

AIRAI MUNICIPALITY, Represented by Edeiuchel
Eungel, Magistrate Thereof, Plaintiff

v.

NGIRKIKLANG REBLUUD and ISIDORO RUDIMCH, Defendants

Civil Action No. 337

Trial Division of the High Court

Palau District

July 26, 1968

Action to determine ownership of land on Ngerduwais Island, Airai Municipality. The Trial Division of the High Court, Joseph W. Goss, Temporary Judge, held that land was village land and had not been purchased by an individual.

1. Palau Custom-Clans-"Rdiaul"

The *Rdiaul* is the second highest of the Airai titles, and is outranked by either the *Ngiraked* or the *Ngirkiklang*, depending on the particular situation.

2. Palau Land Law-Village Land-Sale

Prior to the Japanese Land Survey, 1938-1941, the consent of the then highest title in the village was required for sale of any village land.

3. Palau Land Law-Village Land

Where preponderance of evidence showed that land in question in Airai was registered in the *Daichio* in the name of the *Ngiraked*, it indicated that the land was then village land.

4. Palau Land Law-Village Land-Sale

Where land in question was frequently used by the people of *Airai* prior to an attempted sale, defendant's investments were consistent with his right and obligation to administer the property as *Ngirkiklang* and did not in themselves prove a type of long-term attitude of ownership.

5. Palau Land Law-Village Land-Sale

In view of defendant's authority as representative of the *Rdiaul*, the lack of proof that he held himself out as owner during Japanese times and the lack of proof of any recognition of his claim during Japanese times, the case did not come within the doctrine of acquiescence and recognition of rights.

GOSS, *Temporary Judge*

FINDINGS OF FACT

1. Defendant Rebluud did not obtain the consent of the *Ngiraked* or of any predecessor holder of the *Ngirkiklang* title to any purchase of the Airai Village land Bitkuu on Ngerduwais Island, Airai Municipality.

2. Prior to succeeding to the title *Ngirkiklang*, the Defendant Rebluud for many years was the representative of the *Rdiaul*, the second highest title in Airai.

3. Defendant Rebluud entered Bitkuu without known objection during late Japanese times. He did not erect buildings thereon until after World War II.

4. Defendant Rebluud has not proved that the land Bitkuu was registered in his name in the Japanese Land Survey. The preponderance of the evidence introduced shows the land to have been registered in the name of the *Ngiraked*.

5. The land Bitkuu as village land is administered by the *Ngirkiklang*.

6. Defendant Rebluud became *Ngirkiklang* after World War II.

7. Subsequently thereto he moved a building from his adjoining property Baidok to Bitkuu. In 1963 or 1964, a dock was built thereon at a cost of approximately \$350.

8. Prior to the 1965 sale to Defendant Rudimch's predecessor, the land was used by the people of Airai Village as a resting place for fishermen and shell collectors, a place of refuge during bad weather, a picnic spot for school children and a source of coconuts and coconut leaves for the villagers' traps and nets.

9. The northeast boundary of the land Bitkuu is the line shown as Course 7-8 on the map entitled "High Court Civil Action #337, Ngerduwais, Airai Municipality, No. 226," which is incorporated herein by this reference. The other

boundaries of the areas claimed by the parties are approximately as shown on said map.

OPINION

This dispute first concerns the ownership of the land Bitkuu on Ngerduwais Island, Airai Municipality, designated as a portion of Tract B on the attached map. The Plaintiff claims that the land is village land. The Defendants claim that in Japanese time the land was lawfully purchased by Defendant Rebluud *Ngirkiklang* and was in turn sold by him to Inadalecio Rudimch, who is now deceased and who was the predecessor in interest to the Defendant Isidoro Rudimch.

