

TOSHIWO SHIMA, et al., Appellants
v.
NAMO HERMIOS, et al., Appellees
Civil Appeal No. 426
Appellate Division of the High Court
Marshall Islands District
July 3, 1987

Appeal from judgment of the trial division determining *alab* and *dri jermal* rights to various *wetos* on Wotje Atoll. The Appellate Division of the High Court, Kennedy, Associate Justice, affirmed the finding of the trial division that a *bwilok* had occurred, in which the successor *bwij* acquired complete jurisdiction over *bwij* lands, including the *wetos* at issue.

1. Marshalls Land Law—"Bwilok"—Evidence

Trial division's finding that a *bwilok* occurred was upheld as not clearly erroneous, based on evidence that members of the original *bwij* left the atoll shortly after the dispute, indicating the consent of the original

bwij to the new arrangement, and that nobody contested the succession to *alab* by a member of the successor *bwij*.

2. Marshalls Land Law—"Dri Jerbal"—Evidence

In action contesting *alab* and *dri jermal* rights to various *wetos* on Wotje Atoll, objection that certain exhibit did not refer to the *wetos* by name failed, where there was other evidence in the case from which the identity of the *wetos* was made clear.

3. Marshalls Land Law—"Bwilok"—Particular Cases

In action contesting *alab* and *dri jermal* rights to various *wetos* on Wotje Atoll, judgment of the trial division that a *bwilok* occurred and that the successor *bwij* acquired complete jurisdiction was affirmed, and distribution of funds pursuant to the Micronesian Claims Act of 1971 were ordered to be made as a one-third share for the *alab* and a two-thirds share for the *dri jermal*.

Counsel for Appellants

Grace Alee and

Kaname Yamamura:

RUBEN R. ZACKHRAS

Counsel for Appellees

L. Kemojjo and

Hemos Lajinwa:

LANGINMO JACOB

Before MUNSON, *Chief Justice*, KENNEDY¹, *Associate Justice*, HEFNER², *Associate Justice*

KENNEDY, *Associate Justice*

Appellant Grace Alee appeals the judgment of the trial division holding that the *alab* and *dri jermal* rights to various *wetos* on Wotje Atoll, Marshall Islands, belong to appellee L. Kemojjo. Because the court's findings of fact are not clearly erroneous and its evidentiary rulings are consistent with substantial justice, *Bina v. Lajoun*, 5 T.T.R. 366, 369-70 (1971), we affirm.

¹ Judge of the United States Court of Appeals, Ninth Circuit, designated as Temporary Associate Justice by Secretary of Interior.

² Chief Judge of the Trial Court, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

Before the events at the heart of this litigation occurred, the *alab* and *dri jerbai* rights to the *wetos* in question were held by appellant's ancestors. The rights of appellee's ancestors were junior.³ We shall term appellant's family the "original" *bwij* and appellee's family the "successor" *bwij*.

During the Japanese administration, there was a dispute between members of the original *bwij*, headed by Lakimea, and members of the successor *bwij*, headed by Lelolo. The dispute concerned the actions of Bitan, a member of the original *bwij* who was accused of failing to pay the proper shares to the *alab* and the *iroij*.

The trial court found that a *bwilok* occurred as a result of this dispute, in which the successor *bwij* acquired complete jurisdiction over *bwij* lands on Wotje atoll, including the *wetos* at issue here, and the original *bwij* acquired complete jurisdiction over *bwij* lands in Ailuk atoll. Appellants deny that a *bwilok* occurred, although all parties acknowledge that the members of the original *bwij* left Wotje atoll and relocated on Ailuk and Utrik atolls shortly after the dispute concerning Bitan, while members of the successor *bwij* remained on Wotje atoll.

Because the members of the successor *bwij* who remained on Wotje were all male, a female of the original *bwij*, Lijabiruj, agreed to assist them in housekeeping and cooking. She then married a man of the successor *bwij*, and then gave birth to two children, one of whom was a male named Lakiotak. Upon the death of Lelolo, the *alab* of the successor *bwij*, it was decided that Lakiotak would be the next *alab*, and that Lelolo's heirs would succeed him. Thus, when Lakiotak died, the next *alab* was Laliklik, a member of the successor *bwij* and the nephew of Lelolo.

[1] The evidence was sufficient to show that a *bwilok* occurred, and we do not find the trial division's finding

³ The trial court used the terms "junior *bwij*" and "senior *bwij*."

clearly erroneous, as we must in order to overturn it. *Te-chong v. Peleliu Club*, 7 T.T.R. 364, 367 (1976). Members of the original *bwij* left Wotje atoll shortly after the dispute, indicating the consent of the original *bwij* to the new arrangement. See *Motlok v. Lebeiu*, 7 T.T.R. 359 (1976) (conversion to *ninnin* land must be with consent of those affected). Furthermore, even after the death of Lakiotak, nobody contested the succession by Laliklik, a member of the successor *bwij*. Laliklik's succession would be hard to understand unless a *bwilok* had occurred, and his apparent recognition by members of the original *bwij* does much to convince us that appellant, whose claims as successor arise from being in the original *bwij*, cannot prevail. See *Likinono v. Nako*, 4 T.T.R. 483, 485 (1968).

[2] Given the strength of this inference, we do not think any evidentiary errors alleged to have been made are prejudicial. Finally, appellant's objection that Exhibit 6 did not refer to the *wetos* by name must fail, because there was other evidence in the case from which the identity of the *wetos* was made clear.

[3] Accordingly, the judgment of the trial court is affirmed and the distribution of the funds that were awarded pursuant to the provisions of Title II of the Micronesian Claims Act of 1971 and are held in a trust account by the trial division of the High Court shall be made to the successor *bwij*, the appellees in this case. Distribution shall be in accordance with the schedule adopted by order of the trial division on December 14, 1983, Civil Action No. 7-77, *Shima, et al. v. Hermios, et al.* Specifically, the schedule of distribution shall be one-third share for the *alab* and two-thirds share for the *dri jerbak*.