

NGODRII v. KUMAICHI

Assessor: JUDGE IGNACIO V. BENAVENTE  
Counsel for Plaintiff: ROGER L. ST. PIERRE, ESQ.  
Counsel for Defendant: JOHN D. MCCOMISH, ESQ.

FURBER, *Chief Justice*

This Application for Writ of Habeas Corpus came on to be heard before me this day at Susupe, Saipan, Mariana Islands.

Counsel for the plaintiff stated that he had decided to appeal from the conviction in the Ponape District Court, under which the plaintiff was being held to serve sentence, and apply for stay of sentence pending appeal instead of pressing the Application for Writ of Habeas Corpus, and therefore requested that this action be continued to await the outcome of the appeal in the criminal case.

Counsel for the defendant objected to such continuance and requested that this action be either dismissed or heard on its merits promptly.

Counsel for plaintiff presented his notice of appeal in the criminal case and secured stay of sentence pending appeal. Further discussion was held with counsel, as a result of it was

Ordered that the above-entitled action be and it is hereby dismissed.

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SANTOS NGODRII, Plaintiff

v.

ROBERT KUMAICHI and REKESUK KUMAICHI, Defendants

Civil Action No. 384

Trial Division of the High Court

Palau District

December 18, 1967

Action to determine property rights between divorced spouses. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where *olmesumech* and food money were paid to and accepted by former

spouse such actions cut off any further claims in that regard, but it was appropriate for court to hear and decide property settlement and child support cases even when the traditional meeting had been held.

**1. Domestic Relations—Support**

Palau District Law No. 13-4-66, which imposed an obligation upon a father to provide support for his children under 18 years of age in the event of a divorce arising from his fault, was applicable to situations within its terms from and after its effective date and could be applied to a case although the complaint was filed prior to the effective date of that law. (Palau District Law No. 13-4-66)

**2. Domestic Relations—Divorce**

Under American law when the divorce decree does not provide for alimony payments to the wife, she is prevented from thereafter asking for support from her former husband.

**3. Domestic Relations—Divorce**

Although the settlement of property rights in a divorce decree, or the absence of such settlement, is usually governed by statute in American Courts, it is generally held that if the decree does not contain an adjudication of property rights, the parties are not absolutely barred from bringing an action for settlement of such rights.

**4. Domestic Relations—Divorce—Support**

Almost without exception, the American view is that child support may be ordered after a divorce decree which contained no provision for support.

**5. Domestic Relations—Divorce—Support**

Court was not precluded from considering child support in case under District law, even though the divorce decree made no provision for it. (Palau District Law No. 13-4-66)

**6. Domestic Relations—Divorce—Support**

The provisions of Section 704, Trust Territory Code, relating to power of the court to revise at any time a decree as to support of minor children, did not imply the court could not make subsequent provision for child support even though the decree did not contain a provision which could be "revised" in accordance with that Code provision. (T.T.C., Sec. 704)

**7. Palau Custom—Divorce—"Olmesumech" and Food Money**

Support for the wife and property settlements should be determined in accordance with tradition and not by the courts, unless or until such settlement is not made in accordance with the custom.

**8. Palau Custom—Divorce—"Olmesumech" and Food Money**

Where *olmesumech* and food money were paid after proper meetings, the payment and acceptance cut off any further claims in that regard under the custom.

**9. Domestic Relations—Support**

In conformity with present-day concepts of individual ownership of property in Palau it is appropriate for the courts to hear and decide property settlement and child support cases even when the traditional meeting has been held, and the fair method of making such settlements is to consider the position of the parties and their needs after the divorce settlement.

**10. Domestic Relations—Support**

Where former wife had remarried and was living in the home of her new husband, the system of matrilineal support, as well as her new marriage, should adequately care for her.

**11. Domestic Relations—Divorce—Property Settlement**

A husband owes his former wife an obligation to share in the property acquired during the marriage, as well as the statutory duty to provide support for his children.

