

LAZARUS S., Plaintiff

v.

TOMIJWA, Defendant

Civil Action No. 7

Trial Division of the High Court

Marshall Islands District

June 21, 1954

Action to determine *alab* rights in certain land on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that clearly expressed determinations of Japanese Administration, although distinct departure from Marshallese custom, became the law for lands involved, which Court is bound to follow under T.T.C., Sec. 24.

1. Marshalls Custom—Superseded

Marshallese custom does not control over clearly expressed and firmly maintained determinations of Japanese Administration.

2. Marshalls Custom—Superseded

Determination of Japanese Administration concerning land law, which deviated substantially from Marshallese custom, effectively changed law so far as land in question is concerned.

3. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Determinations of Japanese Administration, in setting up and maintaining special arrangement for control of lands formerly under *iroij lablab*, changed the law so far as "Jebrik's side" of Majuro Atoll

is concerned, and established new way of exercising *iroij lablab* powers there.

4. Trusteeship—Administering Authority—Powers

Administration of territory under League of Nations' Mandate or United Nations' Trusteeship requires that customary law shall be subject to change by administering authority.

5. Custom—Applicability

Customary law of various parts of Trust Territory is in effect only so far as not changed by laws promulgated in Trust Territory Code. (T.T.C., Sec. 21)

6. Trust Territory—Land Law

Land law in effect in Trust Territory on December 1, 1941, remains in full force and effect except as changed by express written enactment, even when such land law varies from previous Marshallese custom. (T.T.C., Sec. 24)

7. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Special arrangement for lands of former *iroij lablab* on "Jebrik's side" of Majuro Atoll, as it stood on December 1, 1941, is continued, with Trust Territory Government taking place of Japanese Administration, regardless of how much law varies from Marshallese custom. (T.T.C., Sec. 24)

8. Marshalls Land Law—"Iroij Lablab"—"Jebrik's Side" of Majuro

Whether Japanese arrangement for *iroij lablab* lands on "Jebrik's side" of Majuro Atoll should now be changed is question of policy for law-making authorities, not for courts to decide.

9. Former Administrations—Recognition of Established Rights—Marshalls Land Law—"Alab"

Alab rights which were clearly established and recognized for at least eight years under former administration will not be upset by courts of this administration on grounds existing then.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The defendant Tomijwa's *bwij* (extended matrilineal family) was clearly and openly established as the one holding the *alab* (person in immediate charge of a piece of land) rights in the land in question, at least as early as 1936, and possibly earlier.

2. Defendant Tomijwa's *bwij* was officially recognized as having *alab* rights by the local government of Majuro

Atoll, and its senior member was listed as *alab* of the land in question in the official listing which the local government was required to make in accordance with publicly announced instructions of the Japanese administration.

3. No question concerning the *alab* rights of defendant Tomijwa's *bwij* in the land in question was raised during the remainder of the Japanese administration. Neither the plaintiff Lazarus, nor his mother as his predecessor in interest, made any apparent protest or effort to have their alleged rights recognized by the Japanese administration, nor has either of them exercised the usual controls of an *alab* over the land since 1936.

4. The establishment of Tomijwa's *bwij* as holders of the *alab* rights was approved by the *droulul* (society) of those holding rights in lands formerly under *Iroi Lablab* (Paramount Chief) Jebrik Lukutwerak (now often referred to as the 20-20 group). The evidence is not clear as to the reasons for this approval, but it is clear that Lazarus' mother, and Lazarus himself as the senior male member of her family, were very inactive for years before that in exercising any rights or performing any duties they may have had as *alab* or acting *alab* of the land in question.

5. In the 1920's, upon recommendations of the plaintiff Lazarus, and Livai Jeremaia, the Japanese administration took the following official actions:

(a) Ended any powers *Iroi Lablab* Drele (sometimes written Dreli or Reli) had over the lands formerly under the deceased *Iroi Lablab* Jebrik Lukutwerak (sometimes written Lukotworok).

(b) Determined that the division of Majuro Atoll into two *iroij lablab* areas, or "sides", be continued along the general lines agreed upon at the close of the last civil war on Majuro, Drele being allowed to continue as *iroij*

lablab of the one of these over which he had been *iroij lablab* before the death of *Iroij Lablab* Jebrik Lukutwerak.

