his memorandum at close of trial the change between Australian $1.00 to U.S. $1.2020 in 1972 to Australia $1.00 to U.S. $1.4225 in September, 1973, is an effective U.S. dollar decline or loss of U.S. $1,728.88. In other words, to satisfy the debt to the seller of Australian $7,841.34, which was U.S. $9,425.30, at time of suit, admitted by defendant, payment of U.S. $11,154.18 is required at time of judgment. Upon the amount due at time of suit, plaintiff claims and is entitled to interest at the rate of 6 percent per annum to judgment and thereafter upon the judgment amount at the same rate until paid.

Ordered, adjudged and decreed:—

1. That plaintiff be and hereby is granted judgment against defendant in the sum of $12,158.04, together with interest on the judgment amount at the rate of 6 percent per annum until paid.

2. That defendant's counterclaim against the plaintiff be and the same is hereby denied.

3. Plaintiff is awarded costs upon making claim in accordance with law.

KOTTA LOKAR, Plaintiff

v.

WILMER LATAK, Defendant

Civil Action No. 20-73

Trial Division of the High Court

Marshall Islands District

November 15, 1973

Action for removal of defendant's family from *wato* in Rita, Majuro Atoll, Marshall Islands, plaintiff *alab* and *dri jerbal* had given them permission to live on. The Trial Division of High Court, D. Kelly Turner, Associate Justice, held the family could be ordered removed without cause and that *iroij erik*

could not countermand removal notice without approval of the *alab* and the members of the *bwij*.

1. **Marshalls Land Law—Business on Land**

   Under Marshallese custom, when a person lives on and sells copra from land, he is expected to make food contributions to both the *alab* and the *iroij*, as well as sharing a small portion of copra sales with them, and in the event he operates a business on the land, the practice is continued.

2. **Marshalls Land Law—"Iroij Erik"—Powers**

   Where defendant was given written notice to vacate land he occupied with the consent of plaintiff, who was *alab* and *dri jerbal*, testimony of person taking the place of the *iroij erik*, that *iroij erik* told her he did not want defendant removed, was not a sufficient defense to removal action, for under Marshallese custom *iroij erik* could not allow defendant to stay without obtaining the approval of the *alab* and the members of the *bwij*.

3. **Marshalls Land Law—"Alab"—Powers**

   Where plaintiff, who was *alab* and *dri jerbal* for *wato*, gave defendant and his extended family permission to live on the land, permission could be revoked without cause.

4. **Marshalls Land Law—"Alab"—Powers**

   Where plaintiff, who was *alab* and *dri jerbal* for *wato* defendant and his extended family had been given permission by plaintiff to live on, was offended by defendant's son, who "took" plaintiff's wife without her consent, the defendant, as head of the family, also offended plaintiff and plaintiff had adequate cause under Marshallese custom to remove the family from the land, particularly since cause was not necessary.

Assessor: MORRIS JALLY, *Associate Judge, District Court*
Interpreter: OKTAN DAMON
Counsel for Plaintiff: JETMAR FELIX
Counsel for Defendant: KONAME

TURNER, *Associate Justice*

Plaintiff is the *alab* and *dri jerbal* for Utirikkan *wato* (also spelled Utdrikkan) in Rita, Majuro Atoll. There is no *iroij lablab* as the land is on "Jebrik's side." The plaintiff and his *iroij erik*, Taidrik, granted permission to defendant, Wilmer Latak, and his extended family to live on the *wato*. This permission included construction of a

dwelling house and perhaps, as defendant insists, also included the right to construct a retail store. Plaintiff, members of his family, and other families also live on this parcel of land.

Whether permission to build a store was granted or not is not material to the result. In any event, plaintiff did not stop defendant from building the store, regardless of whether he had permission or not.

The issue presented is basically whether the plaintiff and the *iroij erik* had a right under Marshallese custom to remove defendant from the land, together with his family and relatives and his store and dwelling. The grounds for removal rested upon the admitted misconduct of defendant's son.

The defendant and his family moved onto the land late in 1971. Soon thereafter defendant's son engaged in a loud and boisterous dispute with defendant's younger brother. It included rock throwing by the son at house roofs and was concluded when the municipal police took him away for the night at the call of the plaintiff.

The next disturbance occurred between defendant's son and the plaintiff's younger brother. There were two versions of the fight between them but in any event, the son again spent the night in jail. After this affair, plaintiff told defendant to send his son away from the land.

Defendant claimed he sent his son to live with his grandmother in Rita. There was no evidence the son actually left the land. He did reappear on the land, living with his wife and her family in his wife's house on the land.

Thereafter, in 1973, defendant's son drunk by his own admission this time, "took" plaintiff's wife, which because of the family relationship under the custom between plaintiff and defendant's son's wife was a violation of a strong taboo under the custom. When this happened, plaintiff went to see the *iroij erik*, told him the defendant's son had

made love (forcibly) with plaintiff's wife, and the two of them agreed upon the removal of the defendant, his family and his property from the land. The notice was given to the presiding judge of the district court who transmitted it with a covering letter to defendant.

Defendant in the evening of the day he received the eviction notice went to see the *iroij erik* to ask for a few days of grace so that he could find a place to move to. At least that was what defendant testified his original intention was, but he came away from the meeting, he said, with a clear understanding that Taidrik did not require him to leave the land, but it would be sufficient if his son was sent from the land.

