

In the Matter of the Proceedings by the TRUST TERRITORY OF  
THE PACIFIC ISLANDS, Plaintiff  
for Condemnation of the Property of EBAS NGIRALOIS, the  
REMED LINEAGE and Unknown Owners, Defendants

Civil Action No. 313  
Trial Division of the High Court  
Palau District

October 18, 1967

*See, also, 3 T.T.R. 637*

Action for condemnation of land in Airai Municipality, taken by eminent domain under T.T.C., Ch. 20, and owned by defendants. Defendants maintain that Court has no jurisdiction over proceedings, that initial entry of Government was unlawful and they are therefore entitled to punitive damages, and that provisions for condemnation proceedings in Trust Territory law deny them due process of law. The Trial Division of the High Court, Chief Justice E. P. Furber, held that Court has jurisdiction to adjudicate provisions of Trusteeship Agreement, that power of eminent domain has been legally delegated to Trust Territory Government, that Code provision for payment of compensation does not deny defendants due process of law, and that defendants are not entitled to punitive damages.

1. Eminent Domain-Generally

While power of eminent domain is attribute of sovereignty, this does not mean it can only be exercised by body which is recognized as sovereign in international sense.

2. International Law-Sovereignty

There are degrees of sovereignty which may be exercised by certain bodies which are sovereign or in position like sovereign with regard to certain matters, while clearly not sovereign in international sense.

3. Eminent Domain-Delegation of Power

Power of eminent domain may be delegated to subordinate governments and to privately owned public utility corporations.

4. Eminent Domain-Delegation of Power

Power of eminent domain may be delegated expressly or by necessary implication and passes naturally with legislative power even though that power may be subject to control by higher level of government.

5. Trusteeship-Administering Authority-Powers

United States, as administering authority of Trust Territory, has full powers of administration, legislation and jurisdiction over territory subject to provisions of Trusteeship Agreement and may apply to territory such laws of United States as it deems appropriate. (Trusteeship Agreement, Art. 3)

6. Trusteeship-Administering Authority-Powers  
Administering authority's full power of legislation in Trust Territory includes right to delegate it.
7. Eminent Domain-Generally  
Trust Territory Code provisions regarding' eminent domain are not inconsistent with grant of legislative power to Congress of Micronesia.
8. Eminent Domain-Public Use  
High Commissioner of Trust Territory may only declare to be public use, for purposes of eminent domain, something which he honestly and reasonably believes to be that. (T.T.C., Sec. 1:302(b))
9. Eminent Domain-Public Use  
While court will give great weight to determination of High Commissioner regarding what is a public use for purposes of eminent domain, if he arbitrarily and unreasonably declares what is actually private use to be public use, court may adjudicate matter and determine whether use is in fact public, since question is ultimately a judicial one. (T.T.C., Sec. 1302 (b) )
10. Eminent Domain-Public Use  
District Attorney or Attorney General must make prima facie showing that property desired by Government is for public use before court proceeds to hear parties. (T.T.C., Sec. 1302(b))
11. Eminent Domain-Public Use  
Where government takes land to obtain coral therefrom for construction of government airfield and access road to airfield, taking is for public use.
12. Eminent Domain-Compensation  
Provision in Trust Territory law that private property shall not be taken for public use without just compensation does not require that compensation be paid before possession is taken, but merely that reasonable, certain and adequate provision is made before owner's occupancy is disturbed. (T.T.C., Sec. 4)
13. Eminent Domain-Generally  
Provisions of Trust Territory law regarding eminent domain proceedings are valid, give High Court jurisdiction in accordance with their terms, and do not deny due process of law or provide for taking of property without just compensation. (T.T.C., Sec. 4)
14. United States--Treaties  
Treaty entered into by United States becomes part of the municipal law and is binding on all judicial tribunals within United States, both state and federal.
15. Trusteeship-Trusteeship Agreement  
Trusteeship Agreement is part of law of Trust Territory and its meaning is subject to adjudication by court in accordance with usual rules of judicial construction.

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16. Eminent Domain-Damages

Landowners cannot claim punitive damages in condemnation proceedings where government entered on land in mistaken but honest belief that land was government land and without any intention to interfere with any rights it knew any private owners had.

17. Eminent Domain-Value

Court will set fair value of land in condemnation proceedings, including trees and coral rock removed from land, as of time government took possession of land, and allow interest from that date.

