ELISA, Plaintiff
v.
KEJERAK, Defendant

Civil Action No. 24
Trial Division of the High Court
Marshall Islands District
June 7, 1954

Action brought by acting *alab* to determine rights to land on Matollen Island, Arno Atoll, upon which defendant worked at least since 1932 under claim of right and with knowledge of *alab*. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where situation was tolerated by plaintiff without apparent protest from at least 1932 until about 1949, and no effort was made to have Japanese Administration correct situation, Court will not attempt to upset it, particularly where plaintiff fails to show anything wrong with rights which defendant previously was allowed to exercise.

1. Equity—Laches
Where party seeks aid of courts of present administration to upset situation which continued for many years under Japanese Administration, and made no effort to have this corrected by Japanese Administration, inference is strong that there was nothing she could legally do about it at that time.

2. Former Administrations—Recognition of Established Rights
It is not proper for court to upset situation which continued for many years under Japanese Administration, particularly where party seeking to do so fails to show anything clearly wrong with rights which adverse party was permitted to exercise during that administration.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The defendant Kejerak has been working the land in question at least since 1932 under claim of right with the knowledge of the plaintiff and in frankly and clearly

stated opposition to her claims as *alab*, or acting *alab* for her mother Neibwij. She made no effort to have this corrected by the Japanese administration.

2. From before 1932, defendant Kejerak consistently refused to pay the *alab's* share to anyone during all the rest of the Japanese administration.

3. The division of Jemen *wato* into a northern part controlled by the plaintiff Elisa, and a southern part controlled by the defendant Kejerak, was specifically agreed to by the *dri jerbal* the plaintiff or her predecessors had attempted to put on the *wato*, and was tolerated by her or her predecessors in interest without apparent protest from at least 1932 until about 1949 as a practical compromise of a situation resulting from a determination by Leroij *Lablab* Liwaito which was very unsatisfactory to the plaintiff and her mother.

CONCLUSIONS OF LAW

[1, 2] 1. This is another case in which the plaintiff seeks the aid of the courts of the present administration to upset a situation which had continued for many years under the Japanese administration. She made no effort to have this corrected by the Japanese administration, and the inference is strong that there was nothing she could legally do about it at that time. For the reasons stated in the conclusions of law by this court in the cases of *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14, and *Orijon and Julet v. Etjon and others*, 1 T.T.R. 101, the court considers that it is not proper for it to attempt to upset the situation—particularly since plaintiff has failed to show anything clearly wrong with the rights which the defendant was permitted to exercise during the Japanese administration.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the plaintiff Elisa has no *alab* or other rights of ownership in the southern part of Jemen *wato* on Matollen Island, Arno Atoll, comprising about one-half of the *wato* and all of that part which the defendant Kejerak has been working.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against either party.