

JERAMOL EDWIN, Plaintiff

v.

KOTWAJ THOMAS, Defendant

Civil Action No. 413

JABURU, Plaintiff

v.

JERAMOL, Defendant

Civil Action No. 372

Trial Division of the High Court

Marshall Islands District

May 10, 1971

Action to *dri jermal* rights in Melo Wato on Wotje Island, Wotje Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that attempt to cut off *dri jermal* rights was invalid as senior *dri jermal* had no authority without specific *iroij* approval to cut off rights without good reason and none was shown in case.

1. Marshalls Land Law—"Ninnin"

Dri jermal rights given as *ninnin* do not vest solely in the last survivor, rather the descendants of those to whom such rights were given have inheritance rights.

2. Marshalls Land Law—"Ninnin"

When a man gives his children, with all necessary consents, the *alab* rights in land as *ninnin* under Marshallese system of land ownership, the presumption, in the absence of a clear showing to the contrary, is that the gift fails to give any rights to that part of the children's maternal lineage outside of these children and their descendants.

3. Marshalls Land Law—"Iroij Lablab"—Powers

A will transferring *dri jermal* rights 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.

4. Marshalls Land Law—"Dri Jermal"—Establishment

Under Marshallese custom, establishment of *dri jermal* on a particular piece of land can be stopped by *iroij lablab* of that land and is supposed to have his consent.

5. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese custom, establishment or reestablishment of *dri jermal* may be accomplished by those having lesser rights in land,

EDWIN v. THOMAS

without any affirmative act or express decision by *iroij lablab*, but merely with his acquiescence or implied consent.

6. Marshalls Land Law—"Iroij Lablab"—Obligations

In passing on land matters, *iroij lablab* must act with honest regard for the welfare of his people and with reasonable consideration for rights of all those having interests in the land.

7. Marshalls Land Law—"Iroij Lablab"—Obligations

Iroij lablab, in passing on land matters, must have good reasons for his decisions when these would upset rights that have been clearly established.

8. Marshalls Land Law—"Dri Jerbal"—Suspension of Rights

A senior *dri jermal* has no authority without specific *iroij* approval to cut off another *dri jermal* without good reason.

9. Marshalls Land Law—"Iroij Lablab"—Limitation of Powers

Under Marshallese custom, it is the requirement that the *iroij* must have good reason to cut off vested interests and very much the same result is achieved under the common law of the United States under the doctrine of estoppel.

10. Estoppel—Generally

When a person stands by and does nothing when he knows someone is changing his position because of an assumed right he may not subsequently come forward and object.

11. Estoppel—Generally

To attempt to remove someone who has been allowed to enter upon land and begun to clear it, without objection, after the improvement work has been done and to thereby take advantage of the work is basically unfair and is not permissible under the doctrine of estoppel.

12. Marshalls Land Law—"Alab"—Establishment

Until a successor *alab* is recognized in that office, he is without authority to act.

Assessor: KABUA KABUA, *Presiding Judge,*
District Court
Interpreter: J. JOHNNY SILK
Reporter: NANCY K. HATTORI
Counsel for Jeramol: MONNA BUNITAK
Counsel for Kotwaj and Jaburu: LEVI L.

TURNER, *Associate Justice*

FINDINGS OF FACT

1. Thomas was the father of Ned, grandfather of Jeramol, and father of Kotwaj.

2. Thomas transferred *dri jermal* rights to Melo *Wato*, Wotje Atoll, to his children.

3. Ned instructed his daughter, Lonna; her husband; and her children, Jeramol and family, to develop and live on Melo *Wato* by letter in 1954. After five years of preparation—building a boat and earning money for purchase of tools and supplies—they went to Wotje in 1959 after Ned's death in that year.

4. No question as to their right to occupy Melo *Wato* was raised by anyone, including Kotwaj and Jaburu, until after the *wato* had been cleared and planted, other improvements made, and harvesting of copra had begun.

5. Kotwaj wrote two wills, the first transferred *dri jermal* rights to descendants of Thomas' children except Lonna and Jeramol. This will was replaced by a will two weeks later transferring *dri jermal* rights to his grandson, Esbon, also known as Herkon Kotwaj Thomas.

6. Neither Kotwaj nor Jaburu and their witnesses were able to prove that there was any or sufficient misconduct on Jeramol's part to cut off his *dri jermal* rights. Testimony as to the alleged offenses committed by Jeramol against Kotwaj and Jaburu was without substance, was no more than rumor and gossip, and was insufficient to justify action against Jeramol.

7. Wotje Island, Wotje Atoll was purchased by the Japanese prior to World War II. The price paid for *dri jermal* rights to Melo *Wato* was 5,000 *Yen* which was divided equally between the five children of Thomas.

8. The island vested in the Trust Territory Government after World War II and has not formally been returned to the former owners by the Trust Territory Government.

