

the property. The trier of fact determined from all the evidence that there was no abandonment of the aircraft by the appellees. For the same reasons previously discussed, the trial court's findings of fact will not be disturbed.

For the reasons stated herein, the judgment of the trial court is AFFIRMED.

IROIJ MO JITIAM, NEILORA LARRING, and BELJA ANEO,
Appellants

v.

LANGILON KONO, Appellee

Civil Appeal No. 413

Appellate Division of the High Court

Marshall Islands District

May 13, 1986

Appeal from final judgment of trial court on complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*. The Appellate Division of the High Court, Munson, Chief Justice, affirmed the trial court judgment, which provided that *alab* and *dri jerbai* rights belong to appellee on both *wetoes* and provided that appellee receive two-thirds of all rents accrued.

1. Property—"Alab" Rights—Particular Cases

On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, evidence presented supported trial court's determination as to proper distribution of rents between the parties.

2. Courts—Jurisdiction—Active Trial

On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, trial court properly denied motion to transfer the case to the Marshall Islands courts based on determination that the case was still in active trial.

3. Limitation of Actions—Land Title Officer's Determination

Failure to appeal a land title officer's determination within one year will bar a litigant from contesting that determination.

4. Property—"Alab" Rights—Particular Cases

On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, trial court properly recognized validity of *katleb* arrangement based on determination of land title officer in 1959.

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Before MUNSON, *Chief Justice*, LAURETA*, *Associate Justice*, BENSON**, *Associate Justice*

MUNSON, *Chief Justice*

In 1956, appellant *Iroi*¹ Mo Jitiam (Mo) arranged with appellee Langilon Konou for the appellee to clean and work Laubaj and Laukijek *wetoes*² located on Rairok Island in Majuro Atoll, Marshall Islands. Both *wetoes* are on "Jebdrik's side."³ In exchange for Langilon's services, Mo agreed that the *wetoes* would be given to him as *katleb*⁴ lands. The *katleb* arrangement was approved by Mo's mother, *Leroi*⁵ Lanjen, who at that time held the *iroi* *erik*⁶ title to the *wetoes*, and by the *droulul*,⁷ or *Bed eo an* Jebdrik,

* United States District Court Judge, District of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

** Associate Justice, Federated States of Micronesia Supreme Court, designated as Temporary Associate Justice by the United States Secretary of the Interior.

¹ *Iroi* is the designation given to a male chief.

² A *weto* (sometimes spelled *wato*) is typically a strip of land stretching across the island from the lagoon side to the ocean side, and varying in size from about one to five acres. The *weto* is the typical Marshallese land unit.

³ On Jebdrik's side in Majuro Atoll, there has been no *iroi* *lablab* for years, the matrilineal line having become extinct; instead, there are a number of *iroi* *erik*, with the *iroi* *lablab* powers controlled by the *droulul*.

⁴ *Katleb* means the land allocated by an *iroi* *lablab* to an individual commoner. It also means any persons who have been given rights by an *iroi* to a land on which they did not have rights before.

⁵ *Leroi* is the designation given to a female chief.

⁶ *Iroi* *erik* means lesser chief.

⁷ *Droulul* is a committee that gives final approval to wills or *katleb*.

which acts as the *iroij lablab*⁸ on Jebdrik's side. Konou began cleaning the unfarmed *wetoes* and planted numerous trees on them in accordance with the *katleb* arrangement.

Between 1958 and 1959, the District Land Title Officer conducted proceedings pursuant to Land Management Regulation No. 1, to determine the rightful ownership of Laubaj and Laukijek *wetoes*. On August 1, 1959 and August 14, 1959, the District Land Title Officer issued Land Determinations of Ownership No. 59-17 and No. 59-53 which determined that the *iroij erik* of both *wetoes* was *Leroij Lanjen* and that the *alab*⁹ and *dri jermal*¹⁰ rights in both *wetoes* were held by appellee. The trial court determined that sufficient notice of the hearing had been given. According to the trial court's record, Erwin Jitiam was authorized to represent his grandmother, *Leroij Lanjen*, and on her behalf he attended several of the meetings conducted by the District Land Title Officer prior to the issuance of the Determination of Ownership. Erwin also testified at the July 22, 1959 meeting that *Leroij Lanjen* was the *iroij erik*, *alab*, and *dri jermal* of the two *wetoes*. No appeal of the Land Title Officer's determination was ever filed by *Leroij Lanjen*.

