

LIJBALANG BINNI and TOJIRO LOMAE, Plaintiffs

v.

ADRE MWEDRIKTOK, SAMUEL LEMTO, MAINA JAJO,
MAKA P., and DAINA MAE, Defendants

Civil Action No. 318

Trial Division of the High Court

Marshall Islands District

September 3, 1971

Retrial of action to determine right to certain titles on Eru Island. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the normal lines of succession could be broken where there were special agreements and that where such agreements were to be in effect for more than the lifetime of the recipient, the title would not revert upon his death.

1. Marshalls Custom—Succession to Titles—Special Arrangements

Without a clear showing that a special arrangement which breaks or interrupts normal succession only was intended to be an interest for one lifetime, such interest does not revert but continues in the lineage of appointee under the special arrangement that terminate or upset the normal course of succession.

2. Marshalls Land Law—"Troij Lablab"—Limitation of Powers

Normally, a dispute over land rights and succession to land interests should be settled by the *iroij lablab*, but the *iroij* may not cut off vested interests without good cause.

3. Marshalls Custom—Succession to Titles—Special Agreements

Because the right of decedent was clearly established and because it cut off the former line of succession without any showing it was intended for the lifetime of decedent, the sisters of the decedent were the successor *alabs* and the Marshallese system of succession to interests in land.

Assessor:

LINO KORABB, *Associate Judge*
of the District Court

Interpreter:

MICHAEL CAPELLE

Counsel for Plaintiffs:

TOJIRO LOMAE

Counsel for Defendants:

SAMUEL LEMTO

TURNER, *Associate Justice*

REPORT OF HEARING

The decision in *Lijbalang Binni, et al. v. Adre Mwedriktok, et al.*, 5 T.T.R. 373, reversed the trial judgment entered April 20, 1970, in this litigation and remanded the case with instructions for further trial. Because no findings of fact nor conclusions of law sufficient to sustain the result reached were made in the first judgment, the appellate court remanded for supplementation of the trial record, rather than trial de novo, to permit a determination of both facts and conclusions of law. The findings and conclusions in the present judgment are based upon the enlarged record.

It appeared after the present hearing that at the first trial, testimony and evidence crucial to a just decision were for some reason entirely omitted from the record. The undeveloped evidence, now a part of the record, included: the testimony of *Iroi lablab* Albert Loeak as to why he cut off the plaintiff Lijbalang as *alab* of the island in question and named the defendant Adre Mwedriktok in plaintiff's place approximately five years after the plaintiff succeeded her brother, Belekej, upon his death in 1961; introduction in evidence and explanation of the genealogical chart for both sides, the parties agreeing as to its accuracy; and an accounting of the money paid by the Trust Territory to the defendants after 1965 and the amounts, if any, due the plaintiffs and the families they represent. These three areas of evidence proved to be decisive of the controversy between the parties even though it was not included in the record of the former trial.

It is appropriate to note by way of further explanation of these proceedings upon remand, that the prevailing rule governing trials in United States courts that a party stands or falls upon the adequacy of his evidence

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in support of his claim cannot be followed in the Trust Territory. This is particularly true in the Marshall Islands where there is an almost complete absence of trained or experienced trial counsel. In the present case, the parties acted as their own counsel. It is absurd to rule in favor of one side or the other because of a failure to meet the necessary burden of proof when the parties or their counsel have no conception of the meaning of burden of proof. Accordingly, it must be the obligation of the trial judge to help the parties produce all available information concerning a controversy. To fail to do so and to decide a case upon the ground that one side failed to sustain the burden of proof is to invite a miscarriage of justice.

FINDINGS OF FACT

1. In German times Lalitin and Lion Nel were *alabs* on Eru Island, roughly having jurisdiction over the southern and northern parts, respectively. On Lalitin's death his son, Belekej, became *alab* of the entire island, succeeding both Lalitin and Lion Nel. Lalitin succeeded Bam as *alab*.

2. Defendants' witness, Ranaj, being a descendant of Bam and the same generation as Belekej, under the custom should have preceded Belekej as *alab*. He did not as the *iroij lablab*, Lobocej, designated Belekej and when *Iroij lablab* Albert designated Lijekboke in place of Lare, who preceded her sister, the plaintiff Lijbalang, Ranaj was again passed over.

3. Under Marshallese custom of inheritance of *alab* rights Belekej's younger sisters, on Belekej's death, were entitled to succeed him. The succession of Belekej to Lalitin broke the customary chain of succession as evidenced by omission of Ranaj as *alab*.

4. *Iroij lablab* Albert sought to reestablish customary succession when he "went by the book" in naming Lijek-

boke but the new line of succession had come into existence without objection and it was then too late to change.

5. Lalitin died in 1932 and was succeeded by Belekej upon the designation of the *iroij*. Belekej died in 1961 and was succeeded by his sister Lare, who was succeeded by the plaintiff, sister of both Belekej and Lare, upon the death of Lare.

6. Lare distributed copra sale money without objection from the *iroij* and on December 13, 1965, after the people of Eru had been moved to Ebeye because of the Kwajalein Missile Range operations, Lare and her sister, Lijbalang, received from *Iroij lablab* Albert Loeak and distributed the payment from the Trust Territory given as lieu compensation for former copra sales.

