LIJON ISHODA, Plaintiff

v.

BELLU JEJON, Defendant

Civil Action No. 381

Trial Division of the High Court

Marshall Islands District

September 30, 1971

Action to determine worker interests in Baten *Wato*, Mejit Island. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where land given as *kitre* was to revert upon donee's death to the successors of the donor, person who was working on land with permission was not entitled to inherit it and had not acquired any interest in it.

1. **Marshalls Land Law—"Kitre"**

   It is appropriate under Marshallese custom for a husband to reserve power of further appointment over land which he gives to his wife as *kitre*.

2. **Wills—Revocation—By Will**

   As a matter of law, a subsequent will rescinds all prior wills in conflict with the subsequent instrument.

3. **Marshalls Land Law—"Kitre"**

   Where husband gave land as *kitre* to his wife, but did not grant her the right to determine how it should pass after her death, one who occupied and used the land with the wife's permission, assented in by the husband, did not acquire any vested rights, rather his interest lasted only until wife's death.

4. **Marshalls Land Law—"Mo" Land**

   Where land was declared to be his *mo* land by an *iroij lablab*, when he died, his worker on the land was entitled to remain on it unless or until it was claimed by "close kin" and the new *iroij lablab* is not necessarily "close kin" under the custom.

5. **Marshalls Land Law—"Iroij Lablab"—Limitation of Powers**

   Termination interests in land cannot be done without good and legal cause and may not be done merely to satisfy the personal wishes of the *iroij lablab*.

Assessor:	KABUA KABUA, *Presiding Judge of the District Court*
Interpreter:	JELTAN J. SILK
Reporter:	NANCY K. HATTORI
Counsel for Plaintiff:	LAWRENCE EDWARDS
Counsel for Defendant:	ANIBAR TIMOTHY

TURNER, *Associate Justice*

REPORT OF HEARING

This trial involved worker interests—*iroij erik, alab,* and *dri jerbal*—for Baten *Wato,* Mejit Island, Marshall Islands. The parties are not the same but the facts in this case are related to the facts found in *Frank Anjouij v. Wame, et al.,* 5 T.T.R. 337.

FINDINGS OF FACT

1. Takalur was the *iroij lablab* of the land in question and was succeeded by Lakiwa, his younger brother, in Japanese times.

2. Lakiwa gave the land as *kitre* to his wife Lejebdrik, (or Lijebdrik), for her lifetime only and upon her death it was to revert to the *iroij lablab* succeeding Lakiwa.

3. Lakiwa, who died in 1950, was succeeded by Litakinej for a brief period, and he was succeeded by Lanjo Laninaur Bowiliej.

4. *Iroij lablab* Lanjo signed a *kalimur* in which he "reaffirmed" an alleged promise of Lakiwa to plaintiff that she have *iroij erik, alab* and *dri jerbal* rights to Baten *Wato.* This document, typewritten in Marshallese and signed by Lanjo Bowiliej, as *iroij,* was dated January 2, 1951, and the English translation, also typewritten and signed by Lanjo Bowiliej, was dated January 2, 1962. Both were filed with the Clerk of Courts May 5, 1969, just before Lanjo died.

5. Plaintiff is the daughter of Noji, who was adopted by Lakiwa and Lejebdrik. This relationship and the Lanjo *kalimur* are the basis of plaintiff's claim.

6. Lanjo signed a subsequent *kalimur*, dated October 9, 1964, in which he:—

(a) Asserts Baten *Wato* returned to him in 1964 upon the death of Lejebdrik.

(b) That he named it a "*mo*" *wato*.

(c) That he assigned Bellu, the defendant, as *dri jerbal* on the land. No mention was made of *iroij erik* and *alab* interests but, as a practical interpretation of the assignment, Bellu retained all the shares when he made copra.

(d) That Lanjo as *iroij lablab* and Bellu should alternate in cutting copra.

7. As a result of a controversy between Bellu and Wame as to entitlement to copra from the land, Lanjo accused Bellu of withholding from him the *iroij lablab* share of copra. On May 7, 1969, Lanjo brought Civil Action No. 358 to terminate Bellu's interests in the land. Lanjo died during the summer of 1969 and this court ordered Lanjo's counsel to substitute the successor *iroij lablab* as plaintiff. The complaint was amended by substituting Wame. Civil Action No. 358 has not been tried.

8. In addition to Lanjo's assignment, Bellu claims the three interests in Baten *Wato* because of his relationship to Lejebdrik who was his grandmother under the custom. Bellu's natural grandmother was Lejebdrik's older sister.

9. Lakiwa and Lejebdrik brought Bellu to the land to live on it and work it.

10. Lejebdrik adopted, in addition to Noji, plaintiff's mother, Kotrel and Tarawa, who worked on Baten *Wato* until they were cut off from the land by Lakiwa.

11. Because the entitlement of Wame to the office of *iroij lablab* was not involved in this litigation between the

two claimants to *iroij erik*, *alab* and *dri jerbal* interests, there was insufficient evidence introduced to settle that claim.

OPINION

[1] It is appropriate under Marshallese custom for a husband to reserve power of further appointment over land which he gives to his wife as *kitre*. In this case Lakiwa, the *iroij lablab*, gave the interests in Baten *Wato* to Lejebdrik, his wife, for her lifetime only. She acknowledged that the land was not to pass to her *bwij*, which would have been normal for the descent of *kitre* land, but that it was to return upon her death to the *iroij lablab*. (Plaintiff's Exhibit 3.)

Disposition of *kitre* land interests are discussed in *Clancy Makroro v. Jablur Kokke*, 5 T.T.R. 465; *Wena v. Maddison*, 4 T.T.R. 194; and *Beklur v. Lijablur*, 2 T.T.R. 556.

