

JOHN TORING, also spelled TODRING, Plaintiff

v.

LEJEBEB, Defendant

Civil Action No. 351

Trial Division of the High Court

Marshall Islands District

March 5, 1974

Action attacking termination of *dri jermal* interests in Tuaklok Wato, Northern Ejej Island, Aur Atoll, Marshall Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where *dri jermal* assigned to the land by the *alab* was the son of a man adopted by his *bwij*, *dri jermal* was not a member of the *bwij*, had very tenuous, if any, right to work the land, and at most, was on the land by the *alab's* sufferance, and that the "good cause" necessary to his removal could be a lot less persuasive than would normally be required.

**1. Marshalls Land Law—"Iroij Lablab"—Basis for Decisions**

A minimum of fair play requires that an *iroij* hear and consider both sides of a controversy before making a decision affecting land interests.

**2. Marshalls Land Law—Adopted Persons—Removal From Land**

Where *dri jermal* assigned to the land by the *alab* was the son of a man adopted by his *bwij*, *dri jermal* was not a member of the *bwij*, had very tenuous, if any, right to work the land, and at most, was on the land by the *alab's* sufferance; and the "good cause" necessary to his removal could be a lot less persuasive than would normally be required.

**3. Marshalls Land Law—Adopted Persons**

A person adopted by a member of a *bwij*, that the adopted person is not a member of, has stronger rights than a child of such adopted person; and where a person is adopted by an *alab* and assigned to land as a *dri jermal*, his interest should not be terminated except for good cause and acquiescence by the *iroij*, though if his child succeeds him as *dri jermal*, the child's interest is weaker and may be terminated without any substantial showing of good cause.

Assessor:

KABUA KABUA, *Presiding Judge,*  
*District Court*

Interpreter:

OKTAN DAMON

Counsel for Plaintiff:

PRO SE

Counsel for Defendant:

ELLAN JORKAN

TURNER, *Associate Justice*

The plaintiff claims the defendant cut off plaintiff's worker's interests, *dri jermal*, on the land known as Tuaklok *Wato* on Northern Ejej Island, Aur Atoll. The first controversy arises over the designation of the land involved in this litigation. Defendant claims it is known as Turion *Wato*. Under the decision in this case, the designation of the specific *wato* is immaterial. It is sufficient that the disputed *wato* was one of nine *wato* on the northern end of Ejej Island, Aur Atoll.

The decisive question of applicable customary law concerns the rights of a child of an adopted child in lineage or *bwij* land. Specifically, is the child of an adopted child entitled to the same consideration and treatment as a true member of the *bwij*? Custom appears to treat them differently.

Plaintiff's father, Toring, who was from Majuro and a member of the Driluwit Clan on that atoll, was adopted by Anej, who was *alab* of the land in question on Aur. Anej assigned Toring to the land as a *dri jermal*. Anej died and defendant became the successor *alab* in 1943. Toring continued working under him until he died in the mid-50's, and his son, the plaintiff, continued working the land. Thereafter, according to the defendant, the plaintiff did not "cooperate" with the *alab* as he was required to do under the custom. Approximately eight years prior to date of trial, defendant began refusing to let plaintiff cut copra on the land.

The upshot of this decision was a meeting on Aur between plaintiff and defendant and *Leroij Lablab* Limojwa. Before the matter could be presented to the *leroi*, the two disputants settled the controversy between themselves and the defendant told the plaintiff to go to the land to cut copra.

Plaintiff did not go. The reason, he said, was because the defendant had assigned a relative to cut all copra then available. Defendant testified he went to the land and waited a week for the plaintiff to show up and then learned the plaintiff had left on the field trip ship for Majuro.

Subsequently, another meeting was held between the two, together with Rubon, plaintiff's brother-in-law, before the *leroi*. The *leroi* declined to make any ruling in settlement of the controversy but did authorize plaintiff to file his lawsuit to prevent defendant from terminating his *dri jermal* interests.

During the course of the trial, the defendant went to Limojwa's representative and got him to agree, in behalf of the *leroi*, with the defendant-*alab*'s determination to terminate plaintiff's *dri jermal* rights. The court refused to accept the written memo evidencing this decision because the plaintiff had not been present at the time it was made.

[1] A minimum of fair play requires that an *iroij* hear and consider both sides of a controversy before making a decision affecting land interests. This court admonished the *leroi* and her representative at another time for making a decision without hearing "both sides" of a controversy. *Edwin v. Thomas*, 5 T.T.R. 326, 330.

The court also cited in *Edwin*, the restrictions upon the exercise of unlimited power by an *iroij* as set forth in *Abija v. Larbit*, 1 T.T.R. 382, 385. *Leroij* Limojwa also was the object of an application of customary law, also pertaining to the present case, in *Jabwe v. Henos*, 5 T.T.R. 458.

