REAB AMON and JELTAN LANKI, Plaintiffs

v.

TENAR LANGRINE, Defendant

Civil Action No. 459

Trial Division of the High Court

Marshall Islands District

July 22, 1974

Dispute over *iroij erik, alab* and *dri jerbal* interests in Jennebneb wato, Rairok Island, Majuro Atoll. The Trial Division of the High Court, Turner, Associate Justice, held that adopted son could not take interests under adoptive father's will where the will was not approved by the *droulul.*

1. Judgments—Res Judicata

Where neither the land at issue nor all the parties were the same, res judicata did not apply, even though some of the parties were the same and the facts were comparable.

2. Marshalls Land Law—"Iroij Lablab"—Approval of Transfers

Whether by will or oral transfer, approval of the *iroij lablab,* or the *droulul* on "Jebrik's side" of Majuro, is mandatory to effectuate a transfer of a land interest other than by inheritance.

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

Where father's will, upon which adopted son based claim to interests in land, was not approved by the *droulul* and the necessary lineage consents were not given to cut off matrilineal succession in the lineage in favor of the adopted son, his claim must fail and the interests were to pass in the proper succession in the matrilineal line.

Assessor:	KABUA KABUA, *District Court Presiding Judge*
Interpreter:	OKDAN DAMON
Counsel for Plaintiffs:	ANIBAR TIMOTHY
Counsel for Defendant:	JETMAR FELIX and ELLAN JORKAN

TURNER, *Associate Justice*

This is another of the controversies involving rights in land on "Jebrik's side" of Majuro Atoll, Marshall Islands. Plaintiff Reab claims the interests of *iroij erik*, *alab*, and *dri jerbal* for Jennebneb *wato*, Rairok Island, Majuro Atoll. Plaintiff Jeltan is Reab's representative and in line as her successor title and land interest holder.

The defendant, Tenar, was the adopted son of Tel, a former *iroij erik* for the land in question. Tenar claims the same three interests to Jennebneb as do the plaintiffs. His claim is based upon Tel's will giving the interests to Tel's wife, Likena, and upon her death to Tenar. Likena is deceased.

In addition to establishing her own interests, plaintiff Reab also seeks to confirm the interests of her *bwij*, which is the same *bwij* as the predecessor *iroij eriks*, Tel and Loton. Furthermore, plaintiffs seek removal of defendant from Jennebneb *wato* because of his refusal to recognize plaintiff as *iroij erik* and to perform his obligations to her as is required under Marshallese custom.

[1] The facts in the present case are substantially the same as those developed in *Amon v. Makroro*, 5 T.T.R. 436. The present case and the prior one by Reab against Makroro are sufficiently similar so that plaintiffs claim their rights have been settled by the *Makroro* decision. With respect to comparable facts the applicable law is the same. However, it does not follow that the former decision is res judicata. Neither the land nor the parties are the same in the two cases and consequently the former decision is

not conclusive in the present case. As to the principle of law known as res judicata, see *Reab Amon v. Labilliet Lokanwa*, Civil Action No. 15-73, 6 T.T.R. 413.

In the *Makroro* case, the defendant resisted plaintiff Reab's claims by claiming the three interests in Lokalik *wato*, Rairok Island, Majuro Atoll. Makroro was the adopted son of Loton and insisted he obtained the rights through Loton's will.

In the present case, Tenar resists Reab's claims by claiming the three interests in Jennebneb *wato*, Rairok Island, by virtue of Tel's will. Tel and Loton were succeeding *iroij eriks* of the land in question. Tel was the oldest and when he died in 1960, Loton succeeded him. Loton died in 1970.

Both plaintiff and defendant trace the *iroij erik* title back to Jakeo, the predecessor to Tel. Jakeo was *iroij erik* from the time of Jebrik Lukotworok, the last *iroij lablab* for lands now comprising "Jebrik's side" on Majuro.

Reab is the correct person by birth under Marshallese custom to inherit *iroij erik* title and interest. This court said in *Makroro* in finding of fact No. 4:

> "The plaintiff, Reab inherited *iroij erik* interests, upon the death of Loton, as Loton's niece, i.e., the daughter of the older sister of Loton's mother. Such inheritance is in accord with customary succession of Marshallese land interests."

The question, then, as to this interest, did Tel's will cut off this inheritance and vest it in defendant, Tel's adopted son? Defendant's claim pursuant to the will is not convincing as to fact and is contrary to Marshallese land law.

Tel's will (Exhibit A) provided:

> "I, Tel, while I am still of sound mind, do make my will that my wife and our son will inherit and live on them and will not be removed from these two lands and no one shall remove them. The names of these two lands are Jennebneb and Drebeiu, on Woj, Majuro Atoll. The name of my son is Tenar. Likena will be first and if

she dies, Tenar will succeed her and shall be responsible for the lands. Dated, September 25, 1958."

