ABIJAI, Plaintiff

v.

JIWIRAK T., Defendant

Civil Action No. 81

Trial Division of the High Court

Marshall Islands District

March 31, 1958

Action to determine *iroij lablab* rights in certain *wato* on Matollen Island, Arno Atoll. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that under Marshallese custom, recognition of another as *iroij lablab* by *alab* in possession of land is effective to constitute him as such, despite objection of *iroij erik*.

1. **Marshalls Custom—"Iroij Lablab"—Recognition**
   Under Marshallese custom, *alab* has right to recognize another as *iroij lablab* against opposition of *iroij erik*, and to withhold share due *iroij erik* until he recognizes *iroij lablab*.

2. **Judgments—Res Judicata**
   Court will not consider same contentions and evidence offered in previous case, although now offered by other parties, and arrive at opposite conclusion, but will consider new matter involving other parties not privies of those in former case, and pertaining to other property.

3. **Judgments—Res Judicata**
   Where no new matter is offered in opposition to *iroij lablab* rights determined in previous case, such opposition will fail.

4. **Marshalls Custom—"Iroij Lablab"—Recognition**
   Under Marshallese custom, where an *iroij erik* has consistently refused to recognize another as *iroij lablab*, he is not required to recognize him as such nor to perform various personal services implicit in the relationship.

5. **Marshalls Custom—"Iroij Lablab"—Recognition**
   Under Marshallese custom, where *iroij erik* consistently refuses to recognize another as *iroij lablab*, he may, without danger of loss of position, refrain from according to *iroij lablab* those personal indications of esteem required of an *iroij erik* who has participated in promoting and recognizing the *iroij lablab's* accession.

TOOMIN, *Associate Justice*

A. FINDINGS OF FACT

1. Plaintiff Abijai is, and has been since 1941, the *iroij erik* of Korej and Lobol *wato*, located on Matollen Island in Arno Atoll. Up to the time of her death in 1932, the *iroij lablab* rights on said *wato* were being exercised by Liwaito, who was for many years one of the two *iroij lablab* in the Arno Atoll. Lomotlok is the *alab* of both *wato* and has been since before the death of Liwaito. Lomotlok is the father of Jatios, who is working the *wato* Lobol as *dri jerbal* with Jitien, and the uncle of Limaejab, who is working the *wato* Korej as *dri jerbal.* The defendant Jiwirak is within the class of those entitled by relationship to succeed to the position of Liwaito as *iroij lablab* of the said *wato.*

2. Since 1932 no part of the *iroij lablab* share of the production of said *wato* has been paid to anyone. In 1944 and subsequent, the *alab* Lomotlok, both by his own action and through his niece and acting *alab,* Limaejab, recognized Jiwirak as the successor to Liwaito, and attempted to persuade plaintiff Abijai to act in concert with him for this purpose, but Abijai has at all times refused to do so. The *alab* Lomotlok and his niece, Limaejab, have been holding the *iroij lablab* share from said *wato* in their possession, pending the ultimate recognition of an *iroij lablab* for said *wato.*

3. Aside from the attempts by the *alab* and his niece to secure the recognition of Jiwirak as Liwaito's successor and the one entitled to *iroij lablab* rights in the *wato* above described, no action was instituted by anyone, including defendant Jiwirak, to secure the rights of *iroij lablab* until August 1957, when Jiwirak entered on the property to help Limaejab in her harvesting of copra. Jiwirak now makes claim in this proceeding for a declaration that he is the rightful *iroij lablab* over said *wato.*

B. CONCLUSIONS OF LAW

1. This case presents for determination the question as to whether under Marshallese custom the recognition of an *iroij lablab* by the *alab* in possession of land, is effective to constitute him as such, despite the objection of an *iroij erik*. The evidence shows that plaintiff had been *iroij erik* for several years prior to the first attempt made by Jiwirak to obtain recognition as *iroij lablab*. It also shows that no *iroij lablab* share had been paid from the subject *wato* since the death of the prior *Leroij Lablab* Liwaito, because of plaintiff's opposition to, and protest against, recognition of defendant as her successor.

