

**MEDALI WAL, Plaintiff**  
**v.**  
**PIUS IREWEI, RONALD SAKUMA,**  
**and NGIRACHEMUL, Defendants**

Civil Action No. 284

Trial Division of the High Court  
Palau District

February 6, 1964

Action to determine title to land in Koror Municipality which was listed in Japanese survey as lineage land under administration of one of lineage members, and now claimed as individual land of two parties to dispute and as lineage land by third party. The Trial Division of the High Court, Chief Justice E. P. Furber, held that as chief's title land includes all strong senior members of lineage including strong members not actually related to it by blood.

**1. Palau Land Law—Japanese Survey—Rebuttal**

Where party's claim to land in Palau is based upon inheritance of individual property from one who acknowledged, in connection with Japanese land survey, that he was administering land for lineage, party's claim must fail.

**2. Palau Custom—Lineage—Membership**

Under Palau custom, individual who was born into lineage is not considered to have dropped out of or have been excluded from lineage even though he has lived on other land and acquiesced for many years in possession and control of lineage land by another.

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

Under Palau custom, transfer of chief's title land of lineage cannot be made without consent of all strong senior members of lineage, including strong senior members not actually related to it by blood.

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

Under Palau custom, sale of chief's title land of small lineage requires consent of one who is important member of lineage.

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

Palau custom regarding sale of chief's title land of clan was amended by Japanese Administration to extent of permitting such sales if necessary consents are obtained.

**6. Palau Custom—Clans**

Where clan is very important to public of South Palau, heads of that clan may speak for other "corners" (lineages) of clan although there is no presumption that heads of Palauan clans may do this generally.

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**7. Palau Custom—Lineage**

Where important Palauan clan is permitted to speak for other lineages within clan, consents of clan's male and female heads are sufficient in connection with sale of lineage land.

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

Under Palau custom, attempted sale by individual lineage member of chief's title land is not effective until necessary consents are obtained.

**9. Palau Land Law—Lineage Ownership—Use Rights**

Where individual lineage member has possessed and controlled lineage land for long period of time, with acquiescence of important lineage members, he may continue to do so unless and until lineage, with approval of male and female heads of clan, makes some other arrangement.

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FURBER, *Chief Justice*

FINDINGS OF FACT

1. Ngirturong consented to the listing of the land in question in the official Japanese land survey of about 1938–1941 as under his administration for the Itungelbai Lineage, and expressly acknowledged that the defendant Pius' mother Iechang (otherwise known as Sumech) was a member of that lineage.

2. The land is all chief's title land of the Itungelbai Lineage, which is one of the "four corners", or four most important lineages, within the Idid Clan, and has never been given by the clan to anyone as individual land.

3. The defendant Pius has attempted to sell the land to the defendant Ronald Sakuma with the consent of Pius' sister, of his cousin Ikluk, and of Ibedul (the highest male title in the Idid Clan) Ngoriyakl, but without the consents of either Bilung (the highest female title in the Idid Clan) Ngerdokoh, or the defendant Ngirachemul.

4. The defendant Ngirachemul's true mother Tiuk, and her mother Ibuuch who adopted Ngirachemul, were both fully accepted as members of the Itungelbai Lineage of the Idid Clan and fulfilled their obligations to that line-

age and clan, even though their ancestors were only connected with the lineage and clan through a daughter born out of wedlock to a male member and through a subsequent adoption.

5. The defendant Ngirachemul has not been active in the Itungelbai Lineage or Idid Clan affairs, but neither any refusal by him to fulfill his obligations nor any break by him with the lineage or clan has been shown.

6. The plaintiff Medaliwal has failed to sustain the burden of showing that the listing of the land in the report of the Japanese land survey referred to above, was wrong.

#### OPINION

This is an action involving a three-way dispute, in which the plaintiff Medaliwal seeks to establish that the major part of the land in question is her individual land and on that basis to stop or upset the sale of the land by the defendant Pius to the defendant Sakuma, the defendants Pius and Sakuma seek to establish that, although the land was formerly all chief's title land of the Itungelbai Lineage, it has now been duly transferred to the defendant Sakuma as his individual land, and the defendant Ngirachemul seeks to establish that all the land is still chief's title land of the Itungelbai Lineage and, on that basis to stop or upset the attempted sale and to establish his right to administer the land. All the parties acknowledge that the Itungelbai Lineage is one of the "four corners" or four most important lineages within the Idid Clan, which is the highest in South Palau.

[1] From the findings of fact, it is clear that the plaintiff Madaliwal's claims must fail since she is relying upon her right to inherit Ngirturong's individual property, whereas Ngirturong himself acknowledged in connection with the Japanese land survey of about 1938 to 1941 that

he was administering for the lineage, and no semblance of any transfer by the lineage to Ngirturong since then has been shown.

