

**JITENBURU, Plaintiff**  
**v.**  
**LIOS, LEJKA, and SEPE, Defendants**  
**Civil Action No. 411**  
**Trial Division of the High Court**  
**Marshall Islands District**

**June 10, 1971**

Action to determine entitlement to claims for condemnation money payable for certain interests on Rairok Island, Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the division of land income is a matter of agreement rather than custom and where all the interested parties have agreed to the division of land income the court will not make another agreement for the parties.

**1. Civil Procedure—Generally**

The law is no respecter of persons in that it does not distinguish between and treats all persons in an action as having equal standing in the community and being of equal worth and, except in domestic relations matters, the need of one litigant and the ability to pay of another does not affect the determination of lawful claims.

**2. Eminent Domain—Compensation—Division of Proceeds**

Where there is no binding custom applicable, division of condemnation proceeds should be by agreement and the court should attempt to make an agreement for the interested people only when it is clearly evident that they are incapable of making their own.

**3. Eminent Domain—Compensation—Division of Proceeds**

If all the interested parties have agreed to a division of land income, there is no valid reason for not adhering to the agreement.

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**TURNER, Associate Justice**

This action involves *alab* and *dri jermal* claims for condemnation money payable to those interests, for Kiniloke, Lijiminwele and Nakan *watos*, located on Rairok Island, Majuro Atoll. Payments, excluding the *iroij erik* share, have been made by the Trust Territory in the amount of Forty-Four Thousand Dollars (\$44,000.00). All but \$9,000 has been divided without controversy but the plain-

tiff claims a share of the \$9,000 allocated to the *alab* interest for Nakan *wato*. The lands were condemned for inclusion in the water catchment system and airport now under construction on Majuro Atoll.

There was no litigation involving the amount the Trust Territory paid. The controversy relates to whom is entitled to it.

#### FINDINGS OF FACT

1. At the meeting held by representatives of those claiming land interests, the plaintiff and her *bwij*, whom she represents in this action, was represented by her brother Kijiner. The representatives agreed to the distribution. It was not until after the money had been divided that plaintiff commenced her objections culminating in this action.

2. Three *bwij* hold interests in the land. First generation descendants have died out in the oldest and middle *bwij*. Lios, first generation descendant of the youngest *bwij* holds *alab* rights to Nakan *wato*. The three *bwij* involved in this action have no interest in *dri jermal* rights on Nakan *wato* which is held by another, unrelated, *bwij* of which Liwaika, who was not a party to this action, is the senior *dri jermal*.

3. Condemnation payments by the government for Kiniloke *wato* was \$22,000 for *alab* and *dri jermal* shares, not including the *iroij erik* share.

4. Condemnation payments for Lijiminwele and Nakan *watos* combined and including the *iroij erik* share was \$31,268. The parties agreed that Lijiminwele, being one acre in size, should have allotted to it \$4,000 of the \$31,268.

5. The Kiniloke distribution was as follows:—

(a) To defendant Sepe, representing the oldest *bwij* because of the death of Lininjir, her mother, the sum of \$5,500.

(b) To Jitenburu, the plaintiff representing the second *bwij* because of the death of her mother, Neilam, the sum of \$5,500.

(c) To defendant Lios, survivor of her sisters Lininjir and Neilam, and therefore *alab* as the senior member surviving of the first generation descendants, the sum of \$5,500.

(d) The defendant Lejka, younger brother of Lios and the deceased Lininjir and Neilam, and therefore senior *dri jermal*, the sum of \$5,500.

6. Because of the objection raised by plaintiff after the division of four shares for Kiniloke, the defendants Lios and Lejka gave their shares of the Lijiminwele four thousand dollars to plaintiff with the result that for this *wato* Sepe received \$1,333 and plaintiff received \$1,333 plus the additional \$1,333 share of Lios and Lejka as *alab* and senior *dri jermal*.

7. The balance of \$27,268 from the Nakan *wato* payment was equally divided between Lios, as *alab*, and Liwaika, as senior *dri jermal*, and Reab, the *iroij erik*.

8. In addition to the \$2,666 received from the Lijiminwele payment and the \$5,500 from the Kiniloke payment, plaintiff asked for and received an additional payment of \$140.00 from Lios, bringing the plaintiff's total received to \$8,306.

OPINION

Plaintiff, having received a greater amount of money than any of the others from the condemnation payments for Kiniloke and Lijiminwele combined, was satisfied with that distribution but was not satisfied with the Nakan *wato* distribution. She accordingly brought this action seeking a division of the *alab's* \$9,000 share.

