

**DUDI, Plaintiff**

**.v.**

**SALII NGIRAIKELAU, Defendant**

**Civil Action No. 55**

**Trial Division of the High Court**

**Palau District**

**September 18, 1958**

Action to determine title and use rights to land in Koror Municipality, which for many years was used and leased by incumbent reigning chief of clan. Plaintiff, representing clan, seeks to oust defendant, incumbent to title, from possession of land and to obtain declaration that clan is rightful owner of land; defendant claims title was transferred to him by clan. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that plaintiff's clan still possesses reversionary rights to land but it has become chief's title land, subject to use rights of reigning chief.

**1. Palau Land Law—Clan Ownership—Use Rights**

Under Palau custom, approval of or acquiescence in construction of house on clan land indicates nothing more than temporary use right of sufficient land on which to build home.

**2. Palau Land Law—Clan Ownership—Use Rights**

Under Palau custom, where clan acquiesces in construction of house on its land, owner of land retains title and owner of improvement keeps title thereto, with possession of land to be restored to owner thereof when improvement is removed, or at some other agreed date.

**3. Palau Land Law—Clan Ownership—Reversionary Rights**

Under Palau custom, where clan protests leasing of clan land and its registration as chief's title land, actions indicate clan never intentionally gave up its reversionary rights and at all times considered it retained right to oppose arbitrary abuse of use rights which it admittedly granted.

**4. Palau Land Law—Chief's Title Land**

Where there is no evidence that Palauan clan conceded more than temporary use rights of land by each reigning chief during his term of office, clan is still possessed of reversionary rights to land, subject only to rights expressly or by necessary inference granted to reigning chief.

**5. Palau Land Law—Chief's Title Land**

Where Palauan clan intended to give no more than personal use rights to first reigning chief who made use of clan land, but clan thereafter acquiesced in use of land by subsequent reigning chiefs, lease rights and exclusive control of income and production now inheres in reigning chief.

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**6. Palau Land Law—Chief's Title Land**

Clan land in Palau may become chief's title land, with use and control inhering in reigning chief by virtue of and during his period of office, where each reigning chief has taken control of entire production and has exclusively enjoyed lease income.

**7. Palau Land Law—Chief's Title Land—Sale**

Chief's title land in Palau is not subject to sale by chief without approval of all adult clan members in maternal line.

**8. Palau Land Law—Chief's Title Land**

Under Palau custom, use rights in chief's title land belong to chief as long as he holds office.

**9. Palau Land Law—Chief's Title Land**

Acquiescence by Palauan clan over long period of time, in devotion of land to exclusive use of reigning chief, results in its taking on character of chief's title land, on principles of waiver.

TOOMIN, *Associate Justice*

JUDGMENT ORDER

A. Findings of Fact

1. Involved in this case is the question of title and use rights to the land Ngermengiau located in Koror Municipality, Palau District. This land is located in a hamlet of the same name and adjoins a hamlet known as Ikelau.

2. Many years ago the land Ngermengiau was owned by the clan Ngermengiau, together with other lands in Palau District. The clan Ikelau owned the land bearing its name adjoining the land Ngermengiau.

3. The leading male title of the clan Ngermengiau was Ngirmengiau, and the leading female title Dirremengiau. The leading male title of the Ikelau Clan was Ngiraikelau, its female titles are not here involved.

4. The clans Ngermengiau and Ikelau combined into one, more than fifty years ago, but in some respects they kept separate. The title Ngirmengiau was given up by the Ngermengiau Clan, and members of the Ngermengiau Clan became eligible to become Ngiraikelau of the combined clan. The female title Dirremengiau remained and

was available only to members of the Ngermengiau Clan. In addition, each clan continued to control its separate properties.

5. The last member of the Ngermengiau Clan to be appointed Ngiraikelau over the combined clan was Ngirmechau. Since his time, there have been four who have held that title, all members of the Ikelau Clan. In turn, they were Blesoch, Tkel, Ruetei, and the present incumbent, defendant Salii.

