LIWINRAK, Plaintiff

v.

JIWIRAK T., Defendant

Civil Action No. 82

Trial Division of the High Court

Marshall Islands District

March 31, 1958

Action to determine *iroij lablab* rights in certain *wato* on Ine Island, Arno Atoll. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that where one claiming to succeed as *iroij lablab* was never recognized as such by interested parties, and there is reasonable uncertainty as to rightful successor, no valid claim to the succession is effectively made, and claimant's action in going upon the land in question was unjustified and constituted trespass, against which equity will grant relief.

1. **Marshalls Custom—"Iroij Lablab"—Succession**
   Where former judgment named party as temporary *iroij lablab* and recognized possibility of others having equal or better right to that title, party named is entitled to act as *iroij lablab* only until such time as there was clear decision as to proper person to exercise those powers.

2. **Marshalls Custom—"Iroij Lablab"—Succession**
   Under Marshallese custom, where there is such reasonable uncertainty as to rightful successor to deceased *iroij lablab* so as to make substantial numbers of owners or interested persons hesitate before declaring their recognition, no valid claim to succession can be effectively made unless and until persons having rights in such lands recognize successor in such a fashion as to evince unmistakable choice.

3. **Marshalls Custom—"Iroij Lablab"—Recognition**
   Under Marshallese custom, where there is no proper recognition of party as *iroij lablab* at any time by parties having *alab* interest in *wato*, party's action in going upon land to harvest and remove copra therefrom was without legal ground, was unjustified, and amounts to trespass against which equity will relieve.

TOOMIN, *Associate Justice*

A. FINDINGS OF FACT

1. Since 1956 plaintiff Liwinrak's mother Klene has been the *alab* in possession of Mwinmwidre *wato* on Ine Island in Arno Atoll. Klene had been living on and working this

wato for many years during the lifetime of her mother Limoren, the former *alab* who died in 1956. Limoren was the older sister of Enej, who was acting *alab* on her behalf, and both of them were living on and working this land as far back as 1915. There has been no *iroij erik* on this *wato*, at least as far back as the time of Liwaito, who died in 1932 and who was the *leroij lablab* over, and was receiving the *iroij lablab* share of production from said *wato* at the time of her death.

2. No *iroij lablab* share of production from said *wato* had been paid by any of the *alab* on said land, or anyone on their respective behalves, after 1932. Upon the ground that he was the rightful successor to Liwaito as *iroij lablab*, the defendant Jiwirak entered on said land in 1957, without making demand or claim, and harvested and removed 500 pounds of copra therefrom.

3. There has never been any recognition by either Klene, the present *alab*, or by Limoren, the prior *alab*, or anyone acting on their respective behalves, of defendant Jiwirak as *iroij lablab* of said *wato*.

B. CONCLUSIONS OF LAW

[1] 1. Defendant Jiwirak claims to be the true successor to Liwaito, the former *iroij lablab* over the subject *wato*. From the genealogical chart of the family of Liwaito heretofore received in evidence in *Lainlij v. Lojoun*, 1 T.T.R. 113, and from other evidence received in that case on behalf of defendant Jiwirak, it appeared that he was among the class of persons having the necessary relationship to Liwaito, which would entitle them and him to recognition as *iroij lablab* in succession to her, with respect to the numerous *wato* over which she was admittedly enjoying *iroij lablab* rights at the time of her death. Because of the possibility of others having an equal or better right, the court in *Lainlij*, supra, decreed that

Jiwirak was entitled to act as *iroij lablab* over the properties involved in that case, until such time, if any, as there should be some other clear establishment of the proper person to exercise the powers of the former *Leroij* Liwaito.

