

recording and that further there is nothing in the record before us to indicate that there were any activities, possession or other acts which would have put the appellants on notice that anyone else claimed the land until 1975.

[2] In the absence of any such allegations in the record, it must be concluded for the purpose of ruling on the motion to dismiss that the appellants owned the land since 1939 and that the recording of the documents in 1954, without anything else, did not start the statute of limitations running until the appellants were put on notice. The statute of limitations, in such a case, cannot be construed in any other manner. *Grayson v. Harris*, 279 U.S. 300, 49 S.Ct. 306, 73 L.Ed. 700 (1929).

The Order dismissing Appellants' complaint is hereby vacated and set aside and this matter is remanded to the trial court for a trial on the merits.

REAB and JELTAN LANKI, Plaintiffs and Appellees

v.

HELKENA LANIKIEO, Defendant and Appellant

Civil Appeals Nos. 112 and 138 (Consolidated)

Appellate Division of the High Court

Marshall Islands District

June 7, 1977

Action by *Leroij Erik* on *Jebdrik's* side of Majuro, and by her successor, for removal of *Alab* and *Dri Jermal*. The Appellate Division of the High Court, Brown, Associate Justice, held that on *Jebdrik's* side of Majuro Atoll there has been no *Iroij Lablab* for years and there are instead a number of *Iroij Eriks*, with the *Iroij Lablab's* powers lying in a committee known as the *Droulul*; and an *Alab* and *Dri Jermal* must recognize and cooperate with the proper *Iroij Erik* and failure to do so may be sufficient cause for the *Droulul* to remove them from the land and terminate their interests.

I. Courts—Jurisdiction—Appealed Cases

Filing of appeal in dispute involving land divested trial court of jurisdiction and actions taken by court regarding Motion for Order to

Show Cause, finding appellant in contempt, ejection proceeding filed in the case by plaintiffs, answer to the proceeding, and motions for and orders in aid of judgment, were null and void.

2. Judgments—Stay of Execution—When Granted

Where action involved questions pertaining to interests in land there was an automatic stay of judgment, so that appellant did not waive any rights by not filing for a stay of judgment. (8 TTC § 2)

3. Marshalls Land Law—Jebdrik's Side of Majuro—Generally

On *Jebdrik's* side of Majuro Atoll there has been no *Iroiij Lablab* for years and there are instead a number of *Iroiij Eriks*, with the *Iroiij Lablab's* powers lying in a committee known as the *Droulul*; and an *Alab* and *Dri Jerbal* must recognize and cooperate with the proper *Iroiij Erik* and failure to do so may be sufficient cause for the *Droulul* to remove them from the land and terminate their interests.

4. Marshalls Land Law—Jebdrik's Side of Majuro—Obligations Toward Iroiij Erik

Alab and *Dri Jerbal* against whom judgment was entered in action for their removal for failure to perform obligations to *Leroiij Erik* on *Jebdrik's* side of Majuro Atoll should be given the opportunity to acknowledge the *Leroiij Erik* and perform their customary obligations to her in light of the judgment.

Before BURNETT, *Chief Justice*, BROWN, *Associate Justice*, WILLIAMS, *Associate Justice*

BROWN, *Associate Justice*

This case involves a dispute as to whether or not Reab is the *Leroiij Erik* and Jeltan Lanki is to be her successor (*Iroiij Erik*) for Alwal *weto* and Bikelan Island, Majuro Atoll; and if so, whether or not Plaintiffs are entitled to remove Defendant from the land and terminate his *alab* and *dri jermal* interests because of his failure to perform his obligations to the *Leroiij Erik* under Marshallese customary law.

On November 23, 1973, the trial court entered judgment in favor of Plaintiffs, and the Defendant timely appealed from that judgment on January 23, 1974. Thereafter, in July, 1974, there was a Motion for an Order to Show Cause filed, and the following month, after a hearing, the trial

court found the Defendant to be in contempt and set forth certain procedures he was to follow to purge himself of the contempt.

On September 5, 1974, a document entitled "Ejectment Action" was filed in the case, which apparently was an attempt to refile a new cause of action concerning the same subject matter which, of course, already was in the process of appeal. On September 17, 1974, an Answer and Counterclaim was filed by Defendant to the purported "Ejectment Action".

On November 11, 1974, there was filed by Plaintiff, Reab, a "Motion to Dismiss Ejectment Action", but it appears that no order ever was entered concerning that purported motion.

On December 9, 1974, Reab filed a Motion for an Order in Aid of Judgment, hearing was held on that motion, and on December 20, 1974, an Order in Aid of Judgment was entered which directed that certain affidavits be submitted to the court prior to a "final" Order being issued. On January 31, 1975, another Order in Aid of Judgment was entered. Various other motions were brought before the court during the year 1975 all dealing with matters connected with the Order in Aid of Judgment.

An appeal was taken from those orders, and this appeal was consolidated with the appeal from the judgment in the main action.

Ultimately, a re-certified record was docketed on January 18, 1977.

