

HENRY MULLER, Plaintiff

v.

CLANCY MAKRORO and JABLUR, Defendants

Civil Action No. 432

Trial Division of the High Court

Marshall Islands District

December 10, 1971

See, also, 5 T.T.R. 465

Action to determine distribution of condemnation payment between *iroij*, *alab* and *dri jermal*. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that in the absence of agreement between the parties the condemnation payment would be divided equally between them.

MULLER v. MAKRORO

Eminent Domain—Compensation—Division of Proceeds

Where the *iroij*, *alab* and *dri jermal* could not unanimously agree on the distribution of payments for land taken for government use, the court would divide the proceeds equally between them.

Assessor: KABUA KABUA, *Presiding Judge of the District Court*
Interpreter: OKTAN DAMON
Reporter: NANCY K. HATTORI
Counsel for Plaintiff: BILIMON AMRAM
Counsel for Defendants: JIMA ALIK

TURNER, *Associate Justice*

RECORD OF HEARING

This action is a sequel to the decision in *Clancy Makroro v. Jablur Kokke*, 5 T.T.R. 465, which held Clancy to be senior *dri jermal* and Jablur to be the *alab* of Komlal Wato, Rairok Island, Majuro Atoll. The judgment, corrected by Supplemental Order and Judgment entered as result of the trial of the present case, 5 T.T.R. 569, ordered the distribution of Trust Territory government condemnation payment of eleven thousand one hundred eighty-eight dollars (\$11,188.00) for 25 years lease to the interest holders in the land. The plaintiff Henry Muller was held to be the *iroij erik* in *Muller v. Maddison*, 5 T.T.R. 471. There is no *iroij lablab* for the land because it is on "Jebrik's side" of Majuro Atoll. (See *Levi v. Kumtak*, 1 T.T.R. 578.) The defendant Jablur (also known as Lijablur) was held to be *alab* of Komlal and Jabonbar Wato in *Beklur v. Lijablur*, 2 T.T.R. 556.

The title was affirmed by the holding in *Clancy v. Jablur*, 5 T.T.R. 465, which also denied Jablur's claim to *dri jermal* interests and held Clancy Makroro was senior *dri jermal*. The condemnation payment by the government was to all three interest holders, leaving it to them to decide upon the

division. The parties being unable to agree upon the division, this action was brought. The plaintiff and the defendant *alab* claim the division should be in three equal shares while the defendant Clancy's proposal is that the division should be on the copra sale formula of 1/6 to the *iroij*, 1/6 to the *alab* and 2/3 to the *dri jermal*.

FINDINGS OF FACT

1. The parties were unable to agree on the division of the payment for Komlal *Wato* but did agree in part on a distribution of 1/3 of the payment for Jabonbar *Wato* to the *alab*.

2. There is no firmly established Marshallese land law custom applicable to division of proceeds received for land condemnation, land sale, or land rental.

3. Division of land transfer proceeds is usually determined by unanimous agreement of the interest holders.

4. The interest holders in Komlal and Jabonbar *Watos* are: *Iroi Erik* Henry Muller, the plaintiff; *Alab Jablur*, and *Dri Jermal* Clancy Makroro, the defendants.

OPINION

Although at least two meetings of interest holders in all the land being condemned by the government for use as airfield and water catchment system for Majuro were conducted by the government a general agreement as to division of payments could not be reached. (Defendant's Exh. B.) Agreements as to individual proceeds were subsequently entered into except for the parties in this case with respect to their interest in Komlal and Jabonbar *Watos*.

In the absence of unanimous agreement between the parties, the Court sees three alternative methods for arriving at a determination. The Court may:—

1. Adopt the "copra formula" division of copra sales proceeds advocated by the defendant Clancy, providing

one-sixth for the *iroij*, one-sixth for the *alab* and two-thirds for the *dri jermal*.

2. Apply the same division of land transfer proceeds made by other interest holders both on Majuro and Kwajalein Atolls. The difficulty with this method is that the agreements reached are not uniform.

3. And finally, the Court may adopt the democratic formula of "majority rule." Such method may be applicable under some circumstances but it is contrary to the feudal system of land tenure traditionally prevailing in the Marshall Islands. For a discussion of "Concepts of Land Ownership" see "Land Tenure Patterns," page 4 et seq. *Limine v. Lainej*, 1 T.T.R. 107. *Jatios v. Levi*, 1 T.T.R. 578. *Lazarus v. Tomijwa*, 1 T.T.R. 123.

Defendant's theory that the copra sales formula should be followed rests upon two basic concepts: (1) that this method is the most nearly analogous to a division of condemnation rental income, and (2) the income is in lieu of the lost subsistence derived from the land, and *dri jermal* are entirely dependent for their living upon the one or more *wato* from which they cut and sell copra, while neither the *iroij* nor the *alab* occupy or work the land but merely share in the *dri jermal* income. There are difficulties with both concepts.

Copra sales income is from labor expended by the *dri jermal* and much of his share of copra sales is compensation for labor and reimbursement of costs. When the land is taken out of production the *dri jermal* performs no labor for which he is entitled to be reimbursed.

Concerning subsistence, all interest holders derive subsistence from productive land. All share in both the production of food and in the sale of copra. When the land is lost all three "owners" lose subsistence.

