LIJOUTA TIKOJ and Others, Plaintiffs
v.
LIWAIKAM and AJEL, Defendants

Civil Action No. 399
Trial Division of the High Court
Marshall Islands District
September 28, 1971

Action to determine right to *alab* and *dri jerbal* interests in Katoj *Wato*, Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that defendants held *alab* and *dri jerbal* rights to the *wato* in question and mere fact that plaintiff's lineage had worked on the *wato* occasionally would not give those persons the titles.

1. **Marshalls Land Law—"Alab"—Obligations**
   Under the custom, a holder of *alab* interests is not obliged to live on nor work the land over which he holds such authority.

2. **Marshalls Land Law—"Dri Jerbal"—Obligations**
   Under the custom *dri jerbal* need not live on the land on which they exercise worker rights, but it is necessary that they "work" the land by clearing, planting and harvesting.

3. **Marshalls Land Law—Generally**
   When a lineage is asked to work land, it does not follow they acquire ownership interest in the land.

4. **Marshalls Land Law—"Iroij Lablab"—Powers**
   It is the rule under the custom that the *iroij lablab* must approve or acquiesce in the termination of vested land interests.

5. **Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro**
   There is no *iroij lablab* on Jebrik's side of Majuro, those rights are exercised by the *droulul* which is composed of the *iroij eriks* and commoners holding land interests on that side.

Assessor:	KABUA KABUA, *Presiding Judge of the District Court*
Interpreter:	JELTAN J. SILK
Reporter:	NANCY K. HATTORI
Counsel for Plaintiffs:	BILIMON AMRAM
Counsel for Defendants:	TONY DE BRUM

TURNER, *Associate Justice*

Although this action was tried on the theory it related to disputed claims to *alab* and *dri jerbal* interests in Katoj (also spelled Katwoj) *Wato*, Rairok Island, Majuro Atoll, the judgment actually determines the distribution of $53,748.75 by the Trust Territory Government to the rightful holders of those interests. The government payment is compensation for the twenty-five-year lease acquisition of the land for inclusion in its airport and water catchment system project for Majuro now under construction.

FINDINGS OF FACT

1. A dispute over *alab* interests in Katoj *Wato* between Jendrik and his lineage and Lajimro and Lejanan, *alabs* of plaintiff's lineage, was settled in German times by *Iroij lablab* Jebrik Kenear, predecessor to *Iroij lablab* Jebrik Lukutwerak (the last *iroij lablab* over many Majuro lands).

2. Jendrik was named *alab* and his opposition was banished. Jendrik also was "*bwirak*", a lesser royalty in the male line, being the son of an *iroij*. His appointment was subsequently affirmed by *Iroij lablab* Jebrik Lukutwerak.

3. Jendrik continued as *alab* until his death when he was succeeded by Lanikin, who authorized plaintiff's lineage, then headed by Lejanan (Lajimro had died in 1923) to work Katoj *wato* after the post-typhoon planting of 1918–1919 came into production because there were no male lineage members available to Lanikin's and Liwaikam's lineage to take charge of the land.

4. Plaintiff's lineage used the land from 1936 until World War II when they went to Nauru and then returned to Majuro, but not to Katoj *Wato*, to live in 1950. No copra was sold from this or any other Majuro land after 1936 because the "seas were closed" by the Japanese administration due to the imminence of the war.

5. In 1947, a "property book" was prepared for Majuro for use in keeping copra sales records. This record, compiled before plaintiff's mother, Neibar, and other members of her group returned from Nauru, listed Jakeo as "*eroij elap*", Luda as *iroij erik*, Lejanan as *alab*, and Neibar as successor *alab* to Lejanan. (Plaintiff's Exhibit 2.)

6. This record was informal and unofficial and erroneous at least to the extent Jakeo was designated *iroij elap*, an authority which had not been continued in any individual after the death of *Iroij lablab* Jebrik. See *Levi v. Kumtak*, 1 T.T.R. 36, and 1 T.T.R. 578.

