

NGIRUHELBAD, Plaintiff

v.

MERII, IMESEI, and TARKONG, Defendants

Civil Action No. 44

Trial Division of the High Court

Palau District

February 14, 1958

Action to determine ownership of land in Koror Municipality, in which plaintiff claims that individual land of deceased, if it came from lineage or clan of which deceased was member, should be controlled after his death by matrilineal lineage or clan from which it came. The Trial Division of the High Court, Chief Justice E. P. Furber, held that son of deceased, to whom deceased directed property should pass, owns property free and clear of any rights in plaintiff as deceased's brother or in matrilineal lineage or clan of which deceased was a member.

1. Palau Land Law—Individual Ownership

Individual land was foreign concept that had no place originally in Palau customary land law.

2. Palau Land Law—Individual Ownership

Purpose of introducing concept of individual land in Palau was to get away from complications and limitations of Palau matrilineal clan and lineage system and to permit individual control of land and patrilineal inheritance.

3. Palau Land Law—Individual Ownership

Older Palau custom is of little help in determining exact effect and implications of concept of individual land.

4. Palau Land Law—Individual Ownership—Decedents' Estates

Under Palau custom, where there are number of heirs or persons among whom deceased has directed individually owned land be divided, deceased's oldest surviving brother or sister may protect rights of all concerned and arrange details of division.

5. Palau Land Law—Individual Ownership—Decedents' Estates

Under Palau custom, where deceased individual land owner has left only one child and directed that properties should go to him, there is nothing for oldest surviving brother or sister of deceased's matrilineal family to do concerning deceased's properties.

6. Palau Land Law—Individual Ownership—Decedents' Estates

Under Palau custom, where deceased owner of individual land has directed that properties pass to his adopted son, properties will go to son free of any rights in deceased's brother or in any matrilineal lineage or clan of which deceased was a member.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The deceased Ngiraterang, otherwise known as Pedro, owned both the house lot and the part of a taro patch involved in this action as his individual property.

2. Ngiraterang orally directed that these properties should pass on his death to his adopted son Tarkong. Ngiraterang notified several people of this, but did not notify his brother Ngiruhelbad of it.

3. While Ngiraterang gave Merii permission to use the part of the taro patch in question, he did not transfer ownership of it to her.

CONCLUSIONS OF LAW

1. This action involves primarily a difference of opinion as to the disposition of land in the Palau Islands that was owned by a deceased person as his individual land at the time of his death. The plaintiff is the brother of the deceased Ngiraterang, the defendant Merii is Ngiraterang's widow, and the defendant Tarkong is the adopted son of

Ngiraterang and Merii. The defendant Imesei claims no interest whatever in either of the properties involved, except the right to maintain a dwelling house on the house lot in question by permission of the defendant Merii. All three defendants appear to be in full harmony with each other.

2. The plaintiff represents two different matrilineal groups—a lineage of one clan as to the house lot involved, and another clan as to the part of the taro patch involved. Ngiraterang was a member of both of these groups. The plaintiff claims that even a person's individual land in the Palau Islands, if it came from a lineage or clan of which the person was a member, should be controlled after his death by the matrilineal lineage or clan from which the land came, and that the senior members of that group should decide what part, if any, of such land should go to the children or widow of the deceased. The plaintiff admits that both properties in question were owned by Ngiraterang and were listed as owned by him individually in the last Japanese land survey in the Palaus. While claiming that Ngiraterang owned these properties as a member of the respective groups referred to above, the plaintiff seems to dispute the significance or effect of "individual" ownership rather than to question the propriety of the listing of these particular properties.

[1-5] 3. It is recognized that "individual land" was a foreign concept that had no place originally in Palau customary land law. It is clear, however, that the very purpose of introducing this land concept was to get away from the complications and limitations of the Palauan matrilineal clan and lineage system and to permit individual control of land and patrilineal inheritance of it. Older Palauan custom is therefore of little help in determining the exact effect and implications of the concept. Where

there are a number of heirs or persons among whom the deceased has directed that land be divided, it is recognized that it would be at least consistent with Palauan custom for the deceased's oldest surviving brother or sister to handle the matter or, as it is sometimes stated, to temporarily "stand in the place of" the deceased to protect the rights of all concerned and to arrange the details of the division. In a situation like that in the present case, however, where the deceased left only one child, namely, his adopted son Tarkong, and had directed that the particular properties in question should go to him, there appears nothing for the oldest surviving brother or sister or the deceased's matrilineal family to do concerning them.

4. It is noted that in its Resolution 2-51, Special Session, the Palau Congress, in response to a request for recommendation as to the codification or statement of Palauan Land Law, submitted the following concerning "Inheritance of land owned by the individual":—

"1. Inheritance of lands owned by an individual shall pass to his male children, in patrilineal descent.

2. Distribution of these lands amongst the inheritors shall be established by:

(a) Written statement in the general form of a will.

(b) Oral statement before the magistrate of the municipality with the *rubaks* (elders) as witnesses, of the distribution of these lands intended by the owner.

3. Adopted children and step-children shall possess equal inheritance rights with natural children if approved by the father.

4. A land owner has the right to transfer his land.

5. The right of disinheritance is possessed by land owners.

6. Female inheritors shall exist only in the absence of all male inheritors.

7. If a land owner shall die without having previously signified his intentions as to the disposal of his land, a council of the eligible inheritors together with the leaders of his talungaluk (lineage) shall determine the apportionment of these lands."

The words in parentheses in the above quotation have been inserted here for the benefit of those not familiar with Palauan terms. They do not appear in the resolution itself. So far as the court knows, this resolution has never been definitely approved or disapproved by, or on behalf of, the High Commissioner.

[6] 5. Without passing upon the question of whether all of the above quotation is a correct statement of the law as to land owned by an individual in the Palaus, the court holds that, at least in the situation involved in this action, the house lot and the part of the taro patch in question passed, on the death of Ngiraterang, to his adopted son Tarkong, free from any rights in Ngiraterang's brother or in any matrilineal lineage or clan of which the deceased was a member.

JUDGMENT

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

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

(a) The following properties, both located in the Municipality of Koror in the Palau District, are owned as his individual property by the defendant Tarkong, who lives in Koror Municipality:—

(i) The house lot known as Irahel, consisting of about 179.9 tsubo, bounded on the east by land now or formerly of Ichikawa, on the north by land now or formerly of Tertong, on the west by the public road, and on the south by the public highway.

(ii) The part which was formerly owned by Ngiraterang of the taro patch known as Maulekikt.

(b) Neither the plaintiff Ngiruhelbad, who lives in Airai Municipality in the Palau District, nor the Dai Lineage (within the Obengedang Clan of Airai), nor the Tungelel Clan of Airai, for both of which the plaintiff has

made claim in this action, has any rights of ownership in either of these pieces of property.

(c) The defendant Merii, who lives in Koror Municipality, has no rights in these properties, except the implied right, as Tarkong's mother by adoption, to act for him with regard to the properties unless and until he objects.

2. This judgment shall not affect any rights of way there may be over the lands in question.

3. No costs are assessed against any party.