

CLEMENT JANRE, Plaintiff
v.
LEBAL LABUNO, Defendant
Civil Action No. 388
Trial Division of the High Court
Marshall Islands District

March 8, 1973

Action for determination of the *alab* for Monom and Kabinbat *watos*, Enijet Island, Mili Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where disputed *alab* interests were in *ninnin* land, which descends vertically, not horizontally, and plaintiff was in the vertical line while defendant was in the horizontal line, plaintiff, acting for his older sister, was entitled to the *alab* interests.

1. Wills—Valid Wills

Properly executed, certified and approved will was valid.

2. Wills—Conflicting Wills—Particular Cases

Where plaintiff and defendant disputed *alab* rights to two *watos*, each offered a will by the same predecessor *alab*, and plaintiff's will disposed of both *watos* whereas defendant's will, executed subsequent to plaintiff's, gave *alab* rights in one of the *watos* to defendant's wife but did not mention the other *wato*, defendant's claim regarding *alab* rights in the *wato* not mentioned in the will he offered must fail.

3. Wills—Conflicting Wills—Prevailing Will

If decedent made two wills, subsequent will would prevail.

4. Wills—Invalid Wills

Will made for decedent after his death, not signed by decedent and using language indicating he did not write it, was not decedent's will and did not revoke prior valid will.

5. Marshalls Land Law—"Ninnin"—Inheritance

Ninnin land is inherited vertically by the descending issue of the donor.

6. Marshalls Land Law—Lineage Ownership—Inheritance

Lineage land is inherited horizontally from the oldest to the youngest persons in the oldest to youngest *bwij*.

7. Marshalls Custom—"Alab"—Children

An *alab's* children are, under the custom, his nephews and nieces as well as his natural children.

8. Marshalls Land Law—"Alab"—Children

An *alab's* children are in the direct line of inheritance for *ninnin* land, but not for lineage land.

9. Marshalls Land Law—"Ninnin"—Inheritance

Where disputed *alab* interests were in *ninnin* land, which descends vertically, not horizontally, and plaintiff was in the vertical line while defendant was in the horizontal line, plaintiff, acting for his older sister, was entitled to the *alab* interests.

TURNER, Associate Justice

This action was brought for determination of the *alab* for Monom and Kabinbat *wato*, Enijet Island, Mili Atoll. The master, Presiding District Court Judge Kabua Kabua, held hearings and recorded testimony of witnesses on Nalu Island, Mili Atoll, October 23, 1971, and on November 4, 1971, at Uliga, Majuro Atoll.

The parties appeared before the Court this day for hearing on the Master's report. The defendant represented his wife, Limin, who also was present and testified. Limin claims the title of *alab* for the land in question while defendant is the *dri jermal*. He admittedly has not recognized plaintiff's sister or plaintiff's mother as *alab* for the land and has made no payment to them of the *alab's* share of copra sales.

As a result of argument of counsel, testimony of witnesses before the master and the master's findings, this Judgment is entered for the plaintiff in behalf of his sister, Neimej, whom he represented as the real party in interest.

Plaintiff clarified his complaint by stating his concern was in having his older sister declared *alab* to be succeeded by himself, even though his complaint sought a money judgment for the *alab's* share of copra sales from the land, admittedly withheld by the defendant.

[1] At the hearing before the master, the plaintiff introduced a copy of Baikan's will, executed May 12, 1956, and certified by Carl Heine, the Clerk of Courts, March 21, 1962. The will was approved by *Leroij* Lanjen and was, therefore, valid. *Lalik v. Elsen*, 1 T.T.R. 134, 139.

The will named the two daughters of Baikan's older brother as his successor *alabs*. These women were Lijorimle and Limanin. Upon Baikan's death Limanin became *alab* until her death in 1967 and she was succeeded by Lijorimle, who died in 1969. The lands included in Baikan's will in behalf of Limanin and Lijorimle consisted of eleven *wato* on Enijet Island, two of which are named in the complaint as the lands in question, and apparently the only two defendants claim any *alab* interest in.

[2] At the hearing before this court defendant offered another Baikan will which named Limin *alab* of eight *wato* on Enijet Island. This will also was approved by *Leroij lablab* Lanjen and was dated December 7, 1964. This will said: "Limin is the one who is entitled to the *alab*'s right on all lands mentioned above." The lands "mentioned above" included seven of the eleven *wato* listed in the 1956 will, including one of the two *wato* involved in this action. Because of this discrepancy, in listing Baikan's *wato* on Enijet Island, the defendant's claim to *alab* rights to Monom *wato* is without support. Kabinbat *wato* is listed in both the 1956 and 1964 wills. The wills, then, can only relate to Kabinbat because there is no dispute as to plaintiff's entitlement under the wills to Monom *wato*.

[3, 4] If, in fact, Baikan made a subsequent will, the last one would prevail. However, the master found, and the evidence submitted at the hearing leads us to conclude, Baikan did not make the will naming Limin *alab* but that it was made for him after his death. The will was not signed by Baikan and the language used indicates someone other than Baikan wrote the will. It is third person, not first person phraseology, i.e.,: "Purpose: All lands owned by Mr. Baikan on Enijet Island."

There was a sharp conflict in the testimony as to when Baikan died. Plaintiff says it was "three days" after he

signed his will, May 12, 1956. The defendant said Baikan died in 1965. The memory of the parties is not adequate to give convincing testimony on the point.

The dispute between the parties need not depend exclusively on the effect of the wills, even though we conclude from the evidence that Baikan's second will was not, in fact, his will and did not revoke the earlier will. Marshallese custom relating to inheritance of *ninnin* land compels the conclusion the plaintiff and his sister, Neimej, are entitled to the *alab* rights.

[5-9] *Ninnin* land, unlike *bwij* or *kabijukinen* land, is inherited vertically by the descending issue of the donor, whereas lineage land is inherited horizontally from the oldest to the youngest persons in the oldest to youngest *bwij*. An *alab*'s "children," i.e., under the custom his nephews and nieces as well as his own natural children, would not be in the direct line of inheritance for lineage land, but would be in the direct line for *ninnin* land.

If these *wato* had been *kabijukinen wato*, Baikan's sister would have been *alab* for them. She admittedly was not and Limin, defendant's wife, could not inherit *ninnin* land from her. In the present case Lomenbit was Baikan's predecessor *alab*. Baikan had no children of his own and the land descended, therefore, to the issue of his brother Lomenbit. They were the "new lineage" for inheritance of *ninnin* land. J. A. Tobin, Land Tenure Patterns, page 27; *Jatios v. Levi*, 1 T.T.R. 538; *Limine v. Lainej*, 1 T.T.R. 231.

Therefore, both under the custom of inheritance and by distribution under the 1956 will, we must hold plaintiff, acting for his older sister Neimej, is entitled to the *alab* interests. Since no claim has been made for money, none may be awarded. However, from and after this Judgment it is fully expected that defendant, as *dri jermal*, shall give due recognition and payment to Neimej and Clement Janre

as her successor, due an *alab* under the custom, for both *wato* involved in this case.

It is ordered, adjudged and decreed:—

That plaintiff and his sister Neimej are entitled to hold the *alab* interests for Monom and Kabinbat *wato*, Enijet Island, Mili Atoll, Marshall Islands, and that the only interests of the defendant is that of *dri jermal* on the two *wato*.