This is the first time, therefore all land interests for the area in question in Mejit can be settled by the court.

In the *Ishoda* decision, the court denied the plaintiff's claim but went a step further than in the previous ruling and held Bellu "is entitled to exercise *iroij erik*, *alab*, and *dri jerbal* interests on Baten *Wato* until such time as those interests may be terminated in accordance with Marshallese custom by the *iroij lablab* successor to Lanjo." That individual, we decide today from the agreement of the parties and the other interested land holders, together with the council for the southern part of Mejit, is Wame.

As matters presently stand, Bellu, in spite of Wame's claim to all interests in Baten *Wato*, holds the worker rights on the *Wato* until such time as his interests may be terminated for any of the reasons found under Marshallese traditional land law for ending an interest in land.

Ordered, adjudged and decreed:—

1. That plaintiff is the *iroij lablab* for Baten and southern Mejit Island land not here specifically set forth.

2. That defendant shall exercise *alab* and *dri jerbal* rights to Baten *Wato* until and unless terminated for failure to meet his obligations under Marshallese custom.

ENOS A., Plaintiff

v.

ANKEIR and MORRIS, Defendants

Civil Action No. 178

Trial Division of the High Court

Marshall Islands District

April 11, 1974

Action to establish *alab* rights to Jabonbok *wato*, Jaluit Island, Jaluit Atoll, Marshall Islands. Trial Division of the High Court, D. Kelly Turner,

Associate Justice, held that plaintiff, who, with the two defendants, had shared the *alab* rights since a 1948 division of the *wato* by the island council, failed to prove he had sole *alab* rights to the entire *wato*.

1. **Constitutional Law—Due Process—Hearing**

   In resolving land dispute, *iroij lablab* was required by law to conduct an investigation and make a determination in accordance with fair play, a minimum requirement being that both sides be given an opportunity to present their case; and where *iroij* did not investigate, two of the three disputants were not present when the third, whom she ruled in favor of, appeared before her, and her daughter prepared the determination and signed it for her, her decision could have no weight or influence with the court, which would allow her a chance to resolve the dispute prior to resolution in court.

2. **Marshalls Land Law—"Alab"—Conflicting Claims**

   Designation of an *alab* for certain land, and the right to divide the rights between three claimants to the *alab* position, rested in the *bwij* with the approval of the *iroij*, but island council, as the chosen representative of the *bwij*, had authority to divide the *alab* rights between the three in absence of protest or a showing of abuse of discretion.

Counsel for Plaintiff: SAMSON ENOS
Counsel for Defendants: LOLIN ALIK

TURNER, *Associate Justice*

Although the presentation in court from which this judgment was derived was designated hearing on Master's report, the Master's report itself, was incidental to the proceedings. There was a pretrial hearing and entry of an interlocutory judgment, which in this instance was anything but a final judgment, in 1965. The complaint in the case was filed in 1962, but the basic controversy arose in 1948 and before.

The controversy involves the division of Jabonbok *Wato* on Jaluit Island, Jaluit Atoll, Marshall Islands District. The last *alab*, holding without dispute, was Lenidrik whose authority was derived through the *iroij* Joel and Litokwa. This was during the Japanese administration. Also during that period, it appears that Dredeni, under

whom the plaintiff claimed, also acted as *alab*. The defendant Ankeir's claim was derived from Lenidrik. Morris' claim was derived from his predecessor uncle.

It was undisputed the three claimants and their predecessors were *dri jerbal*. The dispute arose as to whether the plaintiff, or all three of the parties became *alabs*.

The attempts to reconcile the parties into a system of mutual sharing of work on the land failed, and in 1948, the large *wato* was divided at a meeting conducted by the island council. It is clear the council did not order the division but did instigate the meeting resulting in the decision.

The plaintiff's older brother, Bear, was assigned the middle portion; the eastern-most portion originally intended for Lenidrik was assigned by him to Ankeir; and the western portion originally for Alik passed to his nephew, the defendant Morris, in accordance with the Marshallese custom of descent of *alab* rights. From 1948 until the interlocutory decree, the parties worked the land with only the historical sanction of the council and the acquiescent approval of the *leroij elap*.

The interlocutory judgment was entered to give the *leroij* an opportunity to adjudicate the dispute between the parties with the court's ruling to become final if she did not make a decision. The plaintiff appeared before the *leroij*, in the absence of the defendants, and she ruled in his behalf. The court, however, rejected the ruling, explaining in a letter to all parties dated December 15, 1965:—

"It has also been reported that the plaintiff Enos obtained the alleged 'Final Arrangement of *Iroij* Neimoro L.,' in violation of paragraph No. 2 of the interlocutory judgment in that there was no notice or opportunity for the defendants to be heard (sic) by anyone authorized to represent them, it being alleged that although Lolin Alik's brother was present at the order of the *leroij*,

he was not familiar with the matter and not authorized to represent the defendants."

