tion in Palau High Court Criminal Case No. 430, is extended to July 15, 1972.

RUDOLPH K. MULLER, JOHN M. MULLER, JAMES MADDISON, and Others, Plaintiffs

v.

HENRY MULLER, Defendant

Civil Action No. 437

Trial Division of the High Court

Marshall Islands District

June 22, 1972

Action for distribution, among lineage, of *iroij erik* share of money paid on a lease of *wato* in Rairok District, Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the *iroij erik* was entitled to the money and to use and distribute it as he saw fit.

1. **Marshalls Land Law—Leases—"Iroij Erik's" Share**

   Upon lease of *wato*, *iroij erik* was entitled to retain the *iroij erik* share of the lease money for his own use and distribution as he saw fit, as against claim the money should be distributed among the lineage; but the *iroij erik* was still subject to the general responsibility under custom to take care of his family.

2. **Actions—Penalization of Loser by Winner**

   A party to litigation may not be penalized by a winning adverse party merely because a controversy was brought to court.

3. **Marshalls Custom—"Iroij Erik"—Challenge to Authority**

   That members of family challenged their *iroij erik's* determination of right to money paid upon lease of land did not entitle *iroij erik* to penalize them by refusing to distribute any money to them.

Assessor:	KABUA KABUA, *Presiding Judge of the District Court*
Interpreter:	OKTAN DAMON
Reporter:	NANCY K. HATTORI
Counsel for Plaintiffs:	JOHN HEINE
Counsel for Defendant:	BILIMON AMRAM

TURNER, *Associate Justice*

Plaintiffs seek an equal division of the *iroij erik* share of money paid to the defendant as a result of lease by the Trust Territory Government of Kumlal and Jabonbar *wato*, located in Rairok District, Majuro Atoll. This and other land was leased for use in construction of the new Majuro Airport and water catchment system.

The government paid $27,212.00 for its twenty-five-year lease of the two parcels. (See: Contracts TT L-70-31 L and TT L-70-31 K filed with the Clerk of Courts.) Henry Muller holds the *iroij erik* interest for both parcels, having inherited the interest from his older brother, James Maddison, who was confirmed as holder of the *iroij erik* interest in *Maddison v. Tarkwon and Others*, Civil Action No. 48, not reported.

The parties in the present action agreed that the only interest involved is that of *iroij erik*. Families other than the Maddisons and Mullers hold *alab* and *dri jerbal* interests. In this connection, it is noted the government lease of Kumlal *wato* (TT L-70-31K) lists James Milne as *iroij erik*. This is an error resulting from the purported purchase of the interest by Milne from James Maddison. The error was corrected and Henry Muller's interest confirmed in *Muller v. Milne*, Civil Action No. 402, combined for trial with *Muller v. Maddison*, Civil Action No. 401, both reported at 5 T.T.R. 471. For other decisions relating to the two parcels in question and related lands see: *Makroro v. Kokke*, 5 T.T.R. 465; *Muller v. Makroro*, Civil Action No. 432; and *Lajuan and Others* v. *Makroro*, Civil Action No. 435.

The present case presents two unique problems—(1) how money paid for the lease or transfer of land shall be distributed to the interest holders in that land; and (2) what interests, if any, members of a lineage have in the money which has replaced the land. Both these questions are mat-

ters arising within most recent times. As a result, there is no long established and generally recognized custom applicable to their solution.

Before the days of a cash economy, before American times and to a very limited extent during Japanese times, land was the main source of subsistence for a lineage. An *iroij* obtained a small but recognized share of income from all lands over which he had control. He saw to it his family did not suffer from want. Sometimes he assigned family members to live on and off of parcels of land. The *iroij* made all necessary decisions and they were seldom, if ever, questioned.

But now there no longer is any land. It has been exchanged for money. The decision in this case must determine what is done with the money.

In *Muller v. Makroro*, supra, it was determined that defendant was entitled to one-third of the government payment as his *iroij erik* share. (There is no *iroij lablab* because the land is located on "Jebrik's side" of Majuro Atoll.) For the two parcels in question, this amounts to $9,070.67.

The present case is the sequel to the *Makroro* decision. Plaintiffs are and represent the younger generation of defendant's lineage. They all are descendants of the patrilineal line. Defendant and his younger brother are the only remaining surviving children of LiAnnie, the source of the *iroij erik* interest, and the last of the matrilineal line.

