

LIMINE, Plaintiff
v.
LAINAJ, LITOWELAN and JINET, Defendants
Civil Action No. 18
Trial Division of the High Court
Marshall Islands District
June 7, 1954
See, also, 1 T.T.R. 231, 595

Action to determine *alab* and *dri jermal* rights in certain *wato* on Jabo Island, Arno Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that power of *iroij lablab* over lands under them is subject to laws of present administration; in order for their decisions to have legal effect, they must act within the limits of the law, as reasonable and responsible officials, and with due regard for those having rights in land under Marshallese custom.

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

Power of an *iroij lablab* to transfer *alab* rights in land under him is more limited than it once was.

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

All indigenous leaders, including *iroij lablab*, are expected to obey laws laid down for them by foreign administration, and to restrict exercise of their powers within limits of those laws.

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

Although rights of those under *iroij lablab* are firmer and clearer than in former times, main outline of Marshallese system of land ownership remains in force, including general power and obligation by *iroij lablab* over lands under him.

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

Iroij lablab, in making determinations as to rights in land under them, must act with honest regard for welfare of their people, and with reasonable consideration for rights of those having interests in land under Marshallese custom.

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

There must be good reason or reasons for decisions of *iroij lablab*, especially when these would upset clearly established rights.

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

In order for their decisions to have legal effect in land matters, *iroij lablab* must act within limits of the law, including Marshallese custom, so far as it has not been changed by higher authority.

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

Where law leaves matters to their judgment, *iroij lablab* must act reasonably as responsible officials and not simply to satisfy personal wishes.

8. Marshalls Land Law—Generally

Marshallese system of land law, including both power and obligation of *iroij lablab* and limitations on it, has been carried over under American Administration, under general principles of international law and Trust Territory law. (T.T.C., Sec. 24)

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

Determinations made by *iroij lablab* with regard to his lands are entitled to great weight, and it is to be supposed they are reasonable unless it is clear they are not.

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

Action of *iroij lablab*, in attempting to establish claimant as *alab*, in complete disregard of rights established and clearly recognized by him years before, is unreasonable, contrary to Marshallese custom, and of no legal effect.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The *alab* (person in immediate charge of a *wato* or piece of land) and *dri jermal* (worker) rights in all of the land in question were held by the children of Lojanin and Neiema as *ninnin* (land given by a father to his child or children). They permitted the land to pass down the female line as property of the *bwij* (that is strictly, the extended matrilineal family), or branch of the *bwij*, consisting of their descendants.

2. The *bwij*, or branch of the *bwij*, consisting of the descendants of the children of Lojanin and Neiema, ran out in the female line with the death of Litakere about 1944.

3. After Litakere's death, *Iroij Lablab* (Paramount Chief) Tobo confirmed the right of the children of the last generation of male members of this *bwij*, or branch of the *bwij*, to inherit by establishing Lainej as *alab*. His action

in doing this was reasonable and proper under Marshallese custom.

4. It is therefore unnecessary, so far as this action is concerned, to decide whether any of the *wato* in question were included in the general arrangement made by Laniema while *alab*, with the approval of the *iroij lablab*, with regard to those lands under him as *alab* which were not worked by him personally or the immediate members of his family. This arrangement was that the senior *dri jermal* on each *wato* of these lands would become the *alab* of that particular *wato* on the death of Litakere. The action of the *iroij lablab* in approving this was also reasonable and proper under Marshallese custom. If this arrangement applied to any of the *wato* in question in this action, one or another of the defendants would be *alab* of each such *wato* on that basis.

5. Several years after establishing Lainej as *alab*, *Iroij Lablab Tobo* changed his mind and announced that he recognized the plaintiff Limine as *alab* of the land in question. There was no good reason for this change. The only reason assigned for it was that at the time he established Lainej, Limine was living with a woman *Iroij Lablab Tobo* did not like and did not come to him, and that she had now left that woman. Lainej had not done anything wrong or failed in his obligations to the *iroij lablab* in any way since the time of his establishment as *alab*, and it is not even alleged that he had.