[2] The theory of the court in temporarily, at least confirming Jiwirak in his claim to the succession, was that there had been recognition of his claims by the plaintiff in that case, and that by virtue of plaintiff's such conduct (in that case) he was precluded from later "turning his back" and joining the opposition. It was therefore upon the basis of acceptance and recognition that the *Lainlij* decision was based, and not upon an automatic accession bottomed upon birth and blood. This court therefore holds that where, as here, there is such reasonable uncertainty as to the rightful successor, or whether there is any successor at all, as to make substantial numbers of owners or interested parties hesitate before declaring their recognition, no valid claim to the succession can be effectively made with respect to any lands, unless and until the persons having rights in such lands have recognized the claimant, either by appropriate words or conduct, in such fashion as to evince an unmistakable choice. To hold otherwise would impose an onerous burden on innocent persons which the law should be chary to sanction.

[3] 2. There is no question but that Jiwirak entered upon plaintiff's land and harvested and removed copra therefrom. The court has found as a fact that there was no recognition of defendant as *iroij lablab* at any time by the parties having the *alab's* interest in said *wato.* It must necessarily follow from such finding and the conclusions reached in the preceding numbered paragraph, that Jiwirak's action in going upon the land above described

was without legal ground, was unjustified, and amounts to a trespass against which equity will relieve. While it is claimed that this action was based on an alleged proof of recognition through the will of one Enoj, who was at most only acting as *alab* for the benefit of the *alab* Limoren, no adequate proof was offered of the execution of the said will, no copy was introduced, nor was there any satisfactory evidence that the *alab* Limoren had sanctioned or confirmed such alleged action of Enoj.

Whether the will, if it had been proved and shown to be authorized, would have been adequate to establish the claim of recognition, without proof of its approval by the members of the *alab's* family in possession and working the land, is not being passed on by this court, though made an issue in the case, in view of the holding that there was no adequate proof of the alleged will.

3. From the conclusions reached hereinabove, it follows that defendant Jiwirak has no right to come upon the land Mwinmwidre, harvest copra thereon and remove the same or any of the products therefrom, and that his doing so is without legal ground and amounts to a trespass. It also follows that he is not entitled to evict Klene and plaintiff from said *wato* for failure to recognize him as *iroij lablab* over said *wato*.

C. JUDGMENT

It is therefore ordered, adjudged, and decreed as follows:—

1. That the defendant Jiwirak account to plaintiff Liwinrak, on behalf of her mother Klene, for the value of 500 pounds of copra removed by him in 1957 without legal authority from the premises described above, and to pay said amount to said plaintiff, on behalf of her mother, within ten (10) days from the date of this order.

2. That the defendant Jiwirak T. be and he is hereby permanently restrained, prohibited, and enjoined from going upon Mwinmwidre *wato* on Ine Island, Arno Atoll, from interfering in any way with the possession and quiet enjoyment thereof by plaintiff and her mother Klene, or any persons in privity with them, from harvesting any part of the products grown on said premises, and from removing any of such products from said premises.

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

4. No costs are assessed against either party.

CRESENSIA KEHLER and JULIDA, Plaintiffs

v.

PEDRO KEHLER and SOLIK, Defendants

Civil Action No. 78

Trial Division of the High Court

Ponape District

May 5, 1958

Action to determine ownership of various plots of land on Ponape Island and of personal property in estate of decedent. Widow and adopted daughter of decedent brought suit against son of niece of decedent, who lived with decedent for number of years, for land and personal property. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that land and personal property were inherited by plaintiff beneficiaries and that defendant had no claim against estate; attempted devisement of Japanese lease to certain plot of land was merged in acquisition of Homestead Permit by plaintiff. The Court further held that attempt to convey German land title to other plots of land by testament was invalid and that land passed to oldest brother of decedent in accordance with provisions of deed.

1. **Ponape Land Law—Japanese Lease—Succession**
   Japanese lease of land on Ponape Island held by decedent cannot be devised without permission of Director of South Seas Bureau or his successor, Trust Territory Government.

2. **Homesteads—Merger with Leasehold Estate**
   Where transferee of rights of Japanese leasehold on Ponape Island, instead of requesting approval of transfer, acquires Homestead Permit,