The plaintiffs say that all members of the lineage (both older and younger generations) should share in the *iroij erik* share. Defendant counters by saying that traditionally the *iroij* has exclusive control of the land and when money replaces land, he should have exclusive control of it. His only obligation, he argues, is his traditional duty to look after the welfare of his family, which in the extended family sense of Marshallese custom includes the plaintiff

and those he represents. How much he gives them, if any, is a matter solely within his discretion, defendant insists.

Defendant has some precedent to support this position. Much testimony was given as to what defendant's predecessor and older brother, James Maddison, did with government funds paid for lease of six parcels on Uliga Island in the 1950's. The evidence is clear Maddison gave none of the *iroij erik* share to any of the family. The family members shared the payments for the *alab* and *dri jerbal* interests.

This Court rejected in the *Makroro* case the earlier decision in *Bulele v. Loeak*, 4 T.T.R. 5, on the grounds it simply was not realistic in attempting to measure money for the transfer of land in the same fashion as subsistence interest in the land itself was measured.

Plaintiffs' theory of sharing is that the $9,070 should be divided into seven parts, one for each of LiAnnie's children. Since all but two are now deceased, each child's share should be divided equally by his descendants, plaintiffs say. Plaintiffs seek support from the statement of general application by Jack A. Tobin, a long recognized expert on Marshallese custom, contained in "Marshallese Land Tenure", published as a conference paper of the Fourth Lands and Surveys Conference, November, 1970 (Plaintiff's Exhibit 1) in which it is said at page 139:

> "The lineage functions as a corporate group, the members of which possess undivided rights in the lineage land."

As has been previously noted, only *iroij erik* interests are here involved. This is a deviation from the normal lineage interest situation described by Tobin in "Land Tenure Patterns", page 12, et seq. When a lineage holds an interest in land the *alab*, as head of the lineage, is in charge of the land and he divides the copra proceeds by paying the *iroij* his share, retains the *alab* share for himself and turns

over the remainder to the senior *dri jerbal* for distribution (normally on a per capita basis) to all the workers.

Although LiAnnie's children and their children may be described as a lineage, it is not a lineage having normal interests in land. Because the parties here do not possess normal lineage rights in land, we must conclude the general statement made by Tobin relating to "undivided rights in the lineage land" is not applicable. The proposition that "every Marshallese is a potential *alab*" (Land Tenure Patterns, page 17) is not applicable to the parties to this action with respect to the lands in question.

Another aspect of applicable custom is against the plaintiffs. Traditionally the *iroij* received his share of copra sales proceeds—and there were no other regularly established and recognized patterns of income from land until very recently—and he used this income as he saw fit with very few obligations upon him imposed by custom. One of these was the payment to the *iroij erik* (if there was one in the Radak, the eastern chain) for his supervisory services over lands assigned to him. Another, also in the Radak Chain, was payment of hospital expenses of his subjects. Tobin, "Land Tenure in the Marshall Islands, 1956", page 11, mimeographed paper issued by the Pacific Science Board.

[1] Both from the prior experience of the parties with respect to the *iroij* payments to Mike Maddison and Marshallese custom generally, insofar as it can be applicable to this unique situation, it is clear that the defendant, as *iroij erik*, is entitled to retain his share for his own use and distribution as he sees fit. Under the custom, however, it is recognized the senior leader of a family (here the defendant as *iroij erik* of the LiAnnie descendants) does have a general responsibility of "taking care" of his family. In this case, the defendant should pay to the plaintiffs such amount as he, the *iroij erik*, believes to be proper.

The plaintiffs and those claiming through them have no right to demand any specific amount.

The defendant evidenced concern as to his obligation under the custom to the family because of this suit. He indicated a question in his mind as to whether he should now pay anything to the plaintiffs because by this action they challenged his right to make any determination he saw fit to make.

[2] A party to litigation may not be penalized by a winning adverse party merely because a controversy was brought to the court for decision. This principle was applied in *Rilometo v. Lanlobar*, 4 T.T.R. 172, where the Court said:

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

[3] The converse of this is applicable here. The *iroij* may not obtain "damages", that is penalize, members of his family because they disputed and lost in court his determination of his rights to the money. *Lobwera v. Labiliet*, 2 T.T.R. 559.

The defendant fully intended to give his family some portion of the *iroij erik* share before this action was brought. The defendant may not now refuse this generosity merely because the plaintiffs question defendant's right to make his own determination of the amount to be shared with the family.

Ordered, Adjudged and Decreed:

1. That plaintiffs have no right to a specific share of the payment to an *iroij erik* for the transfer of land, but must be satisfied with such reasonable distribution to them as the *iroij erik* sees fit in good conscience and in accordance with custom to make to them.

2. The Restraining Order heretofore issued against defendant is set aside and vacated.

3. No costs are allowed.