

JIBOR, Plaintiff
v.
TIBIEJ, Defendant
Civil Action No. 50
Trial Division of the High Court
Marshall Islands District
May 7, 1959

Action to determine *alab* rights in certain *wato* on Namorik Island, Namorik Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that establishment of *alab* cannot be upset by those holding subordinate *dri jermal* rights in the land without action of the *iroij elap*.

1. Marshalls Land Law—"Alab"—Establishment

Once *alab* has been definitely established under Marshallese custom, and establishment has been accepted by all those concerned at the time, it cannot be upset years later on basis of facts which were in existence at time of establishment.

2. Marshalls Land Law—"Alab"—Establishment

Under Marshallese custom, establishment of *alab* cannot be later upset on basis of facts which were in existence at time of establishment unless there is clear showing these facts were fraudulently concealed in some manner.

3. Marshalls Land Law—"Alab"—Establishment

Under Marshallese custom, establishment of *alab* cannot be upset by those holding subordinate rights in land without action of the *iroij elap*.

FURBER, *Chief Justice*

This matter came on to be heard at the April–May 1959 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. 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 Jibor was duly established as *alab* about 1935, and exercised his *alab* rights in the land in question without any difficulty until about 1950, when the defendant Tibiej, and those under him, began withholding the *alab's* share from Jibor. In justification of this the defendant advances solely alleged facts which occurred before Jibor was established as *alab*.

CONCLUSIONS OF LAW

1. This action involves the question of a *dri jermal's* right to disregard the long established rights of an *alab* of two pieces of land on Namorik Atoll in the Ralik Chain of the Marshall Islands, without any showing of any cause arising since the establishment of the *alab* or any action by the *iroij elap*.

[1-3] 2. This action is controlled very largely by the conclusions of law by this court in the case of *Taina v. Namo*, 2 T.T.R. 41. Once an *alab* has been definitely established under the Marshallese system of land tenure, and this establishment has been accepted by all those concerned at the time, it is very doubtful whether it can be upset years later on a basis of facts which were in existence at the time of the establishment, unless there is a clear showing that these facts were fraudulently concealed in some manner. The court is clear, however, that such an establishment cannot be upset by those holding subordinate rights in the land without the action of the *iroij elap*.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the plaintiff Jibor, who lives on Namorik Island,

is the *alab* of Lobukwe *wato* and Ronaeo *wato*, both located on Namorik Island, Namorik Atoll, Marshall Islands District.

2. The defendant Tibiej, who also lives on Namorik Island, and those claiming under him, are accountable to the plaintiff Jibor for the *alab's* share of copra made and sold by the defendant Tibiej, and those claiming under him, from these two *wato* since 1950. The defendant Tibiej, as the one in the subordinate position, should take the initiative in working out a practical arrangement for the regular payment of this share in the future and of the amount due. If the parties are not able to agree upon these matters within six months from today, any one of them may apply to the court for a further order concerning them.

3. No costs are assessed against any party.

4. Time for appeal from this judgment is extended to and including August 7, 1959.