RISA B., Plaintiff

v.

KEINTOKA BOKWIJ, Defendant

Civil Action No. 387

Trial Division of the High Court

Marshall Islands District

May 1, 1973

Dispute over succession to *alab* interests in seven *wato* on Tenak Island, eastern Arno Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that *alab* interests of older *bwij* were not permanently cut off and transferred to younger *bwij* when *alab*, from older *bwij*, had his interests suspended when he refused to recognize *iroij lablab* and left the land and plaintiff, from a younger *bwij*, was named to replace him; so that where suspended *alab* returned and resumed exercise of his *alab* interests unchallenged by the person who had replaced him, and then died, his sister was his successor, not the person who had replaced him.

1. **Marshalls Land Law—"Alab"—Succession**

   Alab interests of older *bwij* were not permanently cut off and transferred to younger *bwij* when *alab*, from older *bwij*, had his interests suspended when he refused to recognize *iroij lablab* and left the land and plaintiff, from a younger *bwij*, was named to replace him; so that where suspended *alab* returned and resumed exercise of his *alab* interests unchallenged by the person who had replaced him, and then died, his sister was his successor, not the person who had replaced him.

2. **Marshalls Land Law—"Iroij Lablab"—Refusal to Recognize**

   Under the custom, failure to recognize an *iroij lablab* does not, under the proper circumstances, deprive an *alab* or *dri jerbal* of land interests.

3. **Marshalls Land Law—"Iroij Erik"—Powers**

   Where there was no *iroij lablab* at the time, statement of *iroij erik* that *alab* suspended for leaving the land had returned and had been restored to his *alab* interests and that his younger sister succeeded to those interests upon his death, was the equivalent, under the custom, of a land interest determination by the *iroij lablab*.

Assessor: KABUA KABUA,
District Court Presiding Judge

Interpreter: PAUL TONYOKWE

Counsel for Plaintiff: LEVI LAUNIT

Counsel for Defendant: KANAME YAMAMURA

TURNER, *Associate Justice*

Once again the Court is confronted with a dispute over land interests on eastern Arno Atoll. The Arno disputes began with a civil war between factions headed by *Iroij lablab* Leikman and *Leroij lablab* Lijiwirak, both of whom were killed in the war. The Atoll was divided approximately in half in a settlement in 1879.

Three peaceful and successful reigns for the eastern half of Arno ended in 1932 with the death of *Leroij lablab* Liwaito. There was no successor, at first, although beginning with the American administration in 1944 and thereafter in 1948 and 1950 the executive branch attempted to solve the problem of leadership for eastern Arno. Thereafter the disputes were brought to the High Court where they have continued from the decision in 1954 in *Lainlij v. Lajoun and Jiwirak, et al.*, 1 T.T.R. 113, Marshall Islands Civil Action No. 23, to the present. None of the decisions have been able to settle all the questions. Sometimes the lands are different, or the interests claimed and the parties are different.

It is unnecessary to again repeat the history of this and related litigation. Most of it is covered in *Labina v. Lainej*, 4 T.T.R. 234 and in the appeal decision *Bina Jetnil v. Lajoun*, 5 T.T.R. 366. The most recent trial court decision, until the present case, was *Jetnil v. Buonmar*, 4 T.T.R. 420.

The land involved in the present case consists of seven *wato* on Tenak Island, Arno Atoll. The seven are: Mebeltobok (also spelled Kebeltobok), Meloren, Mwetera, Teron, Lekinbowon, Wirotbwikor and Buni. The two *wato* Kebeltobok and Mwetera were involved in *Bina v. Mwejenwa*, 5 T.T.R. 366. Although it appears a claim was made by Mwejenwa that he held *alab* interest the Court specifically did not rule on the question.

All seven *wato* involved in the present case were involved, with most all other lands in eastern Arno in *Mwejenwa v. Jiwirak*, Civil Action No. 44, decided in 1957 and not reported. The holding, however, was not as to *alab* rights but as to the entitlement of Jiriwak to hold *iroij lablab* interests. The holding was:

"The defendant Jiriwak is entitled to exercise the *iroij lablab* rights over all of the lands in which any of the plaintiffs have an interest on Eneraen Island and that part of Tinak Island which was formerly under Liwaito as *iroij lablab*, subject to all the obligations and limitations which go with those rights, unless and until there is some other clear establishment concerning the exercise of the powers of the former *Leroij lablab* Liwaito."

