

LIWAIKA and TARKAKI, Plaintiffs

v.

BILIMON, Defendant

Civil Action No. 226

Trial Division of the High Court

Marshall Islands District

August 31, 1968

Action to determine *alab* and *dri jermal* rights in a *wato* on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that title passed to senior of the descendants of male members of the *bwij* when *bwij* in question died out in the female line, and also that where party in interest was not present, notified or represented at

hearing held by Land Title Officer, a decision by such officer was not binding upon that person.

1. Marshalls Land Law-"Alab"-Succession

Where there has been a separation of ownership between a *bwij* and a "younger" *bwij* when the *bwij* dies out in the female line its *alab* rights pass to the senior of the descendants of the male members of the *bwij*.

2. Administrative Law-Land Title Determination

Determination of ownership in question would be considered like a judgment quasi in rem.

3. Administrative Law-Land Title Determination-Parties

Where land title determination was rendered without a party in interest participation and without notice to such person or his representative it was not binding upon such person.

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FURBER, *Temporary Judge*

FINDINGS OF FACT

1. The *bwij* descended from Lanwor held its *alab* and *dri jermal* rights in lands on Djarrit Island, including that in question in this action, separate from the *bwij* descended from Melerik, which held such rights in lands on Majuro Island separate from Lanwor's *bwij*, at least from about the middle of Japanese times; this separate ownership was publicly acknowledged and was recognized by all concerned, including the Japanese authorities during the latter half of the Japanese period of administration.

2. The Marshall Islands District Land Title Officer's Determination of Ownership and Release No. 58-1 was made without any actual notice to Liwaika or anyone representing her interest as against that of Bilimon.

3. Lajitok's attempt in recent years to cut off Liwaika's rights in the land in question was not approved by those entitled to exercise the *iroij lablab* powers over the land.

OPINION

This action involves attempted disposition of *alab* and *dri jermal* rights and alleged inheritance of *alab* rights in

a *wato* (piece of land) on "Jebrik's side" of Majuro Atoll in the Marshall Islands District. It raises again the question of the exercise of *iroij lablab* powers over such land, which the court has considered several times before. Those not familiar with the problem will find it discussed in the opinions in *Jatios v. L. Levi*, 1 T.T.R. 578. *Joab J. v. Labwoj*, 2 T.T.R. 172. *Lojob v. Albert*, 2 T.T.R. 338.

So far as the law on this point is concerned, the court has nothing to add to the views expressed in those opinions. Lajitok, during the last years of his life, clearly tried or purported to divide rights in the two *wato* of which he was *alab* on Djarrit Island in such a way that the defendant Bilimon would succeed him as *alab* on that in question in this action and the plaintiff Liwaika's *dri jerbak* rights in it would be cut off, while Liwaika would succeed Lajitok as *alab* of the other *wato*, not involved in this action, and the defendant Bilimon's *dri jerbak* rights would be cut off in that other *wato*. It is also clear that this arrangement was approved by some, but not all, of the *iroij erik* on "Jebrik's side" and by a meeting of at least part of the 20-20 group, over the strong objection of Liwaika. The evidence as to approval by the *iroij erik* of this particular land is confusing. It is apparent from the report of the conference of the parties with him, attached to the pre-trial order, that the present *Iroij Erik* Loton does not recognize or concur in such approval. Regardless of whether his predecessor did or didn't approve or whether Loton did or didn't authorize others to approve in his name, the court considers, as indicated in the third finding of fact, that the approval shown does not meet the requirements, according to the court's previous opinions, for valid exercise of *iroij lablab* power in the special situation existing on "Jebrik's side" of Majuro Atoll. The court rejects as unsupported the plaintiff's claim that Loton is the *iroij lablab* of the land.

The court therefore holds that Lajitok's attempted disposition of the *alab* and *dri jermal* rights in this *wato* was of no legal effect. The question then arises as to how the *alab* rights descended on Lajitok's death.

The *bwij* consisting of the descendants from Lanwor in the female line died out with the death of Lajitok. The plaintiffs' claim that the *wato* in question was owned by a larger *bwij* consisting of the descendants of Lanwor's mother in the female line (and therefore including the descendants of Lanwor's sister Melerik), is disposed of by the first finding of fact. Whatever the situation may have been long ago, it is considered that both plaintiffs are bound by the actions of their predecessors in interest duly recognized by those then in authority.

[1] The plaintiffs, however, have sought to show that even if the *wato* was owned by the *bwij* descended from Lanwor, the younger *bwij* descended from her sister Melerik (of which the plaintiff Tarkaki is a member and claims to be the senior one competent to act) should succeed to the *alab* rights when the *bwij* descended from Lanwor died out. A somewhat similar situation was considered by the court in its Memorandum of Decision in *Limine v. Lainej*, 1 T.T.R. 107, 231, 595, although that action involved *ninnin* land and there had been *iroij lablab* approval of the children of the males succeeding. Under the circumstances shown in this action where there has been such a separation of ownership, the court considers that the claim on behalf of Tarkaki is contrary to present day Marshallese custom and holds that when the *bwij* descended from Lanwor died out in the female line, its *alab* rights passed to the plaintiff Liwaika as the senior of the descendants of male members of the *bwij*.

[2, 3] It is therefore necessary to decide whether Determination of Ownership No. 58-1 by the Marshall Islands District Land Title Officer bars Liwaika from exercising

these *alab* rights. In that Determination, dated July 16, 1958, filed with the Clerk of Courts July 28, 1958, the Title Officer determined that Lajitok was the *alab* and Bilimon the senior *dri jermal*. It is clear from the agreed genealogy that Liwaika is senior to Bilimon. So this Determination of Ownership would indicate a determination that she had lost her *dri jermal* rights and by inference her right to succeed to the position of *alab*. The court has several times indicated informally that it considers these Determinations of Ownership under Office of Land Management Regulation No.1 to be quasi-judicial decisions analogous to court judgments. The question with what kind of judgment they should be compared is not so clear. After consideration of the regulation and the practice under it shown here, the court concludes that the Determination of Ownership in question should be considered like a judgment quasi in rem and holds that it does not bind Liwaika as against Bilimon or prevent her from exercising *alab* rights in the land in question since it was rendered without her participation and without notice to her or anyone representing her interest as against that of Bilimon. *BOA Am. Jur.*, Judgments, §§ 125, 126 and 137.

#### JUDGMENT

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

1. As between the parties and all persons claiming under them, the *alab* and *dri jermal* rights in Drenar wato on Djarrit Island (otherwise known as Rita Island) in Majuro Atoll, Marshall Islands District, are held as follows : –
  - a. The plaintiff Liwaika, who lives on said Djarrit Island, is the *alab* and also has *dri jermal* rights.
  - b. The defendant Bilimon, who lives on said Djarrit Island, has *dri jermal* rights under the plaintiff Liwaika as *alab*.

c. Neither the plaintiff Tarkaki, who lives on said Djarrit Island, nor any of his brothers or sisters for whom he claims to act, has any rights of ownership as *alab* or *dri jermal* or otherwise.

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

3. No costs are assessed against any party.

4. Time for appeal from this judgment is extended to and including December 23, 1968.