JEKRON, Plaintiff
v.
SAUL, Defendant

Civil Action No. 287
Trial Division of the High Court
Marshall Islands District

July 28, 1971

See, also, 4 T.T.R. 128

Hearing on motion for order in aid of judgment. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the establishment of a successor *dri jerbal* could not be made by will without the approval of the *alab* and been acquiesced in by the *iroij erik*.

1. **Marshalls Land Law—"Dri Jerbal"—Establishment**
   It is recognized Marshallese custom that the ultimate authority in establishing *dri jerbal* on a piece of land is vested in the *iroij lablab* providing his decisions are reasonable and in accordance with law and custom.

2. **Marshalls Land Law—"Dri Jerbal"—Establishment**
   The establishment or reestablishment of *dri jerbal* is often done by those having lesser rights in the land without any affirmative act or express decision by the *iroij lablab*, but merely with his acquiesence or implied consent.

3. **Marshalls Land Law—"Dri Jerbal"—Suspension**
   When a *dri jerbal* has disregarded his obligations to the *alab*, their rights are suspended until the controversy causing the conduct contrary to custom has been determined.

TURNER, *Associate Justice*

This matter came on for hearing on plaintiff's motion for an order in aid of the judgment entered August 31, 1968, reported at 4 T.T.R. 128. Plaintiff and his counsel, Ellan Jorkan, appeared but the defendant did not. It appears the defendant, for more than a year, has been physically and perhaps mentally incompetent.

Masa, who is the adopted son of Saul, appeared as Saul's representative and successor with his counsel, Levi L.

Plaintiff's motion was in general terms that the defendant Saul had not complied with Paragraph "c" of the Judgment (4 T.T.R. 131) obligating both parties to perform toward each other as *alab* and *dri jerbal* respectively as is required under Marshallese custom. The specific major complaint as to Saul's failure to act as is expected of a *dri jerbal* was that Saul had made a will designating his adopted son, Masa, as the successor *dri jerbal* and that the will had not been submitted to the plaintiff as *alab* for approval.

Plaintiff further complained that in addition to Masa and his family working on the land, Mona and her family also were working the land. Plaintiff insisted he did not know who these people were and had not approved their entry on the land.

It was this principle applying to an *alab's* power over land that was at issue because the parties agreed that the *alab's* share of copra production had been paid to plaintiff by defendant and his representatives.

[1] It is recognized Marshallese custom that the ultimate authority in establishing *dri jerbal* on a piece of land is vested in the *iroij lablab* providing his decisions are reasonable and in accordance with law and custom. On "*Jebrik's side*" of Majuro Atoll, the practice is modified because after the death of *Iroij Lablab* Jebrik, no successor *iroij lablab* was established and the power vested in the "*droulul*", the Trust Territory Government or for certain purposes in the *iroij erik*. The land in question was subject to *Iroij* Jebrik. The successor and current *iroij erik* is Henry Muller.

Whether the *iroij erik* was consulted by Saul when he made his will in favor of Masa was not proved since neither Muller nor Saul appeared. Saul did not seek

plaintiff's approval and he should have known that he should have. This is the second experience Saul has had with invalid wills. In the judgment in this case, the Court said:—

". . . with regard to the necessity for *iroij lablab* approval of wills under the Marshallese system of land law, the Court considers it clear that the will offered by Saul, even if his allegations of fact in regard to it are true, is clearly invalid and of no legal effect. *Joab v. Labwoj*, 3 T.T.R. 72, 2 T.T.R. 172. *Lalik v. Elsen*, 1 T.T.R. 134."

[2] Whether the will now under consideration, which designates Saul's successor *dri jerbal*, is valid or not is immaterial because it was not presented to the *alab*, the plaintiff. Defendant's counsel agreed that "the will should have gone through the *alab*" to obtain *iroij erik* approval. As a practical matter, it need not have gone beyond the *alab* as it would be reasonable to expect the *iroij erik* would acquiesce in it. The Court discussed the point in *Alek S. v. Lomjeik*, 3 T.T.R. 112 and said at 117:—

"The court takes notice, however, that such establishment or re-establishment of *dri jerbal* is often done by those having lesser rights in the land without any affirmative act or express decision by the *iroij lablab*, but merely with his acquiescense or implied consent."

[3] When a *dri jerbal* has disregarded his obligations to the *alab*, the Court has considered their rights to be suspended until the controversy causing the conduct contrary to custom has been determined. Under the circumstances found here, however, because of Saul's incompetence it would be unfair to penalize Masa, particularly in view of the fact he has not withheld the *alab* share of copra sales.

The parties are obligated to promptly settle the matter, if they can. If, for any reason, either party is unwilling to recognize his obligations under the custom to the other, the controversy should be referred to the *iroij erik* for settlement. If that determination fails, it could be referred

to the *droulul* for decision. As a final resort, application may be made to this Court. Accordingly, it is

Ordered, that Masa, the successor to and representative of the defendant Saul, promptly submit the determination of his *dri jerbal* rights to Lometo *Wato*, Enemanet Island, Majuro Atoll, to the plaintiff Jekron as *alab* and that if agreement is not achieved, both parties shall proceed to a settlement of questions between them in accordance with Marshallese custom.