The land in dispute was originally village or community land considered to be sacred, owned and inhabited by the God Medechibelau. In German times the Administration denied the existence of the local Gods and assigned Ngerduwais to Airai Village. For a discussion of Palau lands once believed to be sacred, see *Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 299-300:-*

"Some clan lands in the past were designated for local gods and called *chetemel chellid* The god was thought to have had anthropomorphic traits and spoke through a medium (*Keidelel a chellid*) who could be of either sex and, at least in one case, even the wife of the god. The medium collected Palau money given to the god for prayers requesting his aid in performing cures, sorcery and divination. The sacred lands were not always permanent for the god could shift its residence. On some of these sacred lands were houses occupied by the medium There were other sacred lands on which no houses were located as *Ngerduwais Island* off Airai, *Ngaregur* and *Ngarakeklau* Islands off Ngerhelong, and *Nikul Islet* in Peleliu. The worship of local gods was suppressed during the German period and offerings of Palauan money confiscated. It is reported that some of these pieces of Palauan money were used by the Germans in some significant land purchases."

In support of his position Counsel for the Plaintiff has cited: *Kisaol v. Charly Gibbons*, 1 T.T.R. 597 and 1 T.T.R. 219. *Medaliwal v. Irewei*, 2 T.T.R. 546. *Ngerdelolei Village*

v. Ngerchol Village, 2 T.T.R. 398. *Gibbons v. Bismark*, 1 T.T.R. 372. 1 T.T.R. 597 and 1 T.T.R. 372 and 2 T.T.R. 546 all concern clan or lineage land rather than village land. The *Ngerdelolek Village* case does pertain to village or community land, but involves the right of a village chief to reassign to another person village land which had previously been assigned to someone else.

[1] The land Bitkuu was administered by the particular person who bore the title *Ngirkiklang*, and the *Ngirkiklang* was entitled to use the land in any way that he desired. Prior to assuming the title of *Ngirkiklang* in American times, the Defendant Rebluud for many years acted as representative of the *Rdiaul*. The *Rdiaul* is the second highest of the Airai titles, and is outranked by either the *Ngiraked* or the *Ngirkiklang*, depending on the particular situation. As representative of the *Rdiaul*, Defendant Rebluud had great authority, which may account for his presence on Bitkuu in late Japanese times without any known objection from the *Ngiraked* or the then *Ngirkiklang*.

[2, 3] Prior to the Japanese Land Survey (approximately 1938-1941), the consent of the then highest title in the village was required for sale of any village land. In Japanese times the highest title in Airai was the title *Ngiraked* for certain purposes, and the title *Ngirkiklang* for other purposes. Defendants have not proven that either the *Ngiraked* or the then *Ngirkiklang* consented to a purchase of Bitkuu. Unfortunately, there is no *Daichio* known to now exist which shows the registry of the land during Japanese times. The preponderance of the evidence introduced shows the land to have been registered in *Daichio* in the name of the *Ngiraked*, which indicates in this instance that it was then village land.

[4] The land Bitkuu was frequently used by the people of Airai prior to the attempted sale to Indalecio Rudimch.

Defendant Rebluud's post World War II investments are consistent with his right and obligation to administer the property as *Ngirkiklang* and do not in themselves prove the type of long-term attitude of ownership found in *Aneten v. Olaf*, 1 T.T.R. 606.

[5] Similarly in view of Defendant Rebluud's authority as representative of the *Rdiaul*, the lack of proof that he held himself out as owner during Japanese times and the lack of proof of any recognition of his claim during Japanese times, the case does not come within the doctrine of acquiescence and recognition of rights reaffirmed in *Sehk v. Sohn*, 3 T.T.R. 348.

As to the Plaintiff's claim that the northeast boundary of the land Bitkuu is the line shown as Course 1, 2, and 3 on the above-referenced map, the Court has concluded that the correct boundary is the course marked 7-8 on said map. The land shown as Tract A thereon is the property of the adjoining landowner, formerly Indalecio Rudimch.

During the proceedings it was stipulated that the prevailing party in the case would also be recognized as the owner of the land Bkulangis, which adjoins Bitkuu on the southwest and is included in the area designated as Tract B on the attached map.

JUDGMENT

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

1. As between the parties and all persons claiming under them:-

a. The lands Bitkuu and Bkulangis on Ngerduwais Island, Airai Municipality, approximately as shown on the attached map as Tract B, are owned by the Plaintiff, Airai Municipality.

b. The land designated on said map as Tract A is owned by the successor to Indalecio Rudimch, in his capacity as adjoining landowner.