Upon *Leroij Lanjen*'s death in 1970, appellant Mo took over Lanjen's powers as *iroij erik* on both *wetoes*. Mo and Konou's relationship was harmonious until a dispute arose regarding the sharing of the proceeds of a Micronesian Claims Commission award for war damages to the *wetoes*. Prior to the war claim dispute, Mo and Konou jointly executed leases and right-of-way agreements. The parties respected each other's interest in the *wetoes*. Appellee paid

⁸ The *iroij lablab*, or *iroij elap*, as he is known in the *relik* (western) chain of islands, means the paramount chief; his approval or acquiescence of any transfer of land interests is necessary before it can be valid.

⁹ *Alab* is the person in immediate charge of a piece of land.

¹⁰ *Dri jermal* designates a worker.

tribute to Mo according to Marshallese custom. Mo also recognized appellee's *alab* and *dri jermal* rights in a *kallimur*,¹¹ and sought appellee's approval for action taken involving the land.

After the war claim dispute arose, appellant Mo refused to accept the traditional tribute from appellee and permitted other people, including appellant Larring, to move onto the land without consulting with appellee. Mo admits to allowing appellant Belja Aneo to build on Laubaj *weto* without appellee's permission. Mo also instructed that all the rents be paid to him. The war claim dispute was resolved in *Konou v. Jitiam*, 7 T.T.R. 630 (App. Div. 1978), when this court held that Langilon Konou had no claim to award because he had no rights in the *weto* prior to 1951, the last year covered by the Micronesian Claims Commission award.

Appellee filed a complaint and petition for injunctive relief on April 7, 1980 in Civil Action No. 17-80, seeking to confirm *alab* rights to Laubaj and Laukijek *wetoes*. The complaint also sought to enjoin appellants from any further acts in violation of appellee's right as *alab*, and for appellants to account to the appellee for withheld rents. A preliminary injunction was granted on June 10, 1980, and resulted in an entry of judgment for appellee on September 14, 1981. The judgment provided in part that *alab* and *dri jermal* rights belong to appellee on both *wetoes*, and the land occupants were required to acknowledge appellee as *alab* if they wanted to remain on the land. The issue of division of rents was reserved by the trial judge in order to hear additional evidence. After hearing additional evidence, a final judgment was issued on April 11, 1984. That judgment provided for the appellee to receive two-thirds of all

¹¹ *Kallimur* is a written paper by which one disposes of his lands, analogous to a will.

rents accrued and appellants were to receive the other one-third. Appellants appealed.

The three issues presented for review are:

1. Whether the trial court correctly determined the proper distribution of rents between the parties;
2. Whether the trial court erred in denying appellants' motion to transfer this case to the Marshall Islands courts; and
3. Whether the trial court erred in confirming the *alab* and *dri jermal* rights in the appellee.

The first issue addressed is the distribution of rental income. In the trial court's judgment dated September 14, 1981, the court found that no agreement existed between the parties with respect to the amount of rental income each was entitled to receive. Two farm leases executed in 1974 and 1975 state that the parties' shares "shall be distributed in accordance with Marshallese custom." The trial court stated that these leases do not provide assistance because there is no Marshallese custom as to the division of land rental income.

Although the trial judge stated,

[f]rom the language used, however, it would appear that they contemplated a division based only on the *alab* and *iroij* shares . . . ,

he specifically stated that he would defer judgment as to distribution and he would "take such further evidence as either party may wish to offer as to a proper division." In the trial court's judgment of April 11, 1984, the court determined that the proper division of the rental proceeds should be by one-third shares for the *iroij*, *alab*, and *dri jermal* interests, with the *iroij* share containing both *iroij lablab* and *iroij erik's* share.

[1] We hold that the evidence presented supported the trial court's decision. Appellee's witness, Nuna Kejlet, testified that he was an *alab* on a *weto* close to the ones in-

volved in this case. Kejlet stated that the division terms of a lease on his land were one-third for the *iroij lablab* and *iroij erik*, one-third for the *alab*, and one-third for the *dri jermal*. Kejlet's lease is evidence that the one-third distribution formula has been used by others in similarly situated *wetoes*. Moreover, the distribution allowed by the trial court appears to be an equitable division, considering the two interests, *alab* and *dri jermal*, provide the lion's share of the work on the *wetoes*, and should be rewarded with the lion's share of the rental income. There was sufficient evidence for the trial court's determination that the rental proceeds were to be distributed in one-third shares for the *iroij*, *alab*, and *dri jermal*, with the *iroij* share containing both *iroij lablab* and *iroij erik's* shares.