This was almost the same conditional decision as the holding in *Lainlij v. Lajoun and Jiwirak et al.*, 1 T.T.R. 113, decided three years earlier in 1954 in which the Court said:

"The defendant Jiwirak is entitled to act as *iroij lablab* until such time, if any, as there is some clear establishment concerning the exercise of the powers of the former *Leroij lablab* Liwaito."

Between the dates of the two cases Jiwirak attempted to consolidate his position by being "elected" or "recognized" in 1956 as the successor *iroij lablab*. *Labina v. Lainej*, *supra*, 243.

In any event as result of one or more of these incidents, either the two "contingent" court decisions or the "election", Mwejenwa announced his refusal to recognize Jiwirak as *iroij lablab* and departed Arno for Majuro Atoll. Accordingly, the *iroij lablab* and the *iroij erik* suspended Mwejenwa's *alab* interests and named as *alab* over the seven parcels in question the plaintiff, Risa. Mwejenwa belonged to a *bwij* older than that in which Risa was a member. It was her theory, advanced in support of her claim against the defendant Keintoka, who was Mwejenwa's sister in the older *bwij*, that the suspension of Mwejenwa's

alab interests cut off the interests of his *bwij* and passed them on to the younger *bwij*.

Mwejenwa returned to Arno and resumed exercise of the *alab* interests in 1969 and died in 1971. His sister then assumed his interests as his successor under the custom. Risa, who had taken no action against Mwejenwa when he returned to Arno, brought this action against the sister after his death.

[1] The Court cannot accept the plaintiff's theory that the *alab* interests of the older *bwij* were permanently cut off and transferred to the younger *bwij*. The history of the many years of land dispute on eastern Arno and the decisions of this Court repeatedly refusing to permanently, or at all for that matter, deprive an *iroij erik* or *alab* of their interests because of their failure to recognize Jiwirak or his avowed successor, Labina, as the *iroij lablab* and *leroij lablab* successors to Liwaito, does not justify such drastic action in the present case. The Court stated the applicable rule to the Arno problem in *Labina v. Lainej*, *supra*, at 4 T.T.R. 249:

> ". . . the testimony and other information concerning the custom in the Marshall Islands, and of the cases, shows the land law in effect on December 1, 1941, required that where there is a reasonable uncertainty as to the rightful successor at all to the position or office of *iroij lablab* in respect to certain lands as to make substantial numbers of owners or interested parties hesitate before declaring their recognition, that the individual claiming such office in addition to proving that he is entitled by birth and blood to succeed to that office, must also show that the persons having rights in such lands have recognized the claimant, either by words or conduct, in such fashion as to evince an unmistakable choice."

In the *Labina* case the Court also said at 4 T.T.R. 254:

> "In action No. 238 [consolidated for trial civil action, *Bina L. v. Mwejenwa*] it must be held that Mwejenwa did not accept or recognize Jiwirak as the *iroij lablab*."

It was this failure to acknowledge Jiwirak which led the *iroij lablab* and *iroij erik* Lujim to cut off Mwejenwa's *bwij* and install Risa, the oldest member of the youngest *bwij* as *alab*. The action, if treated as a permanent cancellation of the *bwij alab* rights, was not the good cause necessary to transfer land interests under the custom. On the contrary, this Court held the refusal of Mwejenwa and others to recognize Jiwirak and his successor, Bina, as *leroij lablab* over the lands in question deprived Bina of the *leroij lablab* interest rather than deprived the *alabs* of their interests. (See Findings of Fact No. 9 at 4 T.T.R. 265.)

