

Ordered, adjudged and decreed : that plaintiff is awarded judgment against the defendants, jointly and severally, in the sum of \$3,236 together with interest on said sum at the rate of 6% per annum from date of entry hereof until paid. No costs are awarded.

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ISHMAEL JATIOS et al., Plaintiffs

v.

LEVI LAUNIT and HENRY SAMUEL, Defendants

Civil Action No. 454

Trial Division of the High Court

Marshall Islands District

April 23, 1973

Dispute over attempted transfer of *dri jermal* interests in Elelan, Mwinkubwe and Boke Lijiker *wato* on "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that no transfer could be made without the approval of the Trust Territory Government, the unanimous consent of the *iroij eriks* on "Jebrik's side" or the *droulul* of Majuro.

**1. Marshalls Land Law—"Jebrik's side" of Majuro—Transfers**

Property on "Jebrik's side" of Majuro Atoll may not be transferred without the approval of either the Government of the Trust Territory, the *iroij eriks* or the group holding property rights on that side.

**2. Marshalls Land Law—"Jebrik's side" of Majuro—Transfers**

Attempt to transfer *dri jermal* interests in land on "Jebrik's side" of Majuro Atoll without obtaining required approval could not be justified by argument that the *alab* had sought to terminate transferor's *dri jermal* interest.

**3. Actions—Defenses—Contrary to Custom or Law**

However worthy the reason advanced as justification for an action may be, the action may not be approved when it is contrary to applicable custom or law.

**4. Marshalls Land Law—"Jebrik's side" of Majuro—Transfers**

Holder of *dri jermal* interests in land on "Jebrik's side" of Majuro Atoll could not transfer such interests without the approval of the *iroij eriks* on "Jebrik's side", or the Trust Territory Government, or the *droulul* of Majuro Atoll.

*Assessor:* KABUA KABUA, *Presiding Judge,*  
*District Court*  
*Interpreter:* OKTAN DAMON  
*Counsel for Plaintiffs:* JOHN HEINE  
*Counsel for Defendants:* RANTAK JEKKAR

TURNER, *Associate Justice*

At the pre-trial conference, held this date, with the parties and their counsel present, there was agreement on the issues of fact which is decisive of this case. Accordingly, on motion of the plaintiffs, summary judgment is entered for the plaintiffs in conformity with the findings of facts and conclusions of law herein set forth.

Defendant Levi Launit attempted to transfer his *dri jermal* interests to the defendant Henry Samuel in the following land located on "Jebrik's side" of Majuro Atoll:

Elelan *wato*, Mwinkubwe *wato*, and Boke Lijiker, an island comprising one *wato*.

Defendants admitted that the attempted transfer had not been approved by the Trust Territory Government, by the unanimous consent of the *iroij eriks* on "Jebrik's side" of Majuro Atoll, nor by the *droulul* of Majuro. This Court has held without deviation since 1952 that these entities hold the power over land normally exercised by the *iroij lablab*. Since the death of Jebrik Lukotworok in 1919 there has not been an *iroij lablab* for lands on Majuro he controlled. The Japanese Government first assumed that authority and from American times it has been in either the hands of the Government or the hands of the *droulul*.

In *Levi v. Kumtak*, 1 T.T.R. 36, the precedent Marshallese land case, it was held that Levi and the members of his *bwij* held *dri jermal* interests in Elelan and Minkibwe (spelled Mwinkubwe in the present case) *watos*. Boke Lijiker Island was not involved in *Levi v. Kumtak, supra*, and plaintiff did not challenge Levi's *dri jermal* interest

claim to it, but because no evidence was taken no decision can be made on this point. It also is unnecessary to decide what interest, if any, Levi has in the land.

The Trial Division Judgment in *Levi v. Kumtak*, *supra*, was affirmed by the Appellate Division in *Jatios v. Levi*, 1 T.T.R. 578, but was of an interlocutory nature dependent upon certain contingencies. There is no record of subsequent action affecting the Judgment.

The factual question of who held *alab* and *dri jermal* interests in land on "Jebrik's side" of Majuro is not of great significance in comparison with the question of law decided in that case.