It is evident that the defendant at the time of this visit to the *iroij erik*, or within a day or two thereafter, began making payments of money to the *iroij* on a more or less regular basis. Prior to commencing the payments to the *iroij erik*, the defendant had been making similar payments to the plaintiff.

[1] These payments were not for land rental, the defendant explained, but were contributions or gifts in accordance with the practice which requires a person operating a business on a *wato* to share some of the income with the *alab* and *iroij erik*. When a person lives on and sells copra from land, he is expected to make food contributions to both the *alab* and *iroij* as well as sharing a small portion of copra sales with them. The practice in the instance of operation of a business is continued except that defendant deviated from the custom by making payments to the *alab* until the *alab* ordered him off the land and then he switched the payments to the *iroij*, who had joined in the eviction notice but thereafter changed his mind.

The evidence is clear the *iroij* did not inform the plaintiff of his change of mind. Defendant at no time approached the plaintiff about remaining on the land. Defendant

simply refused to vacate although he did require his son, his son's wife and her father and mother and "some small children" belonging to his wife's parents to move to other land outside of Rita. However, the removal did not particularly affect the defendant's son as he returned to his father's store frequently, if not daily, to play pool and to "get things he needed." He apparently no longer lived on the land either in his father's or his wife's house.

One final event completes the picture of the dealings between the litigants upon which the court must settle the rights of the parties. On the day the *iroij erik* left Majuro to go to Saipan to live with relatives, he told his younger sister, that (a) he designated her as his representative and that she would be entitled to draw goods from defendant's store, and (b) he did not want the defendant removed from the land. In her testimony about her conversation with her older brother, the *iroij erik*, it is evident she was given no information about the problems between plaintiff and defendant. She said she believed the parties should live peacefully together but had been given no information by Taidrik and therefore had no information whether they could or not.

[2] Defendant's sole justification for remaining on the land after he had been given written notice to vacate was the testimony of the sister and representative of the *iroij erik* that defendant should remain on the land. The defense is not adequate. This controversy is governed entirely by application of Marshallese customary law governing relationships between people.

Even if defendant had established by adequate proof that the *iroij erik* had directed the defendant remain on the land, the change of mind was not effective under the custom because it was done without consultation or approval of the *alab* and the members of the *bwij*.

Many cases in this court have referred to the governing traditional law applicable to changing interests in land. The rule is illustrated by the statements and holdings in *Muller v. Maddison*, 5 T.T.R. 471, 474. The court said:—

". . . it is a basic principle that a member of the lineage, even though he is the senior member and even though he holds the title of *iroij erik*, may not give or transfer lineage land without first obtaining the approval of the adult lineage members and of the *iroij lablab*."

". . . If, however, the transfer is without lineage consent and there is not good reason for the change, then the *iroij lablab's* consent may be upset by the court when it is challenged."

[3, 4] The distinction between the present case and the cited decision is that the defendant, Wilmer, had no interest in the land except permission to live on it with many others. This permission was subject to revocation without cause, except that here there was adequate cause under the custom. It must also be remembered the defendant acknowledged that as head of the family, he was responsible for the conduct of its members. When the son offended the plaintiff, the defendant, as head of the family, also offended the plaintiff and the decision to remove the head of the family and all the family members and property was valid. It was a determination as to land use that could not be changed or revoked without consent of the *bwij*, the *alab*, and the *iroij erik*. No such consent was given. The change of mind of Taidrik may not be sustained, if in fact it did occur, in the face of plaintiff's determination to enforce the decision previously agreed to between them.

The court is not inclined to make invidious conclusions but the evidence is clear that defendant went to plead with Taidrik in the evening of the day the removal notice was given to him and that thereafter defendant paid money to Taidrik while he was on Majuro and when he left, he made payments to Taidrik's sister. Whether these payments did,

in fact, cause the *iroij erik* to change his mind about removing defendant from the land is immaterial. Whatever the reason, if there was a change of mind, it was not effective unless it complied with the traditional pattern governing control of lineage land.

Since the defendant believed he had obtained a reprieve in the removal action, the court will take this into consideration in fixing the time within which defendant must take his property from the land or forfeit it to the plaintiff.

Ordered, adjudged and decreed:—

1. That plaintiff shall and hereby is granted judgment that the defendant shall close his store and remove all of his property together with himself and his family from Utirikkan *wato*, Rita, Majuro Atoll.

2. Defendant shall be allowed ninety days from entry of judgment within which to remove his property and any property remaining thereafter shall be deemed to be forfeited to the plaintiff. This stay of removal shall not affect closing of defendant's store upon entry of judgment.

3. Plaintiff shall be allowed his costs upon making claim in accordance with the law.

LAJUP MOJILIONG, Plaintiff

v.

JELTAN LANKI, REPRESENTATIVE OF "LEROIJ ERIK" REAB AMON, Defendant

Civil Action No. 13-73

Trial Division of the High Court

Marshall Islands District

November 16, 1973

Suit involving *alab* and *dri jerbal* rights in Mwijrokej *wato*, Rairok Island, "Jebrik's side" of Majuro Atoll. The Trial Division of the High Court,