6. Up until Blesoch's time, the lands Ngermengiau and Ikelau were unimproved. Under his directions, these lands were cleared and he caused to be erected thereon two houses for his use. No objection was made by members of the Ngermengiau Clan to this use of its lands.

7. The next Ngiraikelau, Tkel, continued the practice of his predecessor in living in the houses on both parcels. Crops grown on the lands were harvested by permission of Tkel, and none were taken without it.

8. Ruetei became Ngiraikelau about 1922. He instituted the practice of renting portions of the land to the Japanese. He leased a portion of Ngermengiau to a Japanese lumber man for use as a homesite, without requesting or obtaining permission from either clan.

9. The practice of renting their land was disputed by members of the Ngermengiau Clan. As a result the leaders of both clans held a joint meeting in 1933 at Mekitii. At this meeting it was agreed by both groups that whoever is named Ngiraikelau shall hold the title to both lands, shall have control of leasing, and shall have the sole benefit of the use rights.

10. From the time of renting the first plot of ground to the Japanese until his death in 1938, Ruetei collected all rentals from Ngermengiau and controlled all renting. At one time, there were thirty homes built by the Japanese on this leased land, from which Ruetei received rents.

11. A further dispute developed between the two clans when the Japanese survey of lands in the Koror district occurred in the years 1937-1939. This dispute concerned the registration of title to Ngermengiau. Leading men of both clans appeared at a hearing in the Land Claims Office. The dispute was resolved by decision of the Land Office that the land was to be registered in the name of the Ngiraikelau, as under chief's jurisdiction. In the Japanese survey of 1941, the land was registered in the name of defendant, Salii, as administrator.

12. From his accession in 1938, until the filing of this suit in 1956, defendant Salii has been in possession and control of the land Ngermengiau, and has received the income therefrom, without objection from members of the clan Ngermengiau.

13. There is no adequate proof that the members of the Nermengiau Clan ever intended to, or did in fact, turn over their properties and remaining titles to the Ikelau Clan. The Nermengiau Clan is still in existence as such, and is so recognized by the people of Koror.

#### CONCLUSIONS OF LAW

1. This suit was brought on behalf of the sixty members of the Nermengiau Clan for the purpose of ousting the defendant from possession of the land Nermengiau, and obtaining a declaration that the clan, and not the defendant, is the rightful owner of said land. It was alleged that defendant had been wrongfully in possession of the land since 1941.

The defendant's contention is that when the Ngermengiau Clan joined the Ikelau Clan it turned over its remaining properties and titles and thenceforth ceased to exist as a clan. Insofar as this claim is based on alleged agreement between the clans, there has not been sufficient credible evidence of any such agreement. Accordingly, this con-

tention has been disposed of adversely to defendant in Finding of Fact 13.

However, it is possible that even without express agreement on the subject, nevertheless by its conduct, the clan may have impliedly consented to a transfer of title, and thus may have precluded itself from reversing its position at this date. This in turn depends on whether the course of conduct of the clan in relation to the land Ngermengiau is consistent only with an irrevocable transfer of title, or can be explained on some other theory.

[1, 2] The first use of the land Nermengiau by members of the Ikelau Clan occurred when Blesoch cleared part of the land and constructed his houses on the cleared site. Assuming that this action was known to members of the Nermengiau Clan, and was either expressly approved or merely acquiesced in, it would be consistent with Palauan custom to indicate nothing more than a temporary use-right of sufficient land on which to build a home. In such cases, under Palauan custom, the owner of such land retains his title, and the owner of the improvement keeps title thereto, with possession of the land to be restored to the owner thereof when the improvement is removed, or at some other agreed date.

In any event, Blesoch occupied the land, built his homes on it and used its production without objection from the members of the Nermengiau Clan, so far as is shown by the records. The same uses continued during the ascendancy of Tkel, with the same lack of objection.

