

TOKO KEJU, MONNA, et al., Plaintiffs

v.

de BRUM and CAPELLE, Defendants

Civil Action No. 179

Trial Division of the High Court

Marshall Islands District

October 13, 1970

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SHOECRAFT, *Chief Justice*

OPINION

This matter was heard on April 27, 1970, on Likiep Atoll, by the Honorable Solomon Lenebi, of the Marshall Islands District Court, as Master.

The Master's Report was entered on July 21, 1970, and copies were furnished to counsel for the parties. Neither has requested to be heard, nor has any written exception to the Report been taken. However, a purported reply to the Master's Report was filed by counsel for the defendants after the matter had been submitted to this Court.

This is an action by the plaintiffs, Toko, Monna, and other "workers" on Likiep Atoll, Marshall Islands District, for the benefit of themselves and such other workers as may wish to join them against the defendants as "owners" of Likiep Atoll for a revision of the arrangements for working lands on Likiep, the plaintiffs claiming persistent and wide-spread failure of the "owners" to fulfill their obligations as determined by this Court in Marshall Islands District Civil Action No. 49. (Not reported.)

The Action commenced in 1962, and at that time was concerned only with an alleged failure of the defendants to weigh and pay for copra. It was later expanded through several pre-trial conferences from 1963 to 1965 to include

other alleged failures of the defendants to comply with their agreement with the workers, the latest pre-trial order being entered on February 27, 1968, by the Honorable E. P. Furber. This pre-trial order, with which both counsel concurred, specified that "evidence in this action is to be limited to the following:—

(a) Did any of the failures alleged by the plaintiffs, in addition to those admitted by the defendants, actually occur?

(b) What excuse, if any, existed for any of the defendants' failures?

(c) Have the individual workers involved agreed to any of these failures or waived any objection thereto?

(d) Have the defendants used reasonable care to have on hand enough cash, tools, and materials for repair of copra dryers to meet normal needs for these?"

The trial of this matter at Likiep, according to the transcript, consisted of the plaintiff's presentation of one witness who testified that he examined tools on various lands and found them to be unusable, and that there are no workers on the lands at this time because they have no tools with which to work. This is insufficient to establish that plaintiffs are entitled to judgment in their favor, or, more properly, revision of the agreement between plaintiffs and defendants, and it is the opinion of the Court that plaintiffs have failed to meet the burden of proving the allegations set forth in their complaint as amended in the several pre-trial conferences.

It is ordered, adjudged, and decreed that plaintiffs' complaint be and the same hereby is dismissed.

Time for Appeal is extended to sixty (60) days from the date of entry of this judgment.