Court and the Appellate Court will not overturn the Trial Court's decision in this matter.

Judgment is AFFIRMED.

ANJUA LOEAK, Plaintiff-Appellee

v.

MELON LOEAK, Defendant-Appellant

Civil Appeal No. 269

Appellate Division of the High Court

Marshall Islands District

December 3, 1980

Appeal from a judgment that plaintiff succeeded to the rights of *Iroij Lablab* upon the death of former holder of title. The Appellate Division of the High Court, Burnett, Chief Justice, held that where decisive issue was whether defendant's father was a "blood son" of the former *Iroij Lablab*, trial court erred in only considering actual paternity in resolving the matter, and rejecting any consideration of whether defendant's father was other than "adopted", where defendant's father was born to *Iroij Lablab's* wife, in his house, and was accepted as his son, and under the custom one "born in the household" regardless of paternity is considered the same as a "blood child", and therefore judgment was set aside and remanded for further proceedings.

1. **Marshalls Custom—"Iroij Lablab"—Succession**

   At trial in which dominant issue was whether defendant's father was a "blood son" of an *Iroij Lablab*, there was no prejudicial error in the admission of testimony concerning defendant's father's skin and hair color, and admission of will of the *Iroij Lablab*, since this evidence had obvious relevance, its admission was discretionary with the trial court, and its weight was subject to determination by that court.

2. **Attorney and Client—Adequacy of Representation**

   At trial, ignorance or inadvertence of untrained counsel should not be permitted to stand in the way of the fullest possible consideration of all that may be required to achieve a just result.

3. **Marshalls Custom—"Iroij Lablab"—Succession**

   At trial to determine who succeeded to the rights of an *Iroij Lablab* upon his death, where the critical issue was whether defendant's father was a "blood son" of the former *Iroij Lablab*, trial court erred in only considering actual paternity in resolving the matter, and rejecting any consideration of whether defendant's father was other than "adopted",

where defendant's father was born to *Iroij Lablab's* wife, in his house, and was accepted as his son, and under the custom one "born in the household" regardless of paternity is considered the same as a "blood child".

Counsel for Appellant: AMOS JACK
Counsel for Appellee: BENJAMIN ABRAMS

Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, GIANOTTI, *Associate Justice*

BURNETT, *Chief Justice*

This is an appeal from a judgment of the trial court which found that the plaintiff-appellee succeeded to the rights of *Iroij Lablab* upon the death of Albert Loeak and that he is the rightful and sole holder of that title.

This case was initiated on a complaint for declaratory judgment and mandatory injunction filed by the plaintiff September 21, 1977. The original complaint was against the Marshall Islands District Legislature Credentials Committee, asking that the plaintiff be seated by the Legislature in the seat to which he had been elected. After some proceedings for preliminary relief, an amended complaint was filed on April 4, 1978, naming as defendants the Marshall Islands Nitijela, the Marshall Islands District Legislature Credentials Committee, and Melon Loeak. At the time of trial both the Nitijela and its Credentials Committee had been dismissed as parties defendant and a motion by legal counsel for both entities to be heard as *amicus curiae* denied. The only remaining defendant, therefore, was Melon Loeak.

The sole issue at trial was which of the two men was the rightful *Iroij Lablab* for certain atolls in the Marshall Islands. This determination would also necessarily answer the question of which was authorized to assume the seat in the Nitijela to which Anjua Loeak, the plaintiff, had been elected, the issue initially addressed in this litigation.

The trial court found for the plaintiff and held that he is the rightful and sole holder of the title *Iroij Lablab.*

The heart of the question was whether Lajore, defendant's father, was a "blood son" of Loeak. There would appear to be no question that defendant would prevail if, as the acknowledged son of Lajore, it were found that Lajore was a true son of Loeak.

The trial court found, in Finding of Fact No. 7, that "Lajore was an adopted, not blood, son of Loeak."

