

MULLER v. MADDISON

4. The purported transfer of *dri jermal* rights to one acre of Komlal *Wato* by the defendant Jablur to James Milne is invalid, without force and effect, vests no interest in Milne, and deprives Clancy Makroro of no interest.

5. No costs are assessed.

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HENRY MULLER, Plaintiff

v.

JAMES MADDISON, Defendant

Civil Action No. 401

HENRY MULLER, Plaintiff

v.

JAMES MILNE, Defendant

Civil Action No. 402

Trial Division of the High Court

Marshall Islands District

September 15, 1971

Action to determine title to twelve *wato* on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that purported transfer of lineage land without obtaining the proper consents was invalid.

**1. Marshalls Land Law—Lineage Ownership—Transfer**

A member of the lineage, even though he be the senior member and even though he also holds the title of *iroij erik*, may not give or transfer lineage land without first obtaining the approval of the adult lineage members and of the *iroij lablab*.

**2. Marshalls Land Law—Lineage Ownership—Transfer**

After consent of the lineage is obtained for a transfer, then approval of the *iroij lablab*, or person or group exercising those powers is essential to accomplish the transfer.

**3. Marshalls Land Law—Lineage Ownership—Transfer**

When the *iroij lablab* does approve a transfer of interest, it is assumed that the necessary consents have been given, however, if the transfer is without lineage consent and there is not good reason for the change, then the *iroij lablab's* consent may be upset by the court when it is challenged.

**4. Trust Territory—Land Law—Ownership Disqualification**

Only the government may enforce the code provision against a person disqualified from holding an interest in land. 57 T.T.C. § 11101.

**5. Marshalls Land Law—Lineage Ownership—Transfer**

Argument that while it would have been wrong for the *iroij erik* to transfer all of the lineage land to his children without lineage consent, the transfer of only a part of the land was proper, was without merit.

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<i>Assessor:</i>	KABUA KABUA, <i>Presiding Judge of the District Court</i>
<i>Interpreter:</i>	J. JOHNNY SILK
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	BILIMON AMRAM
<i>Counsel for Defendant Maddison:</i>	JAMES MILNE
<i>Counsel for Defendant Milne:</i>	PRO SE

TURNER, *Associate Justice*

Civil Action No. 401 involves claims to the following twelve *wato* on “Jebrik’s side” of Majuro Atoll:—

Wojaninnin  
 Kanel (also spelled Kaner)  
 Mwinkiob (also spelled Mwinkiop)  
 Monjenjen (also spelled Monjenkan)  
 Batinkio  
 Wetoweairik  
 Monkano  
 Jabonbar  
 Monkidren (also spelled Monkio)  
 Jebeten  
 Bikkirin  
 Aronwar (also spelled Arenar).

These spellings are from the listing in the will of Mike Maddison and, alternatively, from “Ownership of Land, Majuro Atoll”, published August 15, 1959, by the district office of Land Management.

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Plaintiff claims the foregoing twelve *wato* and thirty-eight additional parcels as lineage successor to Michael Maddison while the defendant claims the above twelve because of Mike Maddison's will.

Civil Action No. 402 involves Komlal, also spelled Kumlal, *wato*, one of the forty parcels claimed by plaintiff as lineage land. The defendant Milne claims the *iroij erik* rights in Komlal by purchase from Mike Maddison. For a determination as to the defendant's *alab* and *dri jermal* interests in Komlal *wato*, see *Clancy Makroro v. Rokke*, 5 T.T.R. 465.

The two cases, No. 401 and No. 402, largely depend upon the same questions of fact and law and they were, therefore, combined for trial.

FINDINGS OF FACT

1. In early Japanese administration, *Iroij lablab* Jebrik Lukutwerak transferred forty parcels of land (some of them separate islands) on Majuro Atoll to his adopted son, Lebonju, who in turn transferred them by will, approved by the Japanese administrator (Jaluit Jijojo), to LiAnnie Muller and her children, naming the children as follows: Michael Maddison, Hermann Muller, Fritz Muller, Lena Muller, Willie Muller, Henry Muller (the plaintiff in these two actions) and Archie Muller. (See English translations of Lebonju's will filed in *Michael J. Maddison v. Tarkwon and Others*, Civil Action No. 48, decided May 21, 1956, and not reported.

2. Michael J. Maddison, the oldest of LiAnnie's children, attempted to transfer by will the twelve parcels in question in Case No. 401 to his children.

3. The Maddison will is signed "Mike Maddison", dated February 15, 1970, and was signed by two witnesses March 25, 1970, and bore the Court seal and the signature of the Assistant Clerk of Courts that it was "subscribed

and sworn to before me this 6th day of June 1970." Whether the acknowledgment by the Clerk was for the testator or his witnesses or all of them is not shown.

4. The Maddison will was not approved by the *droulul* on "Jebrik's side" or any person or group exercising *iroij lablab* rights.

5. Mike Maddison did not notify or obtain consent of his brother, Henry Muller, when he made the will of twelve *wato* to his children nor when he purportedly sold Komlal *Wato* to Milne.

6. The land in question became lineage land when it passed from LiAnnie to her children.

#### OPINION

[1] There are two principles of Marshallese traditional land tenure which must apply to the facts of this case and require that plaintiff prevail in this action. This is lineage land and it is a basic principle that a member of the lineage, even though he be the senior member and even though he also holds the title of *iroij erik*, may not give or transfer lineage land without first obtaining the approval of the adult lineage members and of the *iroij lablab*.