[2] The rule is that under custom the failure to recognize an *iroij lablab*, under proper circumstances, does not deprive an *alab* or *dri jerbal* of land interests. The Arno Atoll decision on the point is *Lainlij v. Lajoun*, *supra*, where the Court said at 1 T.T.R. 119:

> "During this period of negotiation for position as *iroij lablab*, however, conditions have been and still are so fluid and uncertain that the court considers that the plaintiff Lainlij has not completely forfeited his rights, but they are suspended, and that if he again recognizes defendant Jiwirak as *iroij lablab* of these lands within a reasonable time, he is entitled thereafter to resume the exercise of his powers . . . ."

The same rule was applied to the recognition of an *alab* in *Lazarus v. Likjer*, 1 T.T.R. 129, where the Court said at 132:

> "The court holds that the *dri jerbal* rights of the plaintiff Lazarus and his *bwij* are merely suspended, and that they may regain the future exercise of these rights by recognizing Likjer (or her successor) as *alab* . . . ."

Also to the same effect see the Appellate Division decision in the Marshalls Civil Action No. 1, relating to Jebrik's side of Majuro Atoll, *Jatios v. Levi*, 1 T.T.R. 578 at 583 and 588.

[3] There is another and perhaps even stronger reason for this Court to say that the most that happened was a temporary suspension of *alab* rights in Mwejenwa's older *bwij* rather than a permanent cancellation of those rights. This is derived from the testimony of the defendant's witness, the *iroij erik* Mujina, who said Mwejenwa had returned to Arno, apologized to the *alabs* and *iroij lablab* Jiwirak and was forgiven and restored to his *alab* interests. In view of the prior holding of this Court that Bina did not succeed to Jiwirak's title, the land is therefore under the jurisdiction of the *iroij erik*. His statement that Mwejenwa was restored to his *alab* interests and that the defendant, the younger sister, succeeded to those interests on Mwejenwa's death, is the equivalent, under the custom, of a land interest determination by the *iroij lablab*. The rule was first stated in *Limine v. Lainej*, 1 T.T.R. 107 at 112:

> "Determinations made by an *iroij lablab* with regard to his lands are entitled to great weight, and it is to be supposed that they are reasonable unless it is clear that they are not."

Although plaintiff must fail as to her claim to *alab* interests in the land in question, she is entitled under the custom to *dri jerbal* interests under the defendant *alab* because of her membership in the smaller *bwij*.

Although the *wato* Buni was one of the seven listed as involved in this case the Court must note a possible challenge to the status of this *wato* which may be raised by the Government. There was evidence in Civil Action No. 44, *Mwejenwa v. Lujim*, that this land formerly belonged to the German Government—Jaluit Gesellschaft—and that consequently it came into the possession of the Alien Property Custodian of the Trust Territory Government. The question was not raised during the present trial and because the Government was not given notice of the claim of the parties nor made a party to the action, the Court declines to decide the status of Buni *wato*. Until such time as

the question is finally settled this decision shall apply to this parcel. It is,

Ordered, adjudged and decreed:—

1. That defendant and all those claiming under her in her *bwij* are entitled to *alab* interests in the following *watos* in Tenak Island, Arno Atoll: Mebeltobok, Meloren, Mwetera, Teron, Lekin bowon, Wirotbwikor and Buni. The Buni interests are subject to any Government claim, not here determined.

2. No costs are allowed.

3. The defendant is granted 90 days within which to perfect an appeal.

KIMAT LOTA, Plaintiff
v.
KOMA KOROK, Defendant

Civil Action No. 349

Trial Division of the High Court

Marshall Islands District

May 16, 1973

Action involving succession to *alab* rights in Monjelto on Roi-Namur, Kwajalein Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where evidence showed *iroij lablab* incorrectly determined defendant to be successor, presumption of reasonableness of his determinations was overcome, and declared plaintiff the successor.

Marshalls Land Law—"Alab"—Succession

Where plaintiff claimed that matrilineal line holding *alab* rights to certain land ended with death of the *alab* and that plaintiff, being the oldest member of the patrilineal line, succeeded to the title, but the *iroij lablab* declared defendant the *alab* on the basis of succession list prepared in 1935, and evidence showed the list to be incorrect, presumption that *iroij lablab's* determination was reasonable was overcome and court would declare plaintiff the *alab*.