The essential holding, based on the concept of Marshallese custom that the *iroij lablab* must approve or acquiesce in any transfer of land interest, is that this principle of traditional land law is applicable even when there is no recognized *iroij*. The Court held at 1 T.T.R. 42:

"The rights formerly vested in the *iroij lablab* are now vested in the Government of the Trust Territory of the Pacific Islands, the *iroij eriks* on Jebrik's side, and the group consisting of those holding property rights on that side."

[1] Without the approval of any one of these holders of *iroij lablab* interests, property may not be transferred. To do so is to attempt to evade or flaunt traditional Marshallese principles applicable to land transfers.

Most recently this Court held in *Muller v. Milne*, 5 T.T.R. 471, that an attempted transfer of land should be set aside for failure to obtain the requisite approval or acquiescence. Other similar decisions are: *Jekron v. Saul*, 4 T.T.R. 128; *Mike M. v. Jekron*, 2 T.T.R. 178.

[2, 3] Defendants, in their argument on plaintiffs' motion for judgment urged that the reason the defendant Levi attempted to sell the land to Samuel was that the *alab*, as one of the plaintiffs, sought to terminate his *dri jermal*

interests. The argument must be rejected. As was said in the *Milne* case at 5 T.T.R. 476:

“However worthy the reason may be in justification of an action, it may not be approved when it is contrary to applicable custom or law. A good motive does not justify a wrongful act.”

The Court is fully aware that there are those on Majuro who have attempted either wrongfully or for what they considered legitimate reasons to avoid the application of Marshallese land tenure custom to Jebrik's side on Majuro. Accordingly, these persons who would change the law for their personal benefit have attacked the Court and its initial decision on the question in *Levi v. Kumtak*, *supra*.

Beginning with *Lazarus S. v. Tomijwa*, 1 T.T.R. 123 in 1954, this Court has many times said that it is not for the courts, but for the legislature, to change the land law as it was in effect on December 1, 1941, in accordance with 1 T.T.C. 105. This Court said at 1 T.T.R. 128 referring to the law applicable to Jebrik's side on Majuro Atoll:

“Whether the basic arrangement should be changed now is a question of policy for the law making authorities, and is not for the courts to decide.”

[4] This Court is bound by the Appellate Division holding that the defendant Levi holds (with others) *dri jermal* interests on at least two of the parcels in question. He may not be deprived of these interests without good cause. Just as the Court will protect the defendant's interest in this respect, so it will insist that he conform with the law when he attempts to transfer his land interests. It is,

Ordered, adjudged and decreed:—

1. That the sale of *dri jermal* interests by defendant Levi to defendant Samuel for the following parcels located on Jebrik's side of Majuro Atoll:

Elelan *wato*

Mwinkubwe *wato*

Boke Lijiker Island

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be and the same is set aside, vacated and declared to be without force and effect.

2. That the defendant Samuel has no *dri jermal* interest in the above named parcels and as to him the restraining order heretofore issued in this case shall remain in effect, but it is and shall be vacated as to defendant Levi and his *bwij*.

3. Plaintiffs are allowed costs in accordance with law.

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TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

HILARIO LANZANAS

Criminal Case No. 313

Trial Division of the High Court

Mariana Islands District

April 24, 1973

Prosecution arising from homicide. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that where one man made senseless attack upon defendant, he was entitled to defend himself, but was guilty of manslaughter where, after stabbing assailant, he stabbed two of assailant's companions who were standing by, killing the third man stabbed.

**1. Homicide—Voluntary Manslaughter—Particular Cases**

Where defendant and a companion entered restaurant, had a beer can thrown at them by one of four men sitting together, none of whom they knew, left the restaurant and were about to leave the area in a truck when each was attacked with fists by one of the four men and objects were thrown at the truck, and the other two men were a few feet away and did not attempt to fight with defendant and his companion, and the two attackers took the truck keys and one attempted to pull defendant's companion from the truck, as a matter of law, the attack was completely senseless and defendant was entitled to defend himself, but where, after stabbing his attacker, he stabbed the two men standing by, killing the third man stabbed, his response was not reasonably necessary for the defense of either him or his companion and exceeded the defense permitted by law and defendant was guilty of manslaughter.

**2. Homicide—Self-Defense—Elements**

Self-defense is an excuse or justification for homicide only where defendant was in imminent danger of death or great bodily harm or