(c) Approved the establishment of the *droulul* by those holding rights in *Iroij Lablab* Jebrik Lukutwerak's former lands, under the active leadership of the plaintiff Lazarus and Livai Jeremaia.

(d) Determined that there should be no individual successor to Jebrik Lukutwerak as *iroij lablab*, but that those holding rights in his former lands should work together through their *droulul* and the *iroij erik*, under the supervision of the Japanese administration.

This arrangement was changed somewhat in 1933, but the changes are not material to this action.

CONCLUSIONS OF LAW

1. This action concerns the ownership of the *alab* rights in certain land on "Jebrik's side" of Majuro Atoll. The general question of the division of the atoll into two "sides", or *iroij lablab* areas, is discussed in paragraphs 1 and 2 of the conclusions of law by this court in *L. Levi against Kumtak*, 1 T.T.R. 36. Those not familiar with Majuro history will find helpful background information in that case and in the section entitled "Paramount Chiefs and Cleavage in Village Society", beginning on page 82 in "Majuro—a Village in the Marshall Islands", by Alexander Spoehr, published by the Chicago Natural History Museum as Volume 39 of "Fieldiana: Anthropology".

[1-3] 2. One of the plaintiff's principal contentions is that the actions of the Japanese administration set out in the fifth finding of fact above, were contrary to Marshall-ese custom, and are therefore invalid and should be upset. Under the special arrangement set up by those actions, the *droulul*, consisting largely of commoners, could in effect decide matters which ordinarily only an *iroij lablab* could decide. The *iroij erik* (lesser chief) of a piece of

land could make recommendations to the *droulul* and as a member of it could try to influence its decision. If he was dissatisfied with the decision he could try to have the Japanese administration upset it, but unless and until it was changed by the administration the decision of the *droulul* had the effect of a decision by the *iroij lablab* so far as Jebrik's former lands were concerned. The court agrees that this was a distinct departure from Marshallese custom, but entirely disagrees with the argument that the Marshallese custom can control over the clearly expressed and firmly maintained determinations of the Japanese administration. The main provisions of this special arrangement were continued right up to the arrival of the American Forces. No changes were made which affect this action. The court holds that the determinations of the Japanese administration in setting up and maintaining this special arrangement for the control of lands formerly under *Iroij Lablab* Jebrik Lukutwerak changed the law, so far as that portion of Majuro is concerned, and established a new way of exercising *iroij lablab* powers there.

[4-8] 3. The very nature of administration under a League of Nations' Mandate or a United Nations' Trusteeship requires that the customary law shall be subject to change by the administering authority. Section 21 of the Trust Territory Code only gives effect to the customary law of the various parts of the Trust Territory "so far as such customary law is not in conflict with the laws mentioned in Section 20". The laws promulgated in the Code itself are among those mentioned in Section 20. These include Section 24, which reads as follows:

"Sec. 24. *Land Law not affected.* The law concerning ownership, use, inheritance, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands."

Under this section the special arrangement for *Iroi* *Lablab* Jebrik's former lands, as it stood on December 1, 1941, has been continued (with the Government of the Trust Territory taking the place of the Japanese administration) as the law for those lands, regardless of how much it varies from Marshallese custom. Whether the basic arrangement should be changed now is a question of policy for the law making authorities, and is not for the courts to decide.

[9] 4. The *alab* rights of the defendant's *bwij* in the land in question were clearly established and recognized for at least some eight years under the system which the Japanese administration had established as the law governing the portion of Majuro Atoll in question. The plaintiff seeks to have these upset on grounds all of which existed during the whole of this eight-year period. In accordance with the principles announced in the conclusions of law by this court in *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14, *L. Levi v. Kumtak*, referred to above, and *Orijon v. Etjon*, 1 T.T.R. 101, the court considers it would not be proper for it to try to upset these rights now.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the *alab* rights in Tur, Jenrok, Tetelabuk, and Lomake *Wato* on Jarej Island (otherwise known as Rita Island), Majuro Atoll, are owned by the *bwij* of which the defendant Tomijwa is the present senior member, defendant Tomijwa is the *alab*, and the plaintiff Lazarus and his *bwij* have no *alab* or other rights of ownership therein.

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

3. No costs are assessed against either party.