

LIKINONO and SOLOMON L., Plaintiffs

v.

NAKO and JAMON, Defendants

Civil Action No. 151

Trial Division of the High Court

Marshall Islands District

February 3, 1966

Action to determine *alab* rights in five *wato* on Wotje Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where plaintiffs are attempting to upset arrangement for descent of *alab* rights which was acquiesced in by their predecessors years ago, Court will apply principle inherent in *res judicata*, so that rights once established will not be upset without showing of strong cause.

1. Marshalls Land Law-"Alab"-Succession

Theory of inheritance of *alab* rights which implies series of arrangements out of ordinary course under Marshallese custom, and which negatives normal inferences to be drawn from undisputed facts, should not be given effect without clear proof.

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

Although decisions of *leroj lablab* under Marshallese custom are entitled to great weight, freedom of discretion of *iroij lablab* is more limited than it once was.

3. Marshalls Land Law-"Iroij Lablab"-Obligations

Under Marshallese custom, decisions of *iroij lablab*, to be effective, must be made like those of responsible officials, with due regard for rights already established.

4. Judgments-Res Judicata

Courts are expected to apply doctrine of *res judicata* in refusing to reopen matters once decided by court having jurisdiction over them, except where there is strong showing of gross unfairness, fraud, or subsequent occurrences which make it unjust that decision should stand.

5. Judgments--Res Judicata

Doctrine of *res judicata* inheres in legal systems of all civilized nations as essential to public welfare.

6. Judgments-Res Judicata

Interests of both the public and parties concerned require that there be an end to time when rights clearly established can be properly questioned, so that public and parties might not be endlessly burdened with dispute.

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

Principle of *res judicata* should be applied by *iroij lablab* under Marshallese system of land law in making decisions as to rights in land and pf them.

8. Marshalls Land Law-"Iroij Lablab"-Obligations

Under Marshallese custom, rights once established under *iroij lablab's* predecessors should not be upset without showing of strong cause.

9. Marshalls Land Law-"Alab"-Establishment

Under Marshallese custom, if parties' predecessors were mistaken in method of allowing *alab* rights to pass many years ago, it would be unfair now to upset those rights as then recognized without showing fault on part of those who have been exercising these rights since then.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiffs have failed to sustain the burden of proving that the *alab* rights in any of the lands in question passed or were given to Motlok as *ninnin* (land rights given to the child or children of a male member of a matrilineal lineage).

2. The defendant Nako is in the right relationship by blood to succeed Lobekwor as *alab*.

3. Namu, under general authorization from *Leroij Lablab* (paramount Chieftainess, the female of *iroij lablab* and carrying the same powers) Limojwa to act for her in such matters, recognized Nako as *alab*, but Limojwa herself has not accepted his decision in this particular matter and has recognized Likinono as *alab*.

4. Liuokne gave oral direction (often translated as an oral will) that his children should permit Lauki to succeed to Liuokne's position as *alab* on the death of Liuokne's true brother Lejeka, and on Lejeka's death, all those then immediately concerned permitted Lauki to succeed without any dispute.

5. Lauki and Latlan were successively *alab* of all of the lands in question and Lejeka was *alab* of at least four of the *wato* before Lauki and after Liuokne.

6. Motlok made no effort to exercise or claim *alab* rights in any of the lands in question.

OPINION

This action involves the ownership of only the *alab* rights in five *wato* on Wotje Atoll in the Marshall Islands District.

All of the parties and their predecessors in interest for several generations are descendants of three sisters. The descendants of these three in the female line therefore formed what will be referred to herein as the larger *bwij* (matrilineal lineage) within which there were three smaller *bwij*, each consisting of the descendants in the female line of one of these sisters. The smaller *bwij* descended from the older sister died out in the female line with the death of Liuokne's true brother Lejeka. The plaintiffs are the daughter and grandson of Liuokne and claimed the *alab* rights passed or were given as *ninnin* to the children of Liuokne, of whom Motlok was the oldest. The smaller *bwij* descended from the next younger of the three sisters died out in the female line with the death of Lauki's true brother Latlan. The defendants are members of the smaller *bwij* descended from the youngest of the three sisters, of which *bwij*, Lobekwor, the *alab* for over twenty years before his death in 1957 or 1958, was also a member. They claim the *alab* rights as property originally of the larger *bwij* of which now only the smaller *bwij* descended from the younger sister remains, Nako being its present senior member.

[1] There is no dispute but what Liuokne was *alab* of at least four of the five *wato* in question. The defendants claim that the other one of the five *wato* was never under

an *alab* of the smaller *bwij* descended from the older of the three sisters mentioned above. They say this *wato* came in through the smaller *bwij* descended from the next younger sister. In view of the position taken by the court, however, this question as to the back history of this one *wato* is not important in the decision of this case.