7. Commencing with the first quarter payment of 1966, the Eru money was paid to Atidrik Maie, Chairman of the Kwajalein Copra Fund Committee.

8. In accordance with *Iroij* Loeak's directions, Atidrik divided the funds into eleven equal shares for distribution. The eleven families were designated by Lijekboke, who the *iroij* had designated as *alab* in accordance with his book of succession.

9. Plaintiff and three other families represented by plaintiff declined to accept the division by Atidrik and five hundred twenty-five dollars and eighty cents (\$525.80) is being held for distribution to them. Also, the payment in February, 1971 of three hundred fifteen dollars (\$315.00) has not been divided or distributed to anyone.

10. The *iroij* did not meet with both sides but based his decision on the succession established by the *iroij's* book. The testimony at the former trial of a meeting between representatives of the parties, the *iroij* and the Atoll Council is incorrect and the statement in the former judgment is erroneous that: ". . . it is clear that a meet-

ing, attended by *Iroi* Albert Loeak, the Kwajalein Atoll Council, and the *alabs* of Eru Island, was held about 1966” The *iroi* testified no meeting was held but that he talked to the defendants and designated Lijekboke as the new *alab*. He also said he did not consult with the plaintiffs.

OPINION

As indicated in the findings of fact, the crucial question in this case is whether when normal succession to an interest in land is broken or interrupted by a special arrangement and the party holding the interest under the special arrangement dies, the succession of the interest continues in accordance with the custom in the new matrilineal *bwij* or whether it reverts back to the former lineage. When the *iroi* “went by the book” in designating Lijekboke, he agreed with the defendants that the successor *alab* should be from the lineage of the person who was displaced as *alab* because of the special arrangement designating plaintiffs’ predecessor as *alab*.

The *iroi* objected to any succession that would upset his book, but as the plaintiffs pointed out, the people themselves, with the approval of the then *iroi*, upset the book forty years ago. Belekej may not have been the rightful *alab* by the *iroi*’s book, except the people of Eru made him the *alab*.

Furthermore, there is no indication that under Marshallese custom the *alab* interest reverts to the old lineage. If customary succession is followed, the interest would not revert but would continue in Belekej’s lineage.

[1] There are other methods of interrupting customary succession, such as gifts of land interests as *ninnin* or *imon aje*, which do not revert to the donor’s lineage when the recipient of the gift dies. Without a clear showing that a special arrangement, such as here, only was intended to be an interest for one lifetime, we hold that

such interest does not revert but continues in the lineage of appointee under a special arrangement that terminate or upset the normal course of succession.

Under the circumstances, it was contrary to the intention of the people of Eru Island and contrary to the will of the former *iroij* when *Iroij* Albert Loeak "went by the book" to replace Lijbalang as *alab* with Lijekboke. Particularly is this true when the record shows that there is at least one other person, the defendants' witness Ranaj, who is older than Lijekboke and therefore has a prior right to the position if the appointment had been made in accordance with the book by *Iroij* Albert.

[2] There is no doubt the *iroij* believed in the propriety of his action, even though he did not consult the plaintiff's group before making his decision. Normally, a dispute over land rights and succession to land interests should be settled by the *iroij lablab*. But the *iroij* may not cut off vested interests without good cause.

Discussions of the limitation upon the powers of an *iroij* to transfer *alab* rights in land under him are found in *Limine v. Lainej*, 1 T.T.R. 107, and *Lalik v. Elsen*, 1 T.T.R. 134. The rule of these cases is:—

"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 custom. There must be a good reason or reasons for his decisions, especially when these would upset rights that have been clearly established."

[3] Because the right of Belekej was clearly established and because it cut off the former line of succession without any showing it was intended that the change be only a temporary one lasting for the lifetime of Belekej, it must be held that the sisters of Belekej are the successor *alabs* under the Marshallese system of succession to interests in land. It further follows that since Lijbalang is

the last survivor of Belekej's generation, succession, upon her death, must be in accordance with her normal successors as determined by the custom.

An earlier decision of this court declined to approve an *iroij's* action when he took away rights after consultation with only one group in the controversy. *Abija v. Larbit*, 1 T.T.R. 382.

The court said at 1 T.T.R. 386:—

“The taking away of subordinate rights is a drastic matter which should be undertaken only after thorough investigation and a reasonable effort to settle matters by negotiation.”

It is recognized that at present and as long as the government excludes people from the mid-atoll islands of Kwajalein the office of *alab* is an empty honor. What is essential at this time is adherence to *Iroi* Albert's directive that the government payments be divided equally among the families of Eru. Since none of them can receive compensation from their own labor on the land, all should share equally.

Finally, the four families of plaintiff's group are entitled to receive the money held for them by Atidrik. Also, the 1971 quarterly payments should be promptly divided and distributed.

Ordered, adjudged, and decreed:—

1. That the plaintiff Lijbalang Binni is the rightful holder of *alab* rights to Eru Island, Kwajalein Atoll.

2. That all government payments in lieu of copra income from Eru Island shall be divided equally and paid to each of the families of Eru Island as directed by *Iroi lablab* Albert Loeak. That plaintiffs are not entitled to interest on the money they are to receive because the money has been available to them.

3. That no costs are allowed.