

[6] 6. Control of the land Klouklubed has not been lost or relinquished by the Elsau Clan.

#### JUDGMENT

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

1. As between the parties and all persons claiming through or under them, the land known as Klouklubed, located in Ngerchol hamlet in Peleliu Municipality, Palau District, is owned by the Elsau Clan.

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

3. No costs are assessed against any party.

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**MOOROU and Others, Appellants**

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS  
and its ALIEN PROPERTY CUSTODIAN, Appellees**

Civil Action No. 17

Trial Division of the High Court

Yap District

May 13, 1960

Action by former owners of land in Ruul Municipality to recover land sold to quasi-governmental corporation during Japanese Administration. On appeal from District Land Title Determination, the Trial Division of the High Court, Chief Justice E. P. Furber, held that since owners were forced to sell land to corporation and then to exchange money from sale for valueless government bonds and notes, owners could now repudiate their acceptance of money as compensation for their land; failure of consideration in sale of land results in owners being deprived of land without free will and without receiving just compensation.

Reversed as to certain plaintiffs.

**1. Former Administrations—Taking of Private Property by Japanese Government—Limitations**

Where alleged sale of land to Japanese Government occurred in 1940, it took place so late in Japanese Administration that present administration has obligation to correct wrong if land owners establish sale

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was made without their free will and that just compensation was not received. (Policy Letter P-1, December 29, 1947)

### **2. Former Administrations—Taking of Private Property by Japanese Government—Compensation**

Where Japanese Government and corporation acted in concert in obtaining lands from private owners, transfer of lands and payment in government bonds and notes constituted single transaction.

### **3. Former Administrations—Japanese Mandate**

Under League of Nations Mandate, Japanese Government was obligated to promote material and moral well-being and social progress of inhabitants of territory.

### **4. Former Administrations—Taking of Private Property by Japanese Government—Compensation**

Japanese Government acted fraudulently when it cooperated with corporation to bring about forced sales of land from private owners and then demanded that money received therefrom be exchanged for bonds and notes.

### **5. Former Administrations—Taking of Private Property by Japanese Government—Compensation**

Where Japanese Government acted fraudulently towards private landowners, latter are entitled to repudiate their acceptance of money from government as compensation for their lands.

### **6. Former Administrations—Taking of Private Property by Japanese Government—Compensation**

Although money which landowners accepted from Japanese Government for sale of land in 1940 may have constituted just compensation in yen at that time, forced exchange of yen for government bonds and notes is different matter.

### **7. Eminent Domain—"Compensation"**

Under American constitutional requirements that private property may not be taken for public use without just compensation, there is implied requirement that compensation be in money.

### **8. Former Administrations—Taking of Private Property by Japanese Government—Compensation**

Value of bonds and notes received from Japanese Government for sale of land in 1940 should be determined by value at time and place where they were forced on owners and in light of circumstances existing there at the time.

### **9. Former Administrations—Taking of Private Property by Japanese Government—Compensation**

Japanese Government as a Mandatory and present government as a Trusteeship must give special weight to actual value of government bonds and notes to inhabitants of the territory where these are received.

**10. Former Administrations—Taking of Private Property by Japanese Government—Compensation**

Where value of bonds and notes to owners was far less than money they were forced by Japanese Government to surrender for them, forced exchange in connection with sale of land constitutes substantial failure of consideration, so that owners were deprived of lands without their free will and without receiving just compensation.

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**FURBER, *Chief Justice***

This memorandum of decision is filed in accordance with Rule 16a of the Rules of Civil Procedure and in response to the request of the appellees in this court (who are now appealing to the Appellate Division) in their motion, dated February 26, 1960, for findings of fact and conclusions of law.

To assist all concerned in understanding the position of the Trial Division, the following findings of fact, conclusions of law, and remarks, are submitted:

**FINDINGS OF FACT**

1. There were two series of harsh beatings involved in the circumstances out of which the appellants' claims arise. The beatings of the first of these series were inflicted by representatives of Nantaku on certain of the appellants or their predecessors in interest to induce them to give up possession of the lands and remove their buildings and other property. (For convenience, the appellants or their predecessors in interest are referred to as the "Landowners" hereafter in this memorandum.)

