

LALOU et al., Plaintiffs
v.
ALIANG, representing the
NGEUDEL CLAN, Defendant
Civil Action No. 12
Trial Division of the High Court
Palau District
March 12, 1954
See, also, 1 T.T.R. 290

Action to determine parties' rights to share of income from Mining Trust Agreement under which phosphate is taken from land on Angaur Island owned by clan. Plaintiffs represent non-resident clan members who contend they are entitled to share of income from Mining Trust Agreement. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiffs are only entitled to such portion of benefits from land which they as non-residents would be entitled to receive under Palau custom if there were no mining agreement.

1. Palau Land Law—Clan Ownership—Income Distribution

Members of Palauan Clan to which income from Mining Trust Agreement is distributed are entitled to be considered in clan's share of income, and payments in place of income, and to share in such distribution from time to time, even though they are not residents of land on which mining takes place.

2. Palau Land Law—Clan Ownership—Income Distribution

Where members of Palauan Clan to which income from Mining Trust Agreement is paid do not actually live on land covered by Mining Agreement, they are not entitled to share equally with members of clan who are living on such land.

3. Palau Land Law—Clan Ownership—Income Distribution

Payments which are made to Palauan Clan under Mining Trust Agreement are for purpose of reimbursing clan for phosphate removed from and damage to land that they would otherwise have use of.

4. Palau Land Law—Clan Ownership—Income Distribution

Members of Palauan Clan who do not actually live on land covered by Mining Trust Agreement are only entitled to such portion of payments from trust fund as fairly represents portion of benefits from land which they as non-residents would be entitled to receive under Palau custom if there were no Mining Trust Agreement.

5. Palau Land Law—Clan Ownership—Use Rights

Under Palau custom, members of clan who do not actually live on clan land are entitled to benefits from land according to services which they render to clan and needs of its different members.

6. Palau Land Law—Clan Ownership—Income Distribution

Members of Palauan Clan who do not actually live on land covered by Mining Trust Agreement are not necessarily entitled to fixed portion of clan's share of trust income nor to payments at fixed intervals.

7. Palau Land Law—Clan Ownership—Income Distribution

Palauan Clan which receives money from Mining Trust Agreement may work out division of money received from mining trust, so long as it gives fair consideration to welfare of all its members in accordance with accepted Palau custom.

8. Palau Custom—Clans—Membership

Under Palau custom, *rubaks* of municipality have no authority to split up clan or to rule members out of it merely because of non-residence.

9. Palau Custom—Clans—Membership

Under Palau system of society, one of basic protections of individual is that he is born into certain clan, and it is doubtful whether he can completely lose his membership under any circumstances.

10. Palau Custom—Clans—Membership

Under Palau custom, individual clan member may forfeit his right to some of benefits as member of clan because of misconduct or failure to fulfill all his clan obligations, and when he is absent part of his rights may be suspended.

11. Palau Custom—Clans—Membership

Under Palau custom, mere absence of clan member, no matter how long continued, does not work as forfeiture of either clan membership or rights to share in and use clan's assets.

12. Custom—Generally

"Custom" is such usage as by common consent and uniform practice has become law of place, or of subject matter, to which it relates.

13. Custom—Generally

Custom is a law established by long usage.

14. Custom—Generally

Customs may change gradually, and changes may be started by some of people affected agreeing to some new way of doing things.

15. Custom—Generally

New ways of doing things do not become established and legally binding or accepted customs until they have existed long enough to have become generally known and have been peaceably and fairly uniformly acquiesced in by those whose rights would be naturally affected.

16. Custom—Generally

Mere agreement to new ways of doing things by those to be benefited, without consent of those to be adversely affected, will not of itself work sudden change of customary law.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiffs Lalou, Marbou, and Ngiramechelbang (who are children of the same mother), are members of the Ngeudel Clan in the female line.

2. The Ngeudel Clan long ago owned certain lands on Angaur. It was one of the clans of the former village of Ngebeanged. Over a hundred years ago the clans of Ngebeanged, including the Ngeudel Clan, lost all their rights to lands on Angaur as a result of a war in which the clans of Ngebeanged were defeated and driven from the island. In this war the lands formerly owned by the Ngeudel Clan were conquered and taken over by the Nge-rebelau Clan as their property. Members of the Ngeudel Clan at that time moved to Peleliu.

3. Some years thereafter, the second chief of Angaur sent a spoon to the chief of the Ngeudel Clan on Peleliu as a sign that the clan was invited to return to Angaur. In response to this invitation, some members of the clan returned to Angaur, while others stayed on Peleliu. Those who returned to Angaur were allowed by the Nge-rebelau Clan to use at least a part of the former lands of the Ngeudel Clan, but were not given ownership of them at that time.

4. Members of the Ngeudel Clan on Angaur and the members on Peleliu continued occasional exchanges of property and visits as members of one clan, and when the Japanese Government shortly before World War II purchased some land which the clan had acquired on Peleliu, part of the purchase price was sent by the senior member of the clan on Peleliu to the senior member of the clan on Angaur.

5. After the armistice at the end of World War II, when a possible phosphate mining agreement was being

considered by the clans of Angaur, the Ngerebelau Clan gave to the Ngeudel Clan all rights which the Ngerebelau Clan had to the former lands of the Ngeudel Clan on Angaur, and joined with the other clans of Angaur in representing the Ngeudel Clan as one of those owning land where phosphate was to be mined. The Ngeudel Clan then became one of the parties to the Angaur Mining Agreement of 21 December, 1949, as amended 16 July, 1950, and to the Angaur Mining Trust Agreement of 16 July, 1950. In the schedule of distribution of income to phosphate owners, certified as equitable by the former District Court (now the Trial Division of the High Court) on 11 August, 1950, the Ngeudel Clan is listed as one of the eight clans to whom those portions of the income, and any payments in place of income, distributed from the Trust to the phosphate owners, shall be paid in equal shares.

