

LINIDRIK, Plaintiff
v.
MAIN and OTHERS, Defendants

Civil Action No. 346

LINIDRIK, Plaintiff

v.

LAJINA, Defendant

Civil Action No. 347

Trial Division of the High Court

Marshall Islands District

December 8, 1971

Action to determine *alab* and *leroi* *lablab* rights to Nontain Island, Mili Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that plaintiff had established right to hold title of *leroi* *lablab* and *alab* under the custom.

1. Marshalls Land Law—Generally

The applicable law under the custom provides for termination or change of a vested land interest only for good cause shown and usually with the approval of all those having present or prospective rights in the land.

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

Under Marshallese custom, approval of an *alab*'s will by the *iroi* makes it valid, with or without the approval of the *bwij*.

3. Evidence—Documents—Lost or Destroyed

Because defendant destroyed the will in question, the plaintiff became entitled to prove the contents of the will under the "best evidence" rule applying to lost or destroyed documents.

4. Marshalls Custom—"Iroi *Lablab***"—Approval of Wills**

A will, to be valid, must be approved by the *iroi* *lablab*.

5. Marshalls Custom—Succession to Titles—Order of Priority

Under the custom, inheritance of an *alab*'s title is by younger brothers or sisters or members of a "smaller", that is, lesser, *bwij*.

6. Marshalls Custom—Succession to Titles—Generally

A break in the customary inheritance pattern cannot be continued indefinitely in the case of a member of the *bwij* entitled to inherit claiming the title in question.

7. Marshalls Land Law—"Alab"—Establishment

A claim to *alab* rights may not be made merely because of the exercise of *dri jermal* rights.

8. Marshalls Land Law—"Dri Jermal"—Revocation of Rights

When the status of the *iroij* or *alab* is uncertain, the disregard of *dri jermal* obligations does not justify terminating *dri jermal* interests.

9. Marshalls Land Law—"Dri Jermal"—Obligations

The settlement of any uncertainty relating to the status of the *iroij* or *alab* requires that *dri jermal* faithfully perform all their obligations.

<i>Assessor:</i>	KABUA KABUA, <i>Presiding Judge of the District Court</i>
<i>Interpreter:</i>	OKTAN DAMON
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	TORJON
<i>Counsel for Defendant</i>	
<i>Main:</i>	LAJINA
<i>Counsel for Defendant</i>	
<i>Lajina:</i>	PRO SE

TURNER, Associate Justice

In No. 346, plaintiff claims *alab* interests and in No. 347, the *leroi j lablab* rights to Nontain Island, Mili Atoll, as against Main who claimed to be *alab* and as against Lajina who refused to recognize plaintiff as *leroi j lablab* and insisted, instead, that plaintiff's sister, Neijen, was *leroi j lablab*. At the commencement of trial, plaintiff's counsel moved for default judgments for failure of defendants to file and serve timely answers. As to No. 346, the motion was denied because the defendant had appeared for pre-trial hearing before a Master. Although the hearing was not held, the appearance under the rules of pleading of this court was sufficient in that it amounted to an assertion by the defendant of a demand for trial. Rule 8, d, Rules of Civil Procedure. As to No. 347, a late answer was filed before motion for default was made. The two cases were consolidated for trial on Nalu Island, Mili Atoll.

FINDINGS OF FACT

1. Plaintiff is recognized by the people of Mili Atoll, except for the defendants Main and Lajina and their families, as the *leroi* *lablab* of Nontain Island.

2. Plaintiff has been designated by the Mili *iroi* and the Atoll Council as the proper person to sit in the House of *Iroi* in the *Nitijela*, the district legislature.

3. Although plaintiff's half-sister, Neijen, is older than plaintiff, she has never been recognized as successor to *Iroi* Lakoner.

4. Defendant Main did not inherit *alab* rights to Nontain Island from her father Ruji and Ruji's attempt to transfer the interest to Main by will was ineffective because the will was not approved by the *iroi*.

5. Plaintiff inherited *alab* rights as a member of the *bwi* holding those interests.

6. Defendants and their predecessors held *dri jermal* rights to Nontain Island from early Japanese times and Ruji acted as *alab* even though Jibaru was entitled to the title under the custom. Jibaru did not exercise *alab* rights on the land.

