BIROK KORABB, Plaintiff

v.

NENE NAKAP and NEIDRELE KEJUBKI, Defendants

Civil Action No. 442

Trial Division of the High Court

Marshall Islands District

April 4, 1973

Action to determine *alab* interests in Woje Island and Mijelto *wato*, Namur Island, Kwajalein Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where land distributed in the 1920's was probably meant to be *ninnin* land, but the extended family had treated it as *kabijuknen* land since 1936, and it had been administered as such with the consent of the family and the *iroij lablab*, court would not, in suit to determine *alab* interests, upset the long continued pattern and would treat the land as *kabijuknen* land.

1. **Marshalls Land Law—"Alab"**

   Under Marshallese custom, there is only one holder of *alab* interests for a particular parcel of land.

2. **Marshalls Land Law—"Alab"—Conflicting Claims**

   The rights of *alab* are subject to the power of the *iroij lablab to* make reasonable determination of conflicting claims to entitlement.

3. **Marshalls Custom—Disputes—Settlement by Courts**

   When an *iroij lablab* is unable to make a determination between conflicting claims which he is empowered to settle under the custom, it becomes the obligation of the court to examine the claims.

4. **Marshalls Land Law—"Ninnin"**

   Ninnin lands are a gift from father to children and other lineages have no entitlement.

5. Marshalls Land Law—"Kabijuknen" Land—"Alab" Rights

Alab rights in *kabijuknen* land are inherited from the oldest to youngest *bwij* through the living, oldest to youngest members of each *bwij;* and when one generation in the matrilineal line has died out, the *alab* interests go to the oldest member of the oldest *bwij* in the next younger generation.

6. Marshalls Land Law—"Alab"—Conflicting Claims

Where land distributed in the 1920's was probably meant to be *ninnin* land, but the extended family had treated it as *kabijuknen* land since 1936, and it had been administered as such with the consent of the family and the *iroij lablab,* court would not, in suit to determine *alab* interests, upset the long continued pattern and would treat the land as *kabijuknen* land.

7. Marshalls Land Law—"Kabijuknen" Land—"Alab" Rights

Extended family may upset pattern of succession to *alab* rights in *kabijuknen* land and substitute a special arrangement, with the approval of the *iroij lablab.*

8. Marshalls Land Law—"Alab"—Conflicting Claims

In action to determine *alab* rights in what was probably meant to be *ninnin* land under distribution made in the 1920's but which had, by consent of the extended family and approval of the *iroij lablab,* been treated as *kabijuknen* land since 1936, and which court would continue to treat as *kabijuknen* land rather than upset the long established pattern, subsistence money and payments in lieu of copra income, paid to the family by the government, which had moved the family elsewhere due to operation of Kwajalein missile range, should be distributed as before, but through defendant, who was successor *alab,* rather than through plaintiff, who had been receiving the payments and was next in line to hold the *alab* rights.

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TURNER, *Associate Justice*

[1] This case involves a conflict between family members as to entitlement to *alab* interests in Woje Island and Mijelto *wato,* Namur Island, Kwajalein Atoll. These are part of the so-called mid-corridor islands from which the

government has removed the people to Ebeye Island because of the operation of the Kwajalein missile range. The government pays the former inhabitants of the mid-corridor islands who now live on Ebeye subsistence money plus funds in lieu of copra income. The payments are made to all former mid-corridor residents through their traditional leaders. The conflict over the lands in question arises because since the death of Kinjar, the last generally recognized *alab*, in 1958, there has not been an *alab* officially designated. There are at present three claimants to *alab* interests for the lands in question. Under Marshallese custom there is only one holder of *alab* interests for a parcel of land.

[2] After the death of Kinjar in 1958, the problem as to her successor did not become acute until the removal of the people to Ebeye and the commencement of payments by the government. The rights of *alab* are subject to the power of the *iroij lablab* to make reasonable determination of conflicting claims to entitlement. *Lalik v. Elsen* 1 T.T.R. 134, 141.