In Conclusion of Law No. 2, the court said, "Since Lajore was adopted and not the blood son of Loeak he could not succeed to the rights of *Iroij Lablab.*"

There is no question that if defendant were in fact a "blood son" of Loeak he would succeed to the title in question. There is also no question that if defendant were "adopted" the title would devolve upon the plaintiff.

The court's findings and conclusions led naturally to its judgment for the plaintiff.

Appellant has raised four grounds of error:

1. The court committed prejudicial error by admitting testimony of Lajore's skin color, hair color, and his height.

2. The court committed prejudicial error by admitting the will made by Albert Loeak.

3. The court's findings that Lajore was not the natural son of Loeak was not supported by the evidence and was contrary to the presumption of legitimacy of a child born during wedlock.

4. The court committed prejudicial error when it refused to allow witness *Iroij* Kabua Kabua to testify to circumstances surrounding the birth of Lajore and to the significance of his acceptance and birth in the family of Loeak.

We must as a predicate for whatever may follow say that there can be no criticism of the court in the manner in which the trial was conducted, nor of the view that the

court held as to admissibility of evidence or the weight which it gave to the evidence. We are concerned, however, as to whther the procedural and evidentiary rules which govern this trial, as they must, led to a just result.

We are also concerned with a question which, if it is to be answered in a truly just fashion, must be answered in the light of the custom of the Marshalls. It is most unfortunate that there does not appear to be any manner in which a question of customary devolution can be answered without recourse to such an alien system as the High Court.

The question of a customary title, even though it may involve the monetary benefit which a favorable decision might give, as this does, is nevertheless one which *should* be answered through customary problem-resolving processes.

The fact remains, however, that, if customary avenues provide no solution, it is necessary for the court to provide that solution. In doing so, however, the court must take great care to insure that it is not misled, by its own training and incidental prejudices, into applying those prejudices to the exclusion of customary thinking or thinking of the custom.

[1] As to grounds one and two, we find no prejudicial error in admitting testimony which concerned Lajore's skin or hair color, or in the admission of the will made by Albert Loeak, plaintiff's father. This evidence had obvious relevance, its admission was discretionary with the trial court, and its weight was subject to determination by that court. We cannot say that admission of this evidence was an abuse of discretion by the court.

We are, however, disturbed by the evidence presented on behalf of plaintiff in support of the third ground of appeal; there was sufficient confusion with respect to that issue to lead us to believe that there was prejudice.

As to the fourth ground of appeal we believe that the witness Kabua Kabua should have been permitted to testify further; refusal to permit him to do so, we believe, constituted error.

Counsel for defendant obviously did not fully understand how he might best represent his client. His difficulty arose not only from his lack of training as a lawyer but also from his failure to fully understand what it was that the court required of him.

A review of the entire record shows very clearly that what counsel wished to demonstrate was that, while Lajore may not have been a true blood son of Loeak, he was equivalent under the custom to a son procreated by Loeak. Counsel was precluded from showing this by objections of opposing counsel, and rulings of the court that the sole question was whether Lajore was a blood son or adopted son. This position of the court appears to preclude either consideration of a presumption of legitimacy, as recognized in the common law, or the question of whether one who is "born in the household" is, under Marshallese custom, considered the same as a blood son.

We note that defendant's expert witness, Kabua Kabua, attempted to interject into his testimony the view that Lajore had been "born within the household," and had not been adopted.

The following appears on page 167 of the trial transcript:

"Q. . . . Judge Kabua, based on your knowledge of the Marshallese custom, is there a difference between adoption and acceptance and acknowledgment of a child born in the household?

"A. There is a big difference and they are not the same.

"Q. Can you tell this court what is an adoption and what is an acceptance and acknowledgment of a child born in the household of an *Iroij*?

"A. For an example, which I think will be still on this question of adoption—the example is that Lajore was born within the

household and he was not considered an adopted son. He was not—he was not adopted."

