was brought under Ponape District Law No. 3-9-59, as amended by P.L. 6-64.

[1] No transcript of evidence or draft report accompanied the appeal, so there can be no review of the sufficiency of the evidence. The District Court's comprehensive findings of fact, therefore, must stand.

[2] Appellee's sole contention is that the complaint shows failure to comply with the requirements of the applicable statute relative to notice, and that it was error to allow costs to accrue prior to giving notice. While his legal contention is correct, the difficulty with his position is that the complaint alleged, and the court found as fact, that trespass occurred on more than one occasion. The court further found that notice had been given as required by law. On this general question, see 4 Am. Jur. 2d, Animals, § 55.

[3] Nor was it error to find appellee liable for injury to one of the trespassing animals. Such extreme action can be justified only if clearly required for the defense Qf either person or property. See 4 Am. Jur. 2d, Animals, § 135.

The judgment appealed from is affirmed in all respects.

LOKBOJ RILOMETO, Plaintiff

v.

HATFIELD LANLOBAR and CAPELLE FAMILY, Defendants

Civil Action No. 335

Trial Division of the High Court

Marshall Islands District

December 25, 1968

Action to establish party as *alab* and for compensation for improvements. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that where the *alab* rights had been determined in a previous case the

present case would be barred by the defense of res judicata and also held that where a *dri jerbal* withdraws from land upon his own decision he is not entitled to compensation for improvements he may have made thereon.

1. Judgments-Summary Judgment

   It is proper to enter a judgment based on the claims at a pre-trial conference if on the claims stated at the pre-trial conference it is clear that a party cannot recover.

2. Appeal and Error-Generally

   The only remedy to correct a judgment of the Trial Division is to appeal the case to the Appellate Division of the High Court.

3. Judgments-Res Judicata

   When one fails to appeal within the time allowed or fails to appeal from a ruling on his motion for relief from such judgment he cannot re-try the case in a new action.

4. Judgments-Res Judicata

   If it were not for the defense of res judicata, a party who lost a case could simply start a new case and in the new case re-try the matter just decided and so no matter could be finally determined.

5. Civil Procedure-Damages

   The appropriate manner to determine the exact amount due from one party to another under a judgment is to request the court in that action to determine the correct amount and a petition or request bearing the title and number of the case should be presented and heard in order to determine the amount due.

6. Judgments-Order in Aid of Judgment

   A proceeding under Section 289 of the Trust Territory Code is one to determine a judgment debtor's ability to pay after a court has made a finding for the payment of money by one party to another. (T.T.C., Sec. 289)

7. Judgments-Action on Judgment-Generally

   It is an established rule that to sustain an action ona judgment or decree, the plaintiff must show the defendant to have become bound by a personal judgment for the unconditional payment of a definite sum of money.

8. Marshalls Land Law-"Alab"-Establishment

   It is not proper for a litigant who has just had a trial, an opportunity to prove his right to act as *alab,* and who has lost, to be allowed to maintain a new action against the *iroij lablab* and in effect try his case over again; under those circumstances the principles of res judicata apply.

9. Marshalls Land Law-"Iroij Lablab"-Limitation of Powers

   An *iroij lablab* has the right to settle a dispute as to who. is entitled to the *alab* rights to a piece of land but that right of the *iroijis* not an absolute right to grant one person or another the *alab* rights rather

the detennination must be reasonable and proper and if it is not, a court may overturn that decision.

10. Marshalls Land Law-"Alab"-Establishment

If a party does not wish to follow the detennination of an *iroij lablab* as to who is entitled to exercise *alab* powers on a piece of land, he may file an action in the High Court and have the Court decide if the action of the *iroij* was proper.

11. Marshalls Land Law-"Iroij Lablab"-Actions Against

When a determination of a dispute has been made by an *iroij lablab* that does not give rise to an action against the *iroij* for damages.

12. Judges-Actions Against

Ordinarily, an action or judgment by a judge awarding property to a litigant does not give a person a right to maintain an action against the judge because of his having made a mistake in his decision.