OPINION

Civil Action No. 347 in which plaintiff asserts her *leroi* *lablab* rights to Nontain Island, Mili Atoll, may readily be settled and should be disposed of before the more difficult question of entitlement to *alab* rights to the same land is considered.

The defendants, Main and Lajina, do not claim *iroi* rights but assert those interests are vested in plaintiff's older sister, Neijen. They also say that the share of copra sales in the amount of \$337.57 which plaintiff claims as the *leroi* share was in fact paid to Neijen.

The defendants did not call Neijen as a witness concerning the payments claimed to have been made to her and since Neijen did not assert any claim of entitlement to

leroi *lablab* rights in her own behalf, it is quite apparent the claims of the defendants are without support in this record or at all. On the contrary, the evidence clearly shows the plaintiff is recognized as the *leroi* over the land in question.

It is not proper at the present stage of development of Trust Territory case law to make a decision solely on the failure of one side or the other to prove its claim. As discussed in *Ishoda v. Jejon*, Civil Action No. 381, this court said:—

“There have been a few instances of such limited judgments in this court. They invariably have had most unfortunate consequences. (Citing.) We deem it to be better practice to settle as many issues between the parties as the evidence justifies.”

Accordingly, we examine the validity of plaintiff's claim, even though we reject defendants' unsubstantiated assertions that someone other than the plaintiff was the *leroi*.

Plaintiff and Neijen were half-sisters, having the same father, *Iroi* Loklo, but with different mothers. During Japanese times, at the request of Japanese administrative officers, Loklo, after consultation with his *alabs* designated Lakoner and the plaintiff, Linidrik, as successor *iroi*. Although it is usual under the custom that the oldest lineage member holds title, that practice was not followed in this instance when Linidrik was named rather than her older half-sister.

It is, of course, not unusual that special arrangements sometimes are made as to land interests which are not in strict accordance with custom. This court and its Appellate Division has recognized the practice and approved it in appropriate cases. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

As a result of the designation of plaintiff as *leroi* and the registration of that designation by the Japanese administration, the land interest vested in plaintiff. In accordance with 1 T.T.C. 105, the land law in effect prior

to World War II (December 1, 1941) pertaining to continuing or changing a vested interest must remain in effect unless expressly changed by legislative enactment. *Limine v. Lainej*, 1 T.T.R. 595. *Likinono v. Nako*, 4 T.T.R. 483.

[1] The applicable law under the custom provides for termination or change of a vested land interest only for good cause shown and usually with the approval of all those having present or prospective rights in the land. *Likinono v. Nako*, supra.

This court will not consider upsetting the status of plaintiff not only because of the applicable Code provision and the case law applying Marshallese traditional land tenure law, but for the further compelling reason that plaintiff's title has not been challenged, except by the defendants, since it was registered with the Japanese administration.

Plaintiff has been acknowledged as the *leroi* by all those who have interests in land over which she acquired authority from Lakoner, except by the defendants. By attempting to take the law in their own hands, Main and Lajina are asserting that only they are in step and that everyone else is out of step.

Plaintiff also sits in the *Nitijela*, the Marshall Islands legislature, as one of the Mili *iroij*, having been designated by the Atoll Council, comprised of other *iroij* and *alabs* of Mili. Clearly, she holds the title and is recognized as holding the title.

Payments by the defendants of the *iroij* share of copra sales to Neijen were wrongfully made and do not relieve defendants of their obligation to pay the plaintiff. Because plaintiff offered no proof as to the amount due, she is not entitled to a recovery in this judgment but may bring a separate action in the District Court for any sum she can prove is due her.

The second question for determination is whether plaintiff also holds the *alab* rights over Nontain Island. Plaintiff's Exhibit 2 in evidence lists the *alab* succession approved by *Iroi*j Loklo. This list designates plaintiff as successor *alab* to Jibaru.

Defendants assert Jibaru was not *alab* because the predecessor *alab*, Lejedro, as a result of a dispute between himself and Jibaru, passed the title to Ruji, the father of the defendant Main, under whom she claims. However, it is to be noted that Lejedro's designation of Ruji as the successor *alab* rather than Jibaru came at a time when he was not the *alab* because he had not yet succeeded to the title then held by Neikojdrik.

