

LOJOB (sometimes spelled LEJOB), and Others, Appellants

v.

ALBERT and Others, Appellees

Civil Action No. 134

Trial Division of the High Court

Marshall Islands District

November 16, 1962

Action to determine *alab* rights on certain *wato* on "Jebrik's side" of Majuro Atoll. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that neither claimant for the position of *alab* had necessary approval of those having *iroij lablab* powers, and that attempted approval of one claimant by some members of *droulul* was insufficient when those giving such approval did not properly represent all members of Jebrik's *droulul*.

Modified and affirmed.

1. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

In exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, *droulul* attempting to delegate these powers must make this delegation definite, at a meeting of which whole *droulul* has adequate notice and in which all members have reasonable opportunity to participate.

2. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

For purpose of exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, there must be a meeting of whole *droulul*, and not merely meeting of the *20-20*.

3. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

For purpose of exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, the *20-20* is not considered to be same thing as Jebrik's *droulul*.

4. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

For purpose of exercising *iroij lablab* powers on "Jebrik's side" of Majuro Atoll, Jebrik's *droulul* consists of those holding property rights there, including all those holding *alab* or *dri jermal* rights.

5. Marshalls Custom—"Iroij Lablab"

Those holding land rights cannot throw off entirely all *iroij lablab* controls over their land or pick new *iroij lablab* of their own choosing, since this would be inconsistent with Marshallese custom.

6. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, rights of *alab* and *dri jermal* are subject to power and obligation of *iroij lablab* to make reasonable determinations in doubtful cases and to avoid controversies and secure constructive use of land.

7. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Under Marshallese custom, those having land rights on "Jebrik's side" of Majuro Atoll cannot transfer their lands to individual *iroij lablab* without consent of those holding *iroij lablab* powers on "Jebrik's side" any more than they could if they were under an individual *iroij lablab*.

8. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Landowners of "Jebrik's side" of Majuro Atoll who oppose right of 20-20 to speak for whole of Jebrik's *droulul* in exercise of *iroij lablab* powers have not by their actions gone out of the *droulul*, and should not be denied their rights to notice of meetings and to be heard.

9. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Where one party claiming to be *alab* of certain land on "Jebrik's side" of Majuro Atoll has approval of majority of *iroij erik* on that side, including *iroij erik* whose land is involved, he may temporarily act as *alab*.

10. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Under Marshallese custom, *iroij erik* alone cannot permanently change rights in land on "Jebrik's side" of Majuro Atoll, since they have obligation to consult *droulul* or those properly authorized to represent *droulul*.

11. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Government still has right to come in and supervise exercise of *iroij lablab* rights on "Jebrik's side" of Majuro Atoll if it ever decided to change its position not to do so.

FURBER, *Chief Justice*

OPINION

This appeal from determination of ownership and release by the District Land Title Officer for the Marshall Islands District raises the question considered in the case of *Joab, J., v. Labwoj*, 2 T.T.R. 172, of just how the

iroij lablab powers in land "Jebrik's side" of Majuro Atoll may be exercised at the present time. Those not familiar with this problem are referred to that case and the opinion of the Appellate Division in *Kumtak Jatio v. L. Levi*, 1 T.T.R. 578, for an explanation of the general situation. In this instance the question comes up in connection with approval of alleged wills changing the normal order of inheritance of *alab* rights.

Neither side has satisfied the court that its claimant for the position of *alab* has the necessary approval of those having *iroij lablab* powers, in order to become the true *alab*. The appellee Albert, claiming through an oral will of Litabwinwa, has shown approval to some extent by or on behalf of a majority of the *iroij erik* on "Jebrik's side", including the *iroij erik* of the particular *wato* in question, and by a majority of the male members and two women members of the 20-20 (intended to consist of 20 men and 20 women), and that at least 12 of the women members stated they wished to leave decision to the male members. One of the *iroij erik* on "Jebrik's side" who did not join in this approval, also testified that he believes the matter should be decided by the *iroij erik* of the *wato* involved, and as noted above the latter was one of those who joined in the approval of Albert. It appears clearly from the testimony, however, that this approval was not intended—at least by some of those who signed the statement of approval—to cut off the rights of members of the former *alab's bwij*, but was merely intended to indicate that Albert was the one entitled to act as *alab* unless and until some member of that *bwij* came back to Majuro and showed a willingness to assume the responsibilities of *alab*.

[1] The court recognizes that the appellees and the 20-20 have made some effort to comply with the suggestions made by the court in the opinion in the case of *Joab J., v. Labwoj*, referred to above. They have clarified the

question of who the members of the 20-20 are—except for one apparent vacancy. They have also shown that in Japanese times there was a committee of fourteen members who acted for Jebrik's *droulul* in advising the *iroij erik* and the government on the exercise of *iroij lablab* powers over lands on "Jebrik's side". Clearly the 20-20 considers itself the successor of this committee of fourteen, but just how the committee of fourteen received its powers, and how these powers were passed on to the 20-20 has not been shown to the satisfaction of the court. Neither is the court satisfied that either of the delegations of power which the 20-20 claim were made to it by the whole *droulul* in American time was definite enough, or given by a meeting of which the whole *droulul* had adequate notice and in which all its members had reasonable opportunity to participate.