13. Marshalls Land Law-"Dri Jerbal"-Withdrawal From Land

A *dri jerbal* who decides to withdraw from the land does not have a right to compensation for improvements he made to the land, rather the right to receive part of its products should be considered to have been compensation for the improvements where the withdrawal is based on the decision of the *dri jerbal.*

Assessor: ASSOCIATE JUDGE SOLOMON
Interpreter: MILTON ZAKIUS
Counsel for Plaintiff: LUCKY R. LOKBOJ
Counsel for Defendants: MONNA BUNITOK

CLIFTON, *Temporary Judge*

OPINION

At the pre-trial conference plaintiff's counsel stated the claims of the plaintiff, substantially, as follows:-

1. The judgment in Civil Action No. 63, 3 T.T.R. 248, is erroneous.

2. That the amounts (some $500.00) claimed by the plaintiff in said Action No. 63, 3 T.T.R. 248, against the plaintiff in this case to be due as the *alab's* share of copra produced from the land in question are excessive and include amounts claimed to be due from copra produced when the plaintiff and members of his *bwij* were on Avon and not on Likieup.

3. That as the Capelle family, the *iroij lablab* on the land in question, has refused to recognize the plaintiff's rights as *alab,* that plaintiff and his *bwij* should be allowed to remove themselves from Likieup and be compensated by the Capelle family for the coconut and other trees planted by plaintiff's *bwij* and the dwelling houses and other improvements they made on the land in question, as listed in the complaint in this action.

Plaintiff's counsel gave the details of the basis of the plaintiff's claims in regard to compensation for the said improvements. He stated that the plaintiff's family were relatives of the original owners of Likieup, and that they did not live on Likieup, but had places to stay, like Wojke. That Edward Capelle asked the original *alab,* Lian, if he had relatives to aid in caring for the land on Likieup, and told Lian that if he couldn't get anyone to help him work the land that Capelle would have to take half of his land away from Lian and leave him just enough to live on and work on, and Capelle would bring in other people. Plaintiff's family had lands of their own but Lian and Edward Capelle asked them to come to Likieup and work the land and so they did come to Likieup and work on the land, although they were better off on Wojke and they sacrificed their own land to help their brother Lian. That the leader of the group of plaintiff's relatives who came to Likieup wasRel.

Plaintiff's counsel further stated that before he died Lian, the *alab,* divided his land in two sections, giving one to his first relatives and the other to his own family, instead of to ReI, the *alab* of plaintiff's relatives. That, accordingly, after Lian's death, the *alab's* share on the eastern portion of Likieup was given to Lian's family instead of ReI's faniily who were entitled to it. That in *Lanilobar v. Kiojan,* 3 T.T.R. 248, Rudolph Capelle wrongfully supported Lanilobar's claims and as a result, the

plaintiff in this action and his family lost in Case No. 63, 3 T.T.R. 248. That as plaintiff and his family will not be recognized as *alab* on the property in question and have only *dri jerbal* rights on the land that they have a right to remove from the land and to demand compensation from the Capelle family for the trees which they planted and for the other improvements to the land.

As part of plaintiff's claims, plaintiff's counsel stated that he has a statement from Herman Capelle and a similar statement from six other members of the Capelle family, dated April 5, 1967, in which it is said that inasmuch as the plaintiff's family had been brought to Likieup to work the land while it was completely covered with wild trees that plaintiff and other members of the family of ReI should have the *alab's* rights to the land and should not be required to pay the *alab's* share to the side of the plaintiff in Action No. 63, 3 T.T.R. 248; in other words, that the *alab* rights on Lobot East should be for ReI and his family and the *alab* rights on Lobot West should be for Limojlok and her family.

Plaintiff's counsel, therefore, stated that as plaintiff and his family feel that they cannot stay on Likieup if the *alab* rights are not to go to them, that they should be paid for the improvements they made to the land.

The court allowed the pleadings to be amended to show that Rudolph Capelle was being sued as a defendant individually and as representing the Capelle family, and Monna, counsel for the defendant Lanilobar, appeared also as counsel for Rudolph Capelle and as counsel for the Capelle family. His answer to plaintiff's claims was in substance that the plaintiff was trying to re-try Civil Action No. 63, 3 T.T.R. 248, and that the judgment in that action had decided the rights of the plaintiff and his family.

[1] In accordance with recognized legal procedure, it is proper to enter a judgment based on the claims at a pre-trial conference if on the claims stated at the pre-trial conference it is clear that a party cannot recover. See: *Jekron v. Saul,* 4 T.T.R. 128. It is proper, therefore, to examine plaintiff's claims, as above stated, to see that if the facts on which he claims are true he has a legal right to recover a judgment in this action.