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<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Counsel for Plaintiff:</i>	ITELBANG LUII
<i>Counsel for Defendants:</i>	E. TERMETEET

TURNER, *Associate Justice*

RECORD OF HEARING

Held before D. Kelly Turner, Associate Justice, at Koror, Palau Islands, on November 24, 1967, on the record transferred from the District Court for the Palau District in its Civil Action No. 1214.

OPINION

This matter was transferred from the District Court when it appeared the decision would involve judgment in excess of the jurisdictional amount specified for District Courts by Section 138, Trust Territory Code. It is noted this case was tried in the District Court and referred to this court prior to the effective date of Public Law 3-9, approved September 1, 1967, enlarging the jurisdiction of District Courts to permit judgments for support payments which, in the aggregate, may exceed the sum of \$1,000.00.

As prepared, but not entered, the District Court judgment provided for allocation and distribution of community property in excess of \$1,000.00, rather than for periodic child support in excess of the jurisdictional amount.

At the pre-trial conference, the parties waived presentation of additional evidence and agreed to accept the District Court trial record as the basis for the judgment. We will, therefore, treat the trial record as if it were the record, including the findings, conclusions and proposed judgment, of a Master to whom the matter had been referred for hearing.

The facts of the case are all too familiar to those acquainted with either Palauan or American domestic relations matters. The real parties in interest, Mechellings, the former wife, represented by her uncle Santos Ngodrii, as plaintiff, and Robert Kumaichi, the former husband, who with his father, Rekesuk Kumaichi, are the defendants, were married thirteen years until their marriage was terminated in accordance with a District Court divorce decree entered December 2, 1965.

Although the District Court decree made no monetary awards, either as alimony or for child support, nor did it provide for distribution of community, or perhaps more accurately, communal property, there have been proceedings in accordance with Palauan custom relating to such matters. Since neither under the custom nor in the District Court divorce action were monetary or property matters adequately considered or resolved, the present case was brought in District Court for a property settlement and child support judgment in conformity with applicable Palauan custom.

[1] Plaintiff did not claim relief for his niece, Mechellings, in this case under the Palau District legislative enactment, No. 13-4-66, relating to payment of child support, because it was enacted after the commencement of the ac-

tion. The complaint was filed April 1, 1966, and the District law was effective June 13, 1966. Because the law imposed an obligation upon a father to provide support for his children under 18 years of age in the event of a divorce arising from his fault, it is applicable to situations within its terms from and after its effective date. Consequently, we may apply it to this judgment, even though the complaint was filed prior to the effective date of the law.

[2] Under American law when the divorce decree does not provide for alimony payments to the wife, she is prevented from thereafter asking for support from her former husband. 24 Am. Jur. 2d, Divorce and Separation, § 651.

[3] Although the settlement of property rights in a divorce decree, or the absence of such settlement, is usually governed by statute in American courts, it is generally held that if the decree does not contain an adjudication of property rights, the parties are not absolutely barred from bringing an action for settlement of such rights. 24 Am. Jur. 2d, Divorce and Separation, § 946.

[4] Almost without exception, the American view is that child support may be ordered after a divorce decree which contained no provision for support. 24 Am. Jur. 2d, Divorce and Separation, § 829.

[5, 6] We are not precluded from considering child support in the present case under the District law, even though the divorce decree made no provision for it. Nor do we deem the provisions of Section 704, relating to power of the court to revise at any time a decree as to support of minor children, to imply the court may not make subsequent provision for child support even though the decree does not contain a provision which may be "revised" in accordance with the Code section.

Since this is an action for property settlement and support to be awarded by the court in accordance with the

provisions of Palauan custom, we are confronted with previous rulings of this court on the propriety of such action. Previous cases have held alimony should be determined through "traditional channels" and the courts should not consider such matters until it has been demonstrated that all reasonable effort has failed to resolve the settlements. *Ngeskesuk v. Moleul*, 2 T.T.R. 188. *Itelbang v. Gabrina*, 2 T.T.R. 194.