When Tel died, Loton, not Tel's wife, Likena, succeeded as *iroij erik* on Tel's lands. Defendant admitted Tel did not consult his *bwij* to obtain approval of his will. This was not necessary, he argued, because this was *ninnin* and not *bwij* land.

The argument is contrary to both the custom and the decision of this court. The same argument was made in *Makroro* in behalf of the adopted son who claimed land under a will not approved by either the Jebrik *droulul* or the *bwij*. The decision said at 5 T.T.R. 440:

"The argument is true as far as it goes, but the circumstances here that there were no brothers and sisters nor children of either Tel or Loton surviving in the new 'children's lineage' having the *ninnin* interests caused it to expire and the land interests reverted to the lineage of Tel and Loton's fathers—who gave the land to their sons as *ninnin*. It then descended in that lineage to the plaintiff Reab."

The decision also cited *Jatios v. Levi*, 1 T.T.R. 578, 588, as to succession of interests in *ninnin* land. The weakness in Tenar's argument was that he claimed he was entitled to the *ninnin* interest without *bwij* or *iroij lablab* authority or acquiescence because he was the adopted son of Tel. If he had been a true son by blood and not an adopted commoner, he would have inherited as a member of the successor generation and there would have been no necessity for a will. He could not inherit a royal title because he was not eligible by birth or blood. He could only claim under the will but the will was invalid without approval or acquiescence of the *droulul*. This approval is essential whether the land is *ninnin* or belongs to the *bwij*. There have been many decisions on these propositions of law.

The right of succession of an adopted child was discussed in *Makroro*, where this court said at 5 T.T.R. 436:

"In short then, the claim of defendant Tobeke to *iroij erik, alab,* and *dri jerbal* interests cannot be maintained as a right of succession as against the plaintiff (also the plaintiff in the present case), the oldest surviving blood member of the lineage. The defendant's only entitlement necessarily depends upon the will of his adoptive father, Loton, purportedly transferring interests to him."

The law is settled as to what is required for a will to be effective. The rule was first set forth in *Lazarus v. Likjer,* 1 T.T.R. 129 (1954) holding the consent of the *iroij lablab* was essential and on "Jebrik's side" of Majuro Atoll where there has been no *iroij lablab* since 1919 the court said:

"Under the special arrangement mentioned above for the exercise of *iroij lablab* powers over Jebrik Lukotworok's former lands, that consent in the case of those lands would have to be given either by the *droulul* without objection by the administration, or by the administration itself."

[2] Whether by will or oral transfer, approval of the *iroij lablab,* or the *droulul* on "Jebrik's side", is mandatory to effectuate transfer of a land interest, other than by inheritance. *Makroro v. Kokke,* 5 T.T.R. 465; *Tikoj v. Liwaikan,* 5 T.T.R. 483, 490; and in *Edwin v. Thomas,* 5 T.T.R. 326, 329, this court said:

". . . it is true that a will to be valid must be approved by the *iroij lablab.* But such approval to be effective must be based on both careful investigation to ascertain that all necessary lineage consents have been given and that there is adequate justification if the rights of others are cut off."

[3] In the light of this decision, the will the defendant Tenar based his claim upon was not approved by the *droulul* exercising *iroij lablab* power and in any event no "necessary lineage consents" were given to cut off matrilineal succession in the lineage in favor of an adopted son. On both of these grounds defendant's claim must fail.

The most persuasive evidence that there was no lineage consent to Tel's attempted transfer to his adopted son which thereby cut off *bwij* interests is the fact the will was

not given effect on Tel's death because Loton became the successor *iroij erik*. On Loton's death, the plaintiff was the natural successor except for the wrongful intervention of defendant.

The court necessarily declares the plaintiff the holder of the three land interests. Plaintiff asks Tenar's removal for his failure to recognize her title and interest in the land. The Court will not take such action for defendant's prior failure to comply with the custom. However, if Tenar does not promptly recognize Reab's title and conduct himself toward her in accordance with Marshallese custom then he has no claim to remain on the land, particularly in view of the court's holding in *Makroro*, 5 T.T.R. at 438:

> "The third and weakest priority is the adopted child whose interest in land is primarily the right to work on and receive benefits from land belonging to the lineage of the adoptive parents. This right, particularly after the death of the adoptive parents, must be with permission of the lineage of the adoptive parents and of the *alab*."

Reab, as *alab*, may, if she sees fit to do so, enforce this rule by an appropriate proceeding in this court to remove Tenar from the land.

Ordered, adjudged and decreed:—

1. That plaintiff, Reab Amon, holds *iroij erik*, *alab*, and *dri jerbal* interests in Jennebneb *wato*, Rairok Island, Majuro Atoll, and the *wato* is *bwij* land of plaintiff's lineage with succession in the matrilineal line in accordance with Marshallese custom.

2. Plaintiffs are awarded costs upon claiming them in accordance with law.