[2] When Lejebdrik died in 1964, he assumed control over Baten *Wato* and issued his *kalimur* dated October 9, 1964, (Defendant's Exhibit A) declaring it to be "*mo*" land and assigning defendant to work on it. Whatever authority prior to Lejebdrik's death he may have had, it is unnecessary to decide because his *kalimur* to plaintiff prior to the 1964 document was rescinded by the 1964 instrument. As a matter of law, a subsequent will rescinds all prior wills in conflict with the subsequent instrument. Plaintiff's claim to interests in Baten *Wato* based upon Lanjo's will must be rejected as a matter of law. *Lalik v. Elsen*, 1 T.T.R. 134. *Wena v. Maddison*, supra.

Whatever inheritance rights plaintiff may have had in Lejebdrik's *kitre* land as the daughter of the adopted daughter of Lejebdrik were terminated by the terms of the gift which provided for return of the land to the successors of the donor. It must be concluded that plaintiff has no rights to Baten *Wato* on the basis of either of her

claims. That is, she was not entitled to inherit nor to acquire an interest by Lanjo's will which purportedly affirmed a promise of Lakiwa.

It is customary in United States trial proceedings to limit a judgment to a determination of a plaintiff's affirmative claim and when, as in the present case, the plaintiff is unable to support the claim, that is the end of the matter and judgment is accordingly entered denying plaintiff the relief sought. There have been a few instances of such limited judgments in this court. They invariably have had most unfortunate consequences. For example, see: *Sandbargen v. Chutaro*, Civil Action No. 313, and the opinion on appeal, *Chutaro v. Sandbargen*, Civil Appeal No. 60.

We deem it to be better practice to settle as many issues between the parties as the evidence justifies. Consequently, in addition to denying plaintiff's claim, we also should determine defendant's claim to the land in question.

[3] Defendant claims *iroij erik*, *alab* and *dri jerbal* interests as the gift of Lejebdrik, his grandmother under the custom. The evidence is clear defendant's "smallest" grandmother brought him to the land in Japanese times and that his use and occupancy was approved by the *Iroij lablab* Lakiwa, the husband of Lejebdrik. However, when Lakiwa gave the land to his wife, he did not grant her the right to determine how it should pass on her death.

Under the circumstances, even though defendant has occupied and used the land since Lakiwa's time during the Japanese administration to the present day, he did not acquire any vested rights from his grandmother. His interests lasted only until Lejebdrik's death.

On the death of the donee of *kitre*, Lejebdrik, the land interests reverted to *Iroij lablab* Lanjo. Although Lanjo may have attempted to transfer the interests in 1951 or

1962 (depending upon which date is accepted for Plaintiff's Exhibit 1) his actual authority over the land did not arise until 1964 on Lejebdrik's death. We are not required to apply the sophisticated theory of transfer of future interests because whatever effect Lanjo's promise to plaintiff may have had, it was revoked by the subsequent will assigning the interests in the land to the defendant.

When Lejebdrik died in 1964 both Michael and Wame, both claimants to successor *iroij lablab* rights to Lanjo, moved in on the land and began cutting copra. Defendant was able to resist Michael's encroachment but was unable to thwart Wame who, by his own admission, cut and hid the copra and finally, collected the *iroij lablab* share from the buyer's agent without defendant's knowledge or permission. Wame also reported to Lanjo that Bellu was "embezzling" the *iroij lablab* share, which Wame admittedly collected.

There were two consequences to this controversy between Wame and the defendant. The first was the filing of Civil Action No. 358 to remove Bellu from the land. Lanjo died soon after the action was brought.

The other aftermath of the Wame-Bellu conflict was that plaintiff called Wame as a witness and he declared that he was the successor *iroij lablab* and that the plaintiff was entitled to the interests in Baten *Wato*. Wame erred, as a matter of law as to plaintiff's entitlement and he also erred under Marshallese custom in attempting, in these proceedings, to divest the defendant of his interest in the land.

[4] Baten *Wato* was declared to be his "*mo*" land *Iroij lablab* Lanjo. When he died, his worker on the land—the defendant—was entitled to remain on it unless or until it was claimed by "close kin". The new *iroij lablab* is not the necessary "close kin" under the custom.

However, the successor to Lanjo may, if he sees fit, continue the land as his "*mo*" land and deal with it under the custom relating to such land. Until the succession is clearly established, either in this court or by the people, defendant's interests should not be upset.

[5] Even after the establishment of the successor, the termination of interests in land must be in accord with the law and custom. It cannot be done without "good", meaning "legal", cause. Termination of an interest in land may not be made merely to satisfy the personal wishes of the *iroij lablab*. *Limine v. Lainej*, 1 T.T.R. 107, 111. *Abija v. Larbit*, 1 T.T.R. 382.

It was apparent to the court the statement of Wame that the plaintiff was entitled to the Baten *Wato* land interests and the defendant was not entitled was merely an expression of the previous ill-feeling between Wame and the defendant. Such testimony did not conform to the obligations under the custom of an *iroij lablab's* determination of land interests.

Ordered, adjudged, and decreed:—

1. That the plaintiff, Lijon Ishoda, and all those claiming through her, have no right, title and interest either by inheritance or by will in Baten *Wato*, Mejit Island, Marshall Islands District.

2. That the defendant, Bellu Jejon, is entitled to exercise *iroij erik*, *alab* and *dri jerbal* interests on Baten *Wato* until such time as those interests may be terminated in accordance with Marshallese custom by the *iroij lablab* successor to Lanjo.

3. This judgment specifically does not settle any question there may be as to Wame's entitlement to succeed Lanjo as *iroij lablab*. That question, if any, is to be determined in accordance with Marshallese custom.