

FRITZ RUBASH, Appellant

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS, and
its ALIEN PROPERTY CUSTODIAN, Appellees**

Civil Action No. 120

Trial Division of the High Court

Palau District

July 23, 1959

Action to determine title to land in Koror Municipality which was given by clan in 1924 to people of Koror Village for school purposes, with understanding possession would be returned to clan whenever land ceased to be used for school purposes. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that since condition under which possession was to be returned to clan had taken place, clan is entitled to possession as owner of land.

Reversed.

1. Palau Land Law—Clan Ownership—Reversionary Rights

Where clan loans land to village for school purposes and clan establishes that condition under which possession of land was to be returned has taken place, clan still owns land and is entitled to possession.

2. Palau Land Law—Japanese Survey—Rebuttal

Presumption arising from listing of land in Palau Islands in official Japanese land survey of 1941 as government land may be effectively rebutted.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. No part of the land in question was acquired by the Japanese Government from the Ingeyaol Clan (represented in this appeal by the appellant who is its present

head or "Rubash") for any consideration at any time, nor was there any taking of any of the land by the Japanese Government against the clan.

2. The Ingeyaol Clan, about 1924, gave the people of Koror Village or Community, without the payment of any consideration, the right to use the land in question for school purposes—primarily as a playground and site for teachers' quarters—with the understanding that possession would be returned to the clan whenever the land ceased to be used for school purposes. The Japanese Government participated in the exercise of this right to use the land, but did not acquire any other right in it.

3. The land has not been used for school purposes since World War II.

CONCLUSIONS OF LAW

[1] 1. Inasmuch as the whole claim of the appellees was based upon alleged purchase of the land in question by the Japanese Government in two separate pieces at different times from the Ingeyaol Clan or from persons authorized to act for the clan and it has been found that there never were any such purchases, their claims must fail. The appellant having established that the condition under which possession was to be returned to the clan has taken place, the court holds that the Ingeyaol Clan not only still owns the land, but is entitled to possession.

[2] 2. So much of the evidence considered by the District Land Title Officer has been conclusively shown to relate to other parts of the land known as Kedrekemais than the part in question in this appeal, that the court can have no confidence that the statements of the two witnesses which the District Land Title Officer primarily relied upon related to this particular piece of land. From the statement contained in the District Land Title Officer's conclusions, it appears that these two witnesses were interviewed by

him after the hearing was over without any chance for cross-examination and it is significant that the appellees did not call either of these witnesses to testify before this court. On all the evidence, the court holds that the presumption arising from the listing or recording of this land as government land in the Koror "Tochi Daichio" (that is the summary or index volume for Koror of the results of the official Japanese land survey of about 1938 to 1941), has been effectively rebutted as in the case of *Lusi Orukem v. Trust Territory*, 1 T.T.R. 356.

JUDGMENT

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

1. The District Land Title Officer for the Palau District's Determination of Ownership and Release No. 131, dated November 26, 1957, filed on the same date with the Clerk of Courts for the Palau District in his Volume T-1, page 103, is hereby set aside.

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

(a) The land described in said Determination of Ownership and Release, namely that part of the land known as Kedrekemais, located in Koror Municipality, Palau District, which is shown on Palau District Land Office sketch of Claim No. 131, is the property of the Ingeyaol Clan, of which the appellant is the present head or "Rubash". This part of Kedrekemais is bounded on the northwest by individual land of the appellant Fritz; on the northeast by the water; on the southeast by land which the Ingeyaol Clan claims to have given to Baiei and Omen-gar in German times or very early Japanese times and which is now owned by the government; and on the southwest by the main road to "T" Dock; comprising approximately 80,385 square feet. This part of Kedrekemais consists of the whole of lots 1006 and 1007 and the north-

westerly portions of lots 858 and 859 in the numbering of lots on Koror in the official Japanese land survey of about 1938 to 1941. The location of the dividing line between the parts of lots 858 and 859 which are included in the land described above and the parts which are not so included runs in a straight line from the road through a big stump about three feet from the road, then between two mango trees to the shore, one of these mango trees having a benjo near it and the other a monument near it, all as shown on Exhibit "1" attached to the record of hearing on this appeal.

(b) Neither of the appellees has any rights of ownership in this land.

3. The Ingeyaol Clan, however, shall allow any persons occupying parts of the land under leases or permits from the Trust Territory Government, a reasonable time to remove in a peaceful and orderly way any buildings or property which they may have upon the land, or arrange with the Ingeyaol Clan for permission to remain on some basis agreeable to the clan. Unless some person interested applies to the court for a further determination as to the length of time which will be reasonable for this, and until such further determination is made, it will be assumed that six (6) months from the date of this judgment will be sufficient. Until some new arrangement is made with the Ingeyaol Clan, those in possession of parts of the land under leases or permits from the Trust Territory Government shall only be liable to the Ingeyaol Clan for rent for such time as they remain in possession after this judgment.

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

5. No costs are assessed against any party.