2. The beatings in this first series were administered in the presence of people from the village and resulted not only in Nantaku's obtaining possession of all the lands in question, but in at least one and possibly three of the landowners failing to disclose their ownership rather than chance such a beating even at the risk of receiving nothing for their lands.

3. It was after possession had been obtained as described above that the owners accepted the compensation referred to in the second stipulation confirmed in open court at the beginning of the trial. This compensation was paid in money.

4. The government and Nantaku cooperated so closely in Nantaku's acquiring the lands that the interpreter for the sale believed that the government itself was buying the lands. (See affidavit of Peter Gaangin, dated February 9, 1956; in the District Land Title Officer's file in this matter.)

5. The next day or two after the money had been paid to and accepted by the owners for their lands, the Japanese government began calling in the landowners in groups and demanding that the exact amount paid by Nantaku to each owner be surrendered to the government in exchange for government bonds or notes of the same face value, without any regard to what other money any owner had or did not have and without any claim of reliance upon any law or general policy for fiscal control. The second series of harsh beatings involved were inflicted by government representatives on members of the first two groups of landowners called who protested against giving up their money. Word of these beatings spread and either through the beatings themselves or fear of similar ones all the money paid for the lands was finally surrendered and exchanged as demanded by the government.

6. Regardless of what they might have been worth at the time in the home islands of Japan, the government bonds or notes received by the landowners in this exchange were, under the conditions then prevailing on Yap, of no present practical value to the landowners.

7. None of the landowners had received any benefit from their bonds or notes up to the time of the trial in this court, except for the money received from the annual in-

terest coupons cut from the bonds and cashed during the few remaining years of the Japanese Administration.

#### CONCLUSIONS OF LAW

[1] 1. This alleged sale in 1940 was so late in the Japanese Administration that, in accordance with international law *and* the announced policy of the Trust Territory of the Pacific Islands, the present administration has an obligation to correct the wrong done if the landowners establish that the sale was made without their free will and that just compensation was not received. 30 Am. Jur., International Law, § 47. Trust Territory Policy Letter, P-1, issued by the Deputy High Commissioner of the Trust Territory of the Pacific Islands, dated 29 December 1947, paragraph 13 of which reads as follows:

“Land transfers from non-Japanese private owners to the Japanese government, Japanese corporations, or Japanese nationals since March 27, 1935, will be subject to review. Such transfers will be considered valid unless the former owner (or heirs) establishes that the sale was not made of free will and the just compensation was not received. In such cases, title will be returned to former owner upon his paying in to the Trust Territory government the amount received by him. Yen currency and Japanese postal savings which have been turned in by the former property owner (or heirs) to United States authorities for redemption, and which have not been exchanged for dollars, may be credited toward the payment required to clear the title. In case sufficient yen are not available from this source, exchange will be computed at the following rates, for transactions during the times indicated: prior to 1940, 4 yen to the dollar; 1940, 5 to 1; 1941, 6 to 1; 1942, 7 to 1; 1943, 8 to 1; 1944, 9 to 1; 1945, 10 to 1.”

[2] 2. Under all the circumstances the Japanese government and Nantaku must be considered to have been at least acting in concert, if they were not more closely related, in obtaining the lands in question for government bonds and notes so that the payment of the money compensation and its acceptance by the landowners cannot

fairly be viewed as a separate matter, but must as a matter of equity, good conscience, and substantial justice be considered as part of a series of transactions which must be taken together, including the almost immediate demand, supported by force, that these particular amounts of money be exchanged for bonds or notes, and the exchange thereby brought about. Restatement of the Law of Torts, Sec. 876. 52 Am. Jur., Torts, §§ 110 and 111.

[3-5] 3. Article 2 of Japan's mandate from the League of Nations for the government of what is now the Trust Territory, contained the following provision: "The Mandatory shall promote to the utmost the material and moral well-being and social progress of the inhabitants of the territory subject to the present mandate." Mandates under the League of Nations, by Quincy Wright, page 620. For the Japanese government, under such a mandate, to cooperate in bringing about the alleged sale and stand by while the landowners were induced to accept money in payment for their lands with the reasonable and natural expectation of being able to use it, and then turn around and demand with force and threats of force that this money be surrendered in exchange for bonds or notes, constituted fraud, entitling the landowners to rescind or repudiate their acceptance of the money as compensation for their lands. Restatement of the Law of Contracts, Secs. 471 and 472. 23 Am. Jur., Fraud and Deceit, §§ 2, 14, and 190.