Defendant relied in part, at least, on the only other decision of this Court which attempts to substitute its

judgment as to a division of condemnation proceeds in lieu of a unanimous agreement of the parties. It is *Bulele v. Loeak*, 4 T.T.R. 5, which held the *iroij* should receive 6% of condemnation proceeds. Six percent is approximately one-seventeenth of the whole whereas the one-sixth defendant would allot to the *iroij* is 17 percent of the whole. It is a substantial difference.

In *Bulele* the Court indicated it did not agree with its own formula, saying at 4 T.T.R. 19 that:—

“There is no Marshallese law of custom which specifically determines the division of proceeds from condemnation of indefinite use rights. The amount of each share of such proceeds must be based upon the Marshallese custom for the type apportionment which is most closely related.”

The Court observed that a lease was “in some ways analogous to a transfer of indefinite use rights,” but rejected the theory because “there is apparently precedent for the *alab* to receive the entire payment,” quoting at length from “Land Tenure Patterns,” p. 25, 26.

The Court then decided the *iroij* had no right to possession of the land “but only the right to regularly receive 6 percent of the income from the proceeds, plus his ceremonial gifts, and a right to a possible future interest. . . .” This regular income theory, which could have been achieved by placing all the proceeds in an income producing trust account and paying shares from the income, was rejected by the Court “because the condemnation has so radically altered the relationship of the *iroij*, *alab* and *dri jerbai* in connection with the two *watos*, the Court concludes that the better approach is to divide the proceeds themselves among those entitled to share.”

We agree with the *Bulele* conclusion on what to do, but not with the Court’s idea on how to do it by giving the *iroij* only 6 percent of the proceeds. Nor does the defend-

ant subscribe to that result as he is willing to let the *iroij* and *alab* have 17% of the proceeds each.

The true interest of both an *iroij* and an *alab* in land is far more than entitlement to a portion of copra sales proceeds. The Marshallese have not moved too far away from the ancient tradition that the *iroij* is the "owner" of the land. There are many present day limitations on authority over the land of the *iroij*, nevertheless, he is superior over all others in land matters, subject to acting within the law. *Limine v. Lainej*, 1 T.T.R. 107, 595.

We ignore this recognized authority over and interest in land when we say an *iroij* has only that interest which is represented by his share of copra sales proceeds. We must reject, therefore, both the *dri jerbals* theory of a proper division and this Court's determination in *Bulele*, in order to apply a more equitable division of proceeds.

The second alternative mentioned was to apply the same formula others had employed. But because others unanimously agreed as to a division it does not necessarily justify the same division in the present case. Also the other divisions were not uniform.

In fact the plaintiff once agreed to the one-sixth division now advocated by defendant Clancy. It is clear, however, that the plaintiff was imposed upon in dividing upon a one-sixth basis with Andrel, the *alab* and *dri jerbals* for Mojenkan and Monkieb *Watos*. This agreement was reached jointly with James Maddison, who claimed to be the successor *iroij erik*, only two months after Mike Maddison, the *iroij* died.

Muller testified as soon as he learned he had been misinformed about his entitlement he attempted to rescind his agreement. (Plaintiff's Exh. 2.) But by that time it was too late. (Plaintiff's Exh. 3.) Muller's only recourse would have been a suit for rescission, but at that time he was

confronted with establishing his entitlement to any of the proceeds. *Muller v. Maddison and Milne*, 5 T.T.R. 471.

The defendant also is confronted with a special agreement whereby Jablur has received one-third of Jabonbar *Wato* proceeds. However, Clancy did not agree to a one-half each division of the remainder.

Other comparable divisions on both Majuro and in an earlier period on Kwajelein has been on a basis of a division into three equal shares. There are, however, some variations in even this general rule. *Jitenburu v. Lios et al.*, 5 T.T.R. 383. *Lijoula v. Liwaikam and Ajel*, 5 T.T.R. 483. *In re: Estate of Bulele*, 5 T.T.R. 140.

Finally, we turn to an examination of the propriety of applying the rule of the majority. In this case both the plaintiff *iroij* and the defendant *alab* believe the proceeds should be divided into three equal shares. Only the defendant *dri jermal* objects.

On the witness stand the *dri jermal* admitted that the *iroij* has the greatest authority or "power" over the land, but then insisted that the three interests were "equal."

Either under Marshallese custom that the *iroij* has the power and duty to decide in a lawful and reasonable manner land disputes, or under the theory becoming at least politically recognized in the Marshalls that the "majority rules," this Court has no other fair alternative than to settle the dispute by requiring a division into three equal shares. Either the *iroij erik* has the authority to resolve the dispute or the *iroij* and *alab* as against the *dri jermal* (all three holding "equal" rights according to defendant) should prevail. Accordingly, it is

Ordered, adjudged, and decreed:—

1. That the condemnation proceeds for Komlal *Wato* shall be divided into three equal shares and distributed to

the plaintiff as *iroij*, the defendant Jablur as *alab* and the defendant Clancy as *dri jermal*.

2. That the division of the remainder of the proceeds from Jabonbar *Wato* shall be divided equally between the plaintiff and the defendant, Clancy, the defendant Jablur having heretofore received a one-third share.