

LABILLET v. ZEDEKIAH

Civil Appeal No. 103, ordered dismissed this day, is a companion appeal with the same counsel as the present case.

Ordered, that the appeal filed herein be, and the same is, dismissed.

LABILLET, Plaintiff

v.

ZEDEKIAH L. and "LEROIJ" LANJEN, Defendants

Civil Appeal No. 78

Appellate Division of the High Court

Marshall Islands District

January 17, 1974

Appeal from determination of interests in Makije *wato*, Ajeltake Island, "Jebrik's side" of Majuro Atoll. The Appellate Division of the High Court, per curiam, held that judgment unsupported by any testimony below would not be upheld and that record allowed determination of the interests on appeal.

1. Appeal and Error—Unsupported Judgment—Power of Reviewing Court

That trial court's judgment that defendant held interests in *wato* was without support in testimony before the Master or in the Master's report did not require either a remand or an opposite determination, on appeal, that plaintiff held the interests, where record allowed an appropriate decision.

2. Marshalls Land Law—"Jebriks side" of Majuro—Succession

Plaintiff was bound by the law as to ownership, and successorship to ownership, of interests in *wato* on "Jebrik's side" of Majuro.

3. Marshalls Land Law—"Morjinkot" Land—Generally

Morjinkot was *alab* and *dri jermal* interests, given by an *iroij lablab* who was successful in war, to an outstanding warrior, or to his *bwij*; and since warriors were not of the royal blood, were commoners, the *iroij* interest did not pass under a *morjinkot* gift.

4. Marshalls Land Law—"Dri Jermal"—Revocation of Rights

Where defendant and his people had worked *wato* for half a century, it was not within anyone's power to cut off defendant's *dri jermal* rights without good cause.

Counsel for Appellant:
Counsel for Appellee:

MONNA BUNITAK
BILIMON AMRAM

Before BURNETT, *Chief Justice*, BROWN and TURNER,
Associate Justices

PER CURIAM

This is an appeal from a Trial Division judgment that the defendant, Zedekiah L., held *iroij erik* interests in Makije wato, Ajeltake Island, Majuro Atoll. The decision was based upon a Master's report holding that defendant, *Leroij erik* Lanjen, rather than Zedekiah was the *iroij erik*.

This appeal, however, was taken by the plaintiff, Labiliet, who claimed "ownership" of the land, meaning *iroij erik*, *alab*, and *dri jermal* interests for Makije wato. A prior decision of the trial court, issued upon the basis of the transcript of testimony at an unfinished Master's hearing, had decided that Labiliet held the interests in the land. Upon motion of the defendants, this decision was set aside and the case was remanded to the Master for further hearing and report.

It is not surprising, therefore, that the plaintiff appealed from the second decision, which was directly contrary to the earlier holding, and that one of the grounds for appeal was because of the trial courts action in vacating its initial judgment favorable to appellant and thereafter issuing a judgment holding against appellant. The appellant also sought reversal on the grounds the court made conclusions of fact not supported by the evidence and because of improper rejection of evidence.

Because the appeal questions the sufficiency of the evidence to support the result reached and because the judgment fails to determine all of the issues in dispute thereby making only a partial determination of the controversy, and finally, because the result the Trial Court reached is not supported by any finding of fact drawn from the testimony, it is necessary, in the interests of justice, to review

the entire record. This includes the Master's report, the transcript of testimony at two hearings before the Master, the pleadings and the extensive written argument of counsel.

Normally, an appellate court will not review the record to determine whether the evidence supports one conclusion or another. As was said in *Kalo v. Karapaun*, 5 T.T.R. 536, "It is sufficient that there be some evidence supporting the result reached." The functions of the appellate court in reviewing evidence is stated in *Arriola v. Arriola*, 4 T.T.R. 486.

The appellate rule is codified by 6 TTC § 355(2) which provides:—

"The findings of fact of the Trial Division of the High Court in cases tried by it shall not be set aside by the Appellate Division of the Court unless clearly erroneous . . ."

[1] This appeal does not depend upon weighing the evidence but must seek to determine whether there is any evidence to support the conclusion reached. The record shows the court's judgment that the *iroij erik* interest in *Makije wato* is held by Zedekiah, "pursuant to a grant of those rights from the defendant, *Leroij Janjen*," is without support in the testimony before the Master or in the Master's report.

Nor does the conclusion by this court that the trial judgment result is not supported by the evidence require an opposite determination that the appellant holds the interest. Nor is it necessary to remand the case for further trial. The record is adequate for an appropriate decision "free from manifest error" within the requirements of the code. Had the Trial Division followed the findings of the Master this court would be precluded from setting such findings aside unless they were "clearly erroneous." *Osawa v. Ludwig*, 3 T.T.R. 594.

The problem on this appeal, however, is that the Trial Division approved the Master's report but ignored it in the entry of judgment. The Master specifically found that Moses, the uncle and predecessor of Lanjen, held *iroij erik* rights. No finding of fact or testimony, for that matter, supported the judgment holding that Lanjen passed the interest on to Zedekiah.

Leroij erik, Lanjen, was the proper person by blood under the custom to inherit from Moses upon his death. Counsel reminds us Lanjen is now dead and that Mo Jitiam is the proper person to succeed her.

Labiliet, at one time, collected the *iroij erik* share of copra sales from Makije. He insisted he was entitled to do this because when he returned to Majuro after World War II, he asked Lanjen for the share. Whether it was given to him under an agreement as the appellee claims and appellant disputes is not material because Labiliet did not hold the title. He obtained, by demanding from the *dri jermal*, the customary *iroij erik* share of copra sale proceeds.

