

and that upon failure to do so, the house shall be deemed abandoned by the owner and shall become the property of the Ibuuch Clan.

2. That Adelbai Ngirchoteot and those claiming under him be forever barred from interfering with the use and occupancy of said land as may be authorized by the Ibuuch Clan.

BINA JETNIL, Plaintiff

v.

BUONMAR and ANJUA, Defendants

Civil Action No. 274

Trial Division of the High Court

Marshall Islands District

September 17, 1969

Action to determine who should succeed to title of *iroij lablab* on Island of Takleb, Arno Atoll. The Trial Division of the High Court, Chief Justice, R. K. Shoecraft, held that while plaintiff was entitled to succeed to the title the defendants had authority from plaintiff to act for her as long as they paid her the *iroij lablab* share from the *weto8* in question.

1. Marshalls Custom-"Iroij Lablab"-Succession

The position of *iroij lablab* is primarily one of trust and responsibility, the succession to which depends upon a combination of birth and recognized ability, and it is not a merely personal right which can be given away or abolished at will by one holding it.

2. Marshalls Custom-"Iroij Lablab"-Succession

The expressed wishes of one *iroij lablab* as to the selection of his or her successor may have great influence with his people, but it cannot bind them in such a way as to relieve them from obligations assumed after his or her death.

3. Marshalls Land Law-Generally

All the different levels of owners have rights which the courts will recognize, but they also have obligations to each other, thus there is a duty of loyalty all the way up the line *dr̄i j̄erbal*, to *alab*, to *iroij erik*, to *iroij lablab*, a corresponding duty of protection of the welfare of subordinates running down the line, and a strong obligation of cooperation running both ways.

4. Marshalls Land Law-Generally

As members of the same *bwij*, plaintiff and defendants had certain obligations with respect to each other, probably the stronger obligation being that of the defendants to look after the welfare of their father's sister, the plaintiff.

5. Civil Procedure-Generally

Where no testimony was introduced regarding two matters mentioned in plaintiff's complaint, plaintiff was deemed to have abandoned them.

SHOECRAFT, *Chief Justice*

FINDINGS OF FACT

1. That Jiwirak, *Iroij Lablab* of the *wetos* of Jittaken, Lokloben and Jitoen on the Island of Takleb, Arno Atoll, made a will before his death, naming his sons Buonmar and Anjua, defendants herein, as his successors as *Iroij Lablab* on those *wetos*.

2. That said sons, Buonmar and Anjua, are, and have been since the death of their father in 1964, exercising *Iroij Lablab* powers over said *wetos*.

3. That the plaintiff, Bina (also known by the more formal name of Labina), sister of the deceased *Iroij* Jiwirak, has never exercised *Leroij Lablab* powers over said *wetos*.

4. The *wetos* of Jittaken, Lokloben and Jitoen are *kabi-juknen* land (traditional family land), as contrasted with lands over which Jiwirak was appointed.

OPINION

The plaintiff, Bina, claims in this action that she, as the sister of the former *Iroij Lablab* Jiwirak, is entitled to succeed Jiwirak and to receive the *iroij lablab* shares from copra produced on the lands mentioned in Findings of Fact numbered 1, above, and that the defendants have been withholding said share from her since the death of their father in 1964. Bina claims that the will of Jiwirak naming

his sons to succeed him is invalid for the reason that neither she nor her sister, Bolur, approved said will. She further claims that the land in question is *kabijuknen* land (traditional family land) which came to her father through her mother, that Jiwirak was without power to name his successor by will, and that she, as the eldest sister of Jiwirak, should have automatically succeeded Jiwirak upon his death.

The primary issue in this case is whether or not, under Marshallese custom, the defendants are obligated to pay to the plaintiff the *leroj lablab* share of the proceeds from the three *wetos* in question. The court is of the opinion that they are so obligated.

Although there was little or no testimony which will be of assistance to the court, one salient fact stands out uncontroverted, and that is concerning the nature of the three *wetos* involved here. Bina testified, as did her sister, Bolur, that Takleb Island is *kabijuknen* land. Bina also testified that when the former *iroij lablab* before Jiwirak died, she would normally have succeeded him but that she gave way to Jiwirak on Takleb because Jiwirak was a male, and also because the *alabs* on the other islands on the eastern side of Arno Atoll had elected him as *iroij lablab* on the other islands. She further testified that Takleb Island came from her mother and father for all of the *bwij* and not merely for the sons of Jiwirak. This testimony was not rebutted by the defendants, who relied mainly on the will made by their father.

[1, 2] As was said in *Lainlij v. Lajoun*, 1 T.T.R. 113, at p. 117, "It also seems clear that the position of *iroij lablab* is primarily one of trust and responsibility, the succession to which depends upon a combination of birth and recognized ability, and that it is not a merely personal right which can be given away or abolished at will by one holding it. The expressed wishes of one *iroij lablab*

as to the selection of his or her successor may have great influence with his people, but it cannot bind them in such a way as to relieve them from obligations assumed after his or her death." From the pleadings and the testimony in this case, it does not appear that Bina wishes to act as *leroi lablab* over the lands in question but that she is content for her nephews, defendants herein, to so act so long as she is paid the *iroij lablab* share from the proceeds of the land.

[3,4] The court reminds both parties, however, of the words of Chief Justice Furber in *Jatios v. Levi*, Appellate Division of the High Court, 1 T.T.R. 578, at p. 587. "All the different levels of owners have rights which the courts will recognize, but they also have obligations to each other which severely limit their control over the land. There is a duty of loyalty all the way up the line *dri jermal*, to *alab*, to *iroij erik*, to *iroij lablab*, a corresponding duty of protection of the welfare of subordinates running down the line, and a strong obligation of cooperation running both ways." As members of the same *bwij*, plaintiff and defendants have certain obligations with respect to each other, probably the stronger obligation being that of the defendants to look after the welfare of their father's sister.

[5] No testimony was introduced by either party as to any amounts which may be due to the plaintiff from the defendants for copra produced in past years, and no testimony was introduced as to use of the sailboat formerly owned by Jiwirak. As to these two matters mentioned in plaintiff's complaint, she is deemed to have abandoned her claim.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. As between the parties and all persons claiming under them, the plaintiff, Bina, holds the *iroij lablab* rights in the

wetos of Lokloben, Jittaken, and Jitoen on Takleb Island, Arno Atoll, and the defendants, Buonmar and Anjua, have the authority to act for her for so long as she permits them to so act and for so long as they pay to her the *iroij lablab* share from said *wetos*.

2. This judgment shall not affect any lands other than the *wetos* named herein, nor shall it affect any rights-of-way there may be over the land in question.

3. Costs are assessed against the defendants.

AMERICAN FOREIGN INSURANCE ASSOCIATION, Plaintiff
v.
NAM TRADING COMPANY, S. FUNOWAY, RAPHAEL
DABUCHIREN, YAP SHIPPING CO-OP ASSOCIATION, and
YAP COOPERATIVE ASSOCIATION, Defendants

Civil Action No. 51

Trial Division of the High Court

Yap District

October 6, 1969

TURNER, *Associate Justice*

The above-entitled matter came before the court upon the call of the calendar this date, upon motion of defendants to quash service and dismiss the complaint for failure to state a claim upon which relief can be granted.

The parties not being present nor represented by counsel, the court finds from the record before it **that:-**

1. Complaint was filed in the Trial Division of the High Court, Mariana Islands District Civil Action No. 275, on January 22, 1969.

2. That pursuant to defendants' motion for change of venue, the matter was ordered transferred to Yap District on March 31, 1969.