[2, 3] After consent of the lineage is obtained, then approval of the *iroij lablab*, or the person or group exercising those powers is essential to accomplish the transfer. When the *iroij lablab* does approve a transfer of interest, it is assumed that the necessary consents have been given. If, however, the transfer is without lineage consent and there is not good reason for the change, then the *iroij lablab's* consent may be upset by the court when it is challenged.

This court rejected another transfer of land interest on "Jebrik's side" of Majuro because of inadequate con-

sent in *Jekron v. Saul*, 4 T.T.R. 128. Saul claimed *alab* rights because of a will witnessed by Michael Maddison as *iroij erik* of the land. Two other *iroij eriks* joined as witnesses. The court said at 4 T.T.R. 131:—

“In view of the previous holdings of this court with regard to the exercise of *iroij lablab* powers on ‘Jebrik’s side’ of Majuro Atoll and with regard to the necessity for *iroij lablab* approval of wills under Marshallese system of land law, the court considers it clear that the will offered by Saul, even if all his allegations of fact in regard to it are true, is clearly invalid and of no legal effect.” *Joab J. v. Labwoj*, 3 T.T.R. 72, 2 T.T.R. 172. *Lalik v. Elsen*, 1 T.T.R. 134.

A controversy between the same parties arose in *Mike M. and Saul v. Lojob and Jekron*, Civil Action No. 97, decided September 16, 1958, and not reported, except in a follow-up proceeding involving contempt for failure to comply with the judgment which was reported as *Mike M. v. Jekron*, 2 T.T.R. 178.

The facts of the present case are that the lineage members did not approve the Maddison will nor the sale to Milne. Since this was land on “Jebrik’s side”, approval by the *droulul* was required and in this instance not obtained, even without lineage consent.

[4] Plaintiff asked to amend his complaint in Civil Action No. 402 at commencement of the trial to show that defendant Milne was not entitled to an interest in Komlal *Wato* for the reason he was not a citizen of the Trust Territory and was prohibited from owning land by the provisions of 57 T.T.C. § 11101. The amendment was rejected on the ground that it was not applicable as a matter of law whatever the citizenship of the defendant was. Only the government may enforce the code provision against a person disqualified from holding an interest in land. This court said in *Acfalle v. Aguon*, 2 T.T.R. 133:—

“. . . in accordance with common law principles and previous decisions of this court in other cases, even if a person were dis-

qualified under Trust Territory Code Section 900 from holding a right in land which he had acquired, this was a matter of which only the government could take advantage, and that as against all others than the government, such a person could continue to exercise all the rights of ownership unless and until the government acted on the matter.”

[5] The defendant employed a rather novel theory of defense in which he sought to uphold both the will and the sale. As to the will, defendant urged that Maddison, as *iroij erik*, could transfer some of the lineage land as long as he did not transfer it all. There is nothing in the Marshallese custom nor in the common law, if it were applicable, which permits sustaining a “small wrong”. Defendant implies that it would have been wrong for Maddison to transfer all of the lineage land to his children without lineage consent but that transferring only part of the land (twelve out of forty parcels) made it proper. The theory is rejected.

The defendant also suggested the will should be sustained because Maddison was concerned that his lineage—his brothers and sisters including plaintiff—would not take care of his children after his death. The defendant also sought to justify the sale to Milne on the ground Maddison needed money.

Both reasons are unacceptable. However worthy the reason may be in justification of an action, it may not be approved when it is contrary to applicable custom or law. A good motive does not justify a wrongful act.

Ordered, adjudged, and decreed:—

1. That the plaintiff and those claiming through him hold *iroij erik* rights in the twelve *wato* on “Jebrik’s side” of Majuro Atoll listed as follows:—

Wojaninnin

Kanel (also spelled Kaner)

Mwinkiob (also spelled Mwinkiop)

Monjenjen (also spelled Monjenkan)

NENJIR v. LAIBINMIJ

Batinkio  
Wetoweairik  
Monkano  
Jabonbar  
Monkidren (also spelled Monkio)  
Jebeten  
Bikkirin  
Aronwar (also spelled Arenar).

2. That the plaintiff and those claiming through him hold *iroij erik* rights in Komlal *Wato*, Majuro Atoll.

3. That James Maddison and the other children of Michael Maddison have no interest in the above-named parcels of land, listed in the will of Michael Maddison, and that the will is invalid and without effect.

4. That James Milne acquired no interest by purchase or otherwise from Mike Maddison in Komlal *Wato*.

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**LEROIJ NENJIR, Plaintiff**

v.

**LAIBINMIJ, Defendant**

Civil Action No. 378

Trial Division of the High Court

Marshall Islands District

September 23, 1971

Action to determine right to hold *leroiij lablab* interests on four *wato* on Arno Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where party was entitled to hold *leroiij lablab* position by custom, an *alab's* refusal to recognize her as such would not bring into question her entitlement.

**1. Marshalls Land Law—"Iroij Lablab"—Succession**

The Marshallese system of inheritance of land rights is through the matrilineal lineage starting with the oldest through the youngest of each generation, thus plaintiff, as a younger sister of the predecessor *iroij*, was entitled under the custom to succeed to the position and the fact that an *alab* refused to recognize her position did not preclude her holding the office.