JABWE, Successor to KAIKO, Plaintiff

v.

HENOS, Defendant

Civil Action No. 345

Trial Division of the High Court

Marshall Islands District

September 3, 1971

Retrial on remand from appellate division in action concerning right to succession under will. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the validity of a will depended solely on its approval by the *iroij lablab* and such was sufficient to give it legal validity even if the *alab* did not consent to it.

1. Marshalls Land Law—"Alab"—Limitation of Powers

An *alab* does not have authority to cut off interests in land by himself.

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

The consent of the *iroij lablab* to an *alab's* action removing *dri jerbal* from land must be given only after thorough investigation and upon a finding that good cause exists for cutting off land interests in accordance with the law and the custom.

3. Marshalls Custom—"Iroij Lablab"—Approval of Wills

Validity of a will depends solely upon its approval by the *iroij lablab.*

4. Marshalls Custom—"Alab"—Approval of Wills

Specific approval of a will by an *alab* is not necessary.

5. Marshalls Custom—"Iroij Lablab"—Approval of Wills

It is assumed, unless there is a convincing showing to the contrary, that when the *iroij lablab* approves a will, there is good reason for the disposition desired.

6. Marshalls Land Law—"Imon Aje"—Generally

Land given by the *iroij* to another for services performed in his declining years is known as *imon aje.*

7. Marshalls Land Law—"Imon Aje"—Inheritance

Land interests given as *imon aje* are subject to inheritance by the children of the recipient of the gift and in that respect *imon aje* is like *ninnin* land.

8. Marshalls Land Law—"Imon Aje"—Generally

The difference between *imon aje* and *ninnin* lands is that *ninnin* is a gift of land from a father to his children while *imon aje* is a gift to anyone who has performed services for the giver.

9. Marshalls Land Law—"Imon Aje"—Inheritance

The descent of *imon aje* is altogether different from *kabijukinen* which is lineage land and descends from older to younger within the *bwij*, normally a matrilineal descent.

Assessor:	SOLOMON L., *Associate Judge of the District Court*
Interpreter:	J. JOHNNY SILK
Reporter:	NANCY K. HATTORI
Counsel for Plaintiff:	MONNA B.
Counsel for Defendant:	KONAME YAMAMURA

TURNER, *Associate Justice*

This was a retrial after the Appellate Division remanded the former trial judgment with instructions. The appellate decision is reported as *Henos v. Kaiko*, 5 T.T.R. 352. The former decision in the trial court, from which the successful appeal was taken, was not reported. It was a judgment without trial on a Master's report in which no conclusions were made.

FINDINGS OF FACT

1. Lantab, the *alab* in German times, gave *dri jerbal* interests in Tojlok *Wato*, Utrik Atoll, to Kaiko, predecessor plaintiff and father of plaintiff Jabwe. The land gift was "*imon aje*", that is, for services performed.

2. *Alab* interests in the *wato* descended from Lantab to Lokbok to Tarkoj to Aiben to Henos, the defendant and present *alab*. The *leroij lablab* determined Aiben was the *alab*. The defendant Henos is successor *alab* to Aiben.

3. Kaiko passed on his *dri jerbal* interests by will in 1947 to his natural children and to the children of his older brother, Lomenwa. The will was valid because it was approved by *Leroij lablab* Limojwa and *Iroij erik* Aen. It was not signed by the *alab*. Even if the *alab* did not approve the will, and the proof does not establish

that Tarkoj, the then *alab*, did not approve the will, failure of the *alab* to approve a will does not make it invalid under traditional Marshallese land tenure law.

