

JUDGMENT

Ordered, adjudged, and decreed, that the plaintiff Tere-sia and all those claiming under her have exclusive fishing rights and control of the northern half of the reef Sapun commencing from the *mai* built in Japanese times in the approximate center of the reef; and

That the fishing rights and control of the defendant, Neikinia, and all those claiming under her in the reef Sapun is limited to the southern portion extending from the above-mentioned *mai*.

YANO K. MARIUR, Plaintiff

v.

IBEDUL NGORIAKL and ROMAN TMETUHL, Defendants
and ROMAN TMETUHL, Complainant

v.

NGIRAMECHELBANG, Third Party Defendant

Civil Action No. 395

Trial Division of the High Court

Palau District

June 30, 1970

Action to determine ownership of certain lots in Palau. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while court would not upset public and official designation of land in question as chief's title land such property could not be taken from the individual owner for public use without just compensation.

1. Trust Territory—Land Law

Section 24 of the Trust Territory Code established the land law as that which was in effect as of December 1, 1941, until changed by statute and Japanese land law which recognized and approved, prior to December 1, 1941, transfer in question was binding. (T.T.C., Sec. 24)

2. Palau Land Law—Chief's Title Land

Under Palauan custom, clans and lineages within clans set aside chief's title houses or sites for title houses and when an *Ibedul* is authorized to do so the court will not upset his public and official declaration that he holds such property as titleholder for the clan.

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3. Eminent Domain—Taking

An individual's property cannot be taken from him for a traditional clan use without just compensation either under the custom or appropriately under the Bill of Rights portion of the Code. (T.T.C., Sec. 4)

4. Eminent Domain—Taking

An individual whose land is taken, without just compensation, for clan use is entitled to replacement of his land.

5. Real Property—Sales

Although clan titleholder made a good faith exchange of clan land to another, he could not effectively transfer a portion of land held by another where the clan did not own such land.

Assessor:	<i>Presiding District Court Judge,</i> PABLO RINGANG
Interpreter:	PETER NGIRAIBIOCHEL
Reporter:	SAM K. SASLAW
<i>Counsel for Plaintiff and Third Party Defendant:</i>	JOHN NGIRAKED
<i>Counsel for Defendant Ibedul Ngoriakl:</i>	ROMAN TMETUHL
<i>Counsel for Defendant and Com- plainant Roman Tmetuhl:</i>	IN PROPRIA PERSONA

TURNER, *Associate Justice*

This action arose as a result of a series of transfers of Lots Nos. 892 and 893, numbered and mapped in the *Tochi Daicho* survey and registration conducted in Palau District during 1938 to 1941. The lots at the time of the Japanese survey and registration belonged to the Idid Clan, the royal or strongest clan of Palau. The clan title bearer is also the high chief of the southern half of Palau which includes Koror, the seat of government from German times to the present.

The *Tochi Daicho* listed the lots as administered in behalf of the Idid Clan by *Ibedul* Mariur, the then title bearer of the clan.

The original transactions, out of which this action arises, occurred in 1940-41 when land on which the Koror *bai*,

the community building, was located was sold to a Japanese government corporation. The Koror municipal government then bought with Japanese government funds Idid land on which to build a new *bai* for the municipality. The Idid Clan land was sold for this purpose by agreement between *Ibedul* Mariur, the title bearer and the representative of Idid Lineages, Ngiraket and the defendant, Ngoriakl, also the predecessor and successor *Ibeduls* to Mariur. One-third of the Idid land was not sold to the government, but was retained by *Ibedul* Mariur with the understanding and consent of the lineage representatives that he could transfer the land to his son, Yano, the plaintiff in this action.

Accordingly, a transfer to Yano was prepared by a Japanese scribe, approved by the Japanese administrator, and approved by *Ibeduls* Ngiraket, Mariur and Ngoriakl together with the eight members of the Koror council of chiefs. They also affixed their chops as witnesses to the instrument transferring the house site, the eastern portion of Lot 892, to the plaintiff Yano.

The attempt of the defendants to discount the effectiveness of this transfer was contrary to both the evidence and the law. Since this was a written testamentary transfer the defendants argued that wills were not effective until "about five years ago". What they referred to was the 1966 enactment of the Congress of Micronesia. This law relating to rules governing the preparation of wills, recognized the existence of written wills in the Trust Territory prior to the enactment. Section 351 of the Trust Territory Code excludes the provisions of the act to wills executed prior to its enactment. Furthermore, the Japanese administration in 1941 certified as to the entitlement of the plaintiff to inherit the described land from his father. (Exhibits 2 and 3.)

