

MERAR and REMEKEL,
representing the Ngetelkou Lineage or Clan, Plaintiffs
v.
UCHEREBUUCH, Chief of and representing
the Orakiblai Clan, Defendant

Civil Action No. 34

Trial Division of the High Court

Palau District

February 14, 1958

Action brought to determine status of the Ngetelkou as either lineage or clan, in which plaintiffs seek determination that they are separate clan, and that they hold whatever land rights they have or formerly had on Angaur Island independent of defendant Orakiblai Clan. The Trial Division of the High Court, Chief Justice E. P. Furber, held that regardless of whether plaintiffs' group more closely resembles conventional Palau clan or lineage, their land rights on Angaur are held under defendant clan.

1. Palau Custom—Lineage

Words for "clan" and "lineage" in Palau Islands have not yet received such firm and exact meaning that allowing lineage to act as clan for some purposes means it does not have obligations of lineage in other matters.

2. Palau Land Law—Clan Ownership

Where lineage in Palau Islands has been allowed freedom of action in some matters, this does not free lands, use of which it received through cooperation and permission of clan, from traditional controls and rights of clan.

3. Palau Land Law—Clan Ownership

Regardless of whether certain group more closely resembles conventional Palau clan or lineage, group's land rights which were received from clan are held under clan.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. As a result of migration and of local wars, the Ngetelkou came to hold under the Orakiblai Clan whatever land rights on Angaur Island the Ngetelkou have, or had when these were taken over in whole or in part by the Government.

2. The Ngetelkou have been allowed by the Orakiblai Clan great freedom of action in social matters, and have frequently been spoken of and treated as a clan for some purposes.

3. Relations between the Ngetelkou and the Orakiblai Clan as a whole were friendly and harmonious for some 200 years prior to the making of the Angaur Mining Agreement during the period of the American Administration.

4. Leaders of the Ngetelkou had actual notice of the hearing held by this court, under its former name of District Court, to consider schedules of distribution under the Angaur Mining Trust Agreement, and chose to take no part in the hearing.

CONCLUSIONS OF LAW

1. The plaintiffs, on behalf of the Ngetelkou Lineage or Clān, seek a determination that they are a separate clan and hold whatever land rights they have, or formerly had, on Angaur Island independent of the Orakiblai Clan. The defendant, on behalf of the Orakiblai Clan, claims that the Ngetelkou, coming to Angaur as refugees, were

adopted as a lineage by the Orakiblai Clan, that being the first clan of Angaur. It is admitted that the Ngetelkou are not related to the rest of the Orakiblai Clan by blood in the matrilineal line, that marriage has been permitted between a member of the Ngetelkou and a member of another part of the Orakiblai Clan, and that prior to the disruption in connection with phosphate mining arrangements, the Ngetelkou had the right to possession and use of substantially all of the lands in question, which are often referred to as the "Ngetelkou lands", but the defendant says that these lands were assigned to the Ngetelkou to use as a lineage of the Orakiblai Clan, and that they only have or had the right to use them under the Orakiblai Clan.

[1] 2. The evidence and the facts agreed on show very clearly that the Ngetelkou have some aspects of a clan, and that they and their members, without objection by the Orakiblai Clan, have done a number of things as if the Ngetelkou were a clan. From the above, the plaintiffs argue that their land holdings must be independent of the Orakiblai Clan. The court is not satisfied that the words for "clan" and "lineage" in the Palau Islands have yet received such a firm and exact meaning that allowing a lineage to act as a clan for some purposes would mean that it did not have obligations of a lineage in other matters. Many different relationships between clans are well known in the Palaus. These appear to be often the result of agreements, or special arrangements made for mutual advantage, or forced by one clan upon another as a result of victory in war, or by social or political pressures. The details of such agreements or arrangements do not follow any fixed uniform rules.

3. The position of the Ngetelkou is anomalous. The holder of its highest male title is recognized as a member of the Ngarangebisi, or men's council, of the former vil-

lage of Ngerbelau—allegedly through the influence of the head of the Orakiblai Clan—and both the highest Ngetelkou male and female titles are recognized as the No. 7 titles, for men and women respectively, in Ngerbelau, while the “Ngetelkou lands” are all within the former village of Ngebeyanged and the Ngetelkou claim to be a clan of Ngebeyanged, but they are admittedly not represented on its men’s council (and presumably not on its women’s council either). Traditional patterns of organization are still further upset on Angaur by the fact that the sites of both the former village of Ngerbelau and the former village of Ngebeyanged have been physically abandoned in connection with the mining operations, and the people of Angaur, while retaining their old village organizations to some extent, have lived and operated largely as one village for most immediate purposes for several years.

[2, 3] 4. The court therefore holds that the freedom of action which the Ngetelkou have been allowed to exercise in other matters does not free the lands, which they received the use of through the cooperation and permission of the Orakiblai Clan, from the traditional controls and rights of the Orakiblai Clan. The court holds that regardless of whether the Ngetelkou more closely resemble a conventional Palauan clan or a conventional Palauan lineage, their land rights on Angaur are held under the Orakiblai Clan.

5. It appears that one of the plaintiffs’ main sources of concern is that under the original Angaur Mining Agreement of 1949 none of the so-called “Ngetelkou lands” were to be mined, and that they feel they were not properly considered in connection with the later agreements which opened these “Ngetelkou lands” up to mining. These later agreements are included among those known briefly as “T.T. 24 and its supplements”. It seems to be the

expectation of all the parties to this action that there will be a new schedule or schedules, of distribution requested under the Angaur Mining Trust Agreement because of this agreement T.T. 24 and its supplements, and that the plaintiffs hope somehow through this action to improve their position with regard to the distributions under this Trust Agreement.

6. Attention is invited, as it was during the trial, to the fact that under the terms of the Angaur Mining Trust Agreement, no amendment of the schedules of distribution can be made without notice to all the parties concerned, including the High Commissioner of the Trust Territory of the Pacific Islands and the District Administrator, Palau, and an opportunity for them to be heard, and that it is specifically provided in this Trust Agreement that, in preparing schedules under it, the rights of individual members of the clans and the desires of the clan members, as well as the desires of the chiefs, shall be given full consideration. It would appear, therefore, that the members of the Ngetelkou would be entitled to be heard in connection with new or amended schedules of distribution whether they were considered as a separate clan or not. The plaintiffs were insistent that they wished a determination in this action just between the Ngetelkou and the Orakiblai Clan without bringing into the controversy all the parties who would be involved in a readjustment of schedules of distribution under the Mining Trust Agreement. Accordingly, no determination is made or intimated in this action as to whether or not the Ngetelkou are entitled to any readjustment of schedules under the Angaur Mining Trust Agreement.

7. None of the parties has requested any determination of its rights as against the claims of the Trust Territory Government to ownership of or rights in the lands in question. The Government is not a party to this action,

and no determination is made or intimated as to the rights of any of the parties against the Government.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them:—

(a) The Ngetelkou, so far as any land rights on Angaur Island which they have, or had when these were taken over in whole or in part by the Government, are concerned, are and have been for many years in the position of a lineage which has been adopted by the Orakiblai Clan.

(b) When the rights referred to above were taken over in whole or in part by the Government, the Ngetelkou held them under, that is, as a part of and lineage within, the Orakiblai Clan, and still so hold whatever of these rights now remain in the Ngetelkou.

2. No costs are assessed against any party.