

LAJDRIK WENA, TENAR and LIMIEN, Plaintiffs
v.
MIKE MADDISON, LABBO and Others, Defendants
Civil Action No. 269
Trial Division of the High Court
Marshall Islands District
December 30, 1968

Action to determine rights to certain titles on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, Joseph W. Goss, Temporary Judge, held that persons long established as titleholders could not be upset years later upon facts in existence at the time of establishment of their titles, and that as against others the persons named by the titleholders as successors had the best chance to succeed to such title although permanent succession would require approval of certain other persons and the Trust Territory Government.

1. Marshalls Land Law-"Iroij Erik"-Establishment

A person's long-term exercise of *iroij erik* rights to *wato* in question raised a presumption of her ownership, as did the failure of persons to challenge her rights during her lifetime and the presumed acquiescence of the Japanese Government in the arrangements.

2. Marshalls Land Law-"Iroij El'ik"-Establishment

Once an *iroij erik* has been established under the Marshallese system of land tenure, and the establishment has apparently been accepted by those concerned at the time, it cannot be upset years later on the basis of facts which were in existence at the time of the establishment.

3. Marshalls Land Law-"Kitre"

Kitre is the general term for presents of food, clothing and other things of value, given by a man to a woman before and/or after he marries her.

4. Marshalls Land Law-"Kitre"

Even if a will had been made of *iroij erik* rights and the will had been approved by Japanese authorities prior to the gift of *iroij erik* rights by *kitre*, the will could still be changed in accordance with the law of Marshallese custom because of the changed circumstances.

5. Marshalls Land Law-"Iroij Erik"

If an alleged will of *iroij erik* rights was made after the gift of such rights by *kitre*, the donor had no authority to include such rights where he did not reserve such power at the time of the *kitre*.

6. Marshalls Custom-"Kitre"

Under Marshallese custom it is proper for *kitre* land to pass to the *bwij* of the recipient.

7. Marshalls Custom-Succession to Titles-Generally

Under Marshallese custom those designated as successors by the title-holders have the best right to succeed to such titles.

8. Marshalls Land Law-"Iroij Lablab"-Powers

Succession to permanent *iroij erik*, *alab* and *dri jermal* rights must be ordinarily approved by the *iroij lablab* in accordance with the law of Marshallese custom.

9. Marshalls Land Law-"Jebrik's side" of Majuro

Approval for succession to rights in land on "Jebrik's side" of Majuro Atoll must be by the *iroij eriks* and *droulul* or by the Trust Territory Government, and the High Court may accord the approval by the Trust Territory.

10. Civil-Procedure—Damages

Where no proof of the specific amount of damage was presented at trial a plaintiff is entitled to only nominal damages.

GOSS, Temporary Judge

FINDINGS OF FACT

1. Approximately 1925 Lebonju gave his wife Lijamedr the *iroij erik* rights to the *Wato Ejean* on Rairok Island,

Majuro Atoll as *kitre* (gift by a husband to a wife before or after marriage). Lebonju did not reserve the right to appoint Lijamedr's successor.

2. The *kitre* was approved by the *iroij eriks* on "Jebrik's side", Majuro Atoll.

3. Lijamedr was accepted as *iroij erik* under the Marshallese system of land tenure by those concerned. In the approximately 43 years since the meeting of the *iroij eriks*, Lijamedr's right has not been challenged by the Trust Territory Government, the *iroij eriks* or the *Droulul (alabs and dri jerbals* who hold property rights on "Jebrik's side"). Lijamedr's right was not challenged by defendants until after her death.

4. Likena held both *alab* and *dri jermal* rights to the *wato* before her death.

5. Lijamedr acted as *iroij erik* for the remainder of her lifetime and received the *alab's* share from the *Alab Likena*.

6. Lijamedr designated her adopted son Lajdrik Wena to succeed to her *iroij erik* rights over the *wato*.

7. Labbo was not adopted by Eaninial" the *alab* who preceded Likena.

8. Likena designated her sons Tenar and Limien to be *alab* and *dri jermal* respectively.

9. No proof was presented as to the value of the truckload of copra removed from the *wato* in 1965 by Laninbit, who acted under the alleged authority of his mother Labbo.

