

MELIONG MADRAINGLAI, et al., Plaintiffs

v.

THE SCHOOL OF THE PACIFIC, MUNICIPAL COUNCIL, and
MAGISTRATE OF NGETPANG MUNICIPALITY and DLAN-
GEBIANG CLAN, Defendants

Civil Action No. 1-74

Trial Division of the High Court

Palau District

August 19, 1974

Action to have lease of municipal land voided. Trial Division of the High Court, Hefner, Associate Justice, held that lease did not have to be approved by traditional council where it had been approved by municipal council.

1. Appeal and Error—Reviewability of Issues—Issues Not Briefed

Issues not raised would not be resolved on appeal.

2. Municipalities—Councilmen—Meetings, Votes and Procedure

Where a quorum was present at council meeting and a majority approved of action at issue, whether the signature of one person was proper did not have to be decided.

3. Public Officers—Presumptions

There is a presumption of regularity of official acts.

4. Municipalities—Lease of Municipal Land

Where charter for municipality provided for a municipal council and one was formed, lease of municipal land, approved by the council, did not have to also be approved by the traditional council.

5. Landlord and Tenant—Estoppel

Where neither lessor nor lessee was contesting or asserting a claim based on the lease, those opposed to the lease of the land could not successfully raise estoppel by deed.

Assessor:

SINGICHI IKESAKES, *Associate Judge,*
District Court

Interpreter:

AMADOR D. NGIRKELAU

Reporter:

SAM K. SASLAW

Counsel for Plaintiffs:

JOHN O. NGIRAKED

Counsel for Defendant

School of the Pacific,

Inc.:

JOHNSON TORIBIONG

*Counsel for defend-
ants, the Magistrate
and Municipal Coun-
cil of Ngetpang Mu-
nicipality:*

JONAS OLKERIIL

*Counsel for defendant
Dlangebiang Clan by
the paramount title
holder:*

ROMAN TMETUHL

HEFNER, *Associate Justice*

This matter came on for trial on July 18, 1974. All parties were present and represented by counsel.

Plaintiffs' motion for a temporary restraining order filed June 28, 1974 was heard contemporaneously with the trial on the merits of the case. The Court considers the plaintiffs' complaint filed June 20, 1974 as an amendment to the original complaint and deemed denied by the defendants.

As indicated in this Court's ruling dissolving the injunction pendente lite entered June 14, 1974, the plaintiffs must present new issues to justify a trial on the merits. From the amendment to the complaint and plaintiffs' opening statement, those issues were stated to be as follows:

1. Is the lease between the Municipality of Ngetpang and the School of the Pacific, Inc., void because the required vote of the council was not obtained?

2. Is the lease between the Municipality of Ngetpang and the School of the Pacific, Inc., void because the lease was not approved by the traditional Municipal Government, the "Ngaimis"?

3. Should the land be distributed to the four clans who are claimed to be the lawful traditional and customary owners of the land in question?

Also raised as an issue in the plaintiffs' final written argument was Estoppel by Deed.

Although the first issue was dealt with at the hearing dissolving the injunction pendente lite, the plaintiffs again attempted to show that the necessary members of the Municipal Council of Ngetpang did not approve of the lease to the School of the Pacific, Inc.

Of the eleven positions on the Council, those in dispute are as follows:

1. Rekemesik. 2. Sechewas. 3. Rebelkuul. 4. Leader of the Men's Organization. 5. Leader of the Women's Organization.

The Magistrate of Ngetpang testified that of those persons that he certified as members of the Municipal Council (Plaintiffs' Exhibit 5) only one did not attend the meeting to approve the lease and that was Rekemesik Ngiraiechol. He signed the affidavit (Plaintiffs' Exhibit 1) which approved the Municipal Resolution authorizing the execution of the lease (Plaintiffs' Exhibit 7) just before the meeting.

The Magistrate also testified that Rideb Iechad had attended all Council meetings for the Men's Organization and that Rebluud has done the same as the holder of the title, Sechewas, as well as Demei, the holder of the title Rebelkuul. He did admit that Iterong as leader of the Women's Organization had notified him that she would not attend any further Council meetings until the dispute over the position of Rekemesik was resolved. The Magistrate then certified Lukes Iechad as the representative of the Women's Organization since he felt she was qualified to represent the Women's Organization.

[1] This Court does not intend to resolve the internal disputes as to the representative of the Women's Organization and the Rekemesik as it was not presented directly as an issue in this litigation. The Court does take judicial notice of the Judgment in Palau Civil Action 398 entered April 26, 1968 in which the Trial Division of the High Court affirmed a District Court decision which found

Meliong to be the successor to the chief's title and that Rekemesik Ngiraiechol bears the chief's title and will continue to do so until his death or selection of a replacement Rekemesik in accordance with custom.

[2] At the time of the Council meeting the Magistrate or his representative had Rekemesik Ngiraiechol sign the Plaintiffs' Exhibit 1, circumventing Meliong. Whether this was proper or not, the Court need not decide because even without the Rekemesik's approval, whether Meliong or Ngiraiechol, the Court finds that a quorum was present at the Council meeting and a majority approved of the lease to the School of the Pacific, Inc.