7. The use of Katoj *Wato* by plaintiff's group plus the copra ownership record book prepared in 1947, resulted in erroneous conclusions by Jakeo that Lejanan was *alab* and subsequently (during the trial) by Reab, the present *iroij erik*, that Neibar was *alab* because she (Reab) "had seen Neibar and her lineage on the land from Japanese times to the present." Neibar and her group did not live on Katoj *Wato* after they returned from Nauru in 1950 although they did use it under a claim of right as a carry-over from the authority given them in pre-war days by Lanikin to work the land.

8. The use by plaintiff's group before and after the war and the conclusions made by persons observing that use was not sufficient proof to sustain plaintiff's claim to both *alab* and *dri jerbal* interests. It does indicate plaintiff and her lineage held *dri jerbal* interests.

9. When Tel became *iroij erik* after the death of Jakeo, he asked Neibar to clear Katoj *Wato* of brush to increase copra production. When they failed to do this Tel appointed Ajel, who lived on an adjacent *wato*. Tel's action cutting off plaintiff's interest and appointing Ajel did not relate to *alab* rights, only to *dri jerbal* interests.

10. Plaintiff's group attempted by force to prevent Ajel from using the land after he cleaned it but they were unsuccessful, although they continued harvesting copra from time to time until the Trust Territory Government took it over as part of the new airstrip.

11. The first formal and official determination of ownership interests in Katoj *Wato* was made as a result of a hearing in early April 1958, when ownership determinations were made for all Majuro Atoll lands, by the Trust Territory District Land Title Officer. He listed, at the request of Tel and without objection from others present at the hearing, Tel as *iroij erik*, Liwaikam as *alab*, and Ajel as *dri jerbal.* (Defendant's Exhibit D.)

12. Plaintiff was notified of the listing and her son, Kolej, filed an objection to it May 27, 1958, in which he listed Neibar, plaintiff's mother, as *alab* and *dri jerbal.* (Defendant's Exhibit A.)

13. A hearing on the objection was held by the Land Title Officer on April 6, 1959. The 1958 determination was affirmed and on August 15, 1959, the land office published its "Ownership of Land, Majuro Atoll" showing defendants as *alab* and *dri jerbal*, respectively, of Katoj *Wato.* (Defendant's Exhibits E and C.)

14. Plaintiff's witnesses at the trial insisted they knew nothing about the land office title determination proceedings and did not attend them but these assertions cannot be accepted as true. In addition to the protest filed by plaintiff's son in 1958, another witness who insisted he was unaware of the land office hearings on ownership determinations, who was chosen to represent other *iroij eriks*, in that capacity signed an agreement with the Trust Territory Government for right-of-way over Katoj *Wato* for the Laura road. This agreement was dated October 24, 1961, and shows that plaintiff's trial witness signed in behalf of Loton, *iroij erik;* Liwaikam, *alab;* and Ajel, *dri*

jerbal, two years after the final determination by the land office. During the trial, this witness asserted Neibar was *alab* and *dri jerbal* and in view of this evidence, this testimony is completely rejected.

15. On May 27, 1965, the land office records were corrected to show that Loton had succeeded Tel, who had died, as *iroij erik*. The notice appears to have been signed by Neibar (spelled Neibol) as well as by Loton and Ajel. Neibar was not called as a witness with the result there was no testimony on the point.

16. When the meeting was called of owners whose land would be taken for the airstrip, both sides appeared and claimed the payment the government offered for Katoj *Wato*. Because of the conflicting claims, the District Finance Office withheld $24,431.25 for the *alab's* share and $29,317.50 as *dri jerbal* share pending determination of this ownership litigation.

OPINION

The determination of this case primarily depends upon facts the court believes to have been established at the trial. There are only minimal questions of Marshallese land tenure law established by custom. Accordingly, the findings of fact have been extensively set forth in narrative form to simplify the conclusions to be drawn in this case.

