilli, until his death was *alab* for the land in question. Labni never became *alab* because he died before Chilli. Labni's only ownership interest in the land was the right to work on it as a member of the lineage. As *dri jermal* he could not designate his successor *dri jermal* to the exclusion of the other members of the *bwij*, particularly when plaintiff was recognized by predecessor *alabs* to Grace, the present *alab*, as the senior *dri jermal* on the land.

[2-4] A Marshallese will or "*Kallimur*" is distinguished from the American concept of "will". It is defined as a determination of land rights within the limits allowed by Marshallese custom in *Lalik v. Elsen*, 1 T.T.R. 134, 139. The right to designate a *dri jermal* on land, without

cutting off previously vested rights without good cause, is one of the powers of an *alab*.

[5] Labni was not an *alab* and his will was not effective, if he made one, to cut off plaintiff's vested rights. Even if he had become an *alab* by outliving his older brother, he could not have named defendants exclusively as *dri-jerbal* and thereby cut off plaintiff's rights unless he could demonstrate good cause.

In the *Lalik* decision the Court's comment on the limitation upon determination of land rights by will or *kallimur* is at 1 T.T.R. 140:—

"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 . . . (The *iroij lablab*) is the one to decide whether, under all the circumstances, the necessary people have been consulted about a will or have consented to it."

In the present case, there was proof of determination of rights to this land by the plaintiff. It was a letter from *Alab Jila*, successor to *Alab Chilli*, to the *iroijs* and the Utrik Atoll council that both plaintiff and defendant held *dri-jerbal* rights on *Monkobob wato*.

Grace, the successor *alab* to *Jila* and the oldest matrilineal descendant in the lineage, did not enforce the determination of her predecessor and attempted to resolve the dispute between the plaintiff and defendant by ordering the plaintiff to transfer to *Ailuk Atoll*, some sixty miles south of *Utrik*.

This, of course, Grace had no authority to do. She couldn't cut off plaintiff's vested rights without good cause and she was not empowered to order plaintiff transferred from one atoll to another.

Defendants' counsel argued at the hearing on the Master's report that the plaintiff and defendants would be unable to get along together; that to avoid conflict Grace

could send the plaintiff away. The fear expressed by counsel was of future trouble. It is a matter for future determination in accordance with Marshallese custom and Trust Territory law.

It is recognized as said in *Lalik v. Lazarus S.*, 1 T.T.R. 143, that:—

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

The Master’s decision, now affirmed, is made with the expectation that the parties will endeavor to observe the obligation of cooperation imposed by Marshallese custom. Accordingly, it is,

Ordered, adjudged, and decreed:—

1. That both the plaintiff Betwel Chilli and the defendant Lijatdrik shall have *dri jermal* rights on Monkobob wato, Utrik Island, Utrik Atoll, Marshall Islands.
2. That no costs are assessed.

JAMES MILNE, Plaintiff

v.

NEIAR MOSES, and TOD WHITAKER, Defendants

Civil Action No. 405

Trial Division of the High Court

Marshall Islands District

May 7, 1971

Action to determine rights under lease of land, Utirikan Wato, Rita Island. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that payment to one of a number of owners of leased premises, there being no provision relating to whom payment should be made, does not put lessee in default and such payment is reasonable and proper.