

ISEKO NGIRAMELKEI, Plaintiff

v.

**BAULES SECHELONG and EBILEDIL MEKESONG,
Defendants**

Civil Action No. 57-73

Trial Division of the High Court

Palau District

September 13, 1974

Dispute over title to land. The Trial Division of the High Court, Hefner, Associate Justice, held that the evidence showed that decedent had been given permission by the clan's title holder to use the land when it was village land, that the use of the land and the building of a house on the land gave decedent no rights, and that the land was to be held, on decedent's death, by the title holder for the clan and could not be passed, either by will or deed, by decedent to his wife.

1. Palau Land Law—Village Land—User's Rights

Where evidence showed that land decedent had used and built a house on was public or village land, not decedent's individual land, decedent had no authority to will or deed the land to his wife as her individual land and the land was to be held and administered for the village by the clan's title holder.

2. Palau Land Law—Village Land

Public or village land is held by the title holder for the village and can be disposed of only in certain ways.

3. Palau Land Law—Village Land—User's Rights

An individual may be given permission to use village land, but vested rights in the land do not accrue to the individual either by the permission or the use.

4. Palau Land Law—Village Land

It is the custom that village land is held in the name of the title holder of the clan.

Assessor:

BENJAMIN K. OITERONG, Associate Judge, District Court

Interpreter:

AMADOR D. NGIRKELAU

Reporter: SAM K. SASLAW
Counsel for Plaintiff: NGIRAMECHELBANG NGESKUSUK
Counsel for Defendants: BAULES SECHELONG

HEFNER, *Associate Justice*

This action concerns the title to land known as Ngetekyuid and Uchellulk in the village of Ngerulaobel, Airai Municipality, Palau.

Plaintiff is the widow of Ngiramesubed who was the title holder for the Ngertelwang Clan. The defendant, Baules Sechelong, is the successor title holder to Ngiramesubed pursuant to the judgment in Civil Action No. 582, now on appeal.

Plaintiff claims that the land in question was the individual land of Ngiramesubed and by virtue of his will (Plaintiff's Exhibit 1) and a deed (Plaintiff's Exhibit 3), she is now the owner of the property.

Defendant, Baules Sechelong, claims that the land is village land belonging to the village of Ngerulaobel and he, as title holder of the Ngertelwang Clan, holds and administers the property for the village people pursuant to Palauan custom.

Defendant Mekesong makes no claim to the property and in fact has testified for the plaintiff. She states that several years ago she "had the land and gave it to Ngiramesubed." She denies it was ever public or village land and infers that it was clan but that she had authority to give the land to Ngiramesubed as she was the only female member of the clan and the only person with the right to give the property away.

Several witnesses for the plaintiff testified that before his death, Ngiramesubed told them he wanted his individual land, Ngetekyuid and Uchellulk, to go to the plaintiff. The will of Ngiramesubed does not specifically mention the property nor does it state specifically that the house and

property is to go to plaintiff. Klouldil Belechel is named to settle the property. She has testified that in carrying out the wishes of the deceased, she had the land surveyed and a map prepared (Plaintiff's Exhibit 2) and then had a deed (Plaintiff's Exhibit 3) signed transferring the land to plaintiff.

[1] Palau District Code, Section 801(b) (*See footnote) provides for the disposition of individually owned land in the District of Palau by a will. Whether the will meets the test of the section need not be decided here as the evidence convinces this Court that the land was not individual land but was public or village land. As such, the deceased had no authority or power to will or devise the property to his widow as her individual land.

[2, 3] Land which is village or public land is held by the title holder for the village and can be disposed of in only certain ways. *Airai Municipality v. Rebluud*, 4 T.T.R. 75. Although permission may be given to use a part or all of village land, vested use rights do not normally accrue. *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398, 404.

The defendant Baules and others testified that the deceased, shortly before his death, acknowledged that the land was village land and that in the event the traditional Cheldechoduch funeral ceremony was not held by his relatives, that he requested Baules, as successor title holder, to give a portion of the land in dispute to plaintiff.

* Section 801. Fee Simple Land Transfers; Inheritance.

Land now held in fee simple or hereafter acquired by individuals may be transferred, devised, sold or otherwise disposed of at such time and in such manner as the owner alone may desire, regardless of established local customs which may control the disposition or inheritance of land through matrilineal lineages or clans.

(b) Lands held in fee simple by an individual may be devised by such individual by written will attested before and deposited with the Clerk of Courts, or by a sworn oral or written statement as to the consent of the will by the devisor in the presence of three witnesses not taking under the will before the Clerk of Courts.

Not only was a Cheldecheduch held but Chelbechiil was given to the plaintiff in the form of money and the deceased's uncle indicated the Cheldecheduch was satisfactory. Be that as it may, there is no indication that the administrator of the village land consented to the request of the deceased and gave any of the property in dispute to plaintiff.

The defendant Baules testified that the land was acquired by the village of Ngerulaobel in a war many years ago and has, for a long time, been village land. Pursuant to custom, Ngiramesubed went to the Rubaks of the village and requested permission to build a house on the property. Even though Ngiramesubed was the title holder for the Village, he still had to obtain permission from the Rubaks (Elders of the village) to build the house.

Permission was granted and he lived on the property for a number of years. However, that use did not vest any additional right to him. *Ngerdelolek Village v. Ngerchol Village, supra*. Thus, on his death, he had again no right to devise the property.

[4] It is the custom in the villages in Airai as in other municipalities, in Palau, that village land is held in the name of the title holder of the clan, in this case the Ngertelwang Clan.

Unfortunately, the Tochi Daicho, the Japanese land registration records for the land in dispute are lost or destroyed and not available. The defendant Baules has testified that the land was registered, after survey by the Japanese, in the name of Ngiramesubed as administrator for the village. This testimony is consistent with the other witnesses relating to conversations with Ngiramesubed prior to his death.

This Court is cognizant of the appeal of Civil Action No. 582, Appeal No. 106. Until and unless the judgment is reversed in that case, the defendant Baules Sechelong shall

hold and administer the property in dispute for the village of Ngerulaobel.

It is therefore the judgment of this Court that the land known as Ngetekyuid and Uchellulk is owned by the Village of Ngerulaobel and Baules Sechelong as the title holder of the Ngertelwang Clan shall hold and administer said land for the village of Ngerulaobel.

In the event appellants are successful in their appeal in Civil Appeal No. 106, the duly adjudged title holder of Ngertelwang Clan will hold and administer said property for the village of Ngerulaobel.

Defendant shall be entitled to his costs.