The circumstances of this case are similar to both of the above-named decisions. In the present case, the divorce was granted in December, 1966, by the court and prior thereto the wife, Mechellings, was "*tilobed ra rebai*", that is, cast off under Palauan custom by the acts of the husband amounting to adultery or a new marriage (under the custom) with another. After both the new marriage and the court divorce, the traditional meeting was held at the conclusion of which *olmesumech*, or "parting money", was paid by the husband's relatives to the wife's relatives. Under the custom, it is this meeting and payment of *olmesumech* that technically ends the first marriage even though the husband has begun living with and has entered into a second marriage with another woman.

[7] The payment of *olmesumech* was not made until after the complaint in this case had been filed. The filing of the present case, prior to the meetings for the payment of *olmesumech*, in our opinion, should be treated as an appropriate exception to the general rule laid down in the past by this court that support for the wife and property settlements should be determined in accordance with tradition and not by the courts, unless or until such settlement is not made in accordance with the custom. The rule—and the possibility of exceptions to it—are well stated in *Itelbang v. Gabrina*, *supra*, as follows:—

"Owing to the emphasis on matrilineal support under the Palauan system of society, there should seldom, if ever, be occasion for a

court to grant alimony, in the American sense of the word as payment by one divorced spouse to the other for her or his support, in connection with a divorce between two people living in good faith under that system. The matters of *olmesumech* and food money, however, are essentially different from alimony and involve other people—that is, relatives of both the husband and the wife.

It is believed that under Palauan customary law *olmesumech* and food money, if any, are due to the same extent and under the same circumstances after a court divorce as after a divorce under local custom, but that they should be handled as a separate matter from the divorce so far as the courts are concerned and the same opportunity should be given to settle them through traditional channels as after a divorce under local custom. This court is firmly of the opinion that statements in American law books to the effect that a divorce decree cuts off obligations between the husband and wife that are not provided for in connection with it, are not properly applicable to these group obligations under Palau custom which are so different from anything usual in the United States.”

[8] It is evident from the record of this case that *olmesumech* and food money were paid after meetings held for three days in April, 1966. The payment and acceptance cut off any further claims by the plaintiff in this regard under the custom. *Ngeskesuk v. Moleul*, 2 T.T.R. 188.

The record is also clear that at these meetings very little was said, and certainly there was no agreement, as to property settlements or child support. It appears that during the divorce meeting, payment was made by defendant Robert's family of three hundred dollars (\$300.00) to plaintiff's family, plus two pieces of Palauan money as *Chelebechiil*, money settlement for termination of marriage, and one piece of Palauan money as “*ududirar ngalk*”, children's money.

Contrary to the well-recognized custom that a “*tilobed ra rebai*” cast-off wife takes all community property with her, except the personal items necessary to the man's welfare, in the present case the husband kept nearly all

of the property. The District Court found from the evidence that the following property had been accumulated during the marriage and was owned by the couple and not by the families of either party:—

1. Dwelling house, with furnishings and appliances, in which defendant Robert's father and his family are now living.

2. A restaurant building (the Boom Boom Room) and furnishings.

3. Three glass showcases given by Robert to his present wife for use in her store.

4. One Datsun, which was the subject of suit in *Robert Kumaichi v. Sidoi Omechelang, Omechelang, and Itpik Martin*, Palau District Civil Action No. 358.

The District Court fixed the value of these items at three thousand four hundred sixty-seven dollars (\$3,467.00), and further held that in the light of the custom whereby the cast-off wife is entitled to take the property with her, that the wife in this case should have a cash settlement of one-half the value of the property.

In former times when individual ownership of property was largely limited to personal effects of the parties, it was reasonable that the payment and acceptance of *olmesumech* sufficed for the distribution of the marital estate. That situation is no longer entirely true.