When Jebrik Lukotworok died, without successor, a committee of seven *iroij eriks* and seven *alabs*, called the "14", with the approval of the Japanese Administration, appointed *iroij eriks* on Jebrik's land which did not have an *iroij erik* during Jebrik's lifetime. This was done, apparently, in accordance with Jebrik's wish that his lands be divided among the *iroij eriks*. This division necessitated appointment of an *iroij erik* on some lands, including Makije, the *wato* in question.

Moses was named by the committee of 14 as title bearer for Makije. This appointment occurred in the early 1920's. Moses was succeeded by Lanjen who held the title on December 1, 1941, and in accordance with 1 TTC § 105, the law concerning "ownership" of land continued her interest in effect thereafter. For a complete explanation of

this special situation on "Jebrik's side" of Majuro, see *Levi v. Kumtak*, 1 T.T.R. 36 and 1 T.T.R. 578.

[2] These decisions give the quick answer to Labiliet's claim that he "owned" Makije and "they", particularly the committee of 14, the Japanese government, and the post war *droulul*, had "nothing to do with making decisions over my land." Like others who decline to adhere to the law as it presently exists, Labiliet by refusing to recognize the action of the "14" as approved by the Japanese Administration, or by refusing to recognize the *droulul* or the successor 20-20 as holding the authority of the *iroij lablab* over Jebrik's former lands on Majuro attempts to set himself above the law.

[3] As to Labiliet's claim of the *alab* interest on Makije, that is a different matter. The Master's report offers no conclusion of fact but does find from the testimony that "sometime in the past, Makije once belonged to the plaintiff, Labiliet, and his uncle Lejjon." Labiliet testified the interest of his predecessors in the land came as result of a *Morjinkot* gift following the Majuro Civil War in which *iroij lablab* Jebrik Kable was victorious. Under the custom, in the old days, land was given by the successful *iroij lablab* to an outstanding warrior or to the *bwij* of a warrior. This gift was of *alab* and *dri jermal* interests only. Since the warriors were not of royal blood, the royal title of *iroij* could not be passed on to them. In other words, *morjinkot* was given to a commoner and was not a gift from an *iroij* to an *iroij*. See Tobin, *Land Tenure Patterns*, pp. 34-37.

Labiliet asserted both times he testified before the Master he was the *iroij erik* because he "owned" the land. He "owned," he said, "because this land was given to my *alabs* as *morjinkot*." Labiliet claimed that the land was returned to him by defendant, Lanjen, after it previously had been assigned to Moses, because it was his land. The ownership

distinction between *iroij erik* and *alab* interests in land was ignored by Labiliet.

Labiliet did not exercise any direct authority over the land until after the war because he was absent from Majuro until after the war. Zedekiah claimed *alab* interests from his mother, Linilot, the wife of Jebrik, who purportedly gave the land to her.

Labiliet argued that rights in *morjinkot* may not be cut off by a successor *iroij* without good cause, in this case, by Jebrik Lukotworok who is said to have given the land to Zedekiah's predecessor. The evidence is clear Zedekiah exercised authority over the land from the 1920's but the most this can establish for him is the *dri jermal* interest if Labiliet's *alab* rights were not terminated by Jebrik.

[4] The record requires denial of appellant's claim of ownership of *iroij erik* rights. Although the trial judgment made no mention of appellant's companion claims of *alab* and *dri jermal* interests, the record is sufficiently clear and complete for this court to rectify that omission. In this respect, appellant was partially successful in that the testimony supports his claim to *alab* rights because the land was *morjinkot*. Since Zedekiah and his people worked the land for half a century, it was not within the power of appellant or any one else, without showing good cause, to cut off those *dri jermal* rights. *Makroro v. Kokke*, 5 T.T.R. 465.

The other ground for appeal, in addition to the attack on the sufficiency of the evidence to support the result reached by the trial court, was that the court improperly refused to consider a "document" presented to him before his rendition of judgment. From the file it appears the document was a detailed and extensive review of the testimony and a listing of Labiliet's genealogical chart showing his inheritance of the land. The Court declined to adapt the argument contained in the "document." It was not error to do

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so because it was not in a true sense evidence in the case. It was not error requiring reversal and reconsideration of the judgment particularly in view of the fact this court has studied the "document" as well as the rest of the record.

By applying traditional land law, the statutes and decisions of this court a complete determination of the controversy on appeal can be made from the record. We believe it appropriate to do this and correct the Trial Division judgment without requiring further proceedings, other than entry of a new judgment. Accordingly, the judgment of the Trial Division is reversed, the case is remanded and the Trial Division is directed to enter the following judgment:—

1. That Mo Jitiam holds the *iroij erik* title and interest on Makije wato, Ajeltake Island, Majuro Atoll, as successor to *Leroij erik* Lanjen who was successor to *Iroij erik* Moses, who was appointed by the committee of 14 with the approval of the Japanese Administration following the death of *Iroij lablab* Jebrik Lukotworok.

2. That neither appellant, Labiliet, nor defendant, Zedekiah, hold either the title of *iroij erik* or that interest in the land.

3. That Labiliet and those claiming under him, is the successor *alab* of the *morjinkot* land in question.

4. That Zedekiah and those claiming under him holds vested *dri jermal* interest in the land.

IN THE MATTER OF THE APPLICATION OF VICENTE R.
MATAGOLAI, Petitioner, For A Writ of Habeas Corpus

Civil Appeal No. 90

Appellate Division of the High Court

February 15, 1974

Appeal from denial of habeas corpus petition which sought right to untimely appeal of indigent's conviction on ground indigent's counsel had refused to