Thus there are two facets to the consolidated appeals. First, there is the appeal from the judgment concerning the land dispute and the customary rights concerning the two *watos* in question. Second, there is an appeal based on the question as to whether or not the trial court had jurisdiction as to the actions taken by it after the original Notice of Appeal had been filed in January, 1974. Our first

consideration will be given to the question of the jurisdiction of the trial court as to matters raised after Notice of Appeal had been filed.

[1] The record is in a state of disarray, but it is clear that the filing of the appeal divested the trial court of jurisdiction, and the actions taken by it subsequent to the filing of the Notice of Appeal are null and void. *Association Lumber & Co. v. Superior Ct. of Calaveras City*, 180 P.2d 389 (Cal. App.); *Sullivan v. Cloud*, 244 N.E.2d 625 (Ohio App.); *Peter v. Peterson*, 292 P.2d 130 (Ore.); *Kaneshuina v. Trust Territory*, 5 T.T.R. 99 (1970 App.).

[2] We next consider whether or not Appellant waived any rights by not filing a petition for a stay of judgment. That question is answered in the negative. There was an automatic stay of judgment in this case since it involved questions pertaining to interests in land. 8 TTC Sec. 2 (Cumulative Supplement 1975) provides for the release or transfer of any interest in land in accordance with the terms of the judgment *after* the time for appeal has expired without notice of appeal being filed, or *after* any appeal duly taken has been finally determined, or *after* an order has been entered that on appeal shall not stay the judgment. (Emphasis added.) The statute itself is clear, and on its face it indicates the legislative intent. Additionally, we have reviewed the pertinent portions of the Journal of the House of Representatives of the Congress of Micronesia at its first regular session during January and February 1971 and have determined therefrom that the legislative intent was to provide for an automatic stay under the circumstances we have related. The Journal points out that, as originally drafted, the legislation was to provide that the winning party in a case involving an interest in land could receive his title without waiting for the expiration of the time for appeal or for the conclusion of the appeal itself; but the Legislative Branch was of the

opinion that such proposed speedy vesting of title would be unwise and therefore enacted the legislation in its present form.

[3] As to the appeal from the Judgment itself, Appellant claims that the trial court erroneously applied Marshallese customary law under the facts of the case and goes on to say that the Judgment is not supported by substantial evidence. The latter contention is without merit; there was substantial evidence sufficient to support the Judgment. Appellant urges that under Marshallese custom an *alab* owes no particular duties to an *Iroi Erik* (as opposed to an *Iroi Lablab*). It is, of course, true that an *Iroi Erik* is a subchief, and an *Iroi Lablab* is a paramount chief. In this case, the land in question was on *Jebdrik's* side, and for years there has been no *Iroi Lablab* on *Jebdrik's* side. Instead, there are a number of *Iroi Eriks*, and the powers of the *Iroi Lablab* lie with a committee known as the *Droulul*. In spite of Appellant's strong argument in his brief, the original Judgment points out these facts very clearly. A reading of the entire judgment cannot, in and of itself, lead to the conclusion that it states that an *Iroi Erik* has the power to remove an *Alab* or *Dri Jerbal* from the land or to terminate their interests therein. On the contrary, the judgment states that an *Alab* and *Dri Jerbal* are required to recognize and cooperate with the proper *Iroi Erik*, and Marshallese custom requires such recognition and cooperation; and a failure thereof may be sufficient cause to require their removal from the land and termination of their interests. The actual power of removal from the land or termination of interests lies as correctly stated by the trial court, with the *Iroi Lablab* or with persons holding that authority. Thus, the trial court correctly held that Appellant must recognize and cooperate with the *Leroi Erik* and her successor, and if Appellant

failed to carry out these customary duties then, and in that event, he might be removed from the land and his interest therein terminated by the *Droulul*, which, on *Jebdrik's* side, holds the authority of an *Iroi* *Lablab*. Such removal, of course, requires the proper exercise of authority and must not be done arbitrarily, capriciously, or in a manner contrary to custom.

[4] The trial court correctly held that Defendant and Appellant should be given the opportunity to acknowledge the *Iroi Erik* and perform his customary obligations to her in the light of judgment entered. We agree.

Accordingly, we affirm the judgment of the trial court in the main action below, and we declare null and void all actions of the trial court taken subsequent to the filing of the Notice of Appeal; and the case is hereby remanded for further proceedings consistent with this Opinion.

ESUROI CLAN By RDIALUL EBERDONG, Plaintiff

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, and
MUNICIPAL COUNCIL OF AIRAI MUNICIPALITY, Defendants,

and

KESOL CLAN By JONATHAN NGIRMEKUR, Intervenor-
Appellant,

and

JOHANNES POLLOI By ANTHONY POLLOI, Intervenor

Civil Appeal No. 146

Appellate Division of the High Court

Palau District

June 8, 1977

Appeal from finding that appellant had no interest in certain land. The Appellate Division of the High Court, Williams, Associate Justice, held that the finding was supported by the evidence.