LABILIET, Plaintiff

v.

ZEDEKIAH L., Defendant

Civil Action No. 393

Trial Division of the High Court

Marshall Islands District

June 19, 1972

Action involving claims to *wato* on Ajeltake Island on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, found in favor of plaintiff on the ground that defendant's claim was based on an unsuccessful attempt by an *iroij lablab* to terminate the interest of plaintiff's predecessor.

1. **Judgments—Res Judicata**

   In action involving claims to a *wato,* although rights in an adjoining *wato* were litigated by the same parties and the facts of the two cases were substantially if not decisively similar, res judicata did not apply, because the opinion in the prior case indicated no factual relationship between the two suits.

2. **Marshalls Land Law—"Julobiren ne" Land—Generally**

   Julobiren ne land is land belonging to the chief alone.

3. **Marshalls Land Law—"Mo" Land—Generally**

   Mo land is land belonging to the chief alone.

4. **Marshalls Land Law—"Kotra" Lands—Generally**

   Kotra lands are lands belonging to the chief alone.

5. **Marshalls Land Law—"Morjinkot" Land—Generally**

   Morjinkot land is land given as a gift by an *iroij lablab* to a warrior for bravery in battle.

6. **Marshalls Land Law—"Mare" Land—Generally**

   Mare land is land given in gift by an *iroij lablab* to a warrior for bravery in battle.

7. **Marshalls Land Law—"Morjinkot" Land—Descent**

   After it is given, *morjinkot* land follows the customary line of descent.

8. **Marshalls Land Law—"Iroij Lablab"—Power to Terminate Interest in Land**

   Before *iroij lablab* could terminate interest of successor to *morjinkot* land, it was necessary for successor to consent to the change, in the absence of good cause for termination.

9. Marshalls Land Law—"Kitre"

An *iroij lablab* could not give a gift of land as *kitre* until he terminated the interest of person who succeeded warrior given the land in gift for bravery in battle.

10. Marshalls Land Law—"Iroij Lablab"—Power to Terminate Interest in Land

Where an *iroij lablab* has given *morjinkot* land, a successor *iroij lablab* does not have authority to take the land away from a successor *alab.*

11. Marshalls Land Law—"Iroij Lablab"—Power to Terminate Interest in Land

An *iroij lablab* may not change vested interests in land without good cause.

12. Marshalls Land Law—"Dri Jerbal"—Withdrawal From Land

An *alab* or *iroij erik* may not remove a *dri jerbal* without good cause.

13. Marshalls Land Law—"Dri Jerbal"—Withdrawal From Land

When a *dri jerbal,* in good faith, asserts an *alab* interest in himself and recognizes another as *iroij erik,* and a court determines the assertion and recognition to be erroneous, the *dri jerbal* may not be penalized or required to forfeit his interest until he and those claiming through him have been given a reasonable opportunity to perform their obligations under the custom.

Assessor:	JUDGE KABUA KABUA, *Presiding Judge of the District Court*
Interpreter:	OKTAN DAMON
Reporter:	NANCY K. HATTORI
Counsel for Plaintiff:	JETMAR FELIX
Counsel for Defendant:	ELLAN JORKAN

TURNER, *Associate Justice*

This action involves claims to Monbod *wato* (sometimes spelled Monbor), located on Ajeltake Island, on "Jebrik's side" of Majuro Atoll, Marshall Islands. This case depends upon the applicability of traditional Marshallese land law to the interests claimed.

[1] Rights in the adjoining *wato,* Makije, were litigated by these same parties. The decision is reported at 5 T.T.R. 273. It is now on appeal. The evidence in the present case shows substantial, if not decisive, similarity to the Makije *wato* facts and all the parties are identical; nevertheless,

the court is unable to apply the rule of res judicata as a bar to the present action because the opinion in Makije indicates there is no factual relationship between the two suits. The Makije opinion is a cursory statement of a judgment based upon a Master's report. We note the "trial" in Makije was before the Master even though the land was located on Majuro Atoll and the litigants and their witnesses were available to present their claims in the High Court, as they did in the present case.

FINDINGS OF FACT

1. Monbod *wato*, together with other parcels of land including Makije *wato*, was given to plaintiff's predecessor, Lodrejilo, by *Iroij Lablab* Jebrik Kable as reward for bravery in battle during one of the pre-German administration wars on Majuro Atoll.

