

EJKEL, Plaintiff

v.

KON, Defendant

Civil Action No. 53

Trial Division of the High Court

Marshall Islands District

May 11, 1959

Action to determine *alab* rights on Uliga Island, Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that attempted change of *alab* by Municipal (Atoll) Council was of no legal effect when contrary to prevailing local custom.

1. Marshalls Land Law—Municipal Council

Although municipal (atoll) councils of Marshall Islands are often consulted as to various local situations and as to immediate determinations on land matters outside their powers, they may not legally make determination which interferes with controlling local custom.

2. Marshalls Land Law—"Iroij Elap"—Powers

Attempt by Marshall Islands municipal council to establish party as *alab*, contrary to local custom, does not bind or limit *iroij elap* in exercise of his power.

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

Where evidence indicates *iroij elap* in Marshall Islands disapproved of municipal council's action to establish party as *alab*, and council acted contrary to local custom and there was no good reason for change of original *alab*, attempted change is of no legal effect.

FURBER, *Chief Justice*

This matter came on to be heard at the April-May sitting of the Trial Division of the High Court on Uliga Island, Majuro Atoll, Marshall Islands District. Neither party was present or represented at the call of the list on the opening day of the sitting, and neither had advised the Clerk of Courts whether they desired to be heard further. Associate District Court Judge Solomon, who heard the case as master, reports the parties have indicated they leave it to the court as to whether any further hearing is necessary. The master's report is accordingly approved.

SUMMARY OF FACTS

It appears from the master's report, and the report of the evidence taken by him, that the plaintiff Ejkel was duly established as *alab* of the land in question about 931, and exercised his *alab* rights over it from then until July 8, 1948, when the Namorik Municipal Council purported to establish Kon as *alab* in his place without the consent of the *iroij elap*, and without any showing of failure by Ejkel to carry out his obligations as *alab*.

CONCLUSIONS OF LAW

1. This action involves the question of a municipal or atoll council's right, if any, to change the *alab* of a piece of land on Namorik Atoll of the Ralik Chain of the Marshall Islands.

[1, 2] 2. The court takes notice that during the years immediately after the United States took over the admin-

istration of the Marshall Islands, the municipal councils, as they are now called, or atoll councils, as they were often called at that time, were often looked to, particularly by field trip officers, to report the true facts as to various local situations and to make many immediate determinations as to land matters that were outside of their powers, either under custom or any specific grant or authority. While a council's determination, such as that involved in this action, may constitute a partial or temporary justification or excuse for actions taken in reliance upon it, the court holds that the council's attempted establishment of Kon was of no legal effect whatever so far as any transfer of property rights is concerned, and did not bind or limit the *iroij elap* in the exercise of his power in any permanent way.

[3] 3. The defendant Kon claims a certain written document signed by the *iroij elap*, dated April 17, 1952, and filed in this action, shows that he consented to the action of the municipal council establishing Kon as *alab*. While certain statements in this document taken alone show a desire not to argue with the council, the court considers that the document taken as a whole clearly indicates the *iroij's* disapproval of the council's action, and indicates his own opinion that the parties should work together. Furthermore, no good reason for a change of *alab* based on anything that occurred since Ejkel's original establishment has been shown. The case is therefore largely controlled by the principles announced by this court in its conclusions of law in the case of *Jibor v. Tibiej*, 2 T.T.R. 38.

JUDGMENT

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

1. As between the parties and all persons claiming under them:—

(a) The plaintiff Ejkel, who lives on Namorik Island, is the *alab* of Manwotwot *wato* on Namorik Island, Namorik Atoll, Marshall Islands District.

(b) The defendant Kon, who also lives on Namorik Island, has no rights of ownership in this *wato* except as one of the *dri jermal* under Ejkel, and subject to all of Ejkel's reasonable directions as to division of the work among the *dri jermal* in accordance with Marshallese customary law.

(c) The defendant Kon and any claiming under him are accountable to the plaintiff Ejkel for the *alab's* share of copra made from this *wato* and sold by the defendant Kon and any claiming under him since July 8, 1948. The initiative in working out an agreement as to the amount now due, and the payment of it, and for the regular payment of the *alab's* share in any future copra he may be permitted by the plaintiff Ejkel to make and sell from this *wato*. If the parties are not able to agree on these matters within six months from today, any one of them may apply to the court for a further order concerning them.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against either party.

4. The time for appeal from this judgment is extended to and including August 11, 1959.