18. Eminent Domain-Value

High Commissioner's determination of value of land taken in condemnation proceedings constitutes admission that such amount is average value of land, including things attached to it and coral in it, so far as government is concerned, and no separate allowance will be made for trees and coral severed from land by government when owners fail to produce contrary evidence.

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FURBER, *Chief Justice*

FINDINGS OF FACT

1. Activities of the Government on the land taken damaged the taro patches which constitute the most valuable parts of areas shown as Damaged Areas #1 and #3 on sketch PB-25A filed in this action and incorporated by reference in the plaintiff's amended complaint, to such an extent that they cannot be economically rehabilitated under present conditions..

2. Damaged Area #2 on said sketch has been damaged to the extent of one-tenth (1/10) of its value by activities of the Government on the land taken.

3. Damage to Damaged Area #4 on said sketch has not been proved.

4. The Government entered on the land in question in mistaken but honest belief that the land was Government land and without any intention to interfere with any rights it knew the defendants or any private owners had.

5. The fair value of the land in question at the time the Government entered, about April 1962" was \$605.00 an acre.

6. The Government was notified of the claim of the Remed Lineage to the land in question about April 1962 after the Government had started clearing the land but before it started quarrying there.

#### OPINION

This is an action for condemnation of land in Airai Municipality, on Babelthaup Island, Palau District, taken under eminent domain in accordance with Chapter 20 of the Trust Territory Code. The Government entered and started clearing the land by April 1962 and started quarrying there in May 1962, but did not file its complaint and declaration of taking until December 31, 1964. The land actually taken and actively used by the Government consists of a coral ridge running roughly north and south, with relatively steep slopes on both the east and west sides. Below the area actually taken is a further slope to the southeast down to a substantial taro patch in Damaged Area # 1 on sketch PB-25A referred to in the first finding of fact. Just north of the westerly portion of the land taken, that is, to the northwest of the main part of the ridge, there is a further steep slope down to a smaller taro patch in Damaged Area #3 on the sketch. The whole area is in relatively open country some distance from any village although there are roads by which it can be reached. From the evidence it appears that the ridge itself had been heavily wooded before the Government entered, that the southern end of the ridge covering the central portion of the area marked "Condemnation Area" on the sketch PB-25A had been excavated by the Government by drilling, blasting, bulldozing, and the use of "cat and pans" and that in the blasting pieces of rock had been scattered over a substantial area outside of that taken.

No question has been raised in this action but what the land in question was owned by the Remed Lineage (0:

which Ebas Ngiralois is the male head), both at the time the Government entered and at the time the complaint was filed. The defendants, in addition to questioning the valuation placed on the land by the Government and claiming damage to nearby land, have questioned both the jurisdiction of the court to handle the action and the authority of the High Commissioner to bring the condemnation proceedings. They also claim that the action depends on construction of a treaty of the United States which can only be determined by the International Court of Justice or the Supreme Court of the United States and, further, that the provisions of Chapter 20 of the Trust Territory Code deny the defendants due process of law and are therefore invalid.

On the question of compensation the defendants have vigorously maintained that, because the initial entry on the land was unlawful, as is now admitted by the Government, the defendants are entitled to exemplary or punitive damages for all fill or other materials taken from the land after the Government was once on notice of the defendants' rights, or should have known that it had no right to take the fill, and that the value of the fill and other things removed from the land before the bringing of this action should be allowed as a separate element of damage, in addition to the reasonable market value of the land at the time the complaint and declaration of taking were filed. They also claim that they should have compensation for damage done to other lands of theirs near that taken, and it was expressly agreed at the pre-trial conference as set forth in subparagraph Ib of the Pre-Trial Order as follows:

"The court may consider in this action any adjacent area or areas, in addition to that described in the complaint, which the defendants can show were taken or damaged in connection with the use of the land described in the complaint."

The defendants' argument as to lack of jurisdiction in the court and of authority in the High Commissioner to bring condemnation proceedings turns primarily on a claim that the power of eminent domain is an attribute of sovereignty and that the Trust Territory of the Pacific Islands is not a sovereign and therefore cannot exercise this power. Secondly they have argued that power of eminent domain cannot be lawfully exercised without specific authority and that the temporary Organic Act for the Trust Territory, 48 U.S.C. §§ 1681-1685, is not specific enough to delegate such a power.