2. Lejjon, who died during 1914, was successor *alab* to Lodrejilo and plaintiff is in the proper line of succession to Lejjon.

3. Lejjon lived on Makije *wato* and no one lived on Monbod *wato* up to the present time.

4. While Lejjon lived on Makije, he invited Lininlot, her husband, and her brother, Pero, to live on Makije *wato*. Subsequently, defendant, his sister Likjer and her husband, his sister Julia and her husband, all lived on Makije *wato* and cut copra from the adjoining Monbod.

5. Likjer was appointed *dri jerbal for Monbod and* Makije by plaintiff. He also permitted her to retain the *alab's* share of copra sales but he did not transfer the *alab* interest to her.

6. The use and occupancy of Monbod and Makije by defendant and his people, including Likjer, began prior to World War II when plaintiff was gone from Majuro Atoll due to his employment as a sailor on a German ship.

7. Lininlot became the wife of *Iroij Lablab* Jebrik Lukutwerak. Lininlot left Makije with Jebrik, who died on Ebon in 1919. Defendant and his *kabinkale* (followers onto the land) remained on Makije and cut copra on Monbod.

8. After the death of Jebrik, the committee of *14–14* (predecessors to the modern-day *20–20* on "Jebrik's side" of Majuro) with the help and approval of a representative of the Japanese administration selected *iroij eriks* for the land controlled by Jebrik. Jebrik was not succeeded by an *iroij lablab.*

9. Plaintiff was not present to assert his claim to an interest in either Monbod or Makije and the *14–14* named Jakeo as *iroij erik* for Monbod and Moses, *iroij erik* for Makije. When plaintiff returned to Majuro at the end of World War II, he replaced Jakeo as *iroij erik* for Monbod. The Land Office publication of Majuro land ownerships, August 15, 1959, listed plaintiff as *iroij erik* for Monbod, Likjer as *alab* and defendant as *dri jerbal.*

10. Plaintiff received *iroij erik* shares of copra sales until 1966 or 1967 when payments were stopped on instructions from defendant to the *dri jerbal,* engaged in cutting and selling copra.

11. Defendant is the successor *dri jerbal* to his sister Likjer. He did not inherit *alab* rights from her as Likjer was not granted *alab* interest for Monbod, only the right to retain *alab* share of sales.

[2–4] 12. Defendant did not inherit any interest in Monbod from Lininlot, regardless of what her interest may have been in Makije. Jebrik did not declare Monbod to be *julobiren ne,* or *mo,* or *kotra* (land belonging to the chief alone, see: Land Tenure Patterns, p. 56–59) and did not give it to Lininlot as either *imon aje* or *kitre* (gift of land interest by husband to wife).

OPINION

The defendant's claim to *alab* and *dri jerbal* interests on Monbod is based on a theory of inheritance from Pero, brother of Lininlot, who appointed Pero after Jebrik gave her the land. Jebrik could give Lininlot the land, defendant insists, after he had terminated Lejjon's interest by declaring the land his *julobiren ne*.

All of this may have happened, and we make no determination on the point, as to Makije *wato*. Both evidence and custom refute defendant's claim to Monbod. There are two strong reasons for this denial of defendant's claim.

[5-7] Defendant agrees that Monbod (Makije also, for that matter) was *morjinkot* or *mare* land. The two land titles were used interchangedly during the trial and mean a gift from an *iroij lablab* to a warrior for bravery in battle. *Morjinkot*, when given, thereafter follows the customary line of descent. In the present case, Lodrejilo was the warrior and became *alab* for the *morjinkot lands*, to be succeeded by Lejjon, who, under the custom should have been succeeded by his nephew, the plaintiff.

[8, 9] Before Jebrik could have terminated Lejjon's interest under the custom, it was necessary for Lejjon to consent to the change, in the absence of good cause for termination. Until Jebrik did terminate Lejjon's interest and acquired the land as his own, he could not give it as *kitre* to Lininlot who thereafter became his wife.

There was some attempt by defendant to indicate Lejjon consented to Jebrik's acquisition of Monbod, but the testimony was not convincing. There is nothing in the record to show Jebrik had "good cause" to terminate Lejjon's interest or, after his death, the plaintiff's interest.