As to the other four *wato* involved, 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. Under their theory of the case, there would have to have been a series of arrangements quite out of the ordinary course under Marshallese custom. The court is firmly of the opinion that such alleged or implied special arrangements intended to negative the normal inferences to be drawn from undisputed facts should not be given effect without clear proof.

The plaintiffs have presented some evidence of such a special arrangement at or about the time of Latlan's death some thirty or more years ago, when it is agreed Lobekwor, who was of the *bwij* descended from the youngest sister, was allowed to succeed as *alab*, although even that evidence is not very convincing. They have presented no substantial evidence as to any such special arrangement limiting the *alab* rights in the hands of Lauki and Latlan at the time the *alab* rights in at least these four *wato* were allowed to pass to Lauki and then to Latlan without any dispute. Lauki and Latlan were members of the smaller *bwij* next junior to the smaller *bwij* of Liuokne and should normally have had nothing to do with any rights which had passed or been given to Liuokne's son Motlok as *ninnin* when the smaller *bwij* descended from the oldest sister died out in the female line. One of the plaintiffs himself testified that he did not know why

Liuokne asked his son Motlok to let Lauki succeed, except that Liuokne had directed or made an oral will that his children should take care of their "grandfathers under the custom", Lauki and Latlan. This same plaintiff testified that Motlok carried out the will of his father and passed the *alab* rights to the younger *bwij*.

As found in the sixth finding of fact, Motlok never exercised or claimed any of the *alab* rights in question although there is no dispute but what he outlived both Lejeka (the last surviving member in the female line of the older of the smaller *bwij*), and Latlan (the last surviving member in the female line of the next younger smaller *bwij*). There is also some evidence that Liuokne directed or recognized that Lobekwor (a member of the youngest of the three smaller *bwij*) was in line to succeed to Liuokne's position as *alab*. The only inference the court can fairly draw from all the evidence is therefore that the plaintiffs' predecessors definitely recognized these *alab* rights as property of the larger *bwij* and allowed them to pass down in the normal order from one smaller *bwij* to the next within that larger *bwij* without any question even, until Latlan was about to die.

[2, 3] The strongest thing in favor of the plaintiffs' claims is that both the *leroi* *erik* and the *leroi* *lablab* of the land have recognized the plaintiff Likinono as *alab*. Neither of these *leroi* testified, however, and whether there was any basis of their determinations beyond what the plaintiffs have shown, has not been indicated. Apparently there was some uncertainty about the matter within the family of the *leroi* *lablab* since it appears her decision was reached only after extended discussion, and was at variance with that of her nephew who had been authorized to act for her in land matters. The court has several times held that the decisions of an *iroij lablab* are entitled to great weight, but it has also held the freedom

of discretion of *iroij lablab* under the Marshallese system is much more limited than it used to be, and that their decisions to be effective must be made like those of a responsible official, with due regard for rights already established. *Limine v. Lainej*; 1 T.T.R. 107. *Abija v. Larbit and Others*, 1 T.T.R. 382.

[4-6] The courts are expected to apply what is known as the doctrine of "res judicata" in refusing to reopen matters which have once been decided by a court having jurisdiction over them except in very special circumstances where there is a strong showing that there has been something grossly unfair or fraudulent about the former decision or something has occurred since to make it unjust that the decision should stand. This doctrine is said to inhere in the legal systems of all civilized nations as essential to the public welfare. The interests of both the public and the parties are considered to require that there finally be an end to the time when rights once clearly established can properly be questioned. Otherwise, parties and the public might be burdened with a dispute endlessly. 30A Am. Jur., Judgments, §§ 324-326.

[7-9] It is believed that this same principle should be applied by *iroij lablab* under the Marshallese system of land law in making decisions as to rights in land under them, and that rights once established under their predecessors should not be upset without a showing of strong cause. Even if Liuokne and those active at the time of Lejeka's death were mistaken in causing or allowing the *alab* rights to pass to the next younger *bwij* many years ago, 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 these rights since then. In this instance, therefore, after giving most respectful consideration to the determination of the *leroj lablab*, the

court feels compelled to hold that her recognition of Likinono as *alab* cannot properly be given legal effect.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the *alab* rights in the following *wato*, located on Wotje Atoll in the Marshall Islands District, are held by the *bwij* of which the defendant Nako, who lives on Wotje Atoll, is the present senior member, the defendant Nako is the *alab*, and neither the plaintiff Likinono, nor the plaintiff Solomon L., nor their *bwij* consisting of the children of Liuokne and their descendants in the female line, has any *alab* rights therein : –

- (1) Monwa)
- (2) Kejmarar)
- (3) New York) on Enibin Island
- (4) Tuaklokan)
- (5) The whole of Eneaur Island, which constitutes a *wato* by itself.

2. No costs are assessed against any party.

3. Time for appeal from this judgment is extended to and including April 4, 1966.