[3] The Court cannot properly say in this case the determination of the dispute should be left to the *iroij lablab* under the custom, because the *iroij*, himself, sent the parties to the Court for a resolution of their difficulties. When the *iroij lablab* is unable to make a determination because of the absence of clear and convincing evidence, it becomes the obligation of the Court to examine the conflicting claims. It was said in *Trust Territory v. Benido and Pilmon Lohn*, 1 T.T.R. 46, and cited with approval in *Ngiraiechol v. Inglai Clan*, 3 T.T.R. 531:

> "When local custom fails to provide an acceptable solution for any given problem involving all residents of a governmental subdivision, it is the right, perhaps even the duty, of one or more of the three branches of the government to advance a solution."

The conflicting claims in this case are clear cut. Either one is readily susceptible of solution in accordance with Marshallese custom once it has been determined which claim is supported by the facts. Unfortunately, the evidence in support of either claim is neither clear nor adequate.

[4] Plaintiff claims he should be recognized as having inherited the *alab* interests because he is in the direct patrilineal line of descent of *Ninnin* lands. Such lands are a gift from father to children. "Land Tenure Patterns," J. A. Tobin, p. 27. *Ninnin* interests belong to the issue alone and other lineages have no entitlement. The defendants represent other *bwij*, or lineages of the same family, and if the land is *Ninnin* they have no proper claim.

[5] The defendants insist the land in question is *kabijuknen*, or family plantation or lineage land. For such land *alab* rights are inherited from the oldest to youngest *bwij* through the living, oldest to youngest members of each *bwij*, and when one generation in the matrilineal line has died out, the *alab* interests then go to the oldest member of the oldest *bwij* in the next younger generation.

The evidence as to whether the land in question is *kabijuknen* or *ninnin* is anything but adequate because during the half century this conflict has been building there has been no clear cut successions of *alab* rights in accordance with the recognized Marshallese custom applicable to either family or *ninnin* lands.

The inadequacy of the evidence, therefore, is not the fault of either side but, rather, because of the confused and conflicting situation which has prevailed for so many years. A review of the provable facts will illustrate the problems each side had in supporting their claims.

The lands in question, together with many other lands in Kwajalein Atoll which belong to the present extended family of the parties, were owned, controlled and assembled

by various means, not now important, by the common ancestor, Lejeje, Plaintiff claims, and there is evidence to support this, that Lejeje instructed Lowane to distribute the land to the control of various members of the extended family. Some of this land distributed by Lowane in 1921 and 1922, in accordance with Lejeje's instructions, were gifts to Lowane's direct descendants, thus making it *ninnin.*

Defendants deny there was a distribution to anyone. However, defendants and their witness, in the next breath after such denial, insist Lowane gave one of the parcels—Mojelar *wato* on Roi Island—to Nakab, his nephew.

Lowane represented his father, Lejeje, in assigning land to family members. He was not an *iroij* but a *bwirak,* a man of lesser royalty than *iroij.* He, in fact, assigned all of Lejeje's land, with assent of Lejeje, to Laelang Kabua as the *iroij lablab.* Laelang was the predecessor to the present *iroij lablab,* Kabua Kabua.

When Lowane died, said to have been during 1936, Nakab, who had been assigned the *alab* interest for Monjelar *wato,* declared himself to be *alab* for all of the Lejeje—Lowane land, including the land in question. The members of the several *bwij* descendants of Lejeje met and agreed to Nakab's assumption of authority and submitted his name to *Iroij Laelang,* who approved it. One of the contributing factors to the present dispute was Nakab's assumption of *alab* authority when he was not entitled to be the *alab* under traditional custom because a member of the older generation, Jeokwe, sister of Lowane, was alive and should have held the *alab* title.

Plaintiff attempted to reconcile this conflict with custom by urging that Nakab was not, in fact, the *alab* but was merely assigned to supervise the land in question by Lowane. Even though Nakab admittedly was not next in line upon Lowane's death, there is little doubt that he was

selected by the Lejeje descendants as the *alab*, and the selection was approved by the *iroij*.

