JEKRON, successor to LEJOB and HENRY MULLER, "iroij erik," Plaintiffs

v.

KALBOK, successor to ALBERT, Defendant

Civil Action No. 134

Trial Division of the High Court

Marshall Islands District

April 16, 1974

Proceeding to reopen 1962 judgment. Trial Division of the High Court, D. Kelly Turner, Associate Justice, held the judgment was too remote in time, but that where it determined predecessor to present defendant was acting *alab*, what rights, if any, defendant acquired from him by inheritance should be determined.

1. **Judgments—"Res Judicata"**

   Court decision made in 1962, that predecessor of defendant in present proceeding was acting *alab*, would not be reopened in 1974 at the instance of successor of plaintiff in 1962 action, who sought to establish that he had *alab* and *dri jerbal* rights; however, there were too many important questions of Marshallese land law involved to permit a complete refusal to reconsider "loose ends" in the 1962 decision, particularly, what, if any, rights present defendant acquired by inheritance from the acting *alab*, a question for the *droulul* in the first instance, which would be given an opportunity to decide it before court would do so.

2. **Marshalls Land Law—"Jebrik's Side" of Majuro—"Droulul"**

   The *droulul* of Jebrik's side of Majuro Atoll consists of all *iroij eriks* and *alabs* of all *wato* on Jebrik's side and has the only authoritative *iroij lablab* power for Jebrik's side, under a system of committee control begun by the Japanese administration and, under international law principles, followed by the American administration as the successor sovereign.

Counsel for Plaintiffs: ELLAN JORKAN
Counsel for Defendant: ANIBAR TIMOTHY

TURNER, *Associate Justice*

Judgment entered in 1962 in Marshall Islands Civil Action No. 134, *Lojob v. Albert*, 2 T.T.R. 388, held that

Albert was not the *alab* but was the acting *alab* of Jebeten *Wato*, Enemanet Island, Majuro Atoll. The District Land Title officer had held, after hearing, that Albert was the *alab*. All the original parties are dead and the dispute is now raised between their successors.

[1] Jekron, with whom Henry Muller has joined as successor *iroij erik* to his brother, Mike Maddison, now asks the court to re-open the 1962 judgment to permit him to establish that he holds *alab* and *dri jerbal* interests in the *wato*. A cursory look at the dates involved—a 1962 judgment to be opened for further proceedings twelve years later in 1974—should bring an obvious conclusion there has been a lapse of entirely too much time to permit re-opening now. This conclusion is persuasive even under the generous provisions of Rule 18, e, (6), Trust Territory Rules of Civil Procedure, permitting the motion to be made within "a reasonable time." *Bina v. Lajoun*, 5 T.T.R. 366. *Owang Lineage v. Ngirarkelau*, 3 T.T.R. 560.

Even though the court must hold the 1962 judgment may not be re-opened, there are too many important questions of Marshallese land law now involved in the case to permit a complete refusal to reconsider the "loose ends" found in the former decision. Perhaps, the foremost inquiry relating to the traditional land law of the Marshall Islands is for the purpose what, if any, rights are acquired by inheritance from an "acting" land-interest-holder.

In the former decision, the court held that neither Lojob nor Albert "has satisfied the court" that either of them "has the necessary approval of those having *iroij lablab* powers, in order to become the true *alab*." Albert claimed under an oral will of his father, the adopted son of the former *alab*. The plaintiff, Lojob, claimed *alab* rights by virtue of a written will of the former *alab*, Litabwinwa.

Neither will had been approved by the *droulul* on "Jebrik's side" of Majuro Atoll. Albert did get approval

of the majority of the *iroij erik's* from "Jebrik's side" and by a majority of the male members of the committee of 20-20 (20 men and 20 women). The court declined to accept the 20-20 as being the truly authorized representative of the *droulul.* The *iroij eriks* alone are not, of course, the *droulul.*

[2] The *droulul* membership, as understood by this court, consists of all the *iroij eriks* and all the *alabs* for all the *wato* on Jebrik's side. This group exercises the only authoritative *iroij lablab* power for the land once controlled by *Iroij Lablab* Jebrik, who died in 1919. The system of committee control was begun by the Japanese administration, and under the principles of international law was followed by the American administration as the successor sovereign. *Levi v. Kumtak,* 1 T.T.R. 36. *Jatios v. Levi,* 1 T.T.R. 578. *Joab v. Labwoj,* 2 T.T.R. 172.

The court, in the earlier decision, rejected the theory that the 20-20, as the successor to the committee of 14 of Japanese times, was the authorized representative of the *droulul.* Since the 20-20 was not authorized to act and the *iroij eriks* alone could not exercise *iroij lablab* power and because such power rested in the *droulul* consisting of *iroij eriks* and *alabs,* there has been no duly recognized *alab* for the parcel in question since the death of Litabwinwa.

Now the question is presented as to whether the acting *alab,* upon his death, is to be succeeded in accordance with Marshallese custom as an *alab* would have been. This is a new question not raised in the former decision. It is not, therefore, barred by the doctrine of res judicata resting on the former decision. Nor is it appropriate to re-open the former decision. The dispute should be settled by a new action in which the *alab* interest is determined from the evidential history of the interest.

A final determination should be obtained from the *droulul.* However, if the parties are unable to get that body to meet and decide the question, the court will make the decision upon the basis of the evidence presented to it.

Ordered, that plaintiff's motion to re-open Marshall Islands Civil Action No. 134 is denied without prejudice to either party presenting the question for decision of who is the rightful holder of the *alab* interest in Jebeten *Wato,* Enemanet Island, Majuro Atoll, in a new cause of action.

MELIONG MADRAINGLAI, et al., Plaintiffs

v.

YOSIWO EMESIOCHEL, the School of the Pacific, the Magistrate and Municipal Council of Ngatpang Municipality, and Dlangebiang Clan by its paramount titleholder, Defendants

Civil Action No. 1-74

Trial Division of the High Court

Palau District

April 25, 1974

Motion for relief from order granting motion to vacate injunction. Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where defendants' motion to vacate injunction pendente lite was made without notice to plaintiff, plaintiff's motion to vacate order granting defendants' motion would be granted, for grant of motion to vacate the injunction when plaintiff had no notice and opportunity to resist the motion was a denial of due process.

1. **Judgments—Relief from Judgment—Generally**

   Relief from an order or judgment for new facts or for newly discovered evidence, and relief for "any other reason justifying relief" are mutually exclusive. (Trust Territory Rules Civ. Proc. 18(a), (e)(2), (6))

2. **Judgments—Relief from Judgment—New Evidence**

   Motion for relief from order granting temporary injunction, on ground of "new facts", was inappropriate and should not have been granted where the "new facts" consisted of counsel's conclusions.