

**UODELECHAD NGESENGAOL, FRANCISCO ICHIKAWA,
and LIK NGIRAMARIAR, Plaintiffs**

v.

**UCHEL TORUAL, P. RDIALUL,
and FUMIO RENGIL, Defendants**

Civil Action No. 148

Trial Division of the High Court

Palau District

November 30, 1961

Action to determine title to land in Koror Municipality which was once owned by defendant's lineage but had been in his possession for many years and was listed as his individual land in Japanese land survey. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant has obligation to preserve for benefit of lineage that portion of land containing stone platform where lineage members are buried, but that remainder of land is owned by him individually in accordance with survey listing.

1. Palau Custom—Lineage—Burial Platform

Under Palau custom, in order for lineage to give to individual as his individual land, land area including stone platform where large number of lineage members are buried, there must be express consent or clear acquiescence of all adult members of lineage.

2. Palau Custom—Lineage—Burial Platform

Under Palau custom, strong leaders of lineage who may have implied authority to give individual ordinary property of lineage cannot give to him as his individual land that area including stone platform where large number of lineage members are buried.

3. Palau Custom—Lineage—Burial Platform

Self-respect of Palauan lineage requires that platform where large number of lineage members are buried and space adjoining it for lineage house be preserved in some manner for lineage use.

4. Palau Custom—Lineage—Burial Platform

Under Palau custom, where there is evidence of opposition to transfer of lineage land to individual as his individual land, and there is no clear evidence that opposition was withdrawn, individual is under obligation to preserve for benefit of lineage stone (burial) platform and sufficient land adjoining it for lineage house.

5. Palau Land Law—Japanese Survey—Rebuttal

Where land is listed in Japanese land survey as party's individual land, such listing may be shown to be incomplete.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The major part of the land in question was owned by the Milong Lineage within the Ikelau Clan before the official Japanese land survey of about 1938–41, but it had been in the possession of the defendant Uchel Torual for many years.

2. During that survey there was active dispute as to how this part of the land should be listed, and the matter was referred "to the village" for determination. There was strong opposition by certain members of and persons connected with the Milong Lineage to the land being listed as the individual land of Uchel Torual because of the large number of persons buried in the stone platform on the land, including members of the Milong Lineage.

3. At one point the council of Koror, meeting at Meketii, decided that the land should be listed in the name of Uchel Torual as administrator for the Milong Lineage.

4. Later, members of the council of Koror, including two strong members of the Milong Lineage and a strong member of Olngembang Lineage reported to the survey officials that it had been agreed that this portion of the land in question be listed in the name of Uchel Torual as his individual land, and it was so listed by the survey officials without further hearing, although there is no evidence as to who specifically agreed to this or as to any other terms there may have been to the agreement.

5. The remaining portion of the land in question was given to Uchel Torual at the time of the survey by Mikel on behalf of the Ngermeriil Clan to be added to the portion which had been owned by the Milong Lineage.

OPINION

This action involves the ownership of land in the Palau Islands, the major portion of which has been established

to have been once the property of the Milong Lineage. The action is governed largely by the principles discussed in the opinion of this court in *Ucherbelau v. Ngirakerkeriil*, 2 T.T.R. 282.

The defendant Uchel Torual claims that the major portion of the land was given to him as his individual land in 1910 or 1911 and was so owned by him until the time he admittedly transferred, or attempted to transfer, part of it to the defendant Fumio Rengiil. While it is clear that the defendant Uchel Torual was given possession and the right to use this part of the land at that time, the court considers on the basis of all the evidence that he was not given individual ownership at that time.

[1-5] Under Palau custom the giving by a lineage to an individual, as his individual land, of the area including the stone platform where a large number of the lineage members are buried is a matter requiring express consent or clear acquiescence of all the adult members of the lineage, and cannot properly be done merely by certain strong leaders who may have implied authority to give to an individual the ordinary property of the lineage. The self-respect of the lineage normally requires that such a platform and space adjoining it for a lineage house shall be preserved in some manner for lineage use. In view of the very clear evidence of opposition to the transfer of this land as individual land, and the lack of any clear evidence as to whether this opposition was actually withdrawn or on what terms it was withdrawn, the court considers that under all of the circumstances the defendant Uchel Torual must be considered to be under obligation to preserve for the benefit of the lineage at least the stone platform and sufficient land adjoining it for a lineage house, and that to this extent the plaintiffs have sustained the burden of showing that the listing of this land as individual

land in such records as now remain of the 1938–41 Japanese land survey, is at least incomplete.

The portion of the land in question transferred by Mikel was clearly intended to be added to the portion that came from the Milong Lineage and is, therefore, considered to be covered by the presumption that the listing as individual land of Uchel Torual was correct.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land now known as Trolii (including a strip added by Mikel on behalf of the Ngermeriil Clan), located in the Ngeremenganged section of Koror Municipality, Palau District, bounded and described as follows:—

on the east by property now or formerly of Milong, and on the north, west, and south by land now or formerly of Ngermeriil,

and comprising about 576.8 tsubos,

is owned as follows:—

a. The northeasterly portion, consisting of about 102.5 tsubos, which was purportedly sold to the defendant Fumio Rengiil about February 1959, is owned by the defendant Fumio Rengiil, who lives in Koror, as his individual land.

b. The remainder of said land is owned by the defendant Uchel Torual, who also lives in Koror, as his individual land, but he is under obligation to hold and preserve the stone platform on said remainder and one hundred (100) tsubos of land adjoining said stone platform for the benefit of the Milong Lineage and permit the Milong Lineage such use thereof as it desires.

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

3. No costs are assessed against any party.