[2] We next consider whether the trial court erred in denying appellants' motion to transfer this case to the Marshall Islands courts. The motion was made after the trial, and at the same time the appellants filed a motion for a new trial. The motion for a new trial was subsequently heard by the trial court and denied. The appellants then appealed to this court.

Secretarial Order 3039, § 5(a) states that:

. . . *all cases*, except for suits against the Trust Territory of the Pacific Islands Government or the High Commissioner *currently pending but not in active trial* before the Community Courts, the District Courts, and the High Court shall be *transferred* to the functioning courts of such jurisdiction, provided that the legal rights of the parties in any case in controversy pending before a Community Court, a District Court, or the trial or Appellate Division of the High Court shall in no way be impaired by this Order.

Determination as to *whether a case is in "active trial"* shall be made by the judge before whom such case is pending. (Emphasis added.)

The trial judge, in his discretion, determined that the case was still in active trial. Secretarial Order 3039, § 5(a) provides that such a determination is a discretionary decision

reserved for the trial judge, and it will not be interfered with by this court.

[3] Turning to the final issue, appellants urge that the trial court erred in determining that the *alab* and *dri jermal* rights in both *wetoes* belong to the appellee. The trial court relied in part on the determination of rights made in 1959 by the Land Title Officer. Section 14 of Land Management Regulation No. 1¹² expressly provides for a one-year period in which to appeal a land title officer's determination. The appellants' predecessor in title was given proper notice that there were proceedings instituted by the Land Title Officer concerning the land and that the determination had been issued; they had an opportunity to appeal and failed to do so. The failure to timely file an appeal within that period will bar a litigant from contesting the determination. *Santos v. TTPI*, 7 T.T.R. 615 (App. Div. 1978).

The trial court relied also on the transactions affecting the land subsequent to 1959. The court found these entirely consistent with the determination made by the Land Title Officer in that the appellee's rights of *alab* and *dri jermal* were recognized. These transactions are referred to on page 4 of the Land Title Officer's Determination.

We find that the findings made by the trial court are abundantly supported, and we see no reason to disturb the judgment.

[4] Appellants also claim that the trial court erred in recognizing the validity of a 1956 *katleb* arrangement between appellant Mo and the appellee. Appellants claim that such a *katleb* must be approved by the *Droulul*. The District Land Title Officer must have found that the *katleb* was

¹² Section 14 of 1951 Land Management Regulation No. 1 provides: "Any person who has or claims an interest in the lands concerned may appeal from a District Land Title Officer's determination of ownership to the Trial Division of the High Court at any time *within one year* from the date the determination is filed in the Office of the Clerk of Courts. . . ." (Emphasis added.)

valid when he determined that the appellee had *alab* and *dri jermal* rights to the two *wetoes*. Since there was no appeal of the 1959 Land Title Officer's determination, this issue is also time-barred under Land Management Regulation No. 1.¹³

No purpose would be served by considering the other issues raised by the notice of appeal.

Based upon the foregoing, the judgment of the trial court is AFFIRMED.

FRANCISCA PWALENDIN, Appellant
v.
IGNACIO EHMELE, Appellee
Civil Appeal No. 414
Appellate Division of the High Court
Pohnpei District
October 23, 1986

Action to determine ownership of a tract of land. The Appellate Division of the High Court, Munson, Chief Justice, held that where grantor delivered a quitclaim deed to appellee and it was accepted and recorded, grantor's subsequent attempt to rescind the conveyance by executing a will devising the property to appellant was without legal effect, and therefore judgment of the Trial Court that appellee was rightful owner of the land was affirmed.

1. Appeal and Error—Findings and Conclusions—Tests

An appellate court reviews the trial court's findings of fact under a "clearly erroneous" standard.

2. Appeal and Error—Findings and Conclusions—Clearly Erroneous

A finding of fact is clearly erroneous when the entire record produces the definite and firm conviction that the court below committed a mistake.

3. Appeal and Error—Evidence—Conflicting

An appellate court accords particular weight to the trial judge's assessment of conflicting and ambiguous facts.

¹³ It is clear from examining the record that there was evidence presented during trial, which was not rebutted by the appellants, that the *katleb* did have approval from the *Droulul*. See Reporter's Transcript of Trial on July 27-28, 1981, p. 8, lines 11-17.