TAIDRIK LADRIK, et al., Plaintiffs

v.

LABILIET AND JOAB JAKEO, Defendants

and

ROBERT REIMERS, LIEOEN LOMAK, Successor to LAKAMO, deceased, and HENRY SAMUEL, Third-Party Defendants

Civil Action No. 449

Trial Division of the High Court

Marshall Islands District

November 20, 1973

Class action seeking to have certain land law customs pertaining to "Jebrik's side" of Majuro Atoll upheld. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that transfers of interest without approval of those holding *iroij lablab* authority, and transfer trying to switch such authority over the land to another *iroij lablab*, were invalid.

1. **Marshalls Land Law—Generally**

   It is traditional land law in the Marshall Islands that the *iroij lablab*, or the *iroij elap*, in the western chain, must approve of or acquiesce in any transfer of land interest before it is valid, and if lineage land is to be transferred, the approval of the *iroij erik*, *alab* and *dri jerbal* must also be obtained, prior to obtaining the approval of the *iroij lablab* or *iroij elap*.

2. **Courts—High Court**

   The Trial Division of the High Court is bound by the Appellate Division's decisions, which it may not under any circumstances change or reverse.

3. **Marshalls Land Law—"Jebrik's side" of Majuro—Transfers**

   Any change in the special arrangement made by the Japanese regarding land transfers on "Jebrik's side" of Majuro Atoll, continued in effect by 1 TTC § 105, which the Appellate Division held itself to be bound by, is for the legislative authority, not the courts.

4. **Marshalls Land Law—"Jebrik's side" of Majuro**

   Purchasers of land on "Jebrik's side" of Majuro Atoll were bound by custom requiring holders of *iroij lablab* authority to approve land transfers, and they could not change *iroij lablab* authority over the land and "go out" of "Jebrik's side" to place the land under authority of another *iroij lablab*.

Assessor: MORRIS JALLY, *Associate Judge, District Court*
Interpreter: OKTAN DAMON
Counsel for Plaintiffs: JOHN HEINE and JELTAN LANKI
Counsel for Defendants: ELLEN JORKAN and BARTIMIUS LANGRINE

TURNER, *Associate Justice*

At the time set for trial it appeared to the court, and counsel for the parties agreed after discussion, that there was no substantial issue of material fact and that a decision could be made without trial upon the applicable law. The buyers of the land in question, the third-party defendants, had answered to confirm their interest purchases in accordance with the pretrial memorandum and order, except the defendant Samuel. Counsel stipulated he had purchased land interest from the two defendants.

In support of the allegation of sale to Samuel and his intent to transfer the land sold from "Jebrik's side" to "Kaibuke's side" of Majuro Atoll, plaintiff introduced a letter from Samuel to the *alab* and *dri jerbal* of two of the *wato* Samuel attempted to purchase the *iroij erik* interests in, demanding *ekkan*, meaning tribute of food and other gifts to the *iroij* to be made to *Iroij Lablab*, Joba Kabua, successor title bearer on Kaibuke's side of Majuro.

The defendants introduced a petition containing 98 names, which included the two original defendants, to the effect the signers did not agree with plaintiff's claim in the action. This list was filed in accordance with the pretrial order permitting any "land interest holder on Jebrik's side to withdraw from the class action brought by plaintiff in behalf of all land interest holders on Jebrik's side." There was no showing who of the petition signers actually held land interests, but in view of the agreement that this case should be disposed of by summary judgment it was not necessary that further showing be made.

The undisputed facts are not complex. Briefly, they are:—

(1) The defendant Labiliet sold the three interests of *iroij erik*, *alab*, and *dri jerbal* for Kumor *wato* on Long Island to Robert Reimers.

(2) The defendant Joab Jakeo sold the three interests of *iroij erik*, *alab*, and *dri jerbal* for Berrachwot *wato* in Rita to Lakamo, now deceased, whose successor is Lieoen Lomak.