[2-4] The meeting of August 16 to 17, 1961, was not in any fair sense a meeting of the whole *droulul*, and does not even purport to have been held after the type of notice indicated for a meeting of the whole *droulul* in the court's suggestions in the case of *Joab J., v. Labwoj*. All the *iroij erik* even were not notified. It can, at best, be considered only a meeting of the 20-20. The court entirely repudiates the idea expressed by some of the witnesses that the 20-20 is the same thing as Jebrik's *droulul*. The Appellate Division opinion in *Kumtak Jatios v. L. Levi, et al.*, mentioned above, in discussing the arrangements made by the Japanese administration for the exercise of *iroij lablab* powers on "Jebrik's side" of Majuro Atoll refers to this *droulul* as "consisting of those holding property rights there". The court is firmly of the opinion that this includes all those holding *alab* or *dri jermal* rights there, although it is recognized that minors under 18 years of age would not be expected to act for themselves, and it may well be that under Marshallese custom any

voting should be done only by the *alab* of lands on that side and the senior *dri jermal* of those *wato* on which the senior *dri jermal* is neither a member nor *ajri* (issue of a male member) of the *alab's bwij*. The appellees' argument seems to be that those who do not accept the decisions of the 20-20, or want to work with it, have "gone out of Jebrik's side", or *droulul*, and therefore need not be considered or notified, but that decisions of the 20-20, or at least of Jebrik's *droulul*, should still be binding upon the lands of those who have thus "gone out".

[5-8] On the other hand, there seems to be a desire by the appellants, or some of their supporters, to be permitted to throw off entirely all *iroij lablab* controls over their land or pick a new *iroij lablab* of their own choosing for their lands. The court considers that such "going out" of Jebrik's side and carrying their land rights with them would be clearly contrary to Marshallese customary law and inconsistent with the entire system of Marshallese land ownership. In discussing the Marshallese system of land ownership, this court stated in paragraph number 5 of its Conclusions of Law in *Lalik v. Elsen*, 1 T.T.R. 134.

"The rights of *alab* and *dri jermal* are subject to the power, and in fact the obligation, of the *iroij lablab* to make reasonable determinations in doubtful cases, with a view to avoiding controversies and securing a constructive use of the land."

The court believes that this principle applies on "Jebrik's side" just as much as on lands under an individual *iroij lablab* and that unless and until the system is changed either by general legislation or special legislation as to "Jebrik's side", those having land rights there cannot transfer their lands to any individual *iroij lablab* without the consent of those holding the *iroij lablab* powers on "Jebrik's side", any more than they could if they were under an individual *iroij lablab*. On the other hand, the court is equally clear that merely questioning or denying the

right of the 20-20 to speak for the whole of "Jebrik's side" or *droulul*, does not constitute, under all the uncertainties of the present situation, "going out of Jebrik's side", or *droulul*, in a way that should deny those doing so the right to notice of meetings or the right to be heard.

Unless the 20-20 can produce much more definite evidence than was introduced in this action as to its right to act for the *droulul*, it is strongly urged that an effort be made to hold a fair and representative meeting of the whole *droulul*, after notice in accordance with the previous suggestions of the court, and let that meeting decide on a practical method of expressing the will of the *droulul* and letting the *iroij erik* consul with some workable group authorized to represent the *droulul* in the exercise of *iroij lablab* powers as to individual lands on "Jebrik's side".

[9, 10] Neither claimant having established the right to be the true *alab*, the court is of the opinion that Albert has been shown to have the better right to be acting *alab*. The court is strongly influenced in this by the fact that Albert has the approval as acting *alab* of a majority of the *iroij erik* on "Jebrik's side", including the *iroij erik* whose land is involved. Until a determination is made by the *droulul* on some more definite way of expressing its will, the court will continue, under present circumstances, to give great weight to determinations made by a clear majority of these *iroij erik*, concurred in by the *iroij erik* of the land involved, as to temporary situations which may be allowed to prevail until some better right is shown, but by so doing the court does not mean to imply in any way that the *iroij erik* alone can permanently change rights in land on "Jebrik's side". To do that the *iroij erik* have an obligation to consult the *droulul* or some one or body properly authorized to represent the *droulul*.

[11] All of the above is subject to the right of the government to come in and supervise the exercise of *iroij lablab* rights on "Jebrik's side" in the same way the Japanese Administration did, if the government decides to change its position from that set forth in the former High Commissioner's dispatch 172540Z of August 1960, set forth in full in the opinion in *Joab J. v. Labwoj*, mentioned above.

JUDGMENT

The District Land Title Officer for the Marshall Islands District's Determination of Ownership and Release No. 59-4, dated August 1, 1959, and filed with the Clerk of Courts for that district on August 3, 1959, concerning Jebeten *Wato* on Enemanet Island, Majuro Atoll, is modified by changing the words "*Alab Albert*" to read, "Acting *Alab Albert*, in the absence from Majuro of all members of Litabwinwa's *bwij* and their failure to take any interest in the management or working of the *wato*." As so modified, said Determination of Ownership and Release is affirmed.