[2,3] As to plaintiff's first contention, here denoted number 1, that the judgment in Case No. 63, 3 T.T.R. 248, was erroneous, his only remedy to correct the judgment was to appeal the case to the Appellate Division of the High Court. This he failed to do within the time allowed for an appeal from the original judgment, and no appeal was filed from the ruling on his motion for relief from the judgment which ruling was entered on January 31, 1967. Therefore, he cannot in this new action re-try Case No. 63, 3 T.T.R. 248. The defense of res judicata, in other words that the matter has been adjudged, prevents are-trial.

For an explanation of the defense of res judicata see: 30 Am. Jur., Judgments, §§ 324-326. *Likinono v. Nako,* 3 T.T.R. 120.

[4] If it were not for the defense of res judicata, a party who lost a case could simply start a new case and in the new case re-try the matter just decided and so no matter could be finally determined and, of course, the purpose of a trial by a court is to finally determine a dispute.

[5] As to plaintiff's second contention, here denoted number 2, for the fixing of the exact amount due from the plaintiff in this action for the *alab's* share of the copra, under the judgment in Case No. 63, 3 T.T.R. 248, it would seem that the appropriate way of having that determined is for either party in that action to request the court in that action to determine the correct amount. A petition or

request bearing the title and number of Action No. 63, 3 T.T.R. 248, should be presented and heard in order to determine the amount due. The court here has noted the statement made in the ruling in Action No. 63, 3 T.T.R. 248, made on January 31, 1967, that the plaintiff in that action had decided to withdraw his request for an order in aid of judgment and to start a separate suit on the judgment. It would seem that neither such a separate suit or a request for an order in aid of judgment would be a proper procedure.

[6] A proceeding under Section 289 of the Trust Territory Code is one to determine a judgment debtor's ability to pay after a court has made "a finding for the payment of money by one party to another." In Action No. 63, 3 T.T.R. 248, there has been no such finding, that is, no amount has been found to be due.

[7] As for a new action "on the judgment" it would seem that such an action would not be proper. In 30 Am. Jur., Judgments, § 938, it is said:-

> "It is an established rule that to sustain an action on a judgment or decree, the plaintiff must show the defendant to have become bound by a personal judgment for the unconditional payment of a definite sum of money."

A petition or request by any party to Action No. 63, 3 T.T.R. 248, or anyone who succeeds such party should be under the title and number of said action and request that a hearing be had to determine the amount due under the judgment in said action, but, as before stated, it should not be a separate action nor a proceeding under Section 289 of the Code.

As to plaintiff's final claim, here denoted as number 3, an analysis of this claim shows that plaintiff and the members of his family have no legal right to recover against Rudolph Capelle or the Capelle family for the

improvements on the land involved. Civil Action No. 63, 3 T.T.R. 248, was a determination that plaintiff and the members of his family did not obtain the *alab* rights to the land. Plaintiff's claim, number 3, therefore, is like that under number 2 and the defense of res judicata applies in respect to claim number 3.

[8] It would seem logical to apply the principles of res judicata to situations like this. There are many disputes over the question of who has the *alab* rights to various pieces of land. Some are probably settled by the *iroij lablabs*, their determinations are accepted by the parties. However, some cases come to the courts as evidenced by some of the cases cited herein. Some of the actions are against *iroij lablabs*, that is, an *iroij lablab* has been made a party to the suit. However, in some instances the only parties to the action have been the parties who claim the *alab* rights. Certainly it would not seem proper for a litigant who has just had a trial, an opportunity to prove his right to act as *alab*, and who has lost his case, to be allowed to maintain a new action against the *iroij lablab* and in effect try the case over again, that is, again present to the court all of his witnesses and arguments to prove that he has the right to act as *alab*. Under these circumstances, as had been said, the principles of res judicata, that the matter has been adjudged, should apply.

[9] In further analysing plaintiff's claims, it may be seen that plaintiff's counsel, in his argument, seems to assume that Rudolph Capelle by siding with or agreeing with the plaintiff in Action No. 63, 3 T.T.R. 248, by this the *iroij's* own action cut off or stopped plaintiff's right to be *alab*. The action of Rudolph Capelle, however, instead of an eviction, was rather in the nature of a finding by a court or other person or body having the right to settle disputes, it often has been held that an *iroij lablab* does

have the right to settle a dispute as to who is entitled to the *alab* rights to a piece of land. However, the cases hold that the right of the *iroij* is not an absolute right to grant one person or another person the *alab* rights but that the determination by the *iroij* must be reasonable and proper. If it is not, a court may overturn the decision of the *iroij* awarding *alab* rights. This is true although the courts give great weight to the determination of the *iroij*.

