

ELENGOI METECHERANG, Plaintiff  
v.  
ARIBUK SISANG, and KIUELUL, Defendants

Civil Action No. 378  
Trial Division of the High Court  
Palau District

December 30, 1969

Action of ejectment. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that a person not administrator of lineage land could not permit a stranger to the lineage to occupy and use the land without payment of fair rental for the benefit of the membership, and thus such a stranger could not remain on the land without the consent of the lineage and payment of rental to them.

1. Palau Custom-Clane-Membership

Under the Palau system of society mere absence of a member of a clan, no matter how long continued, does not work as a forfeiture of either his clan membership or his rights to share in and use the clan's assets.

2. Palau Land Law-Lineage Ownership-Use Rights

Where person on land was not the owner, the land being lineage land, he was obliged to administer the land for the benefit of and in the best interests of the lineage membership.

3. Palau Land Law-Lineage Ownership-Administration

Failure to administer lineage land for the benefit of the lineage is sufficient to warrant removal of the administrator by the lineage.

4. Palau Land Law-Lineage Ownership-Administration

Long absence from the land is sufficient grounds for removal of the administrator of lineage land.

5. Palau Land Law-Lineage Ownership-Administration

Who should become administrator of lineage land is a lineage and clan problem to be settled by them.

6. Palau Land Law—Lineage Ownership-Use Rights

Person who was not administrator of lineage land had no authority to permit a stranger to the lineage to occupy and use the land without payment of fair rental for the benefit of the membership.

<i>Assessor:</i>	JUDGE FRANCISCO K. MOREI
<i>Interpreter:</i>	KAZUMOTO H. RENGULBAI
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	WILLIAM O. WALLY
<i>Counsel for Defendants:</i>	ITELBANG Lun

TURNER, *Associate Justice*

This action rests, first, on membership status in Echerang Lineage in Idid Clan, Koror, and, secondly, authority to control of lineage land known as Illames. The ultimate issue is whether the defendant Sisang is authorized to occupy and use the lineage land in question. Sisang, although not a member of the lineage, was granted permission to live on the land by defendant Kiuelul.

Kiuelul was listed in the Japanese land records, the *Tochi Daicho*, in 1938-41 as the administrator of the land Illames for the Ngeremesungil Lineage of Idid Clan.

Originally, the four lineages of Idid included Ngeremesungil, but after its house site was sold it was largely replaced by Echerang Sublineage as an Idid Lineage. Although the *Tochi Daicho* listing showed the land Illames to be Ngeremesungil Lineage, the land is now generally considered (except by the defendant Kiuelul) to be Echerang Lineage land in Idid Clan. Make-up of the Idid Clan is discussed in *Medaliwal v. Irewei*, 2 T.T.R. 546.

The first of the issues in controversy involves the membership status in Echerang Lineage of both the plaintiff and the defendant Kiuelul. In an effort to show that plaintiff had no authority in the lineage, defendant Kiuelul called upon both Ibedul, the male titleholder, and Bilung, the female titleholder, of Idid Clan to show that the plaintiff was "brought into" the clan and that as a "*ngalk ra blai*" (literally a child of the house or a member who came up through the floor) she had no authority in lineage affairs. The evidence, including Ibedul's testimony, demonstrated, however, that the plaintiff was an *ochel* member

by adoption and that, in accordance with Palauan custom, she is a strong member of the lineage when, as in the Ngeremesungil-Echerang Lineage, there are no longer any true *ochel* members. The last *ochel* of Ngeremesungil was Kerekeriil, now deceased.

[1] Just as Kiuelul's attempt to demonstrate that the plaintiff had no authority in lineage affairs, the showing by plaintiff challenging Kiuelul's membership status was equally ineffective. The plaintiff contended she had expelled Kiuelul shortly after the war because of a dispute over the land in question. Although her proof as to expulsion failed, it is true Kiuelul moved to Aimeliik Municipality. Since he has gone to another clan to live-it was described that he has gone to his mother's side-his authority and standing in Echerang Lineage is minimal, but he does, however, retain his membership. He is entitled to return to the clan and lineage perform his obligations to it and to live on the land in question. This court said, in considering the status of a clan member living outside the clan, in *Lalou v. Aliang*, 1 T.T.R. 94 at 99:-

"Under the Palau system of society, one of the basic protections of an individual is that he is born into a certain clan and it is doubtful whether he can completely lose his membership in it under any circumstances. He may forfeit his right to some of the benefits because of his own misconduct or failure to fulfill all of his clan obligations, and when he is absent a part of his rights may, in a sense, be suspended. Mere absence, however, no matter how long continued, does not work as a forfeiture of either his clan membership or his rights to share in and use the clan's assets."