It is evident defendant Liwaikam's lineage has held *alab* rights for Katoj *Wato* for at least seventy years. It also appears plaintiff's lineage held *dri jerbal* interests from approximately 1936 until those interests were terminated by *Iroij erik* Tel in the early 1950's.

[1] It is clear neither defendant Liwaikam nor her predecessor *alabs* lived on the land in question. Under the custom, a holder of *alab* interests is not obliged to live on nor work the land over which he holds such authority. It

is generally true *alabs* hold interests in more than one parcel but their occupancy and use may be limited to only one of those parcels.

[2] Also under the custom *dri jerbal* need not live on the land on which they exercise worker rights, but it is necessary that they "work" the land by clearing, planting and harvesting. The evidence in this case indicates neither the plaintiff's lineage members nor the defendant *dri jerbal*, Ajel, lived on Katoj *Wato* but that they worked it.

Two questions immediately arise: First, whether the designation by Lanikin of Lejanan and his group carried with it an ownership interest; and secondly, if it did vest *dri jerbal* interests, were those rights legally terminated by Tel when he appointed Ajel?

Upon the death of Jendrik, there was no male member of the lineage available to work the land and Liwaikam, a female, was too young. Because of this situation, Lanikin asked her relatives from the lineage banished by the *iroij lablab*. Lejanan responded for his group, who were living on land holdings in another area of Majuro, by sending Neibar and her children to work the land. This continued, however, only until the war when Neibar and her children went to Nauru. Upon their return from Nauru, they did not go to Katoj but lived in the Laura area. When the land was cleared by Ajel they undertook, under claim of right, to resume their *dri jerbal* authority.

[3] When a lineage is asked to work land, it does not follow they acquire an ownership interest in the land. This arrangement between members of a lineage related to another lineage which holds ownership rights is a somewhat common Marshallese practice. What interests, if any, the working group acquire has been considered by this court in *Anjetob v. Taklob*, 4 T.T.R. 120, 122:—

"There is some evidence that some of Kanaki's descendants (who, the court held had been excluded 'long ago' from succession to *alab* and senior *dri jerbal* rights, which the evidence shows to have occurred with respect to plaintiff's lineage) . . . were permitted to make occasional use of the lands after that, but the court considers this understandable as a matter of common accommodation between relations under Marshallese custom without necessarily showing acknowledgement of any rights in the lands."

The claims of the plaintiff group in the present case to both *alab* and *dri jerbal* rights is based on their use of the land periodically from 1936. There is nothing in the record showing authorization for such use also included ownership interests. On the contrary, plaintiff insists they hold *alab* and *dri jerbal* interests as a matter of inheritance from Lajimro and Lejanan rather than by authority of Lanikin.

As between these conflicting claims, the court accepts the evidence of defendant Liwaikam as being more convincing. As a matter of legal procedure, the obligation was upon the plaintiff to convince the court of her claim. Plaintiff's claim, asserted through her witnesses also rested upon the fact of mere use of the land by her lineage, beginning in Japanese times. It is quite apparent, however, that these witnesses either accepted Neibar's statement as to her claimed rights or because they observed plaintiff's group using the land, without knowing what interest, if any, plaintiff's lineage had in the land. As previously indicated, mere usage of land does not establish ownership interest.

The record of this case shows only one situation in which any formal recognition was given to plaintiff's claim. This instance was the meeting at which Majuro property interests were compiled in 1947 for the purpose of keeping records of copra sales. This 1947 record is completely offset by the district land office proceedings in 1958 and 1959.

[4] Assuming plaintiff did show by past use of the land entitlement to *dri jerbal* rights, the question arises as to whether an *iroij erik* may cut off the *dri jerbal* as Tel attempted to do here. It is the rule under the custom that the *iroij lablab* must approve or acquiesce in the termination of vested land interests.