During the time of the next incumbent in the office of Ngiraikelau, Ruetei, a different situation developed. He undertook to rent portions of Ngermengiau to Japanese settlers. He did this without consulting either clan. But his right to do so was challenged by the clan Nermengiau, leading to the meeting between the leaders of the two clans in the abai at Mekitii in 1933. Though the result

was to confirm the use-rights and the right to receive the income and production from this land in the reigning Ngiraikelau, (see Finding of Fact 9 above), it also fairly indicates the following: (a) the clan Ngermengiau was sufficiently in existence for it to act in concert for protection of its clan rights and property; and (b) the clan did not conceive it had granted lease rights to the Ngiraikelau, let alone irrevocable title. For if the clan had parted with the title by intentional act, it would not, in all likelihood have complained of the leasing, nor would the clan Ikelau have paid much attention to the protest.

Similarly, and to be regarded as strengthening the hypotheses assumed in the preceding paragraph, appears the dispute between the clans when the matter of title registration arose in connection with the Japanese survey of 1937-1939. This dispute was resolved by decision of the Land Office that the land should be registered in the name of the Ngiraikelau, as chief's title land. Whether or not this ruling is entitled to be accorded the finality due judicial decisions, the fact remains that the survey, completed and publicized in 1941, lists the land as chief's title land, and it has been so registered and used since that time.

[3] However, the protests made by the clan Ngermengiau at the time of the leasing of their land by the Ngiraikelau, Ruetei, and at the time of registration of their land as chief's title land, afford strong evidence that it had never intentionally given up its reversionary rights, and at all times considered it had retained the right to oppose arbitrary abuse of the use-rights admittedly granted. Nor is there any evidence of contentions advanced by the Ikelau Clan prior to 1941 that either by agreement or by acquiescence, had the Ngermengiau Clan conceded more than a temporary use of the land by each Ngiraikelau during his term of office.

[4] The court is, therefore, constrained to hold that the clan Ngermengiau has neither by express agreement nor by conduct, divested itself of reversionary rights to the land Ngermengiau, and is still possessed of such rights, subject only to the rights expressly, or by necessary inference, heretofore granted the reigning chief.

[5] 2. As indicated above, the clan Ngermengiau seeks to reverse the pattern of fifty years standing, and obtain restoration of the possession and use-rights enjoyed by the reigning Ngiraikelau during that period. Unquestionably the land Ngermengiau during that period has been utilized by the reigning chief since the time of Blesoch, and the exclusive right to its income and production, has been enjoyed and exercised by the chiefs since 1922. From all indications, if the Ngermengiau Clan intended to give no more than personal use-rights to Blesoch, the first Ngiraikelau who made use of the land, nevertheless, it has acquiesced in the decisions thereafter, resulting in lease rights and exclusive control of income and production in the reigning chief.

[6] In each case, since Blesoch, the chief has taken control of the entire production, and since Ruetei, has exclusively enjoyed the lease income. The land has thus become chief's title land, with its use and control inhering in the reigning chief by virtue and during the period of his office. *Ngircherung v. Ngirturong*, 1 T.T.R. 71, *Charly Gibbons v. Kisaol*, 1 T.T.R. 219.

[7, 8] As indicated in the above authorities, such lands are not subject to sale by any chief without the approval of all adult clan members in the maternal line, but the use-rights are the chief's as long as he holds the office.

[9] The court holds then, that whether so intended or not, the acquiescence by the clan Ngermengiau over so

long a period of time, in the devotion of their land to the exclusive use of the reigning chief, has resulted in its taking on the character of chief's title land, on principles of waiver. 56 Am. Jur. 126, Waiver, § 24.

JUDGMENT

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

1. The land known as Ngermengiau in Koror Municipality, Palau District is chief's title land of the combined Ikelau-Ngermengiau Clan.

2. As such land, the present Ngiraikelau, defendant Salii, is entitled to the possession thereof, and the income and use-rights thereof, as between the parties and all persons claiming under them.

3. The clan Ngermengiau is possessed of the reversionary rights in the land Ngermengiau, subject only to the use-rights and income from said land inhering in the reigning chief of the combined Ikelau-Ngermengiau Clan, during his lifetime.

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

5. No costs are assessed against any party.