If the Court discounts the vote of the Rekemesik and the representative of the Women's Organization, there were nine certified members of the Council present who voted to approve the lease. This satisfies the quorum provision of Municipal Ordinance No. 4 dated January 28, 1959 and the majority vote provision of the Municipal Charter granted January 7, 1959.

[3] Therefore, the Court finds no reasons to alter the previous determination, in the order dissolving the preliminary injunction, that the action of the Council was proper. The presumption of regularity of official acts, 29 Am. Jur. 2d 212 et seq., has not been overcome by the plaintiff.

Plaintiffs' main thrust at the trial was that since the traditional Council, Ngaimis, did not approve the lease, it was void. This new attack on the lease presented for the first time at the trial is basically that there are two Municipal Councils, one being chartered pursuant to 4 TTC 1 and the other consisting of the 10 chiefs of Ngetpang (Ngaimis). Plaintiffs assert that no transfer of an interest in land is effective without the approval of the Ngaimis.

The facts in this case reveal that the people of Ngetpang presented a petition to the High Commissioner in late 1958

and thereafter a Charter was issued on January 7, 1959. The Charter left it up to the people of Ngetpang to decide who would be members of the Municipal Council and a Municipal Ordinance No. 4 dated January 28, 1959 was enacted, setting forth its membership. Within one year the Land Determination was made, placing title to the land in question in the Ngetpang Municipality. The transfer to the Ngetpang Municipality was to the entity recently formed and the stipulation by all parties and counsel at the hearing to dissolve the preliminary injunction that the Ngetpang Municipality owned the land, bears out the conclusion that only the legally chartered Municipality was the holder of the title to the land.

The Court is aware that the Congress of Micronesia is now considering legislation to return government land to the people. Ultimately it may be decided that other bodies may control municipal land but it is premature for this Court to speculate how land in Palau will be held and controlled. Suffice it to say that as to the land in question, it is owned and controlled by the Chartered Municipal Government. It is noted that if the people of Ngetpang wanted the Ngaimis to, in fact, be the Municipal Council, they could have done this. The membership of the Municipal Council was strictly up to the people and the High Commissioner left this decision to the people. He did not dictate or decide who should be on the Council.

After all of the testimony and controversy about the "Two Municipal Councils" and failure of the Ngaimis to approve the lease to the School of the Pacific, Inc., Plaintiffs' Exhibits 2 and 3 were introduced into evidence which demonstrates that all of the chiefs assented to the "transfer" of the land to Emesiochel. The testimony further revealed that the Ngaimis knew it was for the purpose of leasing it to the School so therefore the Ngaimis has, at least, concurred in the use of the land for the school al-

though the subsequent lease was between the Municipality and the school rather than the school and Emesiochel who has filed a written disclaimer of any interest in the land.

[4] If this Court were to concede that the Ngaimis had to approve the lease, which it does not, Plaintiffs' Exhibits 2 and 3 are a strong indication that the Ngaimis had already approved the basic transfer of the leasehold interest to the School of the Pacific, Inc.

There was no testimony of custom or of any facts upon which the Court can even consider having the land adjudged to be vested in the four clans as prayed for in the complaint and since plaintiffs' written argument does not argue the point, this issue must be resolved against the plaintiffs.

The plaintiffs, in their written argument, raise the additional issue of "Estoppel by Deed". It is to the credit of plaintiffs' counsel that his ingenuity and resourcefulness has raised so many diverse issues in one law suit. However, the trial court must capture and hold that elusive objective of reaching a final decision in this protracted litigation. Although the litigation does not span a great deal of time, the issues have covered a lot of ground and there is little similarity now to the initial issues presented in plaintiffs' complaint.

[5] Estoppel by deed is not applicable in this case. Neither the Municipality of Ngetpang or the School of the Pacific, Inc., are contesting or asserting some claim based on the lease.

Estoppel by deed precludes a party and his privies to a deed from asserting against the other party to the deed any right or title in derogation of the deed, or from denying the truth of any material facts asserted in it. 28 Am. Jur. 2d 602.

The Municipality of Ngetpang is standing by its commitments in the lease and is not attempting to refute

its title. Therefore, the argument of the plaintiff has no application to the facts in this case. For the reasons stated in this opinion and those set forth in this Court's order dated June 14, 1974 (but which are not repeated here),

It is the Judgment of this Court that:

1. The land known as Ibobang, being a portion of the tract of land known as Ngerdubech, Old Ngetpang and described in the determination of Ownership and Release No. 126, Palau District Land Office, is owned by the Chartered Ngetpang Municipality.

2. The Municipal Council of Ngetpang legally entered into a lease for said land with the School of the Pacific, Inc., which lease has been approved by the High Commissioner of the Trust Territory of the Pacific Islands pursuant to the laws of the Trust Territory.

3. Plaintiff shall not be entitled to any relief from his complaint.

4. No costs shall be allowed to either party.