Lejeman v. Laakbel

Supreme Court
Burnett C.J.; Kondo and Gunatilaka, Associate Justices of the High Court, sitting by designation
4 May 1988

Land titles—customary land rights—land rights by customary succession—whether alteration or rights can be made without reference to chief (iroij).
Appeals—inept counsel—inadequate and conflicting evidence—whether declaration as to customary land can stand when based on conflicting theories.

The plaintiff (and appellee here) was held entitled to certain land rights on Jaluit Atoll. His claim is based on two lines of authority, one being *alab* (see below) the other being *dri jerbal* (see below). The plaintiff claimed to have land described as paramount chiefly land, but may have derived his *jurlobren ne* (see below) title from two different sources. The defendant suggested that there was confusion on the trial record and in the trial court.

HELD:
The plaintiff's claim depends on an "arrangement" by his predecessor in title, and there was inadequate evidence of chiefly approval of that "arrangement". The judgment in the Court below for the plaintiff is reversed and a new trial ordered.

Other sources referred to in judgment:
Tobin, *Land Tenure Patterns*

Editorial Observation:

The following glossary of Marshallese terms may assist:

Alab	Lineage elder of commoner (or *kajur*) lineage
Dri jerbal	Person of work; the person on the land
Iroij	Chief
Iroijlaplap	King
Jurlobren ne (or *jurlobiren ne*)	Personal land of paramount chief
Mo	Forbidden to commoners
Weto (or *wato*)	A strip of land, as traditionally held, running from the lagoon on the inside, across the island to the ocean side and out to the reef.

The Constitution of the Republic of the Marshall Islands provides extensive protection for customary law and traditional land holding. Article VI provides for a Traditional Rights Court, made up of four *iroij*, four *alab*, and four *dri jerbil*, with five of the twelve from the Ralik (western) chain of islands and seven from the Ratak (eastern) chain.

Article X, section 1(2) provides that no person can dispose of land without the approval of the relevant iroij, alab, or senior dri jerbal.

Article X, section 1(1) provides that nothing in Article II (the Bill of Rights) shall invalidate customary law or traditional practice, including the rights of iroij, alab, or dri jerbal.

Article III section 1 provides for an advisory council of chiefs, like the Cook Islands House of Arikis or the Fijian Bose Levu Vakaturoga. The Council of Iroij is constituted by five "eligible persons" from the Ralik chain and seven "eligible persons" from the Ratak chain. The Council advises Cabinet, and can ask for reconsideration by the legislature (the Nitijela) of any bill which affects customary law.

The instant case arose in Jaluit Atoll, a large atoll in the Ralik (western or sunset) chain of islands.

See further, "The Consitutions of the Marshall Islands" in Blaustein and Blaustein, *Constitutions of Dependencies and Special Sovereignties, vol. VII* (1979). The Constitution, as set out in Blaustein, is accompanied by a useful bibliography, a chronology, and The Compact of Free Association.

Also see: Bender, Capelle, and De Brun, *Marshallese–English Dictionary*, (University Press of Hawaii) 1976; C.J. Lynch, *Traditional Leadership in the Constitution of the Marshall Islands*, (Center for Asian and Pacific Studies, University of Hawaii) 1984.

BURNETT C.J.

Judgment:

This appeal was taken from judgment in the High Court which held the appellee to be entitled to both alab and dri jerbal rights in Aiboj weto on Mejae, Jaluit Atoll, Marshall Islands.

Throughout the trial of this matter, the trial court was obviously frustrated by the ineptness of counsel. It appears also that he was misled by the shifting position taken by the appellee and his witnesses as well as inaccurate statements of counsel on, what proved to be, the primary basis for the Court's decision.

The appellee's complaint for a declaration of his rights related only to his claim to be dri jerbal on the land by reason of customary succession. No consideration need be given to his second cause of action, for damages, nor to his third, for injunctive relief, except as they may indicate that the appellant has, in fact, been working the land.

There seems to be no question that the appellee is the alab of Aiboj weto. On trial, for the first time, he claimed his holding of dri jerbal rights, as well, under the custom, as jurlobren ne, a totally new theory.

The trial court judgment held that the plaintiff's claim was "based . . . on the ground that the land in question is what is known as jurlobren ne in which one and the same person holds both alab and dri jerbal rights". Its finding for the appellee rests, principally, on the testimony of Iroij Kabua Kabua.

We look first to the question: what is jurlobren ne?

The first answer is given by the appellee, transcript (2 June 1986) pages 15 and 16: that, with such land, the alab holds the dri jerbal rights.

Later, pages 19 and 20 of the transcript 2 June, he testified that he received his rights through Labutti, his predecessor alab. Then on page 21, he said: "I acquired that title [dri jerbal] through Lininke, the fourth child of Laakbel". Can land be, or become, jurlobren ne if the rights are derived from different sources?

On page 42, the Court is told (by counsel for appellee): "That's the holding of dri jerbal and alab . . . are for the alab only". And on page 49, "[it] . . . concerns only those who are alabs . . .".

The testimony of Iroij Kabua Kabua casts little light on our question, he apparently having little personal recollection of the status of this land. On page 8, transcript 6 June: "Paul approached me with a Deed of Sale . . . and he said, this land is a jurlobren ne and I don't have to approach or talk to the dri jerbal . . . and I signed that Deed of Sale".

On page 9 of the Kabua Kabua cross-examination, it is suggested for the first time that jurlobren ne is held only by the iroij. Kabua's response is that "it applies to alab too". There the matter was left, except for the further testimony that the ". . . present arrangement was made at the time of the defendant's father [Labutti]".

Labutti, the appellant's father, and the appellee's predecessor as alab, is credited at various points in the testimony with having made the "arrangement". Kabua did not say, nor was he asked, whether he was iroij in Labutti's time. At any rate, it is especially interesting to note that, at no time, was anything said as to iroij involvement in this "arrangement", nor was there anything to tell how it came about. All rests on Labutti, the alab, who appears to have been very busy (if we credit the testimony) changing rights and responsibilities without any reference to the iroij or anyone else. That this is contrary to custom is so obvious that it requires no citation.

But, what is jurlobren ne?

Tobin, in *Land Tenure Patterns* (page 49), equates it with mo land: "*Mo* or *kotra* (as it is called in Relik and Radak), and also called *jurlobiren ne* in Radak, is the personal land of the paramount chief".

On page 58, he translates jurlobiren ne as: "Sole of the foot (of the chief only) may touch this land".

Yet, on page 59, we have the cryptic statement: ". . . a type of *jurlobiren ne* is passed down from *alab* to *alab*. Only the chief and the *alab* possess permanent rights in this type of land".

Is this what we have here? It seems unlikely, given appellee's statement that be succeeded Labutti as alab, and got dri jerbal rights from Lininke. Had the land come to him as jurlobren ne, it would necessarily have been from Labutti.

We, and the trial court, are left totally in the dark as to how appellee received both alab and dri jerbal rights (if he did); whether they came to him by succession as jurlobren ne from Labutti, or separately, as alab from Labutti and dri jerbal from Lininke.

These matters might better have been probed by counsel on trial, but they were not, even with diligent urging by the trial court. It is, consequently, with some reluctance that we conclude that there may well have been an unjust conclusion reached, and that a new trial is warranted.

Reversed and remanded.