4. The present *leroij lablab* and the *iroij erik* both approve the will as of the present time and have determined that the children of Kaiko are the rightful *dri jerbal.*

5. After the execution of the will in 1947 which included as *dri jerbal* the children of Lomenwa, the will has been modified by Kaiko by his refusal to recognize the Lomenwa children as *dri jerbal.* The refusal, based upon good cause, is acquiesced in by the *leroij lablab* and *iroij erik.*

6. Henos, the defendant and present *alab*, attempted to remove the Kaiko children from the land and to authorize his nephews and the children of Zebety as *dri jerbal.* This action, taken without the approval or acquiescence of *Leroij lablab* Limojwa and *Iroij erik* Lanadra was beyond the *alab's* power and authority.

7. Zebety, given a use-right by the *alab*, Lokbok, while he taught school on Utrik Atoll, held no permanent interest in the land and when Zebety left for Wotje, his interest in Tojlok *Wato* ended. His children have no *dri jerbal* rights to the land.

OPINION

Although there was a great deal of testimony relating to use of the land in question from German times to the present and upon the further question whether the will of Kaiko passing on his *dri jerbal* interests to his children was or was not valid without the *alab's* signature signifying approval, the controversy can be settled as a matter of law upon facts not in substantial dispute.

Kaiko and his children have worked the land from German times except for a period when they were absent from Utrik while the children were attending the Japanese school on Wotje, until 1968 when the defendant Henos

attempted to cut off their rights and remove them from the land. There was conflicting testimony as to why he attempted to do this, but whatever the reason, he did not consult with nor obtain the approval of the *leroij lablab* and the *iroij erik*.

[1] The law is well settled both by traditional land custom and by decisions of this court determining questions of Marshallese land tenure that an *alab* does not have authority to cut off interests in land by himself. Many cases hold neither the *alab*, nor the *iroij erik* for that matter, have the right to cut off *dri jerbal* interests in land without the consent or acquiescence of the *iroij lablab*.

This court said in *James R. v. Albert Z.*, 2 T.T.R. 135, 137:—

"As previously held by both this court and the Appellate Division of the High Court, an *alab* under Marshallese system of land ownership cannot cut off *dri jerbal* rights or give away *alab* rights all by himself. These are matters which should be taken up with the *iroij elap*, whose decision on the matter will control within wide limits." *Lazarus v. Likjer*, 1 T.T.R. 129, *Kumtak Jatios v. Levi*, 1 T.T.R. 578, *Lalik v. Elsen*, 1 T.T.R. 134.

To the same effect and relating to the authority of the *iroij erik*, this court said in *Joab J. v. Labwoj*, 2 T.T.R. 172, 174:—

"The court is clear that such cutting off of rights which would otherwise continue indefinitely can be done only by the *iroij lablab* or those having *iroij lablab* rights in the land and that an *iroij erik* alone cannot do so."

Again this court said in *Lobwera v. Labiliet*, 2 T.T.R. 559, 562:—

". . . Labiliet's gifts of the *alab* rights and later the *dri jerbal* rights in this *wato* are believed to be binding between the parties . . . (and Lobwera's) rights cannot be cut off without good cause, and without consent of the person or persons exercising the *iroij lablab* powers over the land."

[2] The consent of the *iroij lablab* to an *alab's* action removing *dri jerbal* from land must be given only after thorough investigation and upon a finding that good cause exists for cutting off land interests in accordance with the law and the custom.

This court said in *Abija v. Larbit*, 1 T.T.R. 382, 385:—

". . . there must be a good reason or reasons for his decisions, especially when these would upset rights that have been clearly established . . . ."

The evidence is clear that both *Leroij lablab* Limojwa and *Iroij erik* Lanadra not only do not consent to Henos' action against Kaiko and his children but to the contrary they have determined that the plaintiff and those he represents are the rightful *dri jerbal*. This is sufficient to decide this case.

The court, however, does take note that the present trial was upon remand from the Appellate Division by a decision which set aside the prior judgment because of serious procedural errors resulting in denial of due process to the defendant-appellant.

One of the questions referred by the Appellate Division was the validity of Kaiko's will naming his children as his successor *dri jerbal*. Defendant largely rested his case claiming *dri jerbal* as well as *alab* interests in himself on the alleged invalidity of the will. Kaiko's will was invalid, defendant said, because the *alab's* signature signifying approval did not appear on the will. The failure of the *alab* to approve the will, defendant concluded, made it invalid.