OPINION

[1, 2] The *dri jermal* rights given as *ninnin* by Thomas to his children, of whom Kotwaj was the last survivor,

did not vest solely in Kotwaj after the death of Ned. The descendants of Ned and his other brothers and sister have inheritance rights under Marshallese custom. This Court held in a comparable situation relating to *alab* rights in *Limine v. Lainej*, 1 T.T.R. 231, 234:—

“This Court holds that when a man gives his children, with all necessary consents, the *alab* rights in land as *ninnin* under the Marshallese system of land ownership, the presumption, in the absence of a clear showing to the contrary, is that the rights given are *limited to his children and their descendants*, and that the gift fails to give any rights to that part of the children’s maternal lineage outside of *these children and their descendants*.” (Emphasis supplied.)

Clearly, Kotwaj held *dri jermal* rights as *ninnin* from his father in Melo *Wato*. So also did the descendants of his older brother Ned, whose grandson was Jeramol.

Kotwaj attempted to justify cutting off the descendants of his brothers and sisters, including Jeramol, on two grounds. The first was that his will transferring *dri jermal* rights to his grandson, to the exclusion of all others, was valid and therefore effective because it had been approved by *Leroij lablab* Limojwa and for the alternative reason that Jeramol had offended him and other members of the lineage.

[3] As to the first of these grounds, 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.

[4, 5] As to the general rule, this Court said in *Alek v. Lomjeik*, 3 T.T.R. 112, 117:—

“Clearly, the establishment or reestablishment of *dri jermal* on a particular piece of land can be stopped by the *iroij lablab* of that land and is supposed to have his consent. The court takes notice,

however, that such establishment or reestablishment of *dri jermal* is often done by those having lesser rights in the land without any affirmative act or express decision by the *iroij lablab*, but merely with his acquiescence or implied consent."

The approval of Kotwaj's will was ill-considered by *Leroij lablab* Limojwa and was without investigation on her part or by *Iroij erik* Namu to whom she had given authority to act in her behalf.

[6, 7] It is clear *Leroij lablab* Limojwa did not realize Kotwaj's second will cut off all descendants of Thomas' children who were entitled to *dri jermal* rights in Melo Wato as *ninnin*. This, she would not have done without good reason and from the testimony of *Iroij erik* Namu, neither he nor she had good reason to cut off Jeramol from the land. This Court has pointed out in *Abija v. Larbit*, 1 T.T.R. 382, 385, that an *iroij lablab* "in passing on land matters, . . . must act with an honest regard for the welfare of his people and with reasonable consideration for the rights of all those having interests in the land; that there must be a good reason or reasons for his decisions, especially when these would upset rights that have been clearly established"

[8, 9] As has already been pointed out Kotwaj, even though he is senior *dri jermal*, had no authority without specific *iroij* approval to cut off Jeramol without good reason and none was shown in this case. However, there is yet another reason present which as a matter of substantial justice shows why Jeramol should not be removed from the land. Under Marshallese custom, it is the requirement that the *iroij* must have good reason to cut off vested interests but very much the same result is achieved under the common law of the United States under the doctrine of estoppel. 28 Am. Jur. 2d, Estoppel.

[10, 11] When a person stands by and does nothing when he knows someone is changing his position because

of an assumed right, he may not subsequently come forward and object. Here Kotwaj, knowing of the five years of preparation by Jeramol and his family, made no objection when Jeramol entered the land and began clearing it. To attempt to remove Jeramol after the improvement work had been done and to thereby take advantage of the work is basically unfair and is not permissible under the doctrine of estoppel. Also see: *Jibor v. Tibiej*, 2 T.T.R. 38. *Taina v. Namo*, 2 T.T.R. 41.

Even though we have held Kotwaj and Jaburu did not have, or at least did not show any justification for attempting to cut off Jeramol's rights, it also must be emphasized that all parties are obligated to get along peacefully with each other. This obligation of peaceful cooperation between persons having interests in lands was emphasized in *Jatios v. L. Levi*, 1 T.T.R. 578, 587.

[12] As far as Jaburu is concerned, she has no authority to terminate Jeramol's interest as she sought to do in her complaint. Jaburu is the successor *alab* and until she is recognized in that office, she is without authority to act. Even when she becomes *alab*, she must show good cause for the removal, which she did not do, and obtain the consent of the *iroij*.

Finally, all that has been said as to interests in Melo *Wato* on Wotje Island, Wotje Atoll, and the control of the land by the interests of *iroij lablab*, *iroij erik*, *alab* and *dri jermal* is subject to Trust Territory Government determination. Wotje Island vested, because of the Japanese Government purchase, in the Alien Property Custodian in accordance with 27 T.T.C., Section 2. The government's authority under the statute is to "hold, use, administer, liquidate, sell or otherwise deal with alien property in the interest and for the benefit of the indigenous inhabitants of the Trust Territory" Jeramol, Kotwaj and the others claiming interests in Melo *Wato* are claim-

ants, occupants and users by sufferance. Until the Trust Territory Government sees fit to make a determination regarding Wotje Island, the rights held by sufferance shall remain in effect and will be recognized and enforced in this Court until the status of the land is changed.

Ordered, adjudged, and decreed:—

1. That Jeramol holds *dri jermal* rights on Melo *Wato*, Wotje Island, Wotje Atoll.
2. That the descendants of Thomas' children also hold *dri jermal* rights in the *wato*.
3. That a *dri jermal* is not entitled to share in another's labor but is entitled only to the share obtained from his own efforts.
4. All parties are obliged under Marshallese custom to cooperate and work peacefully together.