Neikojdrik was named in *Iroi*j Loklo's line of succession and was followed by Lejedro, Jibaru and Linidrik. Whether Linidrik succeeded Jibaru or whether Ruji succeeded Lejedro depends not only on the effectiveness of conflicting designations but also who in fact controlled the land as *alab* and whether he was acknowledged as the titleholder. The evidence offered was so conflicting it is impossible to accept one version or the other.

[2] One thing is clear. The defendant, Main, sometime during the 1950's got her hands on Neikojdrik's will designating Jibaru as successor *alab* and destroyed it. She gave as her reason for taking the law into her own hands in this fashion that the will was "invalid" in that it was "improperly made". Main said that Neikojdrik was an "old lady", was "mentally ill", and that she had not consulted with and obtained the approval of the *bwij* when making the will. Defendant did say that the *iroi*j—Loklo and Lanent—approved the will. Under the custom, approval of an *alab*'s will by the *iroi*j makes it valid, with or without the approval of the *bwij*, although the better practice is to consult with and obtain the approval of the *bwij*. *Limine v. Lainej*, 1 T.T.R. 231. *Lazarus v. Likjer*, 1 T.T.R. 129.

[3] Regardless of whether the will was valid or not, it was highly improper for Main to take matters into her own hands and destroy the will. Because of this conduct on the defendant's part, the plaintiff became entitled to prove the contents of the will under the "best evidence" rule applying to lost or destroyed documents. 29 Am.Jur.2d, Evidence, §§ 452, 453 (and cases cited).

[4] Before leaving the testimony as to wills, we note the defendant's effort to bolster her right to succeed her father as *alab* was based upon his will to her. However, defendant admitted neither the plaintiff nor her half-sister, Neijen, had approved Ruji's will. It is well settled a will, to be valid, must be approved by the *iroij lablab*. The defendant had no claim to the title by will without this approval.

[5] The defendant could not inherit from her father, if he was *alab*, unless he was the last member of the *bwij*. Under the custom, inheritance of an *alab*'s title would have been by younger brothers or sisters or members of a "smaller", that is, lesser, *bwij*. No showing was made that the *bwij* died out with Ruji.

[6] The evidence does show that Jibaru did not act as *alab* on the land in accordance with Neikojdrik's will but that Ruji served as successor to Lejedro. This break in the customary inheritance pattern, although not contested by Jibaru, may not be continued indefinitely in the face of a member of the *bwij* entitled to inherit claiming the title. The plaintiff asserts this right of inheritance as against the claim of the defendant.

[7] The evidence does show that defendant and her predecessors, including her father, Ruji, were *dri jermal* on the land from Japanese times. A claim to *alab* rights may not be made merely because of the exercise of *dri jermal* rights.

However, defendant Main's claim of *alab* rights does not jeopardize her *dri jermal* interests. Nor does Lajina's payment to Neijen of the *leroi j lablab* share of copra sales affect his or Main's *dri jermal* interests, even though the payment does not relieve his obligation to plaintiff.

[8, 9] This court has held that when the status of the *iroij* or *alab* is uncertain, the disregard of *dri jermal* obligations does not justify terminating *dri jermal* interests. The settlement of any uncertainty does, however, require that *dri jermal* faithfully perform all their obligations in the future. The plaintiff, as *leroi j lablab* and *alab*, also is obliged to look after the welfare of the *dri jermal*. *Lazarus v. Likjer*, 1 T.T.R. 129. *Jatios v. Levi*, 1 T.T.R. 578.

Ordered, adjudged, and decreed:—

1. That the plaintiff be and she is declared to be the rightful *leroi j lablab* of Nontain Island, Mili Atoll.

2. That the plaintiff, being in the line of succession named by will approved by the *iroij lablab*, and also a member of the *bwij* holding *alab* rights is declared to be the rightful *alab* of Nontain Island.

3. The defendants, as *dri jermal*, and the plaintiff as *leroi j* and *alab*, owe each other mutual obligations under the custom.