[5] In this case before us, neither Ihlon nor plaintiff stood idly by and permitted others to openly and actively use the land. The evidence is to the contrary. They lived upon that land and worked upon it. The evidence is in conflict, but the court is of the opinion that the great preponderance of the evidence is in accord with the foregoing; and, further, that defendant at no time either worked upon or lived upon the land which had been given to Ihlon.

According, it is Ordered, Adjudged and Decreed as follows:

1. As between the parties and all persons claiming under them:

a. The parcels Palapa, Pilenmwali, and Nihmas of the land, Sauiso, Kitti Municipality, Ponape are owned by plaintiff, Jonathan Jonathan, the sole surviving son of Ihlon;

b. The parcels Apali en Toke, Masawi, and Nan Kehnpap of the said land, Sauiso, Kitti Municipality, Ponape, are owned by defendant, Timothy Jonathan;

2. This judgment shall not affect any rights of way there may be over and across said land; and

3. Plaintiff is awarded costs herein.

ELENGOI METECHERANG, Plaintiff

v.

ARIBUK SISANG, and KIUELUUL, Defendants

Civil Action No. 378

Trial Division of the High Court

Palau District

October 12, 1972

Motion to vacate judgment and reopen for admission of newly discovered evidence. The Trial Division of the High Court, D. Kelly Turner, Associate Judge, granted the motion, considered the evidence, and found that it confirmed the judgment.

Palau Land Law—Lineage Ownership—Administration

Japanese land records of registered leases showing registration of leases to Japanese national and showing party in land title dispute as lessor confirmed judgment that such party was the lineage administrator, with authority to lease the land, but was not the individual owner.

TURNER, *Associate Justice*

Defendant Kiueluul filed a motion to vacate the judgment in the above-captioned case and re-open for the admission of newly discovered evidence in accordance with Rule 18(c)(2), Rules of Civil Procedure. The judgment, reported *Metecherang v. Sisang*, 4 T.T.R. 469, was entered December 30, 1969, and the motion was timely filed under the rule within one year on August 11, 1970.

The matter has been presented by Kiueluul's new counsel upon affidavit. Good cause appearing, the defendant is entitled to have the former judgment vacated and the new evidence considered.

The new evidence consists of Japanese land records prepared and recorded in 1937 and 1939. The original documents, together with their English translation have been submitted and are now a part of the record in this case. Both instruments are records of registered leases in which defendant Kiueluul is the lessor. The 1937 instrument shows registration of a lease to a Japanese national for a five-year period commencing June 1, 1937. The other is a lease to a Japanese national for a five-year term commencing October 17, 1939. The two leases cover separate parcels of Lot No. 459 as registered in the Tochi Daicho. Both were house lots.

The judgment in this case only refers to the name of the land—Illames—and not the Tochi Daicho lot number. There is a reference in the Pre-Trial Memorandum and Order as follows: "The parties agree as to the boundaries of the area in dispute which is part of Lot 853, known as

the land Illames." Whether the land, Illames, is Lot 459 or 853 makes little difference in the result as the "new evidence" confirms the judgment that defendant was the lineage administrator, with authority to lease it, but was not the individual owner.

The defendant's motion and affidavit, showing the non-availability of the leases at the time of trial, also asserts:

"These documents set out my unequivocal right to the land as an individual owner."

The defendant misconstrues the legal effect of the leases now admitted into evidence. In the management of land matters, the Japanese administration carefully recorded and approved land transfers, including leases. Also the status—ownership or control—of land was recorded in the Tochi Daicho as a result of the Palau land surveys of 1939–1941. This Court has held too many times to repeat the citations here that the Daicho listing is presumed to be correct and can be overcome only by clear and convincing proof. *Elechus v. Kdesau*, 4 T.T.R. 444.

In the judgment previously entered, we held there was no proof to upset the Daicho listing that the defendant Kiueluul was not the individual owner but was the administrator of the land for the lineage. It is within the authority of an administrator to lease the land he controls. The Japanese certification of the registration of the two leases made by the defendant corroborates this authority and its recognition by the Japanese land administration.

If anything, the new evidence produced by Kiueluul confirms the judgment previously entered and does not support his claim of individual ownership. Therefore, the judgment vacated for the purpose of receiving the new evidence is re-entered and affirmed without change. The judgment reported at *Metecherang v. Sisang*, 4 T.T.R. 469, is

Ordered, reinstated and continued in full force and effect.

T. H. ODELL, Plaintiff
v.
MICRONESIAN CONSTRUCTION COMPANY, INCORPORATED, A CORPORATION, Defendant

Civil Action No. 860

Trial Division of the High Court

Mariana Islands District

October 13, 1972

Suit for balance due under promissory note and agreement for exchange of plaintiff's stock in defendant for certain of defendant's assets. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, granted recovery of the balances found by the court to be due, after disposing of issues relating to offsetting credits.

1. **Bills and Notes—Promissory Notes—Construction**

   Promissory notes are to be construed like other contracts; they are to be interpreted in the light of what the parties intended.

2. **Bills and Notes—Promissory Notes—Construction**

   In interpreting promissory note and agreement for exchange of stock for assets, the court's duty was to ascertain not what the parties may have secretly intended as distinguished from what the words used in their agreement and note expressed, but rather, the meaning of the words used.

3. **Contracts—Construction—Particular Contracts**

   In suit on promissory note issued by defendant corporation, and for balance due under agreement whereby plaintiff exchanged stock in defendant for certain of defendant's assets, court would not rewrite a contract for the parties by following defendant's suggestion that stock's fair value be recalculated downward and thus wipe out the remaining indebtedness on the note.

4. **Contracts—Rescission**

   Rescission is permissible for mutual mistake in the terms, or fraud in the inducement, of a contract.

5. **Contracts—Rescission**

   Rescission requires that the parties be restored to their original position, and promissory note plaintiff held against defendant, together