

2. That the defendant Joseph Belau has no right, title or interest in the land, Ngeaur, except as he may derive from Llecholech Rechemang.

3. That Joseph is entitled to receive from the plaintiff and Belau's other relatives a gift of Palauan money or other property of equivalent value to the money called *Iteterachel*.

4. That Saburo Dulei has no right, title or interest in the aforesaid land and may not occupy it without the express consent of the plaintiff, but Saburo Dulei is entitled to remove the house from the land in which he is living and if he fails to remove the house within ninety (90) days, unless Llecholech Rechemang consents to its remaining longer, the house shall be deemed abandoned to the plaintiff.

5. This judgment shall not affect any rights-of-way which may exist over or across the land in question.

6. No costs are assessed against any party.

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OWANG LINEAGE, Plaintiff

v.

TECHIAU NGIRAIKELAU, AIS and UCHELIEI GIBBONS,  
Defendants

Civil Action No. 370

Trial Division of the High Court

Palau District

May 21, 1968

Action to determine title to land in Korol'. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that court could correct manifest error made in land title determinations and held that a listing in the *Tochi Daicho* as to title to land is to be followed unless there is clear and compelling evidence that it is improper.

DWANG LINEAGE v. NGIRAIKELAU

1. Courts-High Court

The Trial Division of the High Court may correct manifest error in land title determinations.

2. Judgments-Res Judicata

Where an action was filed within one year of the erroneous judgment in a case concerning land in question, court was not bound by the doctrine of res judicata and could decide the present case upon the evidence adduced.

3. Palau Land Law-Japanese Survey-Presumptions

Court follows the *Tochi Daicho* listing of land ownership unless there is clear and compelling evidence it is improper.

4. Palau Land Law-Japanese Survey-Rebuttal

Determinations made in the official Japanese land survey of about 1938-1941, while not conclusive, are entitled to great weight and the burden is on one who disputes such a determination to show that it is wrong.

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<i>Assessor:</i>	JUNGE PABLO RINGANG
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	WILLIAM O. WALLY
<i>Counsel for Defendants:</i>	BAULES SECHELONG and FRANCISCO ARMALUUK (Appointed by the Court)

TURNER, *Associate Justice*

. Trial was held before D. Kelly Turner, Associate Justice, at Koror, Palau District, April 30 through May 2, 1968. After the defendant Ucheliei Gibbons appeared, without counsel, as a result of the pre-trial order adding her as a defendant, the original plaintiff and defendants, through their counsel, stipulated neither side had a claim against the other and that both would support the *Tochi Daicho*, the Japanese land summary listing of the two parcels in dispute. This left the defendant Gibbons as sole claimant against both the Owang Lineage concerning the Iandlsau, listed in the *Tochi Daicho* as owned by the Owang

Lineage, and the defendants Techiau and Ais, concerning the land Malk, listed in the *Tochi Daicho* as owned by the defendant Ais. The defendant Gibbons did not have counsel and because she was unable to obtain representation, the court appointed the Assistant Public Defender to represent her.

#### OPINION

The two parcels of land involved in this case, Isau and Malk, were exchanged for convenience of administration by Omalk, representing the Owang Lineage, and Techitong, a member of the Ibai family within the Olngembang Lineage of the Ikelau Clan, of Korol', in early Japanese times, approximately 1924.

Ais and his mother, Techiau, lived on Malk, and during the last Japanese survey and title determination made in 1938-1941, from which the *Tochi Daicho* was compiled, the land Isau was registered as owned by the Owang Lineage and Techitong had the land Malk registered in Ais' name as owner.

Defendant Gibbons' witness, her brother, Rdialul Torual, who lost his claim to the land in the ejectment action, Palau District Civil Action No. 184, admitted that the land Isau had been successively administered by Owang Lineage after the exchange, that no member of Isau family or lineage within the Ikelau Clan had ever lived on it or used it until recent times and that prior to Owang Lineage administration, Melautoi, a member of the Olngembang Lineage, in which Techitong was a member, had occupied the land.

It was clear from the evidence that the two parcels as listed in the *Tochi Daicho*, and as administered by the parties and their predecessors, were owned by the plaintiff lineage as to Isau and by the defendant Ais as to Malk. This clear and undisputed state of affairs persisted until 1956 when the Trust Territory Palau District Land

Title Officer initiated a title determination by claiming the land Isau for the Trust Territory.

A lengthy affidavit, giving the details of the 1924 exchange, was filed by Techitong and a written statement was made by Itirir, Owang Lineage representative, claiming Isau for the lineage. It also appears the defendant Gibbons and her mother, plus other clan members, appeared in the proceedings and claimed the land Isau on behalf of the Isau "Lineage". The Land Title Officer appears to have accepted a statement from someone that a clan meeting had been held at which it was decided the Isau Lineage owned the land. He made his title determination G-8 accordingly, completely ignoring the *Tochi Daicho* record, the written statements of the Itirir and Techitong, and the even more obvious fact developed by the evidence in this case that there is no Isau Lineage in the Ikelau Clan. It may or may not be a sublineage or family within Owang Lineage, but that fact is not important in view of the clear evidence that this was Owang Lineage land and had been since at least 1924.

