

DONECIO IMEONG and WATARU IMEONG. Plaintiffs

v.

JOSEPH EBAU. Defendant

Civil Action No. 326

Trial Division of the High Court

Palau District

March 31, 1966

Action to determine rights to land in Korol' Municipality. Plaintiff, close Palauan relative of defendant, gave defendant permission to build on land in question and to live there so long as he wanted; when defendant failed to fulfill his obligations to plaintiff, plaintiff negotiated to sell land to outsider after giving defendant two weeks in which to raise money to purchase land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that at time of attempted sale to outsider, defendant and his relatives had right to remain on land until they had reasonable opportunity to work out fair compensation for defendant's neglect of his obligations, and that attempted sale by plaintiff is invalid against defendant's right to have reasonable opportunity to protect his right of possession.

1. Palau Custom-Family Obligations

Where parties are closely related under Palauan custom, they have strong obligation to assist each other and cooperate.

2. Palau Land Law-Use Rights

Under Palau custom, it is common to give use rights in land to party to live on land for as long as he wants and to build there.

3. Palau Land Law-Use Rights

Palau custom of giving use right to person to live on land for as long as he likes and to build there is important property right similar to "life estate subject to conditions" rather than "tenancy at will" as terms are understood in United States.

4. Palau Custom-Family Obligations-"Ocheraol"

Under Palau custom, one's failure to take part in and contribute generously to close relative's *ocheraol* is serious affront to such relative.

5. Palau Custom-Family Obligations-"Ocheraol"

Failure of party in Palau to participate in close relative's *ochteraol* justifies relative in revoking use rights in land given to party, provided he does this in considerate manner and gives party reasonable opportunity to either purchase land or in some other manner compensate for previous breach of his obligations.

6. Palau Custom-Family Obligations-Option to Purchase Land

Under Palau custom, giving close relative who has use rights in land two weeks in which to work out proper adjustment to compensate for his breach of obligations before selling land to someone else is totally inadequate time.

7. Palau Custom-Family Obligations-Option to Purchase Land

Attempted sale by owner of land to outsider, without giving close relative who has use rights in land an opportunity to work out fair compensation for neglect of his obligations, is invalid as against such relative, and latter still has right to reasonable opportunity to work out agreement to protect his right of possession.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Donecio Imeong (hereinafter referred to as Imeong) bought the land in question from the defendant Joseph Ebau in Japanese times.

2. After World War II, the plaintiff Imeong gave the defendant Joseph permission to build on the land in question and live on it as long as he wanted to, but did not give the land to Joseph to own.

3. Under Palau custom, the above mentioned permission carried with it authority for the defendant Joseph to allow his close relatives such as Kliu to occupy the land, but also carried with it an obligation and implied condition that the defendant Joseph would faithfully fulfill his customary obligations to the plaintiff Imeong as his father under the custom and to Imeong's close relatives.

4. The defendant Joseph seriously failed to fulfill his obligations to the plaintiff Imeong by failing, without good cause, to attend and contribute to the "*ocheraol*" (that is, the traditional money raising party usually held upon completion of a Palauan's house) held in 1962 to raise money for the house erected by the plaintiff Wataru Imeong, who is considered under the custom as the defendant Joseph's brother and the plaintiff Imeong's son,

and thereafter further failed in his obligations by denying the plaintiff Imeong's ownership of the land.

#### OPINION

This is an action with regard to land in Korol' Municipality in the Palau Islands between three closely connected Palauans and turns primarily on questions of rights and obligations between relatives under Palau custom. The plaintiff Donecio Imeong (commonly called Imeong) is in fact the stepfather of the plaintiff Wataru Imeong and is at present married to the plaintiff Wataru's mother, who is a member of the defendant Joseph's lineage. Thus, the plaintiff Wataru, being related to the defendant Joseph by blood in the female line, is considered under Palau custom as his brother, and the plaintiff Imeong, being married to one of the defendant Joseph's older lineage mates, is considered under the custom, for some purposes, to be his father, and for others, his brother-in-law.

**[1-3]** It is very clear that under Palau custom such relatives have a strong obligation to assist each other and cooperate. In this instance, however, while it appears that Imeong and Joseph were very friendly up to a few years ago, they have now obviously had a falling out and since then it appears that all three of the parties have been trying to exercise a greater independence of action than they are entitled to under the custom. The kind of use right given Joseph in this instance is common among Palauans and is an important property right similar to a "life estate, subject to a condition" and far different from a "tenancy at will", as those terms are regularly understood in the United States.

The basic facts, in addition to those set out in the findings of fact above, are quite clear. As the defendant Joseph had failed to take his normal traditional part in

the "*ocheraol*" held to raise money for Wataru's house, Imeong and Wataru without any notice directly to the defendant Joseph, endeavored to sell the land in question after just a few weeks' notice to Joseph's and Wataru's relative Kliu, who was in possession with Joseph's permission. When approached by Joseph to allow him and his relatives to purchase the land, the plaintiff Imeong only allowed them, at the most, two weeks to raise the money for this. When the money was not forthcoming within that time, Imeong and Wataru went ahead with the sale without further notice to Joseph and joined in executing a document of transfer to an outsider on March 13, 1963, for six hundred dollars (\$600), paid at that time. They then notified Kliu to vacate the land within six months. When it became apparent that she had no intention of vacating, Wataru, without further negotiation with Joseph, made an agreement with the purchaser to pay interest of twenty-two percent (22%) a year on the purchase price of six hundred dollars (\$600) until she was able to get possession.

