

They are reached, however, and I concur in the opinion of the court as to the holdings on issues 3, 4, and 5.

The passage of time has given rise to an additional problem in this case. Since the matter was submitted for decision after oral argument the Trusteeship Agreement was terminated. This presents the court with the question of its own continuing authority. The majority apparently finds such authority. I cannot assume the court has continuing jurisdiction. The matter warrants briefing and argument.

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**TOSHIWO SHIMA, et al., Appellants**

v.

**NAMO HERMIOS, et al., Appellees**

Civil Appeal No. 425

Appellate Division of the High Court

Marshall Islands District

July 3, 1987

Dispute over *alab* and *dri jermal* rights on Batio and London *wetos*, located on the southern half of Wotje Island, Wotje Atoll, Marshall Islands. The Appellate Division of the High Court, Kennedy, Associate Justice, held that trial division's findings that claimant's father informed on the *iroij* to the Japanese during the Second World War and was stripped of his land rights was not clearly erroneous, and that admission of certain hearsay testimony was not reversible error, and therefore ruling of trial court which rejected claimant's contentions and determined that *alab* and *dri jermal* rights were held by appellee was affirmed.

**1. Appeal and Error—Findings and Conclusions—Tests**

Trial court's findings of fact will not be overturned on appeal unless they are clearly erroneous.

**2. Appeal and Error—Evidence**

Evidentiary errors are not grounds for disturbing a judgment unless substantial justice will otherwise be undermined.

**3. Appeal and Error—Findings and Conclusions—Supporting Evidence**

In a dispute over *alab* and *dri jermal* rights, trial division's findings that claimant's father informed on the *iroij* to the Japanese during the Second World War and was consequently stripped of his land rights was not clearly erroneous, where such facts appeared to have been widely

known in the community and were testified to by numerous witnesses, and where claimant's father chose to go to Japan after the war.

4. Marshalls Land Law—"Marlap" Land

In a dispute over *alab* and *dri jermal* rights, claimant's contention that land was *marlap* land and could not be taken away without good reason, even if accepted, was to no avail, since claimant's father's act of betrayal in informing on the *iroij* to the Japanese during the Second World War supplied a sound and persuasive reason to cut off *alab* and *dri jermal* rights in any event.

5. Evidence—Hearsay—Admissibility

Hearsay testimony is admissible if it comes within one of the recognized exceptions.

6. Evidence—Hearsay—Admissibility

In a dispute over *alab* and *dri jermal* rights, admission of hearsay testimony about general knowledge in the community with regard to the ownership of the *wetos* in question, and particularly in regard to whether claimant's father had been dispossessed of these *wetos* was not reversible error, where such testimony came within two of the recognized exceptions for hearsay testimony.

7. Appeal and Error—Evidence—Admission of Evidence

In dispute over *alab* and *dri jermal* rights, the court's admission of a letter to the claimant could not have been prejudicial to him, since claimant's land interests were extinguished by virtue of his father's actions, and it therefore could not be of consequence that such letter was admitted endorsing the interests of a competing claimant.

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*Hemoj Lajinwa:*

LANGINMO JACOB

Before MUNSON, *Chief Justice*, KENNEDY<sup>1</sup>, *Associate Justice*, and HEFNER<sup>2</sup>, *Associate Justice*

KENNEDY, *Associate Justice*

This is a dispute over *alab* and *dri jermal* rights on Batio

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<sup>1</sup> Judge of the United States Court of Appeals, Ninth Circuit, designated as Temporary Associate Justice by Secretary of Interior.

<sup>2</sup> Chief Judge of the Commonwealth Trial Court of the Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

and London *wetos* located on the southern half of Wotje Island, Wotje Atoll, Marshall Islands. The trial division of the High Court rejected the claims of Kaname Yamamura and determined that the *alab* and *dri jermal* rights were held by Hemoj Lajinwa. We affirm.

[1, 2] The principal issue on appeal is whether the evidence is sufficient to support the trial division's finding that the *iroij* took the land in question away from Kaname Yamamura's family. Appellant also contends that the trial division erred in certain evidentiary rulings. We will not overturn the trial court's findings of fact unless they are clearly erroneous. *Techong v. Peleliu Club*, 7 T.T.R. 364 (1976). Evidentiary errors are not grounds for disturbing a judgment unless substantial justice will otherwise be undermined. *Bina v. Lajoun*, 5 T.T.R. 366, 369-70 (1971).

