

**LALOU and Others, Plaintiffs**  
v.  
**ALIANG and TAKISANG, Defendants**

**Civil Action No. 12**  
**Trial Division of the High Court**  
**Palau District**

**July 8, 1955**

In action to compel payments to plaintiffs in accordance with previous judgment in Civil Action No. 12, 1 T.T.R. 94, the Trial Division of the High Court, Chief Justice E. P. Furber, held that clan to which income from Mining Trust Agreement is paid owes to plaintiffs, as members of clan, and that clan pay to plaintiffs one hundred dollars from each annual payment received for clan from Mining Trust Agreement.

**1. Palau Custom—Clans**

Under Palau custom, management and distribution of assets within clan is private matter in which clan is entitled to exercise wide discretion, so long as it acts with proper regard for interests of all its members in accordance with law, including customary law.

**2. Judgments—Continuing Jurisdiction**

Where Palauan clan has failed to act with reasonable regard for rights of plaintiff in accordance with previous judgment, court will make further determinations.

**3. Judgments—Continuing Jurisdiction**

Judgment as to continuing payments which Palauan clan must make to its non-resident members out of future receipts or income from mining trust is subject to change by court at any time, upon showing of such substantial change of conditions that it is fair that distribution be ordered changed.

**4. Judgments—Continuing Jurisdiction**

If Palauan clan, at meeting at which those traditionally entitled to attend, decides in accordance with Palau custom upon method of use or distribution of future receipts from Mining Trust Agreement which meets conditions in original court judgment, court may modify part of judgment relating to exact payments to be made from future trust fund receipts.

FURBER, *Chief Justice*

(Note for the information of those not connected with this action: Since the original judgment entered March 12, 1954, the scope of this action has been increased by agreement of the parties, and Takisang, who holds the title of *Renguruchel* in the Ngeudel Clan, and is the husband of the defendant Aliang, has been admitted as an additional defendant, in an effort to avoid an unnecessary number of actions.)

ADDITIONAL FINDINGS OF FACT

1. The practice originally adopted by the defendant Aliang of paying to the plaintiff Marbou, as acting head of the lineage consisting of those members of the Ngeudel Clan who are descended from the plaintiffs' mother, \$100.00 from each of the first two annual payments received by the clan from the Angaur Mining Trust, was reasonable and proper under Palau custom.

2. There has been no change of circumstances which justified the defendant Aliang in stopping making such payments, in the absence of any decision made by the clan in accordance with Palau custom for some other reasonable method of distribution or use of such payments from the Trust.

3. The defendants Aliang and Takisang, as leaders of the Ngeudel Clan, treated the \$7,142.86 received by the clan from the proceeds of mining under agreement of May 9, 1953, as if it were all current income. From this amount \$100.00 was distributed to each of three heads of families (other than the plaintiffs or any of those they represent under Palau custom). All the rest (except about \$200.00, which Aliang claims is hers) has been spent by Aliang as she chose, either on personal projects of her own, or on what may roughly be called cur-

rent activities of the clan, or for the benefit of members of the clan other than the plaintiffs and those they represent. The only large part of this balance she is able to account for specifically is an indefinite part of \$1,090.00 spent on a house, which she describes as for herself and her lineage, but in which she says other members of the clan can come and stay with her. A part of this \$1,090.00, however, came from her husband Takisang's salary. This \$1,090.00 did not cover the whole cost of the house, and Aliang considers the house her individual property.

4. The \$50.00 paid to the plaintiff Ngiramechelbang August 5, 1954, was a personal gift from the defendants Aliang and Takisang and should not be considered as a payment by the clan.

5. Since the disputes involved in this action arose between the parties, there has never been a meeting in which the traditional representatives of all the members of the clan had an opportunity to take part in accordance with Palau custom, to try to settle these difficulties within the clan. The defendant Aliang, as chief of the clan, has shown a persistent desire to prevent the plaintiffs from having their traditional part in the making of clan decisions on important matters, to exclude them almost completely from benefits received by the clan from the mining operations since the second payment from the Trust, and to largely disregard their interests.

6. The defendants Aliang and Takisang, as leaders and representatives of the Ngeudel Clan, owe the plaintiffs and those members whom they properly represent under Palau custom, four payments of \$100.00 each from the last four annual payments of \$1,250.00 each, received from the Angaur Mining Trust to date (including the one represented by the check now held by the Clerk of Courts under order of this court), and \$600.00 representing their

share of the \$7,142.86 received under the agreement of May 9, 1953, making a total of \$1,000.00, which is a proper charge against the assets of the clan.

## ADDITIONAL CONCLUSIONS OF LAW

[1] 1. Under Palau custom the management and distribution of assets within a clan is primarily a private matter, in which the clan is entitled to exercise a wide discretion, so long as it acts fairly with a proper regard for the interests of all its members and in accordance with law, including particularly accepted customary law. Perhaps the nearest American analogy to this situation, is the position of the courts in disputes between an association or club and one or more of its members. See 4 American Jurisprudence, Associations and Clubs, Sections 17 through 19. Under Palau custom, however, remedies within the organization do not seem to be as clear—short of physical violence (or the threat of it) which was traditionally the final method of settling disputes, but is now forbidden.