[10] Defendant, however, argued that even though the land was *morjinkot*—from the iroij lablab to the commoner who then acquired *alab* interests—a successor *iroij* had au-

thority to take it away from a successor *alab*. The law and the custom is to the contrary. *Wena v. Maddison*, 4 T.T.R. 194.

It is true, as one witness testified, in the days of the "monarchy," meaning when the rule of the *iroij* was absolute before the days of foreign administration, the *iroij* could do pretty much as he pleased. But in modern times, this unlimited authority has been curtailed. As this same witness said, under the present administration the government (through its courts) has the responsibility of settling disputes between *iroij* and commoner. In ancient times, the commoner dared not dispute the *iroij's* will. This concept has been discussed in early decisions by this court.

The Appellate Division of this court said in *Limine v. Lainej*, 1 T.T.R. 595:

> ". . . in the days before foreign supervision the *Iroij Lablab*, as king, exercised much greater control over the lands than he may today. His responsibilities were greater as he was required to wage war, offensively or defensively, for the protection of his lands and the economic well being of the people subject to him. But as foreign supervision and control took effect, war as a means of determining disputes, was prohibited."

[11] One rule of law applied to the *iroij lablab* is that the *iroij* may not change vested interests in land without good cause for doing so. It was expressed in the trial opinion of the foregoing appellate decision at 1 T.T.R. 107 at 111:

> ". . . the *Iroij lablab*, in making determinations as to rights in land under them, must act with an honest regard for the welfare, of their people, and with reasonable consideration for the rights of those having interests in the land under Marshallese custom; there must be a good reason or reasons for their decisions—especially when these would upset rights that had once been clearly established."

There was no evidence in the present case that *Iroij Lablab* Jebrik Lukutwerak had good cause to terminate

Lejjon's or the plaintiff's *alab* rights in *morjinkot land*. His reason for changing the interest, it is clear, was to obtain the land as his own so that he would be free to give it to the woman he subsequently married, assuming, of course, he in fact gave or attempted to give both Monbod and Makije to Lininlot. The evidence is not clear as to a gift of Monbod either in accordance with or contrary to Marshallese custom. What he may have done with respect to Makije is not for determination in the present case. The disparity between the evidence received as to Monbod and the statements in the Makije trial opinion need not be resolved even though the defendant repeatedly insisted the two parcels should be "treated" as the same and agreed both parcels were *morjinkot* and that Lejjon was the *alab* until his interest was terminated by Jebrik.

[12] In addition to his complaint to establish his interests in Monbod *wato*, plaintiff also seeks to remove defendant, and those claiming through him, as *dri jerbal* on the land. Just as an *iroij lablab* may not terminate a land interest without consent of interest holders or for good cause shown, an *alab* or an *iroij erik* may not remove a *dri jerbal* without good cause. *Alek S. v. Lomjeik*, 3 T.T.R. 112; *Jetnil v. Buonmar*, 4 T.T.R. 420.

[13] When a *dri jerbal* asserts in good faith an *alab* interest in land in himself and recognizes, also in good faith, another as *iroij erik*, then when it is determined in court that the *dri jerbal* did not also hold the *alab* interest and that he was wrong in his recognition of the *iroij erik* interest-holder, he may not be penalized or required to forfeit his own interest for his failure in good faith, but erroneously, to recognize and perform his obligations under the custom to the holder of the superior interests. He and those claiming through him must, at the very minimum be given reasonable time in which to begin performance of his obligations under the custom.

The evidence is clear that defendant's workers ceased paying *iroij erik* shares to plaintiff in 1966 or 1967. What is not clear, because the evidence is lacking, is the amount defendant has withheld to the present day which is due plaintiff. Without satisfactory proof, the court is unable to enter a judgment for any amount.

Under the circumstances, it is

Ordered, Adjudged and Decreed:

1. That plaintiff holds *iroij erik* and *alab* rights to Monbod *wato*, Ajeltake Island, Majuro Atoll.

2. That defendant holds *dri jerbal* interest in the land in question.

3. That plaintiff may not terminate defendant's interest in the land without first giving defendant, and those claiming through him, reasonable opportunity to meet their obligations to the *alab* and *iroij erik* in accordance with Marshallese custom.

4. That plaintiff is required under the custom to perform his obligations, including responsibility for their medical bills, toward those who work on the land in which he holds *iroij erik* rights.

5. No costs are assessed.