[1] However, the question as to whether, despite such opposition, an *iroij lablab* can be effectively recognized and constituted as such over land in Arno Atoll, has been considered and effectively answered in *Lainlij v. Lojoun*, 1 T.T.R. 113. This court, in its judgment order in that case, paragraph 6, held that the *alab* in that case, who had recognized the defendant Jiwirak as *iroij lablab* over land involved in that case, had the right to do so against the opposition of the *iroij erik*, and even to withhold the share due the *iroij erik* until he had again recognized the *iroij lablab*, where he had once recognized the *iroij lablab* and then "turned his back on him". Such result of withdrawal of recognition is not involved in, nor is it appropriate under, the facts of this case. However, this court is persuaded that the conclusion of the court in *Lainlij v. Lojoun*, supra, is in accordance with Marshallese custom and law, and should be followed in this case.

[2, 3] 2. Plaintiff contends, and asks this court to declare, that defendant Jiwirak is not entitled to *iroij lablab* rights as the successor to Liwaito. The evidence on this point comes within the range of evidence, and the points made under this heading are within those made in and con-

sidered and passed on by this court, in the third conclusion of law in the *Lainlij* judgment order. This court cannot consider these same contentions and the same evidence, when made and offered by other parties than those in *Lainlij*, supra, and arrive at an opposite conclusion. It will, however, consider any new matter which casts doubt on the legitimacy of Jiwirak's succession, when such new matter is presented in a proceeding involving other parties, not privies of those in a former case, and pertaining to other property. Since no new matter has been here presented, the court holds that the evidence offered in opposition to Jiwirak's accession to rights formerly held by *Leroij Lablab* Liwaito is inadequate to merit a finding to that effect.

3. It is within the realm of possibility that the exercise of *iroij lablab* rights by defendant Jiwirak over the subject *wato* may provoke inimical relations between plaintiff the *iroij erik*, and the *iroij lablab*, or between the *iroij erik* and the *alab* and those working on the land. It is also possible that pressure may be exerted upon the *iroij erik* to either change his position with respect to the recognition of the *iroij lablab*, or lose his own rights as *iroij erik*, as a result of failure so to do. This conclusion is implicit under the reasoning of *Lainlij v. Lojoun*, supra.

[4] However, there is a basic distinction between the two situations and the two cases. In *Lainlij* the *iroij erik* had himself recognized Jiwirak as *iroij lablab* and had persuaded others to follow him, after which he recanted and attempted to keep the defendant's *alabs* steadfast to their assumed obligations toward him as *iroij erik*, while refusing to perform those assumed by him to the *iroij lablab*. In the case at bar, the evidence establishes that plaintiff has consistently refused to recognize Jiwirak as *iroij lablab* despite the constant pressure of the *alab*. The court holds that he is not required by virtue of this de-

cision to recognize the *iroij lablab* as such, and perform the various personal services implicit in the relationship, such as bringing food from the *alab* to the *iroij lablab*, or collecting the *iroij lablab's* share of production and delivering it to him, but he must continue to take the traditional steps required of an *iroij erik* in the supervision of planting, harvesting, and marketing with relation to the subject *wato*.

[5] So long as he proceeds in the traditional manner to carry out those duties of the *iroij erik* which pertain to the property in which they have a common interest, he may, without danger of loss of position, refrain from according to the *iroij lablab* those personal indications of esteem required of an *iroij erik* who has participated in promoting and recognizing the *iroij lablab's* accession.

C. JUDGMENT

It is therefore ordered, adjudged, and decreed as follows:—

1. The recognition by the *alab* of Korej and Lobol *wato* on Matollen Island in Arno Atoll, of the defendant Jiwirak's right to act as *iroij lablab* over said *wato* is hereby sanctioned, approved, and confirmed, and said Jiwirak is hereby decreed to have the rights of *iroij lablab* in said *wato*.

2. The motion of plaintiff for a declaratory judgment that the recognition by the *alab* of defendant Jiwirak as *iroij lablab* over said *wato* against the objection of plaintiff thereto is invalid, is hereby overruled.

3. No costs are assessed against either party.