**[1-4]** While it has been many times stated that the power of eminent domain is an attribute of sovereignty, that does not mean that it can only be exercised by a body that is recognized as a sovereign in the international sense. Under the American system of government it is well-recognized that there are what may be called degrees or aspects of sovereignty which may be exercised by certain bodies which are sovereign or in a position like a sovereign with regard to certain matters, while clearly not sovereign in the international sense. Bouvier's Law Dictionary, Vol. 2, Third Edition, Sovereignty, p. 3096. *People of Porto Rico v. Rosaly* (1913), 227 U.S. 270, 33 S.Ct. 352. It is abundantly clear that the power of eminent domain may be delegated to subordinate governments and even to privately owned public utility corporations. It may be delegated either expressly or by necessary implication and passes naturally with general legislative power even though that power may be subject to control by a higher level of government. 27 Am. JUR. 2d, Eminent Domain, §§ 17-24. *Cincinnati v. Louisville and Nashville Railroad Company* (1912), 223 U.S. 390, 32 S.Ct. 267. In discussing the power of eminent domain in the Northwest territory under the Ordinance of 1787, in its opinion in the Cincin-

nati case cited above, the United States Supreme Court stated at page 270 of 32 S.Ct. : –

"Article 2 is not a grant of power, but a limitation upon the power of eminent domain assumed to exist. It was conferred upon the governor and judges by the power to adopt and publish the laws of any original state deemed appropriate, and by the second section there was conferred upon the governor and legislature, when organized, 'authority to make laws in all cases . . . not repugnant to the principles and articles in this ordinance established and declared.' This legislative power, temporarily in the governor and a majority of the judges, and then in the governor and the legislature, when organized, included, by necessary implication, the general power to provide for the appropriation of private property for public purposes. . . ."

Further, on the same page the court stated :- "

"That the Northwest territory Was not a state, but a mere territorial dependency, is of no consequence. The United States was an independent sovereign, and when it created a territorial government with legislative authority subject only to the limitations of the creating act, it granted to this new dependent government this vital power unless it plainly appears that it was withheld."

**[5]** Article 2 of the United Nations Trusteeship Agreement designated the United States of America as the administering authority of the Trust Territory, and Article 3 of the Agreement expressly provides **that:-**

"The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable such of the laws of the United States as it may deem appropriate to local conditions and requirements."

**[6, 7]** The court holds that this full power of legislation included the right of eminent domain and the right to delegate it, that it was effectively delegated by the Congress of the United States by 48 U.S.C. § 1681, to such person" or persons and to be exercised in such man-

ner or through such agencies as the President of the United States may direct or authorize, that Executive Order of the President No. 11021 for the Administration of the Trust Territory of the Pacific Islands, effectively vested this Power in the Secretary of the Interior, that, by Department of the Interior Order No. 2658, the Secretary of the Interior in turn effectively delegated power to legislate on this matter to the High Commissioner who, by his Executive Orders 79 of August 28, 1959, and 87 of July 27, 1961, lawfully enacted what became Chapter 20 of the Trust Territory Code. This chapter, together with other parts of the Code as it then stood, was confirmed by Section 6 of the Department of the Interior Order No. 2876 of January 30, 1964. By Department of the Interior Order No. 2882 of September 28, 1964, legislative power was placed largely in the Congress of Micronesia effective July 12, 1965, but that order did not change the situation as far as this case is concerned for Section 25 of the order continued in effect all laws not inconsistent with the provisions of the order "until modified or repealed by competent authority".

**[8-11]** The defendants' argument that Chapter 20 of the Code denies the defendant due process of law appears to be based primarily on the claim that Section 1302 (b) gives the High Commissioner arbitrary power to declare anything public use, even though it is in fact a private use. The court considers that there is no merit in this claim and that, under a fair construction of the section, the High Commissioner may only declare to be a public use something which he honestly and reasonably believes to be that. While great weight must be given by the court to his determination, if he should arbitrarily and unreasonably declare what is actually a private use to be a public use, the court would still be entitled to adjudicate the matter and determine whether the use was in fact a public use, this being ultimately a judicial question. 26 Am.