[2] The question of just who are the present members of the Itungelbai Lineage and what consents are necessary for the sale of the land is more complicated. It is very clear from the evidence that the defendant Ngirachemul is definitely connected with the lineage. The claim on behalf of the defendants Pius and Sakuma, however, is that he is not closely enough, or strongly enough, connected to have any voice in the disposition of the land in question. According to all of the parties, the true members of the Itungelbai Lineage in the female line have died out and therefore those members in the paternal line who have taken an active interest in the lineage and fulfilled their obligations to it now stand in a position like that of true members in the female line. The defendant Pius claims that these consist solely of the descendants of his mother Iechang, plus Iechang's brother's son whom she has brought into the lineage and given the title of Ngiraitungelbai. As stated in the fourth finding of fact above, however, Ngirachemul's true mother, and her mother who adopted Ngirachemul, were both accepted as members of the lineage and, although Ngirachemul has lived on other land and appears to have acquiesced for many years in the possession and control of the land in question by the defendant Pius and his mother before him, the court can find no basis for holding that he has dropped out or been excluded from this lineage into which he was born.

[3, 4] This court has already held in *Maria Gibbons v. Emamelei Bismark*, 1 T.T.R. 372, that a transfer of chief's title land of a lineage cannot be made without the consent of all the strong senior members of the lineage

there may be, including strong senior members not actually related to it by blood. It is doubtful how strong a member Ngirachemul is, but the theory on which sales of such land were permitted in Japanese times appears to have been that they might be made provided consent was given—either personally or through those authorized to speak for others under Palauan custom—by all those in a position to reasonably object. The court considers that in a small lineage such as this Ngirachemul is an important enough member to raise such an objection and that his consent is necessary to a sale of the chief's title land of the lineage.

[5] It has even been alleged that such land cannot be sold at all. This may well have been true in pre-foreign times, but the court considers it well-established that, under the Japanese Administration, sales of such land were permitted, as in the case of the chief's title land of a clan discussed in the conclusions of law in *Charlie Gibbons v. Kisaol*, 1 T.T.R. 219, provided sufficient consents were obtained. Palauan customary law on this matter must therefore be considered to have been amended by the Japanese Administration to the extent of permitting such sales if the necessary consents are obtained.

[6, 7] Chief's title land of one of the "four corners" of a clan is of such special importance to the clan that the sale of it would ordinarily be of concern to the heads of the other three of the "corners" or important lineages in the clan, as well as to the heads of the clan. The Idid Clan is so important to the public of South Palau and the main features of its organization are so well known that the court takes notice that, due particularly to reduction of the number of members, its male head—Ibedul—and its female head—Bilung—between them may speak for all three of the other "corners". The court clearly recognizes

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that this is an unusual situation which would not apply to many clans and should not be taken as establishing any presumption that the heads of Palauan clans can do this generally. The court holds, however, that in this particular situation the consents of Ibedul (already given) and of Bilung would be sufficient so far as the members of the clan outside the Itungelbai Lineage are concerned.

[8] The court accordingly holds that the attempted sale by the defendant Pius to the defendant Sakuma, is not yet effective, but might become so if the consents of Bilung Ngerdokoh and the defendant Ngirachemul were obtained.

[9] Since the defendant Ngirachemul has acquiesced for so long in the possession and control of this land by the defendant Pius and his mother before him, the court holds that Pius may continue to administer the land, unless and until the lineage, with the approval of the male and female heads of the Idid Clan, makes some other arrangement.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land located in Koror Municipality, Palau District, known as Itungelbai, listed as Lot No. 860 in the Tochi Daicho (Summary Report) of the official Japanese land survey of about 1938 to 1941, containing nine hundred eighty nine and nine tenths (989.9) tsubo more or less, and bounded as follows:—

On the south by a public highway,  
On the east by land of Ilames,  
On the north by Government land, and  
On the west by land of Olngembang,  
is owned by the Itungelbai Lineage (within the Idid Clan) as chief's title land; the defendant Pius Irewei, who lives

in Koror, is entitled to administer it unless and until the lineage, with the approval of the male and female heads of the Idid Clan, makes some other arrangement about it; and the plaintiff Medaliwal, who lives in Nghesar Municipality, Palau District, has no rights of ownership in it.

2. The attempted sale of this land to the defendant Ronald Sakuma, who lives in Koror Municipality, Palau District, may become effective if the consents of Bilung Ngerdokoh and the defendant Ngirachemul, who lives in Koror, are obtained. The defendant Pius Irewei is allowed ninety (90) days from the date of this judgment to endeavor to obtain such consents. If he has not obtained them by that time, the defendant Ronald Sakuma shall recover from the defendant Pius Irewei so much of the purchase price as he has paid.

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

4. No costs are assessed against any party.