CONCLUSIONS OF LAW

[1] 1. The basic question of law involved in this action is as to the power of an *iroij lablab* to transfer *alab* rights in land under him. That power has become more limited than it once was.

[2] 2. In the days before control by any foreign administration over the Marshall Islands, the principal limi-

tation on the powers of an *iroij lablab* appears to have been the practical necessity of retaining the loyalty of enough of his subordinates so that they would effectively support him in power by force of arms—particularly in wars. So long as he could maintain control by force or threat of force, his personal decision was final. Even under these conditions certain interests in land and principles as to their inheritance became established by custom, which the *iroij lablab* were expected to consider and generally recognized in practice. The German administration changed the situation drastically by prohibiting war between the Marshallese. The basic traditional restraint on the *iroij lablab* was largely replaced by the obligation to comply with the demands or requirements of the administering authority and the possibility of appealing to that authority in case of serious dispute. From the very nature of administration by a foreign power, all the indigenous leaders, including *iroij lablab*, must be expected to obey the laws laid down for them by the foreign administration and to restrict the exercise of their powers within the limits of those laws. It is recognized that the power of the foreign administration may itself be limited by the terms of the mandate or trusteeship agreement under which it is operating, but no question of such limitation on the administration has been raised in this action.

[3-7] 3. Both the German and Japanese administrations applied their limitations quite largely by specific instructions to the *iroij lablab* or the local atoll governments, or by notice through the atoll governments of particular determinations, rather than by the announcement of general rules. From their various instructions and determinations, however, and the practice under them, certain general principles can be seen. The rights of those under the *iroij lablab* became gradually clearer and firmer, but the main outline of the Marshallese system of land ownership

was left in force, including the general power and obligation of supervision by an *iroij lablab* over the lands under him. Special arrangements were made as to certain lands over which it was determined that there was no individual *iroij lablab*, but those do not affect this action. By 1941 it had become clear that the *iroij lablab*, in making determinations as to rights in land under them, must act with an honest regard for the welfare of their people, and with reasonable consideration for the rights of those having interests in the land under Marshallese custom; there must be a good reason or reasons for their decisions—especially when these would upset rights that had once been clearly established. In other words, in order for their decisions to have legal effect in land matters, the *iroij lablab* must act within the limits of the law, including Marshallese customary law so far as it had not been changed by higher authority, and where the law left matters to their judgment they must act reasonably as responsible officials and not simply to satisfy their own personal wishes.

[8] 4. This system of land law, including both the power and obligation of the *iroij lablab* and the limitations on it, has been carried over under the American administration, first under general principles of international law as explained in the conclusions of law by this court in *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14, and later by a provision in the Interim Regulations which has now been continued by Section 24 of the Trust Territory Code. This section reads as follows:

“Sec. 24. Land Law not affected. The law concerning ownership, use, inheritance, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands.”

[9, 10] 5. Determinations made by an *iroij lablab* with regard to his lands are entitled to great weight, and it is to be supposed that they are reasonable unless it is clear that they are not. In this instance, however, the action of the *iroij lablab* in attempting to establish Limine as *alab* in complete disregard of the rights which had been established and clearly recognized by him years before, is considered both unreasonable and contrary to the Marshallese customary law. The court therefore holds that it is of no legal effect.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the plaintiff Limine and her *bwij* have no *alab* or other rights of ownership in Lajbwe, Mwijinenekan, Babin, Towelan, Merekan and Unintorkan *wato*, all located on Jabo Island, Arno Atoll, except the right to live and keep her house on Lajbwe *wato*, so long as she behaves well, under permission granted her by the defendants.
2. Defendants have sought no determination of rights as between themselves, and none is made in this action.
3. This judgment shall not affect any rights of way there may be over the land in question.
4. No costs are assessed against any party.