Jur. 2d, Eminent Domain, § 38. This view is reinforced by the wording of Section 1306 requiring a prima facie showing by the Attorney General or the District Attorney that the property desired by the Government is for public use before the court need proceed to hear the parties. In the present case the undisputed evidence shows that the land was taken possession of and used to obtain coral, originally for use in construction of a Government airfield, and when the coral obtained was found not to be suitable for that use, use of the land was continued to obtain coral for building an access road from Babelthaup Dock to the airfield and from the airfield to the dock where dredging of other materials for the airfield was done. No question has therefore been raised but what the taking in this particular instance was actually for a public use.

[12, 13] The defendants also object that the provisions of Chapter 20 do not provide that compensation be paid before the Government takes possession. While it sometimes has been stated that the payment of compensation should precede a taking under eminent domain, this involves a very technical consideration of the meaning and date of a taking and appears to apply to the passing of title rather than possession. If the taking is construed to be made, as it often is, at the time of the filing of the complaint starting the proceedings for determination of value, then it is practically inconceivable that the compensation, if it hasn't been agreed upon by the parties, can be determined and paid by the time of the taking. The Supreme Court of the United States has made it very clear that, so far as the provision of the Fifth Amendment to the United States Constitution, similar to the provision contained in Section 4 of our Bill of Rights, providing that private property shall not be taken for public use without just compensation, does not require that the compensation be paid before possession is taken, but merely that "reason-

able, certain, and adequate provision for obtaining compensation" shall be made before the owner's occupancy is disturbed. *Cherokee Nation v. Southern Kansas Railway* (1890), 135 U.S. 641, 10 S.Ct. 965. In the *Cherokee Nation* case cited above, the Supreme Court was concerned with a statute authorizing a railway company to make takings under eminent domain which provided that, in case of appeal from a finding of referees as to the value of land taken, the company was required to pay into the court double the amount of the award, to abide the judgment of the court, and that upon doing so the company might enter upon the property sought to be condemned. The Supreme Court stated at page 659:-

"We are of the opinion that this provision is sufficiently reasonable, certain and adequate to secure the just compensation to which the owner is entitled."

This court therefore holds that the provisions of Chapter 20 of the Trust Territory Code are valid, give this court jurisdiction in accordance with their terms, and do not deny the defendants the benefit of due process of law or provide for a taking of their property without just compensation.

[14, 15] The court can see no merit at all in the defendants' claim that it is without jurisdiction because the action depends upon the construction of a treaty between the United States of America and the United Nations which they allege can only be determined by the International Court of Justice or the Supreme Court of the United States. It is a well-established principle of American law that a treaty entered into by the United States becomes a part of the municipal law and is binding on all the judicial tribunals within the United States, both state and federal. 52 Am. Jur., Treaties, §§ 4, 22, and 25. Actually the Trusteeship Agreement involved here was entered into in accordance with a joint resolution of the

Congress, but it is clearly recognized as a part of the law of the Trust Territory by Section 20 of the Trust Territory Code and, as such, its meaning is subject to adjudication by this court in accordance with usual rules of judicial construction.

[16] The court considers that the defendants have failed to establish adequate ground for their claim to exemplary or punitive damage. Unquestionably the Government gave little weight or attention to the defendants' claims up to the time that a suit for ejectment was brought on November 23, 1962, against the Government employees in charge of the quarrying operations. The Government entered and cut down trees without any notice to the defendants, started quarrying and blasting, after notice of the defendants' claim, and bulldozed waste over an embankment into a bamboo grove and taro patch, but it appears this was all done because of supreme confidence that only Government land was involved. This confidence seems to have been based on the firm belief in some map in the Palau District Land and Claims Office which is alleged to have shown the land in question as having been bought by the Japanese Navy. The map in question has not been identified in these proceedings, so that it is impossible for the court to tell whether this was shown by some such map or whether the map was misread. Aside from the nature of the acts themselves, the defendants' claim of wantonness receives its principal support from the fact that, in the administrative proceedings which resulted in Determination of Ownership and Release No. 195 by the Land and Claims Administrator dated July 27, 1964, filed August 14, 1964, in the Office of the Clerk of Courts for the Palau District, it was found that the Trust Territory of the Pacific Islands never did claim any right, title, or interest in or to the larger tract of which the land now in question is a part. It is believed, however, that

under all of the circumstances and in the light of all the evidence, this determination by the Land and Claims Administrator must be construed to mean that the Trust Territory never made any deliberate and authoritative claim to ownership. Certainly the undisputed acts and declarations of its employees constituted somewhat of a claim of right in the land. However mistaken they may have been, the court can find no basis for believing that those employees acted in any spirit of mischief or with criminal indifference to the rights of anyone. The court takes judicial notice of the spotty and incomplete nature of land records in the Palau District, making the matter of any title search very different from what it would be in a jurisdiction where there has been 50 or 60 years or more of systematic, orderly keeping of land records, and inevitably making the result more uncertain.