Evidence before this court subsequent to the foregoing letter now requires a holding the *leroij* did not make a "thorough investigation" and that as result it cannot be said her determination has either weight or influence on the court. It was said in *Likino v. Nako*, 3 T.T.R. 120, 124:—

"The Court has several times held that decisions of an *iroij lablab* are entitled to great weight, but it has also held the freedom of discretion of *iroij lablab* under the Marshallese system is much more limited than it used to be, and that their decisions to be effective must be made like those of a responsible official, with due regard for rights already established. (Citing.)

[1] As this court recently said in *Toring v. Lejebeb*, 6 T.T.R. 491, the *iroij lablab* must conduct an investigation and determination of a land dispute in accordance with fair play and that a very minimum requirement is that both sides be given an opportunity to present their case.

In the present case this was not done. The written determination itself was prepared and signed for the *leroij* by Neilan L. the daughter of the *leroij*. Among other things, and upon good reasons given, the daughter stated to the court:—

"Therefore, I hereby enforce my words and say that I want that the court disregard and suspense the paper, '*Kwon im Rerelok Eo an Leroij Neimoro L.*' (being the 'Final Arrangement of *Leroij* Neimoro L.'), which the court asked for in the interlocutory judgment."

When no further word or final decision was made by the *leroij* and the parties themselves were just as intransigent as ever, the court in 1970 made a general appointment of a Master instead of limiting the inquiry to the matters left dangling and temporarily decided in the in-

terlocutory judgment. As a result, the Master conducted a full scale hearing on Jaluit with the parties and counsel present; submitted a detailed report of his findings and conclusions; and made recommendation to this court as to its decision.

After many delays in bringing counsel and parties before the court, hearing on the Master's report was held, thereby permitting this final, albeit appealable, judgment.

The plaintiff's, actually his successor Bear's, because Enos recently died, objection to the original judgment and to the Master's proposed decision recommending the division into three parcels be continued in effect, was that neither the *iroij* nor the island council had the authority to divide the land and thereby reduce Enos' claim to entitlement to the entire parcel.

There are several weaknesses in this argument. The first, and perhaps the greatest, is that the plaintiff failed to convince the island council, *Leroij* Neimoro, this court at its first trial, the Master, and finally, this court again on the hearing on the Master's report that Enos (or Bear) was entitled to be the sole *alab* and that the defendants had no claim other than that of *dri jerbal.*

[2] As far as the authority of an *iroij* to "divide land," the ultimate control rests with the *iroij.* The *alab* is the direct supervisor, but in this case involving *alab* interests, no reliance can be placed in the unsupported claim of the plaintiff, or the other parties, for that matter. Designation of an *alab* and agreement to divide land rests in the *bwij* with the approval of the *iroij.* The island council as a legal entity did not have authority to make a land determination, but as the duly chosen representatives of the *bwij,* they had adequate authority to make the division in the absence of either protest or showing of abuse of discretion.

Also it must be persuasively considered against plaintiff that the land has been worked, as divided in 1948, without

change since that time. Even though the *leroij* was invited by the court to make a final determination of the matter she has not in fact done so (except for the repudiated change of mind) and has acquiesced in the arrangement to the present—a period of twenty six years.

This long delay in making change does not bar the plaintiff's claim under the twenty-year statute of limitations because the statute did not begin to run until 1951 and was "tolled" by plaintiff's suit in 1962. Plaintiff has not "slept on his rights." Plaintiff simply has been unable to convince the island council, the *iroij*, the court and its Master, he is entitled to prevail. The court declines to upset this stage of affairs without far more compelling reasons than plaintiff was able to present.

Ordered, adjudged and decreed:—

1. As between the parties and all persons claiming under them, rights in Jabonbok *Wato*, on Jaluit Island, Jaluit Atoll, Marshall Islands District, are held and are to be exercised as follows:—

a. The defendant Ankeir is to exercise *alab* and *dri jerbal* interests for the eastern, one-third of the *wato*.

b. Bear, the successor to the plaintiff, Enos A., deceased, is to exercise *alab* and *dri jerbal* interests for the middle, one-third of the *wato*.

c. The defendant Morris is to exercise *alab* and *dri jerbal* interests for the western, one-third of the *wato*.

d. None of the parties shall have an interest in or claim to, except as may be hereafter acquired, the lands of the other two parties.

2. No costs are allowed.

3. Plaintiff may have ninety days within which to perfect an appeal.