

[6, 7] Turning to the second contention, it is clear that the defendant misconceives the meaning of cruel and unusual punishment. The punishment which could have been imposed for violation of Section 815(a) was twenty times as great as was imposed on him. In addition, he could have been imprisoned for a term of one year. Obviously, therefore, the punishment imposed was moderate and well within the discretion of the District Court. Nor is that court required to treat two defendants alike, as the court has the right to consider other factors than the similarity between two defendants and their offenses in imposing punishment.

JUDGMENT

There being no merit in the points raised in this appeal, the judgment of the District Court of Yap District is affirmed.

YMESEI, Plaintiff

v.

NGIRAMEKETII RINGANG, Defendant

Civil Action No. 108

Trial Division of the High Court

Palau District

June 13, 1958

Action to obtain reimbursement for cost of raising female child who lived with father's side of family after father's death and later chose to leave father's family and take up residence with mother's side. Plaintiff, brother of child's deceased father, seeks to obtain reimbursement for cost of raising child from infancy until time she left father's side. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that there is no basis in Palau customary law whereby one clan is required to reimburse another for cost of raising female child.

1. Palau Custom—Family Obligations—Child Support

There is no basis in Palau custom whereby one clan reimburses or is required to reimburse another for expense of raising female child.

2. Palau Custom—Children's Money

Under Palau custom, side of family which has custody of child's Palauan money retains possession of it until other side is desirous of redeeming it, usually when child is to be married or brings gifts of value to clan having her custody.

3. Palau Custom—Children's Money

Under Palau custom, when mother's side of child's family is willing to give up all claim to her and her property, they are entitled to child's Palauan money.

4. Palau Custom—Family Obligations—Child Support

Under Palau custom, if child leaves father's family to take up residence with mother's side, there is nothing which can be done relative to reimbursement of father's side.

5. Palau Custom—Oral Wills

Under Palau custom, if child's deceased father leaves instructions for ultimate devolution of his property of which he is admittedly in control at time of his death, instructions will be given status of oral will and carried out in accordance with deceased's wishes.

TOOMIN, Associate Justice**A. FINDINGS OF FACT**

1. Tarkong, the natural brother of plaintiff Ymesei, died in February 1953, leaving four children surviving, among them being his daughter Katarina, now aged 12.

2. Tarkong had been married to one Tukei, who died in 1951. Defendant Ngirameketii is Tukei's natural brother.

3. On his deathbed Tarkong arranged for Katarina to live with his and the plaintiff's parents, and requested plaintiff to take care of Katarina and all the property he was leaving her and her sisters and brother, with the proviso that if any of them should leave their father's family, they were to receive only the house (or their share thereof) he was leaving them, and no other property.

4. Katarina came to live with her father's family upon his death until shortly after the death of plaintiff's father Esebei in October 1957.

5. According to Palauan custom, upon the death of plaintiff's father the care and custody of Katarina devolved upon plaintiff's mother. This was also in accordance with Tarkong's wishes. However, plaintiff's mother became ill and was taken to a hospital in November 1957. As a result of this illness, Katarina came to live with plaintiff.

6. Also in accordance with Palauan custom, when the custody of a female child becomes lodged in the father's side of the family, the mother's side is entitled to receive from the father's side the Palauan money held for the benefit of the child. Upon acceptance of this money, all interest of the mother's side in the child or her property ceases.

7. Conformably with custom, shortly after the death of plaintiff's father, the defendant, as representative of the Idis Clan, requested plaintiff, as representative of the Ibedechang Clan, to pay over to the Idis Clan the Palauan money to which the mother's clan was entitled by virtue of the custody of Katarina having been given to the father's clan. This the plaintiff agreed to pay, but asked deferment until his mother's return from the hospital.

8. Before plaintiff's mother's return from the hospital, entirely through her own volition, Katarina left plaintiff's home and went to live with a relative of defendant. Defendant has offered in open court to have the child returned to plaintiff's home, but the child has advised the court she desires to live with her uncle, the defendant Ngirameketii, and his side of the family.

B. CONCLUSIONS OF LAW

1. Plaintiff's lawsuit recognized the impracticality of an order on defendant to return the child Katarina to the custody of plaintiff and the child's father's side of the family. He asked instead that the court award him judg-

ment, as representative of the Ibedechang Clan, against the defendant, for the cost of raising and providing for Katarina from infancy until her present age, since this cost had been borne by the father's side of the family. He estimated the cost to be the sum of \$1,500.00.

The defendant has resisted this claim for reimbursement on the ground there is no basis in Palauan custom for payment of such compensation.

[1-4] The court concludes that there is no such basis in custom whereby one clan reimburses, or is required to reimburse, another for the expense of raising a female child. The custom appears to be that the side which has custody of the child's Palauan money, retains possession of it until the other side is desirous of redeeming it. This usually occurs when the child is to be married, or is bringing, or about to bring, gifts of value to the clan having her custody. There is, however, a recognized exception where the child's mother's side is willing to give up all claim to her and her property. In such case they are entitled to the child's Palauan money, which is what defendant attempted to obtain prior to Katarina's leaving her father's family. This attempt was defeated when Katarina left her father's family and took her residence with the mother's side. Under the custom there appears to be nothing which can be done relative to reimbursement in such cases.

[5] 2. The further question presented is what should be the status of Katarina's claim to the property left by her father in plaintiff's custody and control. It was agreed between the parties that Tarkong had left instructions with respect to the situation which might develop whereby one or more of his children might leave the custody of his side of the family, and that in such case he had declared his will to be that such child, or

children, should forfeit all of their inheritance, except the dwelling place he had left for them. The defendant recognized and agreed that this provision was eminently fair and binding on the mother's side, and that it was acceptable to the Idis Clan. The court concludes that in view of the instructions left by Tarkong for the ultimate devolution of his property, of which he was admittedly in control at the time of his death, they will be given the status of an oral will and carried out in accordance with Tarkong's wishes.

C. JUDGMENT

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

1. Plaintiff is not entitled, either individually or on behalf of the Ibedechang Clan, to any recovery from defendant, either individually or as representative of the Idis Clan, for advancements by members of the Ibedechang Clan for the raising and maintenance of the child Katarina.

2. The custody of the child Katarina by her mother's family, represented in this proceeding by defendant, is hereby sanctioned and approved.

3. All interest of the child Katarina in the property of her father Tarkong shall remain with his family, represented here by plaintiff, in accordance with the instructions left by Tarkong, except for her share in the dwelling house left by him for all of his children.

4. No costs are taxed against either party.