[6, 7] 4. In the absence of other evidence, it is believed that the amount of money which Nantaku paid and the landowners accepted must be considered for the purposes of this action as constituting just compensation in yen at that time. A certain amount of cash on the one hand, however, and bonds and notes on the other hand, even though of the same face value as the cash, are very different

matters—especially when the government on a remote island group has forced one to give up cash for the bonds or notes. This basic difference anywhere is so clear that under American constitutional requirements that private property shall not be taken for public use without just compensation, it is regularly held that there is an implied requirement that the compensation be in money and a statute requiring that a landowner take his payment in warrants or in stock or bonds of the corporation acquiring the land has been held unconstitutional. 18 Am. Jur., Eminent Domain, § 128, especially notes 8 and 9.

[8-10] 5. In accordance with general principles of the law of damages, the value of the bonds and notes involved should be determined by their value at the time and place where they were forced on the landowners and in the light of circumstances existing there at the time. 15 Am. Jur., Damages, § 123. Restatement of the Law of Torts, Sec. 927. Furthermore, since the Japanese government was a Mandatory and the present government of the Trust Territory is under a trusteeship, it is believed that both of them and all their agencies must give special weight to the actual value of such bonds and notes to inhabitants of the territory. Viewed by these standards, it appears from the sixth and seventh findings of fact above that the value of these bonds and notes to the landowners was far less than the money they were forced to surrender for them. The court therefore holds that this forced exchange, under the circumstances disclosed, constituted a substantial failure of consideration resulting in the landowners being deprived of their lands without their free will and without receiving just compensation.

#### REMARKS

1. In connection with the cooperation and acting in concert of the Japanese government and Nantaku, the court

takes judicial notice that "Nantaku" is the short, popular name for the Nanyo Takushoku Kaisha and that this corporation, though having some private capital as well as government funds invested in it, was controlled and supervised by the government, was very different from an ordinary American business corporation, and was of the kind often referred to as "quasi-governmental". (For a brief description of its organization and activities, see "Civil Affairs Handbook, West Caroline Islands, OpNav 50 E-7", dated 1 April 1944, issued by the Office of the Chief of Naval Operations, U.S. Navy Department, page 165.)

2. In connection with the somewhat confusing use of the term "Chief of Worowo" in the testimony, attention is called to the fact that under the Yapese traditional type of village organization a village regularly has three top officials, each of whom is commonly referred to in translation as a chief of the village. Furthermore the chief of each of the districts in the Yap Islands proper, which districts came, under the American Administration, to be municipalities, of which Ruul is one, is often considered for some purposes—especially in dealing with outsiders—as the chief of or responsible for all the villages in his district.

3. The foregoing findings of fact and conclusions of law are intended to cover the issues raised at the trial based upon the stipulations confirmed by counsel in open court at the beginning of the trial, which are believed to apply fairly to all the appellants, except Uag, Figir, and Forun (as successor to Waayan). As mentioned under "remarks" in the record of civil trial, however, there was clear and uncontroverted testimony indicating that the second of these stipulations was in error as to the appellant Uag, and there were indications it probably was in error as to Figir and Forun. The court is satisfied that that

stipulation was entered into in good faith without any realization by counsel for the appellants that the position of these three appellants might be materially different from that of the others. Nothing said in any of the findings of fact or conclusions of law is intended to constitute or imply any determination by the court that the owners Uag, Figir, or Waayan ever sold their lands or received any compensation for them. It is believed that these matters as to them and their successors in interest should be left open to future proof and that they should not be prejudiced in any future proceedings by this stipulation entered into, so far as they are concerned, through misunderstanding of counsel.

4. The objections raised by the appellants at the pre-trial conference and in their notice of appeal as to the institution of the proceedings in the Land Office and notice of hearing before the Title Officer are considered to have been either waived (as anything more than ground for the trial granted in this court) by the appellants' seeking and proceeding without objection with trial in this court, or to have been cured by that trial. No attempt is therefore made to rule upon them further at this time.