

NGESKESUK LOUCH, Plaintiff

v.

MENGELIL, Defendant

Civil Action No. 142

Trial Division of the High Court

Palau District

March 7, 1960

Action to determine title to land in Peleliu Municipality which was listed in Japanese land survey as clan member's individual land and then sold by him to Japanese Navy, although chief of clan had given land to member in order to administer it for clan. The Trial Division of the High Court, Associate Justice A. J. McCormick, held that land is owned by clan and that clan's control has not been lost or relinquished.

1. Palau Custom—Clans—Membership

Under Palau custom, where party is member of clan through his father or through paternal line, he is "weak member" of clan.

2. Palau Custom—Clans—Membership

Under Palau custom, "weak member" of clan is entitled to dry land, taro patch and Palauan money, and nothing more.

3. Palau Land Law—Clan Ownership

Under Palau custom, "weak member" of clan may be assigned as administrator over clan or family land.

4. Palau Land Law—Clan Ownership—Transfer

Under Palau custom, effective alienation of land by "weak member" of clan requires consent and approval of chief title and other important members of clan.

5. Palau Land Law—Japanese Survey—Rebuttal

While determinations made in official Japanese land survey in Palau Islands are entitled to great weight, they are not absolutely conclusive.

6. Palau Land Law—Clan Ownership—Reversionary Rights

Where party is given land to administer for clan, and he sells land to Japanese Navy, with authorization of clan, control of land is not thus lost or relinquished by clan.

McCORMICK, *Associate Justice*

FINDINGS OF FACT

1. Klouklubed, the land in dispute, is an area of approximately 9,545.8 tsubos, located in Ngerchol hamlet in Peleliu Municipality, Palau District.

2. Elsau is a clan, the chief title of which is *Louch*, now held by plaintiff for some 30 years.

3. Ebechoel is also a clan, the chief title of which is *Mengelil*, now held by Metoched, not the defendant.

4. While two different clans, they are so closely related that the members of one clan can hold titles in the other.

5. *Dilsebsis* is the chief female title of the Elsau Clan, held by Elechesel who was given the title by plaintiff, Louch, after the death of Madelsar.

6. Defendant is a member of the Bongbei family in the Elsau Clan through the paternal line, and was adopted by Elechesel.

7. Plaintiff Louch and Elechesel made the following distribution of lands in middle Japanese times and before the Japanese land survey (1938-41):

(a) Plaintiff Louch—given chief title land of Ngetechuang.

(b) Defendant Mengelil Olikong—given dry land, taro patch, and Palauan money.

(c) Elechesel and the defendant—given Klouklubed to administer for the Elsau Clan.

8. At time of distribution, plaintiff was not Louch, but was acting at the direction, and on behalf, of Ngirioulblai who was a very old chief of Elsau Clan.

9. At time of distribution, Dilsebsis was held by Madelsar, who was not Ochel (true member of female line) so most of the decisions had to be made by Elechesel who was Ochel.

10. After the Japanese land survey, defendant sold a part of Klouklubed to the Japanese Navy under protest, but received 400 yen with an additional 600 yen going into Nangtak Kabushiki Kaisha.

11. When plaintiff Louch first learned of sale, he, along with Ngirakidel and Obak, hamlet chiefs, went to Elechesel and the defendant demanding distribution of payment. Defendant asserted the payment had not been made, and Elechesel claimed she had not received the payment. Shortly after this Peleliu was attacked and people were evacuated.

12. At the time of the Japanese land survey, the defendant, in the absence of any other member of the Elsau Clan, assisted the Japanese surveyors and pointed out Klouklubed as his individual land.

13. Determination of Ownership No. 66 in Land Office in Koror lists the land Klouklubed as the property of the Elsau Clan in fee simple.

CONCLUSIONS OF LAW

[1] 1. Under Palauan custom, defendant is a member of the Elsau Clan through his father or paternal line and therefore a "weak" member.

[2] 2. As such, defendant was entitled to dry land, a taro patch, and Palauan money, all of which he received, and is entitled to nothing more.

[3] 3. Defendant may be assigned as administrator over the clan land or family land.

[4] 4. Under Palauan custom, an effective alienation of land by defendant requires the consent and approval of Louch and other important members of the Elsau Clan.

[5] 5. While determinations made in the official Japanese land survey (1938-41) in the Palau Islands are entitled to great weight, they are not absolutely conclusive.

[6] 6. Control of the land Klouklubed has not been lost or relinquished by the Elsau Clan.

JUDGMENT

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

1. As between the parties and all persons claiming through or under them, the land known as Klouklubed, located in Ngerchol hamlet in Peleliu Municipality, Palau District, is owned by the Elsau Clan.

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

3. No costs are assessed against any party.

MOOROU and Others, Appellants

v.

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

Civil Action No. 17

Trial Division of the High Court

Yap District

May 13, 1960

Action by former owners of land in Ruul Municipality to recover land sold to quasi-governmental corporation during Japanese Administration. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that since owners were forced to sell land to corporation and then to exchange money from sale for valueless government bonds and notes, owners could now repudiate their acceptance of money as compensation for their land; failure of consideration in sale of land results in owners being deprived of land without free will and without receiving just compensation.

Reversed as to certain plaintiffs.

1. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where alleged sale of land to Japanese Government occurred in 1940, it took place so late in Japanese Administration that present administration has obligation to correct wrong if land owners establish sale