[2] There certainly are circumstances under Title 53 and Title 49 whereby aliens are entitled to a hearing in accordance with fundamental due process. However, the Order of the Trial Court, in effect, instructs the Executive Branch to provide an administrative hearing before applying for any Deportation Order under 53 TTC § 62, and if left to stand could involve needless expense and time which we do not believe is required by that section. We specifically reject that part of the Court's Order which would require a prior administrative hearing before any application for a Deportation Order under 53 TTC § 62.

Defendant's motion to dismiss for the reason this matter is now moot is hereby Granted.

LITARBWIJ MOTLOK, Appellant

v.

JELKAN LEBEIU, Appellee

Civil Appeal No. 94

Appellate Division of the High Court

Marshall Islands District

April 13, 1976

Dispute over *alab* rights to land. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed Trial Division's finding and judgment that plaintiff, oldest descendant in matrilineal line, though descended from a smaller, younger *bwij*, was entitled to *alab* rights in certain *watos*, rather than defendant, descendant from oldest *bwij* and daughter of last recognized *alab* whose *alab* rights had ended with his death in World War II.

1. **Marshalls Land Law—Lineage Ownership—Inheritance**

   Under Marshallese custom, lineage land is passed on from matrilineal line, not patrilineal line, so that plaintiff who was oldest person in matrilineal line, even though he was from a smaller, younger *bwij*, would succeed to *alab* rights, rather than defendant who was descendant from oldest *bwij* and daughter of last recognized *alab* whose *bwij* had ended with his death during World War II.

2. **Marshalls Land Law—Lineage Ownership—Transfer**

   In order for *alab* to give his daughter land, land must have been capable of being given away; if land was lineage land at time of gift, *alab* could not give it to his daughter without obtaining consent of persons who would normally inherit in the lineage.

3. **Marshalls Land Law—"Agri in Bwij"**

   If lineage does not concur with desire of *alab* to *ninnin* to his children, children may remain on land as *agri in bwij*.

4. **Appeal and Error—Findings and Conclusions—Supporting Evidence**

   In dispute over *alab* interest in land, where defendant, descendant from oldest *bwij* and daughter of last recognized *alab*, now deceased, claimed that three sisters created three separate *bwijs* and three separate rights, and one witness testified that last recognized *alab* owned his *wato* separately, and trial court found this not to be so, but found that plaintiff, oldest descendant in matrilineal line, even though descendant from a smaller, younger *bwij*, was entitled to *alab* interest in land, and record on review was devoid of any evidence to substantiate such separation and further revealed that defendant, in a prior proceeding, claimed the property in a manner which defeated theory that a separation occurred, appellate court would not disturb trial court's finding.

5. **Marshalls Land Law—"Iroij"—Powers**

   If an *Iroij* recognizes a person as *alab*, it must be in accordance with Marshallese custom, as to do otherwise exceeds his authority; an *Iroij* cannot change *alab* rights at will and there must be some reason to justify change.

6. **Marshalls Land Law—"Iroij"—Powers**

   Though determination made by an *Iroij* with regard to his lands is entitled to great weight, in an *alab* land dispute where record on appeal disclosed that the present *Iroij* recognized defendant, a descendant from oldest *bwij* and daughter of last recognized *alab*, now deceased, whose *bwij* ended upon his death, as present *alab*, and where record further disclosed that present *Iroij* stated he received his information from his predecessor, but where evidence showing some occurrence or reason to alter normal succession of *alab* rights and allow the *Iroij* to recognize someone other than the plaintiff, a descendant in matrilineal line from a smaller, younger *bwij*, who would take in normal and customary way, was not present in record, and where present *Iroij* was unable to tell reason that defendant's father transferred land to defendant, *Iroij* exceeded his authority and record substantiated trial court's finding that plaintiff was entitled to *alab* rights.

Counsel for Appellant: ANIBAR TIMOTHY
Counsel for Appellee: JOHN HEINE

Before BROWN, *Associate Justice*, WILLIAMS, *Associate Justice* and HEFNER, *Associate Justice*

HEFNER, *Associate Justice*

This appeal concerns a dispute over who is entitled to *alab* interests in five *watos* in the Marshall Islands.