Plaintiff had two theories upon which she based her claim. The first was that she was responsible for the *bwij* having the most members and therefore her need was

greater. The other was that because her *bwij* had a potential *alab* interest in the land, the members were entitled to share in the *alab* proceeds when it was "sold" to the government.

As to a person's need, the law seeks to treat all persons equally, whether they be rich or poor. Judgments are based on the law, not on need. In the Marshall Islands, the land law is derived from traditional custom except as modified by legislative enactment. A plaintiff must have sustained an injury to personal or property rights to entitle him to the aid of a court.

[1] The law is no respecter of persons in that it does not distinguish between and treats all persons in an action as having equal standing in the community and being of equal worth. The need of one litigant and the ability to pay of another do not affect the determination of lawful claims, except perhaps in domestic relations matters.

The plea for relief because of need should be made to the parties having interests in the land. In the present case, the representatives of those claiming land interests, including the plaintiff's brother as the representative designated by plaintiff and by her sister, Ermen, participated in the determination of the division of the money and they did not object to the determination. In fact, all representatives agreed to the division. In fact, the plaintiff did present her plea of a greater need to the representatives of the other lineages and received additional payments from them.

There remains, then, the question whether the *bwij* were entitled to receive a portion of the *alab's* share for Nakan *wato*. Plaintiff agreed that her *bwij* had no *dri jerb-al* interest in Nakan *wato* and that the *dri jerb-al* interest was properly paid to the *bwij* represented by Liwaika.

Plaintiff also agreed her *bwij* had never received the *alab* share, nor any portion of it, of copra sales from Nakan *wato* after the death of her mother, Neilam, who was suc-

ceeded as *alab* by Lios. But plaintiff presented an ingenious argument to the effect that because the land was “sold”, the proceeds should be divided differently than income from the sale of copra. Plaintiff and her witnesses asserted this was in accord with Marshallese custom but they failed to offer any evidence or example as to the custom, relying only on their statement it was in accord with custom.

Plaintiff’s reliance on custom was based on the proposition that some day, in the normal course of events under Marshallese custom, the senior member of plaintiff’s *bwij* would be entitled to inherit the title of *alab*. This potential future interest required a division now of the government’s payment, assigned by agreement as the *alab* share, to the *bwij*, according to plaintiff. Actually, the government paid only a lump sum for all interests in the land—*iroij erik*, *alab* and *dri jermal*—leaving it to the interest holders to make their own division. This they did and after participating in the agreed division through her representative, the plaintiff now objects to it.

Defendants, of course, denied that a division of land “sale” or rental income should be treated any differently than income from copra sales. Defendants suggest division of land income is a matter of agreement rather than custom. We agree with the argument.

There evidently is no clear cut customary practice applicable. Contrary to plaintiff’s theory this Court has applied the custom of copra sales division to division of land sale proceeds. *Bulele v. Loeak*, 4 T.T.R. 5 at 9 (Finding No. 10).

[2] We do not necessarily agree with this decision whereby the Court divided condemnation proceeds on the basis of copra sales in the absence of an agreement. We believe division should be by agreement when there is no binding custom applicable. The Court should attempt to make an agreement for the interested people only when it is clearly evident they are incapable of making their own.

That is not true of the present case because agreement was reached.

[3] If all the interested parties have agreed to a division of land income, there is no valid reason for not adhering to the agreement. After all, there is very little difference in kind between land income from copra sales or from rental payments. Rental income paid in advance or sale income, both of which consolidate future income, are of course greater in amount than continuing copra income. Although plaintiff referred to the government condemnation proceedings as a "sale", they were in fact no more than twenty-five-year leases at the rate of \$4,000 per acre for the period with right of renewal upon agreement as to the amount of further rental payment after the first twenty-five-year period.

The plaintiff is bound by the agreement her brother, as her representative, made for her and the other members of their *bwij*. The Court was unable to find either from plaintiff's evidence or elsewhere that there is any custom requiring a change in the agreement.

#### JUDGMENT

Ordered, adjudged, and decreed:—

1. That plaintiff and her *bwij* has no present interest in Nakan *wato* and is not entitled to the *alab*'s share that she, through her representative, and the representatives of the other interested parties agreed should be paid from the condemnation proceeds received from the Trust Territory.

2. That plaintiff's *bwij* holds a future interest in Nakan *wato* which may come into existence at such time as a member of the *bwij* inherits the title of *alab*. Future rental payments to a future *alab* shall be in accordance with this judgment.