An objection to this line of questioning was sustained, and the court continued to adhere to the view that the issue was the narrow question of whether Lajore was adopted or not.

The view that the court held took no account of the long-established common law presumption of legitimacy. More important, however, it left no room for consideration of what appears may be a Marshallese equivalent.

We note that the first challenge to the paternity of Lajore, defendant's father, came in plaintiff's rebuttal. Defendant attempted, in an admittedly unknowing fashion, to respond by showing that *even* if Lajore were not the true son of Loeak, that he had been born of Loeak's wife, in Loeak's house, and that Loeak had accepted him as his son.

Thus, every element of the common law presumption was present, and that there was an effort made to show how such a situation is treated under the Marshallese custom.

Much was made on trial of defendant's effort to produce evidence out of the ordinary course. In rejecting such testimony the court was, in any strict sense, completely correct. We are disturbed, however, by the conviction that matters such as this should not be decided on the basis of counsel's familiarity with the rules. It is clear that counsel for defendant was not familiar with what was allowable in terms of testimony of one whom he had called originally as an expert witness, and what was allowable on "rebuttal" and on "surrebuttal." In general, he was very simply at a loss in terms of how to present, for the court's consideration, evidence which, in terms of custom, would bear very heavily upon the issues now before us.

[2] We can understand the frustration felt by both the court and counsel for plaintiff, with the lack of understand-

ing of defendant's counsel with the procedural niceties. We have consistently adhered, however, to the principle of *Gaamew v. You*, 2 T.T.R. 98 (Tr. Div. 1959) and *Loton v. Langrin*, 5 T.T.R. 358, 362 (App. Div. 1971). Ignorance or inadvertence of untrained counsel should not be permitted to stand in the way of the fullest possible consideration of all that may be required to achieve a just result.

As we see it, the primary question was never directly addressed in this matter. That is, whether under the custom, one who is "born in the household" is, under the custom, the same as a blood child of his father. The question is a mixed one. The trial court, obviously, determined that Lajore was not a "blood son" of Loeak. The court rejected any consideration of whether he was other than "adopted." In this, we think the court erred.

[3] The judgment is, therefore, set aside, and the matter remanded for further proceedings in the trial court.

The trial court will, consistent with the views expressed in this opinion, hold further hearing as required to determine the facts of Lajore's birth, and make conclusions as to the application of law and custom to such findings.

E. F. GIANOTTI, *Associate Justice*, concurring.

I concur in the Court's opinion but with this added comment.

This case rests very importantly upon a matter of customary Marshallese tradition. Customs present in Micronesia have long been recognized by this court and in fact have been incorporated as part of the written law under 1 TTC § 102. The issue of Marshallese custom and any applicable Micronesian custom should have been considered by the trial court. The High Court has consistently followed the practice of considering custom and in the immediate case the trial court should not have confined itself to the narrow question of whether there was an adoption or not. However, a reversal of the trial court judgment due to a

lack of familiarity with Trust Territory procedural court rules, especially a lack of familiarity with those rules pertaining to in-court examination of witnesses, should not establish a precedent whereby all cases would be reversed by the appellate court for such lack of familiarity. The appellate opinion cites the case of *Gaamew v. You*, 2 T.T.R. 98. Although this is a trial court opinion, this case should be followed in establishing when a reversal for lack of familarity with the rules should be allowed. On page 100 the case states the Court should modify trial procedure whenever substantial justice requires. A trial assistant or an attorney is expected to have a working knowledge of Trust Territory High Court procedural rules and a counsel's failure to know or to learn these rules should not in every instance be allowed as a lever for reversal. As the *Gaamew* case held, "whenever it deems *substantial justice* [emphasis added] so requires." In other words, when good conscience requires the court to adopt an equitable attitude then and only then should the case be reversed for counsel's lack of knowledge of the procedural rules. A blanket reversal in all cases based upon these grounds could only lead to a gross injustice.