

MAKRORO v. KOKKE

CLANCY MAKRORO, Plaintiff

v.

JABLUR KOKKE, Defendant

Civil Action No. 406

Trial Division of the High Court

Marshall Islands District

September 14, 1971

Action to determine *dri jermal* rights to Komlal Wato, Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that an *alab* acting without the approval of the *iroij lablab* cannot terminate a *dri jermal* interest in land and thus defendant's attempted action to cut off *dri jermal* rights under those circumstances was invalid.

**1. Marshalls Land Law—"Iroij Lablab"—Powers**

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.

**2. Marshalls Land Law—Generally**

Where neither the defendant's *bwij* nor the *droulul* were informed of nor gave their approval to the attempted sale to another, such sale was invalid.

**3. Marshalls Land Law—"Kitre"**

*Kitre* is a gift by a husband to his wife.

**4. Marshalls Land Law—"Dri Jermal"—Revocation of Rights**

An *alab*, acting without approval of the *iroij lablab*, or in the case of "Jebrik's side", the persons or group exercising such authority, cannot terminate a *dri jermal* interest in land.

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*Interpreter:*

*Reporter:*

*Counsel for Plaintiff:*

*Counsel for Defendant:*

J. JOHNNY SILK

NANCY K. HATTORI

JIMA ALIK

JAMES MILNE

TURNER, *Associate Justice*

This action involves *dri jermal* rights to Komlal *Wato*, Rairok Island, Majuro Atoll. Rights in this land are of no present significance, except as they determine entitlement to condemnation payments by the Trust Territory. The land has been condemned for a 25-year lease period for use as airport and water catchment system. Successor interest holders in all probability will be entitled to further payments from the then government on expiration of the present lease agreement. Presence of an assessor was waived by the parties for the trial.

## FINDINGS OF FACT

1. The Trust Territory Land Title Office, in an attempt to establish a record of holders of land interests on Majuro Atoll held hearings in 1958 and published its determinations in 1959, showing in regard to Komlal *Wato*, the land in question, that the defendant, Jablur, also spelled Lijablur, held both *alab* and *dri jermal* interests.

2. The hearings held by the land office were informal and all the claimants to land interests, including the plaintiff, did not participate.

3. Regardless of the land office listing of interests, defendant acknowledged plaintiff to be *dri jermal* of the land in question, in litigation settling *alab* and *dri jermal* rights for the land, decided by this court in 1964, *Jemba Beklur v. Lijablur*, 2 T.T.R. 556.

4. Defendant is the *alab* of Komlal *Wato* and Henry Muller is the *iroij erik*. Because the land was formerly controlled by *Iroij lablab* Jebrik Lukutwerak and there presently is no *iroij lablab* for this land or other land on "Jebrik's side" of Majuro Atoll, *iroij lablab* authority is exercised by the *droulul*, composed of *iroij eriks* and other land interest holders of former lands of *Iroij lablab* Jebrik.

5. Plaintiff is a blood relation of the defendant. They are brother and sister under the custom.

6. The land in question was given by Lebonju as *kitre* to his wife, Lijironean, with the understanding it should pass on her death to the defendant Lijablur.

7. After the 1918 or 1919 typhoon, Lebonju asked his *bwij*, of which Neiwan was the senior member, to return to the land to replant it. Neiwan declined and went to Laura to live. Lebonju appointed Makroro, plaintiff's father, as *dri jermal*.

8. Makroro replanted after the typhoon and continued as *dri jermal* until his death when he was succeeded by his son, the plaintiff Clancy.

9. Defendant did not exercise any rights on the land until she returned to Majuro from Arno in 1951. Although Jablur testified she did not recognize Makroro as *dri jermal*, it is a fact he worked the land with Clancy after 1951 until his death and Clancy continued without objection from Jablur until the present dispute arose.

10. When the Trust Territory made condemnation payments for the land in question and adjacent lands for an airport and water catchment system now under construction, the plaintiff, defendant and the *iroij erik* agreed that the payment should be divided one-sixth for the *iroij erik*, one-sixth for the *alab*, one-sixth for the "Jebrik's side" hospital fund, and the remainder for the *dri jermal*.

11. At that time it was disclosed to plaintiff that one acre of Komlal *Wato* had purportedly been sold by Mike Maddison, the predecessor *iroij erik* of Henry Muller, and by the defendant to James Milne for one thousand dollars (\$1,000.00).

12. Plaintiff had not been consulted and had not consented to the sale. Henry Muller, the present *iroij erik*,

also did not consent to the sale and sought to recover the *iroij erik* interest from Milne in *Henry Muller v. James Milne*, 5 T.T.R. 471.