The court therefore holds that in view of the fourth finding of fact above, the defendants are not entitled to exemplary or punitive damages or to anything by way of counter claim for alleged wanton destruction of their property. 22 Am. Jur. 2d, Damages, §§ 249-253.

[17] The defendants have earnestly maintained that they should have compensation as a separate item of damage for their trees and coral rock or gravel removed from the land, and have introduced evidence bearing on the value of these, after they were severed from the land. The court recognizes that there is conflict in the authorities as to how compensatory damages should be figured in cases where, as here, there has been a wrongful entry prior to condemnation. There appear to be three quite distinct lines of cases dealing with this matter. 26 Am. Jur. 2d, Eminent Domain, last par. of § 152. After consideration of the differing points of view represented by these lines of cases and endeavoring to weigh their merits, the court has come to the conclusion that it should follow the

rule of the United States federal courts and endeavor to figure the fair value of the land and the things attached to it, including the trees and coral rock, at the time the Government took possession and then allow interest from that date. 26 Am. Jur. 2d, Eminent Domain, § 152, Note 17; *Jacobs v. United States* (1933), 290 U.S. 13, 54 S.Ct. 26; *Seaboard Air Line Ry. Co. v. United States* (1923), 261 U.S. 299, 43 S.Ct. 354; *United States v. Rogers* (1921), 255 U.S. 163, 41 S.Ct. 281.

The court has therefore attempted to figure the value of the land as it was when the Government entered about April 1962 and to allow interest from that time at six percent (6%) per annum, except upon the amount deposited in accordance with Section 1309 of the Code for the period during which that was on deposit, the interest on that amount being expressly limited to three percent (3%) per annum by subparagraph (b) of Section 1309. This is substantially as contended for by the plaintiff except that it claimed the valuation should be made as of May 1962 when it was agreed the quarrying started. The evidence is uncontradicted, however, that the Government had entered and started to clear the land by, if not slightly before April 1962. The Government has not produced any evidence as to the exact date it entered on the land and apparently kept no record of it. The court therefore believes that just compensation requires the computation of interest from April 16, 1962.

Neither side presented any expert testimony as to the value as a whole of the particular land involved, including the things attached to it, at the time the Government entered. The defendants have presented evidence as to the value of the taro patches which they allege, and the court has found, were damaged, but not as to the value of the area taken or the slopes included in the damaged areas. It will be noted from the sketch PB-25A that these slopes

constitute a substantial portion of Damaged Areas #1 and #3. The court has therefore had to rely heavily upon the information it obtained at the view of the premises in question which was taken by the court in the presence of counsel in connection with the pre-trial conference.

**[18]** The High Commissioner's determination that \$605.00 per acre is estimated to be just compensation for the taking of the lands, as set out in both the declaration of taking and the amended complaint, is considered to constitute an admission that that was the average value of the land, including the things attached to it and the coral in it, so far as the Government is concerned. The court considers that the defendants' evidence fails to show an average value for the land, including the things attached to it and the coral in it, in excess of \$605.00 an acre. It therefore determines that the fair value of the land taken at the time the Government entered was \$605.00 an acre, including the trees and the coral rock later removed, and that the defendants should be compensated at the same rate for Damaged Areas #1 and #3 in view of the first finding of fact above, and at one-tenth (1/10) of that rate for the injury to Damaged Area #2, plus in each instance interest as indicated above, but that no separate allowance should be made for the value of any trees or coral severed from the land and removed by the Government.