The Trial Court found that the plaintiff is entitled to be *alab* and denied the defendant-appellant's claim.

The Notice of Appeal cites two grounds of error. The first ground is not exactly clear, but appears to be based on the Trial Court's failure to find that the appellant was a descendent in the older lineage, and as such, her claim is stronger than the appellee, who is a member of the younger lineage. The second ground is that the Court failed to recognize Marshallese custom. It is argued that the three *Iroijs*, Namidrik, Andrew and Manassa recognized appellant as *alab*, and their determination should be final.

It is conceded that the land in question was originally lineage land. Three related *bwij* (matrilineal family group) were represented by three sisters, Mandrik, Liberman and Limauu. The plaintiff is a descendent of Limauu, the youngest sister. The defendant is a descendant of the oldest sister, Mandrik.

The last undisputed *alab* was Lokajotok, who is the defendant's father and who died during World War II.

[1] The judgment of the Trial Court points out that under Marshallese custom, property rights are passed on from the matrilineal line and not the patrilineal line. That even though the appellee was from a smaller, younger *bwij*, he would succeed to the *alab* rights since there was no one superior in the matrilineal line. *Janre v. Labuno*, 6 T.T.R. 133; *Lenekam v. Lidrik*, 6 T.T.R. 327; Land Tenure Patterns, p. 26.

The appellant impliedly agrees with this application of the custom since she attempts to circumvent this customary

law by claiming the *alab* rights as *ninnin* land or land given to a child by a father. To support this claim, she has produced testimony that the *Iroijs* have recognized her as *alab*.

[2, 3] However, in order for the appellant's father to give the land to her, the appellant must show that at the time of the gift, the land was capable of being given away by the father. If the land was lineage land at the time, the father could not give it to the appellant. *Ninnin* land belongs to the father's issue alone and other lineages have no claim to it. Land Tenure Patterns, p. 27. The father must have the right to give it away or obtain the consent of the persons who would normally inherit in the lineage. Lokajitok, as *alab*, does not have independent authority over the disposition of the land unless he consults with the lineage. If the lineage does not concur with the desire of the *alab* to *ninnin* to his children, the latter may remain on the land as *ajri in bwij*, Land Tenure Patterns, p. 28.

[4] In order to overcome this situation, the appellant argues first that the three sisters created three *bwijs* and three separate rights. One witness, Komram, stated that "Lokajitok owned his *wato* separately from those belonging to Neilon." The Court specifically found that this was not the case, and the record, except for this one conclusion, is void of any evidence to substantiate such a separation. In fact, and as pointed out by the Trial Court, the appellant in a prior proceeding claimed the property in such a manner which defeats the theory that a separation occurred. We cannot disturb the finding of the Trial Court in this respect.

The main thrust of appellant's appeal is that the Trial Court did not follow the decision of the last three *Iroijs* who have authority over the land. It is clear from the record that the present *Iroij* recognizes the appellant as the *alab*. He states he received his information from his

predecessor. The evidence showing some occurrence or reason to alter the normal succession of *alab* rights and allow the *Iroij* to recognize someone other than one who would take in the normal and customary way is just not present in the record. The present *Iroij* was unable to tell the reason that the appellant's father transferred the land to her. (Rep. Tr. p. 45)

[5] If an *Iroij* recognizes a person as *alab*, it must be in accordance with Marshallese custom. To do otherwise exceeds his authority. *Likinono v. Nako*, 4 T.T.R. 483. This problem of recognition of an *alab*, contrary to custom, was dealt with in *Limine v. Lainej*, 1 T.T.R. 595. It is clear that an *Iroij* cannot change *alab* rights at will, and there must be some reason to justify the change. The Trial Court could find no such justification nor can this Court. As stated in *Limine v. Lainej*, supra, determination made by an *Iroij* with regard to his lands are entitled to great weight. However, there is nothing in the record to show why a determination was made here which is contrary to Marshallese custom.

[6] The Trial Court found that under the circumstances in this case, the *Iroijs* exceeded their authority. The Appellate Court shall not set aside findings of fact of the Trial Court unless the Trial Court was clearly erroneous. 6 TTC § 355(2). The record, in fact, substantiates the Trial Court finding.

The judgment is Affirmed.