For a discussion of such determinations by an *iroij lablab* and the weight to be given such determinations by the courts, see: *Lalik v. Elsen,* 1 T.T.R. 134. *Lalik v. Lazarus S.,* 1 T.T.R. 143. *Limine v. Lainej,* 1 T.T.R. 107, 231, 595. *Abaya v. Larbit* and *Lieakmo v. Abya,* 1 T.T.R. *382. Jojen v. de Brum,* 2 T.T.R. 336. *Likinono v. Nako, 3* T.T.R. 120. *Liema v. Lojbwil,* 2 T.T.R. 345.

[10] As can be seen by the above cases, if a party does not wish to follow the determination of an *iroij lablab* as to who is entitled to exercise *alab* powers on a piece of land, he may file an action in the High Court and have the court decide if the action of the *iroij* was proper.

[11,12] It would appear, therefore, that when a determination of a dispute has been made by an *iroij lablab* this does not give rise to an action against the *iroij* for damages. The situation is similar to that of actions against judges. Ordinarily, an action or judgment by a judge awarding property to a litigant does not give a person a right to maintain an action against the judge because of his having made a mistake in his decision. See: 30A Am. Jur., Judges, § 73, p. 42 and 43.

As heretofore pointed out, it should be recognized that it was not the action of the *iroij,* that is, Rudolph Capelle, that caused the determination that plaintiff and his family did not possess the *iroij* rights, but it was the facts that had occurred prior to the time the *iroij* was called upon to

make his determination that caused the determination or finding to be made that plaintiff and his family did not possess the *alab* rights.

[13] As to plaintiff's claims that a *dri jerbal* who decides to withdraw from the land has a right to compensation for improvements he made to the land, the court knows of no cases or other authority recognizing such a right. On the contrary, it would seem that it should be held that the use of the land and the right to receive part of its products should be considered to have been compensation for the improvements where the withdrawal is based on the decision of the *dri jerbal.*

See: *Lobwera v. Labiliet,* 2 T.T.R. 559.

This result would seem to apply especially in a case such as this where it would be the act or decision of the plaintiff and his family to abandon their *dri jerbal* rights in the land. As the situation stands today, they may continue to enjoy *dri jerbal* rights although it has been established that they have no right at this time as an *alab* or to take the *alab's* share of the products.

In view of the foregoing, judgment must be entered against the plaintiff as follows:-

JUDGMENT

The above entitled action having been duly brought on for a pre-trial conference on November 1968, at the High Court, Majuro, Marshall Islands District, Temporary Judge Robert Clifton presiding, and Lucky R. Lokboj acting as counsel for the plaintiff and Monna Bunitok acting as counsel for Lanilobar and Rudolph Capelle and the Capelle family; Associate Judge Solomon of the District Court of the Marshall Islands acting as Assessor, Milton Zakius acting as interpreter, and it appearing from the pleadings in said action and the statements of counsel for

the plaintiff that no cause of action exists In respect to plaintiff's claims,

It is ordered, adjudged, and decreed that the plaintiff shall take nothing by reason of his complaint and claims herein. The time for the filing of a notice of appeal from this judgment is extended to 60 days from the date of entry hereof.

MARIA SAM, Plaintiff

v.

MIKEL SAM, Defendant

Civil Action No. 306

Trial Division of the High Court

Ponape District

December 26, 1968

See, also, 4 T.T.R. 184 3 T.TR. 203

Action for enforcement of orders for support. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that where state of record made it impossible to reach any accurate determination which would enable the court to make a final order regarding previous support orders, each of the parties would have to file written sworn responses to a series of questions.

BURNETT, *Associate Justice*

Plaintiff's request for Writ of Execution filed herein August 27, 1968, is hereby denied.

Plaintiff's application recited various orders for support which have been entered previously, and asserts that defendant owes in excess of $1,000 for support of the children and of the plaintiff.

The factual record before me makes it impossible to reach any accurate determination as to how much may be owing by the defendant at this time. The original order for support entered by Associate Justice Goss was in effect