(3) Defendant Labiliet sold the three interests of *iroij erik*, *alab*, and *dri jerbal* for Eneko Island to Henry Samuel.

(4) Defendant Joab sold the *iroij erik* rights for Mwinbijenro and Likweloken *wato* to Henry Samuel. (This was the land from which Samuel, as *iroij erik*, demanded *ekkan* in behalf of *Iroij* Joba Kabua.)

[1] None of the transfers were approved by the *droulul*, the 20-20 or the government, each being the holder of *iroij lablab* authority on "Jebrik's side". It is the traditional land law in the Marshall Islands that the *iroij lablab*, or *iroij elap* as he is known in the *relik* (western) chain of islands, must approve or acquiesce in any transfer of land interest before it is valid. Prior to obtaining consent of the ultimate authority, the *iroij lablab*, the person seeking to transfer a land interest must consult with and obtain the approval of the other lesser titleholders, *iroij erik*, *alab*, and *dri jerbal* when *kabijukinen* land, (lineage land) is to be effectively transferred. However, the custom is that the *iroij lablab* must in all circumstances approve termination or transfer of land interests.

In *Neikabun v. Mute*, 5 T.T.R. 493, 495, the general rule, with citations, of the authority of the *iroij lablab* is stated:—

". . . Marshallese customary land law (is) that a transfer of land interests must be approved, in all circumstances, by the *iroij lablab*.

Limine v. Lainej, 1 T.T.R. 231; *Lalik v. Elsen,* 1 T.T.R. 134; *Lajeab v. Lukelan,* 2 T.T.R. 563; *Muller v. Maddison,* 5 T.T.R. 471."

In *Makroro v. Kokke,* 5 T.T.R. 465, this court said:—

"The custom is clear and has been emphasized in many decisions of this court that a holder of land interests may not transfer those interests without first obtaining consent of the lineage and approval of the *iroij lablab* or the person or group exercising *iroij lablab* authority."

Also it was said in *Linidrik v. Main,* 5 T.T.R. 561, 565:—

"The applicable law under the custom provides for termination or change of a vested land interest only for good cause shown and usually with the approval of all those having present or prospective rights in the land. *Likinono v. Nako,* 4 T.T.R. 483."

This rule under the custom runs into misunderstandings and attempts to set it aside on "Jebrik's side" of Majuro Atoll, where there is no *iroij lablab* and has not been one since the death of *Iroij Lablab* Jebrik Lukotworok in 1919. The Japanese administration set up a system of administration of Jebrik's former lands which has prevailed without any but minor change since Jebrik's death.

The Japanese pattern was formalized in the American administration by *Levi v. Kumtak,* 1 T.T.R. 36 (1953). The court said:—

"The decision not to have any *iroij lablab* for Jebrik's side was undoubtedly a departure from Marshallese custom, but it was a clear determination by the authority then administering the Marshall Islands (the Japanese) making an exception to or change in the customary law. The Japanese Government consistently refused to bring the two sides together under one *iroij lablab* for more than twenty (20) years right up to the time of the occupation by the United States forces."

After citing Trust Territory Code (now 1 TTC § 105) continuing in effect "The law concerning ownership, use, inheritance, and transfer of land in effect in any part of the

Trust Territory on December 1, 1941. . . ." The court held:—

"This court is therefor bound to uphold the law in effect on December 1, 1941, until it is changed by express written enactment. . . ."

This 1953 decision of High Court Associate Justice James R. Nichols was appealed to the Appellate Division where it was affirmed. Chief Justice Furber said in the appellate decision in *Jatios v. Levi*, 1 T.T.R. 578, 583:—

"So far as the *iroij lablab* and *iroij erik* rights are concerned, the appellant Kumtak is asking us to upset a special arrangement set up by the Japanese Government in the 1920's for roughly one-half of Majuro Atoll. . . ."