In this case, the first house, built after three years of marriage, was the individual property of the husband and wife. The land was recorded in the husband's name. Even though a money-raising party was held at the completion of the house at which the husband's relatives and friends raised \$2,400.00 and the wife's relatives provided food, all in accordance with the custom, nevertheless, the house did not become lineage property but was regarded as individual property of Robert and Mechellings. This situation is the trend in present-day Palauan society. As a result,

it is not appropriate to say that payment of *olmesumech* settles property rights. As in this case three hundred dollars (\$300.00) and three pieces of Palauan money were paid which does not represent one-half fair value of the marital estate which the District Court found to exceed \$3,400.00.

The Palau District legislature recognized there were greater obligations in a divorce settlement than merely the payment of *olmesumech* when it obligated the offending spouse to provide child support in addition to what may have been paid or received as *olmesumech*.

[9] We hold, therefore, in conformity with present-day concepts of individual ownership of property that it is appropriate for the courts to hear and decide property settlement and child support cases even when the traditional meeting has been held. The fair method of making such settlements is to consider the position of the parties and their needs after the divorce settlement.

[10] In the present case, the former wife has remarried and is living in the home of her new husband. Also, as this court has pointed out before, the system of matrilineal support, as well as her new marriage, should adequately care for her.

[11] The husband, however, owes his former wife an obligation to share in the property acquired during the marriage, as well as the statutory duty to provide support for his children. In the present case, a fair solution is to require the husband to provide for the children in the future by dividing the property, or its value with his former wife for the benefit of their children. It does not necessarily follow that the same solution should be applied to future cases. Other determinations by the courts should be made upon the facts presented and should take into consideration the amount of individual property acquired dur-

ing the marriage and the disposition and needs of the children after the divorce.

Under the circumstances applicable here, the following judgment order is entered.

#### JUDGMENT ORDER

It is ordered, adjudged, and decreed:—

1. That the individual property—land, buildings, furnishings and other personal effects acquired by Robert and Mechellings during their marriage should be shared for the benefit of their children rather than retained for the sole benefit of either of them.

2. That one-half the value of the property retained by the defendant Robert Kumaichi, amounting to one thousand seven hundred thirty-three dollars and fifty cents (\$1,733.50) shall be paid by him into a trust fund established in the Bank of Hawaii to be used for the equal benefit of the seven children of the parties in accordance with their future needs until each has attained the age of 18 years.

3. That any funds remaining in trust after the youngest has attained the age of 18 shall be divided equally between all of the children then living.

4. That payment into the trust fund shall be made by the defendant Robert Kumaichi at the rate of thirty-five dollars (\$35.00) per month, beginning January 1, 1968.

5. That the bank account shall be an interest-bearing savings account and shall be subject to withdrawal upon the signature of both Robert Kumaichi and Mechellings, or upon the signature of one of them with the approval in writing of the other.

6. Withdrawals shall be for the benefit of and to meet the needs of the children as determined by the defend-

MAKAYA v. MAKAYA

ant Robert Kumaichi and Mechellings in consultation with those having the care and custody of the children.

7. Costs shall not be awarded either party.

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JOHNNY MAKAYA, Plaintiff

v.

ERLIN MAKAYA and AMBILOS IEHSI, Defendants

Civil Action No. 331

Trial Division of the High Court

Ponape District

March 20, 1968

Action to recover for improvements made to land. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that although plaintiff failed to prove a right to enter and cultivate land in question, justice required that due regard be given to his rights in and to the fruits of his labor insofar as the court could do so consistent with rights of former landowner and innocent purchaser.

**1. Ponape Land Law—Use Rights**

Plaintiff failed to prove that an agreement was ever made whereby the defendant would convey certain land to plaintiff's son pursuant to an adoption agreement and that plaintiff would have the right to enter and cultivate the land because of such agreement.

**2. Real Property—Improvements**

Where person cultivated land in question and constructed buildings thereon in reliance on the family relationship of the parties, justice required that due regard be given to his rights in and to the fruits of his labor insofar as the court could do so consistent with the rights of the former owner and the innocent purchaser of the land.

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SHOECRAFT, *Chief Justice*

STATEMENT OF THE CASE

This is an action in which the plaintiff claims to have entered upon and cultivated land belonging to the defendant pursuant to an agreement or understanding arising