Kaname Yamamura claims *alab* and *dri jermal* rights as the son of Hiroshi Yamamura. All seem to agree that in 1923 *Iroij* Labureo granted rights in the land to Hiroshi in return for a promise to clear and cultivate the land. The question is whether those rights were taken away for good reason. The trial division found that Hiroshi was accused of informing Japanese authorities that the *iroij* had fraternized with American scouts while Japan and the United States were at war, and that when the *iroij* discovered Hiroshi's collaboration and informing, he retaliated by stripping Hiroshi of his land rights. A second reason for taking land away was Hiroshi's failure to make necessary payments to the *iroij*. Appellant claims the trial court erred in making these findings because there was no evidentiary support and because certain evidentiary rulings were incorrect. We reject the appellant's arguments.

[3] The trial division's findings that Hiroshi Yamamura informed on the *iroij* to the Japanese and was stripped of his rights are not clearly erroneous. These facts appear to

have been widely known in the community. Seven witnesses testified about Hiroshi Yamamura's betrayal of the *iroij*, and numerous witnesses about his divestment. This testimony was supported by the facts that Hiroshi Yamamura did not stay in the Marshall Islands after the war but instead chose to go to Japan, and that Kaname Yamamura has not worked the land in question. Kaname Yamamura's principal contention, that his father could not have betrayed the *iroij* because he and his whole family would have been killed for doing so, does not suffice in the face of the evidence to the contrary.

[4] Kaname Yamamura's contention that the land was *marlap* land and could not be taken away without good reason, see *Edwin v. Thomas*, 5 T.T.R. 326, 330 (1971), is to no avail. Even if we found this to be so, Hiroshi Yamamura's act of betrayal supplies a sound and persuasive reason to cut off his *alab* and *dri jermal* rights.

[5, 6] The admission of hearsay testimony was not reversible error. Hearsay testimony is admissible if it comes within one of the recognized exceptions. *Trust Territory v. Miller*, 5 T.T.R. 193, 199 (1972). Here the testimony was about general knowledge in the community with regard to the ownership of the *wetos* in question, and particularly with regard to whether Hiroshi Yamamura had been dispossessed of those *wetos*. This testimony can be said to fall within the exception for reputation testimony concerning personal history, Fed. R. Evid. 803(19), or concerning customs affecting lands in the community and events of general history having an effect in the community, Fed. R. Evid. 803(20). See TTC Rules of Evid. 63(27). Such testimony can be expected to be reliable given the traditionally intimate nature of the Marshallese community, in which matters of this sort are commonly known to all. In any event, no substantial injustice was created by the admission of this testimony.

[7] Finally, the court's admission of a letter from *Iroi*j Namu Hermios to claimant Hemos Lajinwa, claimed by Kaname to be without proper foundation, could not have been prejudicial. His interest in the *alab* and *dri jermal* rights having been extinguished by virtue of his father's actions, it could not be of consequence to him that a letter was admitted endorsing the interests of a competing claimant.

Accordingly, the judgment of the trial court is affirmed and the distribution of the funds that were awarded pursuant to the provisions of Title II of the Micronesian Claims Act of 1971 and are held in a trust account by the trial division of the High Court shall be made to the appellee in this case. Distribution shall be in accordance with the schedule adopted by order of the trial division on December 14, 1983, Civil Action No. 7-77, *Shima, et al v. Hermios, et al.* Specifically, the schedule of distribution shall be one-third share for the *alab* and two-thirds share for the *dri jermal*.

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TOSHIWO SHIMA, et al., Appellants

v.

NAMO HERMIOS, et al., Appellees

Civil Appeal No. 426

Appellate Division of the High Court

Marshall Islands District

July 3, 1987

Appeal from judgment of the trial division determining *alab* and *dri jermal* rights to various *wetos* on Wotje Atoll. The Appellate Division of the High Court, Kennedy, Associate Justice, affirmed the finding of the trial division that a *bwilok* had occurred, in which the successor *bwij* acquired complete jurisdiction over *bwij* lands, including the *wetos* at issue.

1. Marshalls Land Law—"Bwilok"—Evidence

Trial division's finding that a *bwilok* occurred was upheld as not clearly erroneous, based on evidence that members of the original *bwij* left the atoll shortly after the dispute, indicating the consent of the original