"As a result of determination G-8, this court has twice entered judgments based upon stipulations of the parties. The first of these, Civil Action No. 184, held that the land was owned by Rosang Sungiyama, when in fact she only represented the Owang Lineage. The next "consent" decision was Civil Action No. 319. This judgment was entered March 29, 1966, and held:

"... the land known as Isau . . . is owned by Isau Lineage and may be administered by Ucheliei Gibbons . . . ."

The present case was filed January 26, 1967, within a year of the decision in Civil Action No. 319. Upon plaintiff's motion, the court proceeded with trial of the present case, as an independent action to obtain relief from the judgment in No. 319, upon the grounds of mistake, newly discovered evidence and misrepresentation of an ad-

verse party (the present defendant Gibbons who was the plaintiff in No. 319) in accordance with Rule 18(e), Rules of Civil Procedure.

It is apparent from the evidence, the plaintiff and the members of her Owang Lineage accepted the representation of defendant Gibbons that if she were allowed to retain the land Isau, that the land Malk would be returned to Owang Lineage by rescission of the 1924 exchange between Omalk and Techitong as set forth in Techitong's statement in 1956 to the Land Title Officer. This representation and the assumption drawn from it were erroneous because neither the lineage nor the defendant Gibbons had authority to set aside the land exchange and return Malk to Owang Lineage. An obvious basis for the erroneous belief by the parties was the fact that Ais and his mother were not parties to either the land determination or the subsequent court actions and could not have their rights to Malk interfered with by any understandings to which they did not consent.

Because the parties believed the land Malk would be returned to the Owang Lineage by the decision in Civil Action No. 319, it was stipulated that the decision should be based upon the Land Title Officer's Determination G-8, even though that decision accepted an alleged clan agreement as to the land Isau which was contrary to the actual facts of ownership. We have no hesitancy, therefore, in holding the title determination was erroneous and the judgment in Civil Action No. 319 compounded the error. We can, under Rule 18(e), give relief from the judgment in No. 319, by setting it aside.

**[1]** This court has in the past corrected manifest error in land title determinations. *Rdialul Torual v. Trust Territory*, 2 T.T.R. 267. *Fritz Rubash v. Trust Territory*, 2 T.T.R. 80. *Lusi Orukem v. Trust Territory*, 1 T.T.R. 356.

[2] The foregoing cases set aside title determinations on appeal. No appeal was taken from Determination G-8 as to the land Isau, but we need not now consider that determination but may appropriately set aside the decision in No. 319 which affirmed the erroneous prior determination. The present action having been filed within one year of the judgment in No. 319, we hold we are not bound by the doctrine of *res judicata* and may decide the present case upon the evidence adduced.

The evidence is conclusive that the Owang Lineage owned the land Isau, whatever the status of the defendant Gibbons as a member of the Isau family or sublineage. It also is evident the land exchange in 1924, which resulted in title to Malk going to Ais was intended to be a complete and permanent arrangement without intent that there should be a future rescission and return of the exchanged lands. The *Tochi Daicho* record is in itself sufficient to support this conclusion.

[3,4] We follow the *Tochi Daicho* listing unless there is clear and compelling evidence it is improper. This court said in *Osima v. Rengiil and Rechesengel*, 2 T.T.R. 151:-  
 "As this court has repeatedly held, determinations made in the official Japanese land survey of about 1938-1941, while not conclusive, are entitled to great weight. The burden is on one who disputes such a determination to show that it is wrong. See paragraph 3 of conclusions of law in *Basehalai Baab v. Klerang and Rudimch*, 1 T.T.R. 284."

The evidence in this case supports the *Tochi Daicho* record rather than upsets it. The defendant Gibbons, as claimant in behalf of her lineage of the land Isau in Civil Action No. 319 and in the present case, admitted she did not participate in the listing because that was the responsibility of Omalk and Techitong. This fact alone is sufficient for the court to hold she did not sustain her burden of upsetting the *Tochi Daicho* listing, even though

she and her predecessors were able to obtain a contrary result from the Land Title Officer in 1956.

Accordingly, it is

#### JUDGMENT

Ordered, adjudged, and decreed : –

1. That Owang Lineage of the Ikelau Clan is the owner of the land Isau, Koror, Palau District, being designated Lot 902 in the *Tochi Daicho*, and that Rose Kebe-  
kol may administer the land in behalf of the lineage.

2. That Ais, the son of Techiau Ngiraikelau, is the owner of the land Malk, Koror, Palau District, being designated Lot 1062 in the *Tochi Daicho*.

3. That the Isau Lineage and the defendant Ucheliei Gibbons have no rights, title or interest in either parcel of land except as may be derived from the above-named owners.

4. That this judgment shall not affect any rights-of-way which may be over or across the lands in question.

5. No costs are assessed against any party.