[5] This land being on "Jebrik's side" of Majuro, there is no *iroij lablab*. The rights are now exercised by the *droulul* which is composed of the *iroij eriks* amd commoners holding land interests on Jebrik's side. *Levi v. Kumtak*, supra. *Mike M. v. Jekron*, 2 T.T.R. 178. *Lojob v. Albert*, 2 T.T.R. 338. *Muller v. Maddison* and *Muller v. Milne*, 5 T.T.R. 471.

There is no evidence the *droulul* approved Tel's action at the time Ajel was appointed to the land. However, the matter was reported and explained to the *droulul* members at the 1958 land office meeting. The necessary acquiescence was given at that time. In any event, we hold that whether or not plaintiff was entitled to *dri jerbal* interests by use of the land prior to the war that interest was terminated by Tel when he appointed Ajel and explained the change at the meeting of *iroij eriks* with the land title officer.

The land office publication of ownership interests separated the recorded listings into two categories. One was designated "Ownership Unofficial from 1958 Meetings" and the other category, which included Katoj *Wato*, was designated "Ownership from Hearing."

The land title officer said in his "Explanatory Notes" regarding the second category:—

> "Source two: This comes from the Land Title Hearings held from time to time by the Land Title officer at the Marshall Islands District Court House. This information is official. The only way these decisions may be changed is by filing an appeal to the High Court of the Trust Territory of the Pacific Islands."

The land title officer might have added that appeals from formal title determinations were required to be filed within one year thereafter. (Office of Land Management Regulation No. 1, Section 14.) No appeal was taken from the 1959 determination.

When the government undertook to obtain use rights for the airport land and proposed to pay substantial sums for twenty-five-year leasehold interests, the plaintiff and those she represents came forward to assert their claim to *alab* and *dri jerbal* interests. As has been indicated, the claim largely rested on the 1947 "copra book" and the use of the land from time to time since 1936. Because of the dispute, the government payment was not made and the plaintiff filed this action May 21, 1970.

To avoid the terminating effect of failure to appeal within one year, or at all, from the land title officer's decision, the plaintiff, through her witnesses sought to show they knew nothing about the land office hearing in 1958. This, of course, is not believable because the plaintiff's son filed a protest to the land officer's finding within a month after the 1958 meetings. Also, plaintiff's witness, Tairik, who claimed to be the *iroij lablab* on "Jebrik's side", but upon questioning agreed he only was an *iroij erik* "elected to represent other *iroij eriks*", declared he was not present at the land office meetings and the 1959 hearing on ownership of Katoj *Wato* and that he knew nothing about it. He also testified at length it was contrary to the custom for Tel, as *iroij erik*, to cut off the *alab* and *dri jerbal* rights of the plaintiff without *droulul* approval.

Despite his opinion that Neibar was *alab* of Katoj and that he and the plaintiff knew nothing about the land office proceedings, he, nevertheless, signed the Laura road right-of-way agreement with the government in 1961 in

which he represented Liwaikam as *alab* and Ajel as *dri jerbal.*

The record is clear, contrary to the extensive testimony from plaintiff's witnesses, that Tel did not "cut off" Neibar's rights as *alab* because she never held those rights. Whatever *dri jerbal* interests Neibar and plaintiff's lineage may have had were lost when they declined to comply with the *iroij erik's* request to clear the land and he thereupon designated Ajel as *dri jerbal.* Tel's naming of interest holders at the 1958 land office meeting merely confirmed an existing state of facts and did not "cut off" any of plaintiff's rights because her lineage held none.

It is ordered, adjudged, and decreed:—

1. The defendant Liwaikam holds the *alab* rights and the defendant Ajel is *dri jerbal* of Takoj *Wato,* Rairok Island, Majuro Atoll.

2. The plaintiff and all who claim through her have no right, title or interest in the land in question.

3. In accordance with this Judgment, the Marshall Islands District Finance Officer is directed to pay the sum of $24,431.25 as *alab's* share to Liwaikam and $29,317.50 as *dri jerbal* share to Ajel in release to the Trust Territory Government of their right to use and occupy Takoj *Wato* during the existing airport lease period.

4. No costs are allowed.