13. Because of the dispute between plaintiff and defendant as to *dri jermal* interests in Komlal Wato, the Trust Territory payment for that interest in the amount of eleven thousand one hundred eighty-eight dollars (\$11,188.00) is being held by the District Finance Office pending settlement of this case.

#### OPINION

Defendant raised issues of both Marshallese land tenure and decided law in an attempt to support her claim to *dri jermal* interest in Komlal Wato. Her claims, however, were contrary both to applicable Marshallese custom and the prior decision of this court.

It is significant that defendant's counsel purportedly purchased one acre of the land in question and that payment of a relatively large sum of money hinges upon the determination of *dri jermal* interests.

[1] It is not difficult to clear up any question as to the purported buyer's interest before proceeding to settlement of the dispute between plaintiff and defendant. 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.

An attempt to divide land with respect to *alab* and *dri jermal* interests was held invalid because it was not approved by the *iroij elap* in *James R. v. Albert Z.*, 2 T.T.R. 135. For the same rule, see: *Lazarus v. Likjer*, 1 T.T.R. 129. *Limine v. Lainej*, 1 T.T.R. 231.

[2] Since neither the defendant's *bwij* nor the *droulul* were informed of nor gave their approval to the attempted

sale to Milne, we have no hesitancy in holding it invalid. Milne may have claim against Jablur for the money he paid her but that is not a matter for decision in this case.

As to the dispute between plaintiff and defendant concerning *dri jermal* rights, the defendant asserts a number of theories, not the least of which is that she received both *alab* and *dri jermal* rights from her father who was the *iroij erik*, and therefore the land was *kitre*. She concludes that a holder of *kitre* may do with the land as she sees fit.

The statement as to the custom is approximately correct except that in this case the facts do not fit the custom relied upon. It was defendant's mother by adoption who received the *alab* and *dri jermal* interests as *kitre*.

[3] *Kitre* is a gift by a husband to his wife. Defendant was the daughter, not the wife of Lebonju, the *iroij erik*. Lijironean, the wife of Lebonju, held the rights as *kitre* and the husband and wife agreed that Jablur should succeed to these interests. *Jemba Beklur v. Lijablur*, supra.

The defendant, during the litigation with *Jemba*, very clearly recognized plaintiff as *dri jermal*. Indeed, she did not deny he held the rights when she testified in the present case.

In the *Jemba* case, the court held "Lijablur's blood relatives" held *dri jermal* rights. Plaintiff is a blood relative and with his father has exercised the rights since Lijironean died and defendant succeeded to her interests. That decision is binding upon defendant.

However, defendant bases her present claim upon the reason that she "cut off" plaintiff from the land because "he did not render loyal services" to her. The grounds for terminating an interest is appropriate but the proof was utterly lacking that plaintiff withheld the *alab*'s share of the copra cut and sold from Komlal.

It appears defendant's justification for attempting to terminate plaintiff's interests was not that he withheld her share of copra sales but that he did not give her enough money. Whether this justifies termination of an interest, and we do not agree that it does, the attempted action was invalid under the custom anyway.

[4] It has been held many times that an *alab*, acting without approval of the *iroij lablab*, or in the case of "Jebrik's side", the persons or group exercising such authority, cannot terminate a *dri jermal* interest in land. Approval of higher authority is mandatory. This court recently held in *Jabwe v. Henos*, 5 T.T.R. 458, that:—

"The law is well settled both by traditional land custom and by decisions of this court determining questions of Marshallese land tenure that an *alab* does not have authority to cut off interests in land by himself. Many cases hold neither the *alab*, nor the *iroij erik* for that matter, have the right to cut off *dri jermal* interests in land without the consent or acquiescence of the *iroij lablab*." (Citing.)

Defendant's attempted action against plaintiff is contrary to the custom and the decisions of this court. Plaintiff's vested rights must be affirmed and in lieu of his right to work the land, he is entitled to the government's payment for the leasehold interest.

It is ordered, adjudged, and decreed:—

1. That plaintiff Clancy Makroro, and those claiming through him, hold the *dri jermal* interest in Komlal Wato, Rairok Island, Majuro Atoll.

2. The District Finance Officer is directed to pay to Clancy Makroro in full satisfaction of plaintiff's claim against the Trust Territory Government the sum of eleven thousand one hundred eighty-eight dollars (\$11,188.00) now held by the Finance Office.

3. Defendant Jablur holds the *alab* interest for the land in question but does not hold *dri jermal* rights in the land.

4. The purported transfer of *dri jermal* rights to one acre of Komlal *Wato* by the defendant Jablur to James Milne is invalid, without force and effect, vests no interest in Milne, and deprives Clancy Makroro of no interest.
5. No costs are assessed.