The defendants' objection that all of the land taken had not been set out in the original complaint is considered to have been waived by the Government having filed its amended complaint, materially increasing the area condemned and incorporating by reference sketch PB-25A to which no objection was made. The defendants' objection that the nature of the interest proposed to be taken by the Government, namely, "indefinite use rights therein, for all purposes, including the right to alter and destroy the premises", is too indefinite and that the rights taken are

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a complete destruction of the premises is considered to be cured by the agreement set forth in the Pre-Trial Order that the valuation of the rights taken is to be on the same basis as if the Government were taking a fee simple.

The court therefore figures the compensation due the defendants as follows, based on the areas shown in sketch PB-25A referred to above : -

4.0044 acres taken @ \$605.00 per acre	\$2,422.66
3.1192 acres (Damaged Areas #1 and #3) badly damaged @ \$605.00 per acre	1,887.12
.7505 acres (Damaged Area #2) damaged to the extent of one-tenth (1/10) its value	45.41

Total initial damage:	<u>\$4,355.19</u>
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Interest thereon at six percent (6%) from April 16, 1962 to December 31, 1964 (time of filing of declaration of taking and making of deposit under Trust Territory Code Section 1309)	<u>707.75</u>
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Total compensation due as of the time of filing of declaration of taking	<u>\$5,062.94</u>
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The deposit under Trust Territory Code Section 1309 was \$2,077.30, leaving an excess of compensation due as of that time amounting to \$2,985.64, including \$707.75 interest which should not be compounded.

Interest since filing of declaration of taking:

On the \$2,077.30 deposit at three percent (3%) per year in accordance

with Trust Territory Code Section 1309(b) from December 31, 1964, to October 18, 1967 (date of judgment)	174.15
On \$2,277.89 (the excess of \$2,985.64 minus the \$707.75 interest included therein) from December 31, 1964, to October 18, 1967 (date of judgment)	381.92
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Total Compensation Awarded To Date of Judgment	\$5,619.01

#### JUDGMENT

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

1. The defendant Remed Lineage, consisting of the defendant Ebas Ngiralois of Korol', Palau District, as its male head, and his brothers and sisters and their descendants in the female line, is awarded \$5,619.01 as just compensation as of this date for the rights taken by the plaintiff in this action and damage caused the defendant Remed Lineage's adjacent lands.

2. Of the amount awarded above, \$2,077.30 has been deposited with the Clerk of Courts. The Clerk of Courts is hereby authorized to pay said sum to the defendant Remed Lineage through its counsel Finton J. Phelan, Jr., Esq., after the expiration of thirty (30) days from the date of this judgment, provided no notice of appeal has been filed by then.

3. The defendants shall take nothing under their counterclaim.

4. Upon payment of the above award to the defendant Remed Lineage through its counsel Finton J. Phelan, Jr., Esq., with interest at six percent (6%) per year from this date to the date of payment, indefinite use rights for all purposes, including the right to alter and destroy the premises, shall become and be the property of the plain-

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tiff, Trust Territory of the Pacific Islands, in the following land situated in Airai Municipality on Babelthaup Island, Palau District, constituting a part of the area known as "Delul" and being bounded and described as follows:-

Commencing at a concrete monument at the southern point thereof, thence running north 45° 51' 4" west 221.36 feet to a concrete monument at what is believed to be Government land;

Thence turning and running north 2° 10' 53" east 388.29 feet by said Government land to a concrete monument at the boundary between Government land and land of the Remed Lineage, sometimes known as land of its male head Ebas Ngiralois;

Thence turning and running south 66° 13' 14" east 235.49 feet to a one-half (1/2) inch diameter iron rod;

Thence turning and running south 78° 26' 50" east 35.15 feet to another one-half (1/2) inch diameter iron rod;

Thence turning and running south 71° 22' 26" east 304.30 feet to a concrete monument;

Thence turning and running south 37° 51' 5" west 284.72 feet to a concrete monument;

Thence turning and running south 61° 40' 52" west 249.15 feet to the point of beginning;

The last five courses being by land of the Remed Lineage, sometimes known as that of its male head Ebas Ngiralois;

Containing 4.0044 acres more or less;

Being the area shown as "CONDEMNATION AREA" on Department of Land Management sketch or map PB-25A entitled "Airai Municipality Delul Rock Mountain Map" approved July 7, 1966, a blueprint of which was filed in this action July 18, 1966.

5. In accordance with Section 1312 of the Trust Territory Code, all taxable costs shall be paid by the plaintiff.