The next issue, after determination that both plaintiff and Kiuelul are members of Echerang Lineage in Idid Clan, is whether or not Kiuelul continues to be the administrator of the land Illames, or whether he has forfeited that right because of his indifference to the interests of the lineage members in the lineage land.

Kiuelul claims to be the individual owner on the theory it was given to him to administer for the "children of our father". The "father" was Ngiraked, the lineage titleholder and, Kiuelul claimed, all the children but himself are now dead.

This unsupported claim of ownership is contrary to both the *Tochi Daicho* listing and the understanding of those familiar with the land Illames. Although Kiuelul is not the individual owner of the land, he has for several years treated it as his own. He first gave permission to Sakuma to build a house on the land. Sakuma was followed by Osiik who was succeeded by the defendant Sisang. None of these people were lineage members and none of them paid rentals for their use and occupancy.

**[2]** Kiuelul claimed these strangers to the land "carried out his clan obligations" as consideration for use of the land. If Kiuelul were the individual owner, he could do with the land as he saw fit and could permit its use for the rather nominal and uncertain consideration he claims he received. But he is not the owner and accordingly, he is obliged to administer the land for the benefit of and in the best interests of the lineage membership. *Lalou v. Aliang*, 1 T.T.R. 94. *Kebliil era Kedam or Youlkedidai, Rep. by Risong Rechetmol v. Mukui Ucherremasch, Iderrech, and Dirremasch Ochebir*, 4 T.T.R. 459.

[3,4] Kiuelul's failure to administer the land for the benefit of the lineage is sufficient to warrant his removal by the lineage members as the administrator. His long absence is also sufficient grounds for removal. As a matter of fact, Ibedul testified he considered Tatsuo, a lineage member living at the lineage house site, Echerang, as the administrator in Kiuelul's absence.

**[5,6]** Whether the plaintiff becomes the administrator as she seeks to be in this action or whether the senior strong

members select someone else is a lineage and clan problem to be settled by them. In any event, it is clear Kiuelul is not and has not been the administrator for many years and has no authority to permit a stranger to the lineage to occupy and use the land without payment of fair rental for the benefit of the membership.

The defendant Sisang may not remain on the land without the consent of the plaintiff and the other lineage members and without the payment of rental to the lineage.

Because this action was one in ejectment against Sisang, judgment must be entered against him. In all fairness to him he should be given reasonable time to work out some arrangement to remain on the land and pay a fair rental. If he does not get the required consent, he must then vacate the property.

It should be further noted that there should be no question raised as to the plaintiff's right, as a member of Echerang Lineage, to use and occupy a portion of Illames. Also, in the event Kiuelul desires to return to Koror to live, he also may live on Illames.

#### JUDGMENT

Ordered, adjudged, and decreed:-

1. That the land Illames is the property of Echerang Lineage of Idid Clan and that the lineage membership shall control its administration.
2. That the defendant Sisang occupies the land in question without the consent of the plaintiff and has no right to remain on the land unless all senior lineage members other than the defendant Kiuelul grant permission and upon payment of a fair rental to the lineage.
3. That the plaintiff, the defendant Kiuelul, and Tatsuo and their children are lineage members and as long as there are lineage members, they control lineage lands in

Idid Clan even though Ibedul and Bilung as male and female title bearers of the clan are administrators for the clan.

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EREANG ARMALUUK, Plaintiff

v.

ORRUKEM, DIBECH WONG, and  
TAKADA SPOONS, Defendants

Civil Action No. 383

Trial Division of the High Court

Palau District

December 30, 1969

Action for recovery of property in Airai Municipality, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where person stands by and lets someone else openly and actively use or publicly claim ownership of land, the person who so stands by a long time will have lost whatever rights he may have had and the court will not assist him in regaining such rights.

1. Palau Land Law-Lineage Ownership-Transfer

Under Palauan custom ownership of land by a lineage or family requires unanimous consent of the senior family members before it may be transferred.

2. Real Property-Sales-Bona Fide Purchaser

Where purchaser testified that District Land Management Office records and seller's assurances caused her to believe land could legally be sold to her she became an innocent purchaser without notice of plaintiff's claim; plaintiff's suit not being filed until six months after purchase.

3. Real Property-Sales-Bona Fide Purchaser

As between two innocent persons, the party whose inaction made it possible for the loss to occur bears the loss.

4. Trust Territory-Land Law-Adverse Possession

The Trust Territory 2.0-year statute of limitations for adverse possession of land does not become operative until 1971 because Section 316 of the Code did not go into effect until May 28, 1951. (T.T.C., Sec. 316)

5. Real Property-Quiet Title-Laches

The doctrine of stale demand is based on the theory that if a person of sound mind stands by for 20 years or more and lets someone else openly and actively use or publicly claim ownership of land, the person