**[4-6]** The failure of the defendant Joseph to take part in and contribute generously at Wataru's "*ocheraol*" was both a serious affront to Wataru and his father Imeong under the custom and put them under pressure to raise money in some other way. This, the court considers, justified Imeong in revoking his permission for Joseph to use the land now in question, provided he did this in a considerate manner, giving Joseph every reasonable opportunity to either purchase the land himself or in some other manner compensate for his serious breach of his obligations to Imeong and Wataru. There is some doubt in the evidence as to whether Imeong gave Joseph one week or two in which to do this. Assuming, however, he did allow the full two weeks, the court considers that a totally inadequate time under Palauan concepts

within which to expect Joseph and his relatives to work out the proper adjustments before selling the land in question to someone else.

While it is recognized that this 22% interest, which Wataru agreed to pay the purchaser, was the maximum allowable at that time under Palau District Legislature's Resolution No. 38-59 then in effect, it is considered an extremely excessive rate for one brother under the custom to try to impose on another without any negotiations as would normally be expected in such a situation under Palau custom. It should be noted that Section 1103 of the Trust Territory Code, added by Executive Order No. 99 of January 11, 1965, has radically modified the effect of Palau District Legislature's Resolution No. 38-59 so far as contracts made on or after February 15, 1965, are concerned. The contract for interest between Wataru and his purchaser in this instance was made prior to February 15, 1965. It is believed, however, that this section strongly indicates that twenty-two percent (22%) a year is a high interest even between persons not closely related, and that under all the circumstances, including the speed and lack of consultation with Joseph with which the plaintiffs have acted, the most they can fairly expect from Joseph now in the way of interest in connection with the help he should have given them, is the legal rate on judgments of six percent (6%).

**[7]** The court holds that at the time of the attempted sale by Imeong and Wataru, Joseph and his relatives claiming under him still had the right to remain on the land until they had had reasonable opportunity to work out a fair compensation for Joseph's neglect of his obligations and that Imeong and Wataru, having endeavored to cut this off, their attempted sale is invalid as against Joseph's right to have reasonable opportunity to protect his right of possession by purchasing the land or work-

ing out some other agreement with the plaintiffs, and that he is still entitled to reasonable opportunity to do this.

JUDGMENT

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

1. As between the parties, all of whom live in Koror Municipality, Palau District, and all persons claiming under them, the rights and obligations of the parties are as follows:-

a. The defendant Joseph Ebau has the right to live on and to permit his close relatives, such as Kliu, to live on the four hundred (400) *tsubos* of the land known as Btelulachang ra Ucherrong, located in Ngerchema Village in Koror Municipality, Palau District, shown on the sketch attached to the pre-trial order in this action, but these rights will cease at the expiration of four (4) months from the date this judgment is entered, *unless*, within those four (4) months, he either:-

(i) pays the plaintiffs Donecio Imeong and Wataru Imeong six hundred dollars (\$600), plus interest at six percent (6%) per year, from March 13, 1963; or

(ii) makes a new arrangement with the plaintiffs Donecio Imeong and Wataru Imeong, satisfactory to them, to remain on the land.

b. If the defendant Joseph Ebau does neither of the above things within the four (4) months specified, he and those claiming under him shall vacate the land promptly at the expiration of the said four (4) months and shall have no further rights in it.

c. If the defendant Joseph Ebau does pay the plaintiffs Donecio Imeong and Wataru Imeong six hundred dollars (\$600), plus interest at six percent (6%) a year, from March 13, 1963, within the four (4) months specified above, the land described above will become said Joseph Ebau's individual property free and clear of all claims

of the plaintiffs Donecio Imeong and Wataru Imeong and of all persons claiming under them.

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.

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OSEKED BUK and Others, Appellants

v.

SIANGELDEB BASILIUS, Appellees

Civil Action No. 338

Trial Division of the High Court

Palau District

March 31, 1966

Appeal from judgment of Palau District Court which held that defendant, who had paid out children's money which he was entrusted to hold for individual, must reimburse value of money paid out and would receive no credit for second piece of Palauan money which he gave in exchange for children's money. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant had obligation to keep money intact or to replace it with piece of Palauan money of greater value, but that defendant will be credited with value of money given in exchange for children's money.

Modified and affirmed.

1. Palau Custom-Children's Money

Under Palau custom, basic obligation of person holding children's money for safekeeping is to either keep it intact and not use it for any other purpose or, if he pays it out, to replace it with piece of Palauan money of greater value.

2. Palau Custom-Children's Money

Under Palau custom, there is no justification for redesignating, without consent of payee, a payment of children's money that has once been voluntarily made without any indications of fraud or duress.

3. Palau Custom-Children's Money

Under Palau custom, attempted designation of money paid for food and services as "children's money" is of no legal effect.

4. Palau Custom-Children's Money

Where money exchanged for children's money has substantial value, defendant who wrongfully pays out children's money will be credited for value of money paid for it.