Nakab served as *alab* until his death in 1946. At that time the conflict with custom was compounded when Kinjar, younger sister of Nakab, became *alab*. She was named by the Kwajalein council, rather than the family, and the selection would have been logical under the custom except for the break with tradition arising when her brother became *alab*. It also is clear Jeokwe, who was entitled to the *alab* interest traditionally, also was alive when Kinjar succeeded Nakab.

The principal effect of the break with tradition arising with both Nakab and Kinjar was to demonstrate these lands in question were lineage or *kabijuknen* lands rather than *ninnin* lands, as plaintiff insists they were.

It may have been true that Lowane or Lejeje fully intended that Woje Island and the *wato* on Namur Island should be *ninnin* land. To make this convincingly clear, however, Lowane should have passed the lands on to Korabb, his son, rather than to Birok, the plaintiff and his grandson, and Lela, the daughter of his nephew, Kejibki. He didn't pass the interests on to his son, Korabb, and plaintiff says it was because Korabb was gone from Kwajalein as a sailor or a resident of Jaluit until he returned shortly before his death.

Whatever the reasons, Marshallese custom as to inheritance of *alab* rights for lineage land was not followed, nor was the traditional pattern for inheritance of *alab* rights for *ninnin* land observed. This state of affairs prevailed for more than twenty years from the time Nakab became *alab* on the death of Lowane until the death of Kinjar in 1958. After Kinjar's death there has been no generally recognized *alab*. There have been a number of claimants, and in the present trial three persons, Neidrele and Nene, the defendants, and Birok, the plaintiff, claimed *alab* rights.

The three *alabs* for a parcel of land is completely contrary to the Marshallese custom, hence the necessity for this Court to untangle the claims.

[6] The Court is unwilling to upset the recognized pattern of land supervision which has prevailed since 1936 by declaring at this late date the land to be *ninnin* rather than *kabijuknen.* We must make this conclusion, even though we recognize the probability it was intended at the outset to be *ninnin* but, because it also is clear that the family members themselves have treated the land as *kabijuknen* since 1936, the Court should not upset this long continued pattern.

This Court was confronted with much the same problem as is now before the Court in the early case of *Likinono v. Nako*, 3 T.T.R. 120, which held that even if the predecessors of the parties were mistaken in their decisions as to land rights and that once rights have been established and have been acquiesced in for a long time by the predecessors of those now disputing the rights they should not be upset without a showing of strong cause established by clear and convincing proof. In its decision the Court said at 3 T.T.R. 125:

> ". . . the plaintiffs appear clearly to be trying to upset an arrangement either agreed to or acquiesced in by their predecessors years ago and to be trying now to establish a view that is basically inconsistent with the inferences normally to be drawn from what admittedly happened. . . . It is considered unfair to now upset the rights as then recognized without any showing of fault on the part of those who have been exercising those rights since then."

All of the older generations, including and prior to Nakab, Kinjar and Korabb, have now died, and we must resolve the conflict by applying traditional Marshallese custom as to inheritance of *alab* interests to the generation following Nakab, Kinjar and Korabb.

Neidrele is the last (youngest) member of the oldest *bwij* and should be *alab* at present. Under the custom she should be succeeded by the oldest member of the next younger *bwij*, who is Nene. He, in turn, should be succeeded by the oldest member of the next younger *bwij*, who is Birok, and after him should come the oldest member of the smallest *bwij*, Lino.

[7] This analysis is beyond the necessary scope of the present decision but is offered for future guidance. Actually the family members might upset this pattern anytime they see fit, subject to the approval of the *iroij lablab*. "Special arrangements" outside of the custom were made many years ago in this case and have been made from time to time elsewhere in Micronesia. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619, 627.

All that is needed to be decided in this case is the conflict between plaintiff's and defendants' claims.

[8] It appears the government payments have been made to plaintiff for distribution. Under this decision the distribution should remain unchanged but should be made through Nene as the successor *alab*. If Nene fails to perform his obligations in accordance with Marshallese custom the matter should be brought to this Court either as an independent action or upon a motion for an order in aid of judgment, it is,

Ordered, adjudged and decreed that plaintiff has failed to establish his present entitlement to the title of *alab* for Woje Island and Mijelto *wato* on Namur Island, Kwajalein Atoll, and therefore is denied relief.