

LUSI ORUKEM, Appellant

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS, and
JOSEPH C. PUTNAM, its Alien Property Custodian, Appellees**

Civil Action No. 64

Trial Division of the High Court

Palau District

February 11, 1958

Action to determine ownership of land in Koror Municipality, in which plaintiff claims as representative of successors to former owner and defendant claims land on basis of determination made in Japanese survey of 1938-1940. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that presumption arising from listing of land in Japanese survey as individual land of defendant's predecessor in interest was effectively rebutted.

Reversed.

1. Palau Land Law—Japanese Survey—Rebuttal

While determinations made in official Japanese land survey of 1938-1940 in Palau Islands are entitled to great weight, they are not absolutely conclusive.

2. Palau Land Law—Japanese Survey—Rebuttal

Presumption arising from listing or recording of land in Japanese land survey of 1938-1940 as individual land of party's predecessor in interest is effectively rebutted where evidence shows transfer to party's predecessor did not have necessary approval or was handled in unusual way.

FURBER, Chief Justice

FINDING OF FACT

1. Any transfer of the land in question which Ngiracheluol planned or attempted to make to Hasimoto was never completed.

CONCLUSIONS OF LAW

[1] 1. While the court holds that determinations made in the official Japanese land survey of about 1938 to 1941 in the Palau Islands are entitled to great weight, they are

not absolutely conclusive. See *Basehelai Baab v. Klerang and Rudimch*, 1 T.T.R. 284.

[2] 2. In this appeal, however, even the testimony of the principal witness for the appellees, taken alone, leaves room for an inference that either the transfer to Hasimoto was incomplete at the time the witness knew about it, or the listing of this particular land in the Japanese land survey of about 1938 to 1941 was handled in an unusual way. There is no indication why the Japanese Land Survey Office should be purporting to pass upon a transfer from a Palauan to a Japanese which, according to this witness' own testimony, required the approval of the office of the South Seas Bureau before it could be completed, or why, if the transfer had already been approved by the South Seas Bureau, the Land Survey Office should be questioning it at all. Unfortunately all there now appears to be available, at least in the Palau District, of the records concerning this transaction and listing or recording is the summary or index volume of the results of the survey for Koror, known as the "Tochi Daichio". Of all the evidence, the court holds that the presumption arising from the listing or recording of the land as the individual land of Hasimoto Sizu, as shown in this "Tochi Daichio", has been effectively rebutted.

3. No issue has been raised by the parties to this appeal as to the exact nature of the appellant Lusi Orukem's interest in the land. Accordingly, no determination is made as to the extent of her rights beyond determination that she has the right to stand temporarily in the place of Ngiracheluol to protect those claiming as his successors.

JUDGMENT

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

1. The District Land Title Officer for the Palau District's Determination of Ownership and Release No. 6,

dated January 21, 1957, filed the same day with the Clerk of Courts for the Palau District in Volume T-1, page 87, is hereby set aside.

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

(a) The land described in said Determination of Ownership and Release, namely, that shown as Lot numbered 1029 on map of Koror on file in the Palau District Land Office, containing 329.3 tsubo (or 11,845 square feet), consisting of a part of the land known as Keklau, and located in Koror Municipality, Palau District, is the property of those entitled to succeed to the rights of Ngiracheluol, deceased, either by inheritance or by gift to take effect at his death, who are represented in this appeal by the appellant Lusi Orukem, who lives in Koror; and

(b) Neither of the appellees has any rights of ownership in this land, and neither of them ever had.

3. The appellant Lusi Orukem is recognized as a proper person under Palau custom to temporarily “stand in the place of” Ngiracheluol to protect the rights of those claiming to have succeeded him on his death, but no determination is made as to whether or not she has any beneficial interest in the land, or is merely a trustee—presumably for the benefit of Ngiracheluol’s sons, Kiku and Isak.

4. The appellant Lusi Orukem and all those for whom she is acting—that is, all persons claiming as successors of Ngiracheluol—shall allow Dilirang, the lessee of the land from the Trust Territory Government, and all those claiming under her, a reasonable time to remove in a peaceful and orderly way the house and all other property which she or they may have upon the land, or arrange a new lease with the owners. Unless some person interested applies to the court for a further determination as to the

length of time which will be reasonable for this, and until such further determination is made, it will be assumed that six (6) months from the date of this judgment will be sufficient. Until some new arrangement is made with the owners, Dilirang or those claiming under her shall only be liable to the owners for rent for such time as they remain in possession after this judgment.

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

6. No costs are assessed against any party.

MERAR and REMEKEL,
representing the Ngetelkou Lineage or Clan, Plaintiffs

v.

UCHEREBUUCH, Chief of and representing
the Orakiblai Clan, Defendant

Civil Action No. 34

Trial Division of the High Court

Palau District

February 14, 1958

Action brought to determine status of the Ngetelkou as either lineage or clan, in which plaintiffs seek determination that they are separate clan, and that they hold whatever land rights they have or formerly had on Angaur Island independent of defendant Orakiblai Clan. The Trial Division of the High Court, Chief Justice E. P. Furber, held that regardless of whether plaintiffs' group more closely resembles conventional Palau clan or lineage, their land rights on Angaur are held under defendant clan.

1. Palau Custom—Lineage

Words for "clan" and "lineage" in Palau Islands have not yet received such firm and exact meaning that allowing lineage to act as clan for some purposes means it does not have obligations of lineage in other matters.

2. Palau Land Law—Clan Ownership

Where lineage in Palau Islands has been allowed freedom of action in some matters, this does not free lands, use of which it received through cooperation and permission of clan, from traditional controls and rights of clan.