[1] Section 24 of the Trust Territory Code established the land law as that which was in effect as of December 1, 1941, until changed by statute. The Japanese land law which recognized and approved, prior to December 1, 1941, the transfer to the plaintiff is binding in this instance.

If this had been the extent of the controversy the result would present no complex problems. However, after Japanese times there were further transfers of the land in question. At the beginning of the American administration the Idid land purchased for the community *bai* (which had been destroyed during World War II) reverted to the Idid Clan. *Ibedul* Mariur died in 1956 and although the land in question formally vested in plaintiff as a testamentary devise he did not take possession because it was occupied; except for an 80 *tsubo* parcel, by the successor *Ibedul*, the defendant Ngoriakl.

Approximately three or four years ago (the parties were uncertain as to the date) defendant *Ibedul* Ngoriakl sold the house site, inherited by plaintiff from his father, to the co-defendant Tmetuchl, who thereupon built an impressive two-story concrete house on the site. Upon completion of the house *Ibedul* Ngoriakl traded the remainder of Lot 892 and Lot 893 to Tmetuchl in exchange for the house site parcel and the two-story house built upon it.

This property *Ibedul* Ngoriakl declared to be the Idid Clan's chief's title house. He renounced any personal claim to the property and declared he held it as titleholder for the clan—in effect the clan's trustee or administrator.

[2] Under Palauan custom, clans and lineages within clans set aside chief's title houses or sites for title houses, *Ibedul* was authorized to do this with the land in question and we will not upset the public and official declaration he has made in the record in this case.

[3, 4] There remain, however, two problems. The land now declared to be the chief's house site was legally

owned by plaintiff. His property cannot be taken from him for a traditional clan use without just compensation either under the custom or appropriately under the Bill of Rights portion of the Code which provides in Section 4 that private property shall not be taken for public use without just compensation. The plaintiff is entitled to replacement of his land.

The second of the two problems flowing from the declaration of a portion of Lot 892 as the Idid Clan title house site is the claim of the third party defendant Ngiramechelbang to an 80 *tsubo* parcel located in Lot 892 on the boundary of the house site with the remainder of the lot. The third party defendant inherited the parcel from his mother, Dirablong, who with her husband, Siksang, purchased the parcel from plaintiff.

[5] Although *Ibedul* made a good faith exchange of Idid Clan land to Tmetuchl for the property now declared to be the chief's house site, he could not effectively deal with Ngiramechelbang's 80 *tsubo* parcel because Idid Clan did not own it. Since it could not be transferred to Tmetuchl, his claim against Ngiramechelbang must fail.

JUDGMENT

1. That Idid Clan is the owner of the eastern portion, comprising 211 *tsubo*, of Japanese survey Lot No. 892 to be used exclusively for the chief's house site.

2. Idid Clan having obtained the above described land from the plaintiff, Yano Mariur, is now obligated to transfer to the plaintiff a parcel of land approximately the same size, and of equivalent value and desirable location acceptable to plaintiff and available to the Idid Clan to transfer.

3. That the defendant, Ngiramechelbang is the owner of the 80 *tsubo* on which his house is constructed which is located within Japanese survey Lot No. 892.

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4. That the balance of the land in dispute in Lots 892 and 893 exchanged by the Idid Clan with the defendant-cross-complainant, Roman Tmetuchl, for the two-story concrete house constructed on the Idid Clan's chief's house site together with the land on which it is located, is owned by Roman Tmetuchl except for the portions noted above.

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

6. No costs are assessed.

ARUKO DAVID LUHK, et al., Plaintiffs

v.

WELTER DAVID, Defendant

Civil Action No. 366

Trial Division of the High Court

Ponape District

July 6, 1970

Action to determine title to land in Leak Section, Madolenimw. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that under the custom a division and transfer of land by a father to his children carries with it a clear obligation to care for and support the father during his lifetime and a failure to do so will cancel the transfer.

1. Ponape Land Law—Japanese Survey

A division approved by the Japanese surveyors was to be absolute, and each holder of a part of a divided lot was thereafter to have as complete control over his part as the owner of the whole would have over the whole if there had been no division.

2. Ponape Land Law—Obligation to Support

Upon a clear showing of an agreement to support and a gross failure to perform agreement by transferee, transfer may be cancelled and land transferred to another.

3. Ponape Land Law—Agreement to Support

Under recognized custom in Ponape, a division and transfer of land by a father to his children carries with it a clear obligation to care for and support the father during his lifetime.