in fact, cause the *iroij erik* to change his mind about removing defendant from the land is immaterial. Whatever the reason, if there was a change of mind, it was not effective unless it complied with the traditional pattern governing control of lineage land.

Since the defendant believed he had obtained a reprieve in the removal action, the court will take this into consideration in fixing the time within which defendant must take his property from the land or forfeit it to the plaintiff.

Ordered, adjudged and decreed:—

1. That plaintiff shall and hereby is granted judgment that the defendant shall close his store and remove all of his property together with himself and his family from Utirikkan *wato*, Rita, Majuro Atoll.

2. Defendant shall be allowed ninety days from entry of judgment within which to remove his property and any property remaining thereafter shall be deemed to be forfeited to the plaintiff. This stay of removal shall not affect closing of defendant's store upon entry of judgment.

3. Plaintiff shall be allowed his costs upon making claim in accordance with the law.

LAJUP MOJILIONG, Plaintiff

v.

JELTAN LANKI, REPRESENTATIVE OF "LEROIJ ERIK" REAB AMON, Defendant

Civil Action No. 13-73

Trial Division of the High Court

Marshall Islands District

November 16, 1973

Suit involving *alab* and *dri jerbal* rights in Mwijrokej *wato*, Rairok Island, "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court,

D. Kelly Turner, Associate Justice, held that the evidence showed plaintiff had *dri jerbal* interest at the most.

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

   Where the only evidence on issue of plaintiff's claimed *alab* and *dri jerbal* interests in land was a government record of a land title officer's determination that someone else was *alab* and plaintiff was *dri jerbal*, the most plaintiff could successfully claim was a *dri jerbal* interest.

2. **Actions—Penalization of Loser by Winner**

   The mere bringing of a suit to determine interests in land is not sufficient justification for termination of whatever rights plaintiff may have in the land.

Assessor: MORRIS JALLY, *Associate Judge, District Court*
Interpreter: OKTAN DAMON
Counsel for Plaintiff: ELLEN JORKAN
Counsel for Defendant: JOHN HEINE

TURNER, *Associate Justice*

This controversy involved *alab* and *dri jerbal* interests for Mwijrokej *Wato*, (also spelled Mwiroke) Rairok Island, Majuro Atoll. Reab Amon is the *leroij erik*. The land is on "Jebrik's side" and the *droulul*, twenty-twenty or the government holds the *iroij lablab* rights.

It is a suit that should not have been brought by plaintiff in that he could have avoided going to court by adhering to custom by presenting his problem to the *leroij erik* and the members of the *bwij* holding interests in the land. Plaintiff is not a member of the *bwij* but is a member of the *jowie*, or clan, of which the *bwij* is a part. When plaintiff came here in 1945 from his home island, with his wife whose home was Laura, Majuro Atoll, he agreed to clear the land in question if Tel, the then *iroij erik*, would give him an interest in the land.

[1] According to plaintiff and his wife, Tel promised both *alab* and *dri jerbal* interests. Whatever the promise

might have been, the evidence is clear that the most the plaintiff is entitled to claim is the *dri jerbal* interest.

The plaintiff relied upon a will by Tel, dated November 9, 1959, and filed with the Land Title Office. The will provides: "That Taimon (also spelled Daimond) and Lajup are the *dri jerbal* and *alab*. Taimon will be the *alab*."

The Land Title Officer in connection with making determinations of Majuro land interest held a "hearing" July 21, 1959, at which plaintiff is quoted as agreeing with the announcement that Tel was both *iroij erik* and *alab*, and that he Lajup, was the *dri jerbal*. Thus, either by government record or by Tel's subsequent will the plaintiff may not successfully claim more than a *dri jerbal* interest. At the time of trial the defendant acknowledged that plaintiff was a *dri jerbal* on the *wato*.

Before disposing of the will, the court reminds the parties that in this instance Tel's will was without validity. In the first place, Tel was not the *iroij* in 1946–1947 when he purportedly promised the interests to plaintiff. Tel did not become *iroij erik* until his predecessor, *Jakco*, died in 1954. Also there is no evidence the *droulul* or the twenty-twenty or the government or the adult members of the *bwij* (other than Tel) approved any transfer of any interest to plaintiff either at the time plaintiff entered upon the land or in 1959 when Tel's will was filed with the Land Office.

This court has held many times a will is without effect without the approval of the *iroij lablab* or those entitled to exercise their powers. The first of these cases, which have consistently been followed since, are *Limine* v. *Lainej*, 1 T.T.R. 231 (1955) and *Lalik v. Elsen*, 1 T.T.R. 134 (1954). In any event, the evidence is clear that the most plaintiff could claim is a *dri jerbal* interest.

As indicated previously where plaintiff erred was in not adhering to custom when he encountered land problems.

Plaintiff, with Jacob Erakdrik and Kaitel Reimers, went to defendant, Jeltan, as the representative of *Leroij Erik* Reab to discuss a lease of the *wato* or part of it, for the purpose of raising pigs. Jeltan admittedly told them the question would be considered at a meeting of members of the *bwij*.

Apparently, the prospective lessees anticipated a favorable decision because they moved fencing and pigs onto the land. Plaintiff claims they (the proposed tenants) told him to take his house off the land. Plaintiff followed their instructions and moved to the home of relatives without checking with either the defendant or the *leroij erik* as to whether or not he was required to leave the land.

Defendant testified no lease had been entered into and that prospective lessees had no authority to move plaintiff from the land. Defendant also asserted that the pigpen should not have been built on the lagoon side (which was the most desirable location) but should have been placed on the oceanside of the *wato* and that plaintiff should not have removed his house to make way for the pigpen. Defendant also testified that any lease, when made, would not include the entire *wato* and that there would be room for defendant or anyone else to live on the land even with a pigpen built on it.

As to the existence of a lease, none was produced by plaintiff. He did offer an instrument filed with the Land Office, which might be construed as a lease by an untrained layman, though it was not a binding instrument. It was this document which did not bear his name as either *alab* or *dri jerbal* which caused the plaintiff such concern. He filed suit to establish his rights without making inquiry about the matter with the *leroij erik*.

The defendant testified that although plaintiff was recognized as one of the *dri jerbal* on the land, the land interest holders now wanted him removed and his interest

terminated because he had disregarded his obligations under the custom to the *leroij erik*. A *dri jerbal's* failure to cooperate or meet his obligations under the custom is an adequate ground for his removal. However, that is a decision that should not be made by the court, but by the land interest holders and the *bwij*. If the decision is made in accordance with custom and one side or the other refuses to observe it, then this court will assist in enforcing the decision.

[2] The court also is of the opinion that the mere bringing of a suit to determine interests in land is not alone sufficient justification for termination of whatever rights in land a plaintiff may have. We agree with the decision in this respect with *Lobwera v. Labiliet*, 2 T.T.R. 559.

Ordered, adjudged and decreed:—

1. That until his rights may be terminated in accordance with the custom, the plaintiff Lajup and all those claiming under him holds *dri jerbal* interests on Mwijrokej *Wato*, Rairok Island, and is entitled to live thereon.
2. That if defendant's rights are to be cut off, it shall be done by the *leroij erik* with the approval of the *bwij* in accordance with Marshallese custom.
3. No costs are allowed.

CLAUDE NELSON, Plaintiff

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant

Civil Case No. 570

Trial Division of the High Court

Palau District

November 19, 1973

Action for overtime pay. The Trial Division of the High Court, Brown, Associate Justice, held that where employment contract set annual salary, did not set hours of work per week and did not provide for overtime pay,