The statement at 5 T.T.R. 462 is equally applicable to the present case:—

"The consent of the *iroij lablab* to an *alab*'s action removing *dri jermal* from land must be given only after thorough investigation and upon a finding that good cause exists for cutting off land interests in accordance with the law and the custom."

After rejecting the written statement of the *leroi* upholding the *alab* in the removal of the *dri jermal* from the land because there obviously was no consideration of the position of both sides, the court permitted the parties to return together to *Leroij Limojwa*, present their respective cases, obtain her decision and report back to the court.

This was appropriate on the theory the court should not interfere with the proper exercise of custom and the application of traditional land tenure determinations as long as these decisions are in accordance with both law and custom.

The appellate division of this court said in *Heno v. Kai-ko*, 5 T.T.R. 352, 357:—

“Many times it has been decided in the courts that the determination of land rights by the *iroij lablab* will be presumed correct and will be upset only when there is clear evidence the determination was improper.”

Thus, when the parties reported back to the court, and *Leroij Limojwa* had again sustained the *alab*'s removal of the plaintiff from the land, the determination would be binding upon the court unless, for any reason, it appeared there was not good cause for the defendant to cut off plaintiff's rights. There was no conclusive evidence offered during the trial whether plaintiff had ignored customary obligations and thus created “good cause.”

[2] The uncertainty may be resolved, however, by examining the precise nature of the interests plaintiff held as a *dri jermal* assigned to the land by the *alab*, when plaintiff was not a member of the *bwij* owning and controlling the property. Plaintiff was the natural son of an adopted son of the *bwij*. As such he was neither a member of the *bwij*, as was his father as result of the adoption, but he likewise had very tenuous, if any, entitlement to work the land. At most, plaintiff was on the land by sufferance with the consent of the *alab*. Although the court would not approve an arbitrary withdrawal of the consent by the *alab*,

the "good cause" for terminating the right to work the land would be far less persuasive than normally would apply.

J. A. Tobin discusses adoptive rights in "Land Tenure Patterns," p. 21:—

"The Marshallese (adopted) child becomes a part of another extended family group but also retains his ties, emotional and otherwise, with the biological parents and other *bwij* relative. . . .

"Adopted children are allowed the right to work on and enjoy the benefits derived from the land belonging to the lineage of their adopted parent with the permission of the *alab* and the lineage."

[3] Plaintiff's father, having been adopted by the *alab* and assigned to work on the land in question, and also having obtained the consent of the successor *alab* to work the land, acquired protected interests that should not be terminated without the *alab's* determination supported by "good cause" and acquiesced in by the *iroij*. Plaintiff, however, did not stand in as strong a position as his father traditionally under the custom nor under the facts of the present case. The defendant was *alab* when plaintiff's father died and permitted plaintiff to continue working the land for a short period. There was no specific assignment of plaintiff to the land, nor a confirmation by the *leroi* of plaintiff's permission to work the land. Whatever interests plaintiff had in the land were by acquiescence of the *alab*. Tobin said in "Land Tenure Patterns":—

"The children of the adopted children also have rights in the land, but these rights become progressively weaker with ensuing generations. These rights must also be confirmed by the *alab*."

Under the circumstances of the *alab* withdrawing his confirmation of plaintiff's assignment to cut copra on the land, and this decision having been approved by the *leroi* *lablab*, the court concludes a child of an adopted child may be removed from land without any substantial showing of

good cause for the action. There has been sufficient evidence from the defendant justifying his action.

Ordered, adjudged and decreed:—

1. That plaintiff shall be denied relief and may work the land on northern Ejej Island, Aur Atoll, only if and when assigned to do so by the *alab*.

2. That no costs are assessed.

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ITPIK MARTIN, Appellant

v.

FRANCISCO MOREI, Appellee

Civil Action No. 52-73

Trial Division of the High Court

Palau District

March 18, 1974

Appeal from land commission determination. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that appellant's admissions to land registration team defeated his claim on appeal.

1. Real Property—Sales—Recording

Where owner of land sold it to two different persons and the first transfer agreement was recorded, second sale, as a matter of law, could not be sustained, because buyer was prevented by the transfer from being an innocent purchaser without notice of the prior sale.

2. Real Property—Sales—Contracts

Evidence supported land commission determination defendant owned property on basis of sale by plaintiff where plaintiff acknowledged to land registration team that he had entered into and signed the sale agreement and plaintiff had not challenged the agreement for nine years, until the land commission hearing.

Assessor:

SINGICHI IKESAKES, *Associate Judge,*  
*District Court*

Interpreter:

AMADOR D. NGIRKELAU

Counsel for Appellant:

PRO SE

Counsel for Appellee:

PRO SE