6. The defendant Aliang is the chief of the Ngeudel Clan and is recognized as such by the *rubaks* of Angaur, although by arrangement with her, her husband, Renguruchel, regularly acts for her and is accordingly sometimes referred to as chief. Aliang represents the clan in this action. Aliang had a part of the Ngeudel Clan's share of the income from the Angaur Mining Trust paid to the plaintiff Marbou at one time, but stopped doing this when the *rubaks* of Angaur objected.

7. Angaur is socially and culturally a part of the Palau Islands. While there may be some differences in their customs as to other matters, there are no differences which affect this case between the customs of Angaur and those of the rest of the Palau Islands.

CONCLUSIONS OF LAW

[1-7] 1. The plaintiffs as members of the Ngeudel Clan are entitled to be considered in the distribution of

the clan's share of income, and payments in place of income, from the Angaur Mining Trust, and to share in such distribution from time to time. Since, however, as agreed in the pre-trial order, the plaintiffs do not and never have lived on Angaur, they are not entitled to share equally with the members of the clan living on Angaur. Since the payments from the fund are intended to reimburse the clan for phosphate removed from and damage to land the clan would otherwise have the use of, the plaintiffs are only entitled to such portion of these payments as fairly represents the portion of the benefits from the land which they as non-residents would be entitled to receive under Palau custom if there were no mining agreement. This in turn would depend in part upon the services the plaintiffs render the clan and the relative needs of the different members, including the plaintiffs. They are not necessarily entitled to any fixed proportion of the clan's share, nor to payments at fixed intervals. The clan is entitled to work out such division of the money received from the Trust as it desires, so long as it gives fair consideration to the welfare of all of its members in accordance with accepted Palau custom.

[8-11] 2. The defendant personally with the acquiescence of the clan, at least at one time, included the plaintiffs, or one of them, in the distribution of the clan's share of the income, but this was stopped owing to objection by the *rubaks* of Angaur, who appear to base their objection on the theory that the Ngerebelau Clan's rights to the former Ngeudel Clan lands were only given to that part of the Ngeudel Clan composed of residents of Angaur, and that only residents of Angaur should share in a clan's receipts from the Trust. No such limitation is shown to have been expressed at the time of the gift, nor is it contained in the schedule of distribution of in-

come to phosphate owners certified as equitable by the former District Court (now known as the Trial Division of the High Court) as required by the terms of the Angaur Mining Trust Agreement. The schedule states payments of the shares are to be made to the chiefs of the clans "to be held, used, and distributed in accordance with the provisions of the Angaur Mining Trust Agreement". Article 5 of the Trust Agreement expressly provides, among other things, "Any person receiving payments of income or principal as chief or head of a clan, lineage, or family, shall hold such income in trust for the members of the clan, lineage, or family to be used, managed and distributed in accordance with accepted custom." It seems clear that under Palau custom, the *rubaks* of a municipality have no authority whatever to split up a clan or to rule members out of it merely because of non-residence. Under the Palau system of society, one of the basic protections of an individual is that he is born into a certain clan and it is doubtful whether he can completely lose his membership in it under any circumstances. He may forfeit his right to some of the benefits because of his own misconduct or failure to fulfill all of his clan obligations, and when he is absent a part of his rights may, in a sense, be suspended. Mere absence, however, no matter how long continued, does not work as a forfeiture of either his clan membership or his rights to share in and use the clan's assets.

[12-16] 3. The defendant seems to imply or suggest that the residents of Angaur, or their leaders, have somehow by agreement between themselves changed the customary law on Angaur so as to cut out the rights of non-resident members of the clans of Angaur. "Custom" in the legal sense, is defined in part in Bouvier's Law Dictionary (Third Revision) as, "Such a usage as by common consent and uniform practice has become the law

of the place, or of the subject matter, to which it relates," with the further statement, "Custom is a law established by long usage." Customs may change gradually, and changes may be started by some of the people affected agreeing to some new way of doing things, but such new ways will not become established and legally binding or accepted customs until they have at least existed long enough to have become generally known and have been peaceably and fairly uniformly acquiesced in by those whose rights would naturally be affected. Mere agreement to new ways by those to be benefitted without the consent of those to be adversely affected, will not of itself work a sudden change in the customary law. See paragraphs 5 and 11 of the article on Usages and Customs in Volume 55 of American Jurisprudence, at pages 267 and 272.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. The plaintiffs, Lalou, Marbou, and Ngiramechelbang, are members of the Ngeudel Clan and as such are entitled to receive from time to time a part of the clan's share of the income, and payments in place of income, from the Angaur Mining Trust, to be determined as provided below.

2. The Ngeudel Clan itself is entitled in the first instance to determine when the plaintiffs are to receive payment and how much these payments shall be, provided the payments represent a proportion of the clan's share of the income, and payments in place of income, from the Trust reasonably equal to the proportion of the benefits from the land which, under all the circumstances under Palau custom, the plaintiffs would be entitled to receive if there were no mining agreement. The land referred to is that on which the Ngeudel Clan's claim to share in pay-

ments from the Angaur Mining Trust is based, shown in the survey made about 1950 by the Palau District Administration.

3. If the plaintiffs and the clan are not able to come to an agreement upon the payments to be made to the plaintiffs in accordance with this judgment, any party may apply to the court for a further determination of the matter.

4. No costs are assessed against any party.