[3] That argument is not supported by the law or the custom. Validity of a will depends solely upon its approval by the *iroij lablab*. The will now in question was approved by both the *iroij lablab* and the *iroij erik* and that was sufficient to give it legal validity even if we assume de-

fendant's argument is correct that the *alab* did not consent to the will.

This court said in *Limine v. Lainej*, 1 T.T.R. 231, 233:—

"As explained in the conclusions of law by this court in *Lalik v. Elsen*, 1 T.T.R. 134, under Marshallese customary law the approval of the *iroij lablab*, or those entitled to exercise *iroij lablab's* powers, is necessary to make a will of rights in land effective, and is one of the most important things about it." See also conclusions of law by this court in *Lazarus S. v. Likjer*, 1 T.T.R. 129.

[4, 5] Specific approval of a will by an *alab* is not necessary. Only the *iroij lablab's* approval is required and it is assumed, unless there is a convincing showing to the contrary, that when the *iroij lablab* approves a will, "there is a good reason for the disposition desired", as was said in *Lalik v. Elsen*, supra. Also, in the *Lalik* case, the court said that all necessary consents have been given:—

"He (the *iroij lablab*) is the one to decide whether, under all the circumstances, the necessary people have been consulted about a will or have consented to it."

We hold Kaiko's will to be valid without evidence, by signature or otherwise, of the *alab's* approval. The approval of the *iroij lablab* is sufficient.

There is another point relating to Marshallese custom the Appellate Division admonished this court to determine. The issue arose from the appellant's argument the result was contrary to Marshallese custom. On the contrary, we now find and accordingly hold that even without the will, Kaiko's children would be entitled to inherit *dri jerbal* interests from their father because of the special nature of the land.

[6] Tojlok *Wato* was given to Kaiko by the *iroij*, Lantab, for services performed in his declining years. Under Marshallese custom, it is known as "*imon aje*". See J. A. Tobin in "Land Tenure Patterns", page 30.

[7, 8] The land interests given as "*imon aje*" are subject to inheritance by the children of the recipient of the gift. In this respect, "*imon aje*" is like "*ninnin*" land. The difference between the two is that "*ninnin*" is a gift of land from a father to his children while "*imon aje*" is a gift to anyone who has performed services for the giver.

[9] The descent of "*imon aje*" also is altogether different from "*kabijukinen*" which is lineage land and descends from older to younger within the *bwij*, normally a matrilineal descent. See "Land Tenure Patterns", page 26.

We also note that in the Appellate Division decision reversing the prior judgment that the prior determination failed to settle all the issues between the parties, specifically the claim of the defendant Henos that he not only was entitled to *dri jerbal* interests but also to *alab* rights. At the time of the former proceedings in the Trial Division, *Leroij lablab* Limojwa had determined that Aiben was *alab* and that Kaiko was *dri jerbal.*

At the time of the present trial, the plaintiff acknowledged the *leroij's* determination of *alab* interests and specifically agreed that Henos was the successor *alab* to Aiben, deceased. The former judgment adopted the Master's report that Henos was the *alab* and this was in obvious conflict with the determination of the *leroij* that Aiben was the *alab* which the trial court also approved. This apparent conflict is resolved by the finding that Henos is the successor to Aiben.

JUDGMENT

It is ordered, adjudged, and decreed that:—

1. The children of Kaiko, represented by the plaintiff Jabwe are the *dri jerbal* of Tojlok *Wato*, Utrik Atoll.

2. The defendant, Henos, and all those claiming under him do not have *dri jerbal* interests in the *wato.*

3. The defendant, Henos, holds *alab* interests in the *wato*.

4. Plaintiff is awarded such costs as are in conformity with law and allowable upon an itemized sworn statement filed within thirty (30) days from entry of judgment.