[2] As Kumtak Jatios attempted to do in 1953–1954 so are the defendants and their buyers, the third-party defendants, now attempting to do in this case. This court will not change the law which has prevailed in Majuro for more than forty years. Not only is this court willing to again affirm the early cases upon the law set forth, but this court may not under any circumstance change or reverse the decision of the appellate division. The trial court is bound by appellate court decisions until the law has been changed.

[3] For that reason, if for no other, this court must follow the *Levi* decision. Because no man is above the law, these defendants and all other persons are bound by the law of the *Levi* decision. Neither a court nor an individual may change the law. As was said in *Levi*:—

"We therefor hold that any upsetting that is to be done now of the special arrangement made by the Japanese for what is commonly called Jebrik's side of Majuro Atoll, including the land now in question, is a matter for determination by the law-making authorities and not by the courts."

Not only are the defendant-sellers bound by the law requiring *droulul* approval of any land transfer on "Jebrik's

side" but the defendant-buyers also are bound by this law and by the customary law under the custom forbidding attempts by land interest holders to change *iroij lablab* authority over the land. This issue came up and was decided adversely to the desires and attempts to make changes by the buyers in the present case by this court in *Lojob v. Albert*, 2 T.T.R. 338 (1962). Judge Furber said:—

". . . there seems to be a desire by the appellants or some of their supporters, to be permitted to throw off entirely all *iroij lablab* controls over their land or pick a new *iroij lablab* of their own choosing for their lands. The court considers that such 'going out' of Jebrik's side and carrying their land rights with them would be clearly contrary to Marshallese customary law and inconsistent with the entire system of land ownership. . . . unless and until the system is changed either by general legislation or special legislation as to Jebrik's side, those having land rights there cannot transfer their lands to any individual *iroij lablab* without the consent of those holding the *iroij lablab* powers on Jebrik's side, any more than they could if they were under an individual *iroij lablab*."

[4] The court must hold, therefor, that the attempts of the third-party defendants to change the land from the present *iroij lablab* authority on Jebrik's side to another *iroij lablab* on Majuro Atoll is in violation of well-established Marshallese custom. This court will follow the law and the custom and must deny the defendants' attempts to violate both the law and the custom.

Defendants' counsel suggested to the court that these transfers of land interest should be condoned because the two selling defendants are old and under the application of *drenbwijrok* should be allowed help in supporting themselves because of their age. The court is sympathetic to the reason, but no matter what justification there may be, the court cannot permit violation of both law and custom. Nothing has been said in this decision which would prevent the sale by the defendants to the buyers if and when such

transfer of land interest is approved by the *droulul.*

However, the court must point out that even if the *droulul* should approve the transfer of interests in the lands in question that would not permit the buyers to "go out" of "Jebrik's side" and place the land under another *iroij lablab* as was attempted by at least one of the buyers in this instance.

Until the defendants have complied with the law, the attempted transfers must be set aside. If the transfers are made in conformity with the applicable law in the future, this court continues to remain available to uphold the custom relating to changing *iroij lablab* authority.

Because the issue was not raised the court will not make a determination of the rights between buyers and sellers as result of vacating the attempted sales. The land interests revert to the seller. The buyers have no further rights in the lands in question. Whatever claims there may be against the sellers is an entirely separate matter.

Ordered, adjudged and decreed:—

1. The transfer of the three interests in Kumor *Wato* on Long Island by Labiliet to Robert Reimers is vacated and set aside.

2. The transfer of the three interests in Berrachwot *Wato* in Rita by Joab Jakeo to Lakamo, deceased, whose successor is Lieoen Lomak is vacated and set aside.

3. The transfer of the three interests in Eneko Island, Majuro Atoll, by Labiliet to Henry Samuel is vacated and set aside.

4. The transfer of the *iroij erik* interests in Mwinbijenro and Likweloken *Wato* by Joab Jakeo to Henry Samuel is vacated and set aside.

5. No determination is made as to any claims the third-party defendant buyers may have against the defendant sellers.

6. Copy of this judgment shall be filed with the District Land Management Office.

7. No costs are allowed.