[2] 2. The Ngeudel Clan, under the leadership of the defendants Aliang and Takisang, has failed to take advantage of the opportunity offered by the court in the second paragraph of the judgment entered in this action March 12, 1954, to make any initial determination as to when and how much the plaintiffs should be paid out of the income of the Angaur Mining Trust, subject to the conditions stated by the court. They have had over a year to do this. Upon motion filed by the plaintiff Marbou for a further determination in accordance with that judgment, the court considers that it must, therefore, in fairness to the plaintiffs, proceed to make the best determination it can of the matter. It should be clearly understood that the determination here made is in large part based on the failure of the clan and the defendants, as its leaders, to

act with reasonable regard for the rights of the plaintiffs. If the clan had made any reasonable determination which complied with the terms of the judgment, even though quite different from the determination now adopted by the court, it might have been allowed to stand.

3. The general principles stated in the preceding paragraphs are also applicable to the \$7,142.86 received under the agreement of May 9, 1953. According to the terms of that agreement, this sum was a part of the clan's share from the proceeds of mining in the area covered by that agreement, and the balance of the clan's share of those proceeds was to be placed in the Angaur Mining Trust Fund. The clan might well therefore have decided to try to use this sum to buy land or something else in the name of the clan which would have been of permanent value to all its members, including the plaintiffs and those they represent. If that had been done, the plaintiffs' benefit from this payment would have been represented by the security and possible protection in the future, which such an asset would give to all members of the clan, and they would not then have been entitled at this time to a payment representing any part of that sum which was so invested. In view of what has actually happened, however, including the way in which this sum has been disbursed by the defendants, as shown in the third additional finding of fact, the court considers it is just that the plaintiffs and those they represent should receive an amount equal to approximately the same proportion of this sum as that which they received from the annual payments from the Trust Fund under the practice originally adopted.

[3, 4] 4. So far as continuing payments out of future receipts or income of the clan are concerned, the judgment of the court is similar to a decree for the support of a wife or children in the United States, in that it is

subject to change by the court at any time on a showing of such a substantial change of conditions that it is fair that the distribution ordered be changed. Even now, if the Ngeudel Clan, at a meeting at which all those traditionally entitled to attend (including representatives of all the members regardless of residence), decides, in accordance with Palau custom, upon a method of use or distribution of its future receipts from the Trust Fund, which meets the conditions stated in the original judgment in this action, the court will be willing to consider modifying the part of the supplemental judgment relating to the exact payments to be made out of future receipts. In so stating, the court does not mean to imply or suggest that the clan's decision should be controlled by any supposed American conception of voting upon a basis of numbers of members represented. It is clear from the agreements of the parties that there are approximately twice as many members of this clan residing outside of Angaur (including such children of male members as have been accepted by the plaintiffs' lineage and are acting as members of the clan) as there are members on Angaur, and that all of those residing outside of Angaur are descendants of the plaintiffs' mother. This may possibly explain, in part, the defendants' desire to exclude them from consideration. What the court is endeavoring to make clear is that the clan leaders should consult all those traditionally entitled to be consulted (including the plaintiffs) and endeavor, in a spirit of common regard for the welfare of their fellow clan members, to reach a fair decision under all the circumstances.

## SUPPLEMENTAL JUDGMENT

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

1. The defendants Aliang and Takisang, as representatives of the Ngeudel Clan, owe the plaintiffs and those

they traditionally represent, one thousand dollars (\$1,000.00), which sum is chargeable against the assets of the clan and shall be paid to the plaintiff Marbou, as the acting head of the lineage consisting of those members of the clan who are descended from the plaintiffs' mother.

2. Until further order of the court, the defendants Aliang and Takisang, or their successors in office, shall promptly pay to the plaintiff Marbou, or his successor, as the acting head of the lineage consisting of those members of the clan who are descended from the plaintiffs' mother, one hundred dollars (\$100.00) from each annual payment received for the Ngeudel Clan from the Angaur Mining Trust.

3. As soon as practicable after the expiration of the time for appeal from this judgment, if no notice of appeal has been filed, the Clerk of Courts shall arrange to cash the check for one thousand two hundred and fifty dollars (\$1,250.00) now held by him subject to the order of the court in this action (which has already been endorsed in blank by the defendant Takisang under his title of *Ren-guruchel*), and shall pay one thousand dollars (\$1,000.00) of the proceeds thereof to the plaintiff Marbou in satisfaction of the amount due under the first paragraph of this judgment, and pay the balance to the defendant Takisang. If a notice of appeal from this judgment is filed within the time allowed therefor, the Clerk of Courts shall continue to hold this check subject to further order of the court.

4. No costs are assessed against any party.