

materials before the court must be viewed in light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 39 U.S. 654; 8 L.Ed.2d 176; 82 S.Ct. 993. From the record at this stage, it appears there are substantial issues of fact which must be determined by the Trial Court. At least the chain of title upon which the defendants rely is defective on its face and only upon a trial can it be determined if the plaintiff or the defendants should prevail.

The Court's order entered July 19, 1974 is hereby reversed and this matter is remanded to the Trial Division of the High Court for a trial on the merits.

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JABWE, Successor to KAIKO, Plaintiff-Appellee

v.

HENOS, Defendant-Appellant

Civil Appeal No. 84

Appellate Division of the High Court

Marshall Islands District

March 27, 1975

Appeal disputing determination of *dri jermal* interests. The Appellate Division of the High Court, Hefner, Associate Justice, held that the evidence supported the trial court's decision.

**1. Appeal and Error—Generally**

On appeal, the Appellate Division of the High Court will make every reasonable presumption in favor of correctness of the lower court's decision and the burden is on the appellant to affirmatively show error; and the court's function is to determine whether there is any evidence supporting the judgment.

**2. Marshalls Land Law—"Dri Jermal"—Transfer of Rights**

Will transferring one's *dri jermal* rights to one's children does not have to be approved by the *alab*.

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JOHN HEINE  
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HEFNER, *Associate Justice*

This matter was previously remanded for trial by the Appellate Division in Civil Appeal No. 70. Thereafter a Judgment (on retrial) was entered and the defendant appeals from the latter judgment.

The appellant has failed to file a written argument but this court determines that the file and records in this matter are such that it shall proceed to determine this matter without further written or oral arguments by either party.

The notice of appeal is quite lengthy and exceeds the concise statement specified in Rule 21, Rules of Civil Procedure. In fact, the notice of appeal appears to be appellant's written argument. To present an orderly appeal, the notice of appeal should conform with Rule 21 and at the time the record is certified arguments should then be prepared pursuant to Rule 32h(2), Rules of Criminal Procedure (made applicable to the Rules of Civil Procedure).

In order to fully assess appellant's position on appeal, this Court will fully consider the points raised in the notice of appeal.

The appellant's main dispute with the trial court's decision is unique in that he does not argue so much for his personal benefit but for others whom he feels should be the *dri jermal* of the *wato* in question. The trial court found that the appellant is the *alab* and the appellee does not dispute this.

Since appellant's rights as *alab* are now secure, it is difficult to determine how his rights are prejudiced by the finding that plaintiff (as representative of all the children) holds the *dri jermal* rights. *In re Estate of Wisly*, 5 T.T.R. 81. This court recognizes the need for cooperation and loyalty in the Marshallese land tenure system. *Lalik v. Lazarus S.*, 1 T.T.R. 143, 145. However, appellant simply

argues that someone else's rights are cut off and this is contrary to Marshallese custom.

The specific finding appellant disputes is that Kaiko (predecessor to plaintiff Jabwe) passed his *dri jermal* interests by will to his natural children and to the children of Kaiko's older brother, Lomenwa.

[1] On appeal, the Appellate Division shall make every reasonable presumption in favor of correctness of the decision of the lower court and the burden is on the appellant to affirmatively show error. *In re Estate of Wisly*, 5 T.T.R. 81.

As stated in Civil Appeal No. 70, the appellate function is to determine whether there is any evidence supporting the judgment. *Henos v. Kaiko*, 5 T.T.R. 352.

A review of the record shows testimony to support the finding that the *dri jermal* interest in the land came to Kaiko as "imon aje", which is a gift for services performed and that Kaiko transferred his *dri jermal* rights to the children.

[2] The will was approved by the *Leroij lablab* and *Iroi Erik*. The approval of the *alab* is not required. *Limine v. Lainej*, 1 T.T.R. 231, *Lalik v. Elsen*, 1 T.T.R. 134.

The judgment is affirmed.