CONCLUSIONS OF LAW

[1] 1. Lijamedr's long term exercise of the *iroij erik* rights to the *wato* raises a presumption of her ownership, as does the failure of defendants to challenge her rights during her lifetime and the presumed acquiescence of the Japanese Government in the arrangements. For somewhat analogous situations, see: *Orijon v. Etjon*, 1 T.T.R. 101.

[2] 2. Once an *iroij erik* has been established under the Marshallese system of land tenure, and the establishment has apparently been accepted by those concerned at the time, it cannot be upset years later on the basis of facts which were in existence at the time of the establishment. *Jibor v. Tibiej*, 2 T.T.R. 38.

[3,4] 3. Lebonju's desire to make a *kitre* to Lijamedr must be concluded to be a changed circumstance which is deemed consented to by the Japanese authorities in view of that government's long acquiescence. *Kitre* has been described as follows:-

"Anburo (older word: Kitre)

"This is the general term for presents of food, clothing and other things of value, given by a man to a woman before and/or after he marries her.' *Taro* patches are sometimes given as *kitre*. Anburo (literally translated means 'of the heart') and *kitre* means 'out in the open' as opposed to *bonerik* (something one hides to buy the heart of the girl one loves.) *Kōbōjōjōj* is the new slang expression for the latter type of gift. An analogy is drawn by informants: two sailing canoes in a race. The paddling done by the men in one of the canoes which gives the extra advantage and wins the race is like the *kōbōjōjōj* (gift) given by one of two men who are courting the same girl. The word has a slightly ribald connotation." Vol. 1, Land Tenure Patterns, Trust Territory of the Pacific Islands; p. 40 (J. A. Tobin).

Even if Lebonju had made a will of the *iroij erik* rights to Ejean *wato*, and the will had been approved by Japanese authorities prior to the *kitre* to Lijamedr, the will could still be changed in accordance with the law of Marshallese custom because of the changed circumstances. *Lalik v. Elsen*, 1 T.T.R. 134.

[5]4. If the alleged will was made after the *kitre*, Lebonju had no authority to include the *iroij erik* rights to Ejean since he did not reserve any power over Ejean at the time of the *kitre*.

[6] 5. Under Marshallese custom, it is proper for *kitre* land to pass to the *bwij* of the recipient. Vol. 1, Land Tenure Patterns, Trust Territory of the Pacific Islands, p. 67 (J. A. Tobin).

[7] 6. Under Marshallese custom and between the parties the plaintiffs Wena, Tenar and Limien (respectively) have the best rights to succeed to the *iroij erik, alab* and *dri jermal* rights formerly held by Lijamedr and Likena.

[8, 9] 7. Succession to permanent *iroij erik, alab* and *dri jermal* rights must be ordinarily approved by the *iroij lablab*, acting in accordance with the law of Marshallese custom. Approval for succession to rights in land on "Jebrik's side" of Majuro Atoll must be by the *iroij eriks* and *droulul* or by the Trust Territory Government. The High Court may accord the approval by the Trust Territory. *Jatios v. Levi*, 1 T.T.R. 578.

[10] 8. Plaintiffs are entitled to only nominal damages for the removal of the truckload of copra by Laninbit, since no proof of the specific amount of damage was presented at the trial.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. As between the parties and all persons claiming under them, rights in the *Wato* Ejean, Rairok Island, Majuro Atoll are held as follows:-

Iroij erik-Lajdrik Wena

Alab-Tenar

Dri jermal-Limien.

2. This judgment shall not affect any rights-of-way there may be over, upon or under the *wato*.

3. Defendant Labbo shall forthwith pay to plaintiffs \$1.00 for the copra removed in 1965.

4. Time for completion of the survey ordered May 25, 1967, is extended to sixty days following entry of this

judgment. When said survey is completed, upon stipulation of the parties, a Judge of the High Court may order that the survey be incorporated into this judgment as properly depicting the claims of the parties.

5. The Court Clerk will cause this judgment to be docketed and translated. He will forward copies to counsel, to the Headquarters Land Management Officer, and to the District Land Management Officer.

6. No costs are assessed against any party.

7. Time for appeal is extended until forty-five days after entry of judgment.