# MARIA OBKAL and TETSUO RECHULDAK, Plaintiffs

# ARMALUUK and FRANCISCO ARMALUUK, Defendants, and LISA YURIKO OMDASU, Intervenor

Civil Action No. 390

Trial Division of the High Court
Palau District

## January 22, 1970

Action to determine ownership of land in Koror, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that in the case of individual land in Palau Islands, the lineage or clan from which it came retains no control over it and as plaintiffs were unable to overcome presumption that *Tochi Daicho* listing of land in question as individual land was correct such listing would control.

#### 1. Palau Land Law-Individual Ownership

In the case of individual land in Palau Islands, the lineage or clan from which it came retains no control over it.

2. Executors and Administrators—Suits By or Against—Limitation of Actions

The two-year statute of limitations relating to actions against representatives of decedents in possession of an estate precluded plaintiffs from recovering the land from defendants some ten years after the defendants took possession and control of the land upon the death of their predecessor.

Assessor:

JUDGE PABLO RINGANG SINGICHI IKESAKES and KAZUMOTO H. RENGULBAI

Interpreters:
Reporter:

SANAE N. SHMULL JOHN O. NGIRAKED

Counsel for Plaintiffs:

WILLIAM O. WALLY

Counsel for Defendants:

Pro se

Intervenor:

### TURNER, Associate Justice

At the time of trial, the defendants urged their motion for judgment on the ground plaintiffs' action was barred by the two-year statute of limitations upon an action against a representative of a decedent in possession of an estate. Section 318, Trust Territory Code.

In order to expedite taking evidence on the motion as well as to present the merits of the controversy, the parties agreed and the court approved presentation of evidence by the defendants first and when the court declined to rule on the defendants' motion at conclusion of defendants' evidence, the court then heard the plaintiffs' evidence on the merits. This unusual trial procedure was authorized under the provisions of Rule 15, Rules of Civil Procedure.

This action involves a dispute over a parcel of land called Suuch in Koror, Palau District, listed as Lot No. 877 in the Japanese land survey ownership book, the Tochi Daicho. Plaintiff, Maria Obkal, as female title bearer, represents Olngebang Lineage, Ikelau Clan, and claims the land in behalf of the lineage. The defendants, father and son, and the defendant Armaluuk's sisters not named defendants but who assert rights with their natural brother—claim the land as individually owned as result of its transfer to them by their uncle Derbai Ucherkemur. The transfer was made shortly before Derbai's death to be effective at the time of his death. Derbai Ucherkemur is listed in the Tochi Daicho as the individual owner of the land in question. The evidence demonstrates the land was given to him by the male title bearer of the lineage, Umang, who was one of the elders of Koror charged with affirming land interests to be listed in the Daicho. The testimony of the plaintiff and her witnesses that Derbai's individual ownership listing was acquired by subterfuge and fraud, that he misrepresented the consent of a female title bearer, and that the transfer to him was intended to be conditional is not credible evidence. The plaintiffs were unable by their testimony to upset the presumption that the *Tochi Daicho* listing was correct.

#### OBKAL v. ARMALUUK

The main thrust of the plaintiffs' claim was that the transfer was conditional; that is to say it was Derbai's property as listed but subject to reversion to and control by the lineage. No provision was made by the Japanese for conditional transfers in the *Daicho* listing, they asserted. The plaintiffs overlook the fact that had the lineage interests in this land continued in effect after the transfer to Derbai, he would have been listed under the Japanese system as administrator rather than individual owner.

The primary concern of the court, however, is to attempt to settle once and for all the plaintiffs' theory—compounded of equal parts of self-interest, traditional custom, and real property law followed in Palau beginning with the Japanese administration—that even though land is individually owned, the clan or lineage has a reversionary interest and control over it. The plaintiffs' witnesses recognized that the land was transferred to defendants' predecessor but insisted his transfer to the defendants was contrary to the custom and that it should have reverted to the lineage or descended to intervenor Yuriko as representative of the lineage.

The plaintiffs brought on one witness, who had purchased a portion of the land in question, to testify that he refused to accept the transfer from the listed owner, Derbai, without lineage approval because there was "no such thing" as individual ownership free from lineage control.

[1] This court has rejected this theory now advocated by the plaintiffs each time it has been presented. In *Ngiruhelbad v. Merii*, 1 T.T.R. 367 at 369, this court said:—

"It is recognized that 'individual land' was a foreign concept that had no place originally in Palau customary land law. It is clear, however, that the very purpose of introducing this land concept was to get away from the complications and limitations of the Pa-

lauan matrilineal clan and lineage system and to permit individual control of land and patrilineal inheritance of it. . . . Where there are a number of heirs or persons among whom the deceased has directed that land be divided, it is recognized that it would be at least consistent with Palauan custom for the deceased's oldest surviving brother or sister to handle the matter or, as it is sometimes stated, to temporarily 'stand in the place of' the deceased to protect the rights of all concerned and to arrange details of the division."

This judgment was appealed and was affirmed by the Appellate Division in *Ngiruhelbad v. Merii*, 2 T.T.R. 631 at 636, where it is said:—

"We have set out the chain of authority here to show that old Palauan custom is not, and has not been for more than sixty years (as of 1961), the sole criterion to be considered concerning title to and transfer of land. Administrative determinations or rulings of the various foreign administrations take precedence over local custom. . . .

"In this instance, the Japanese Administration, in its land survey of about 1938—40, confirmed individual title to land, free from lineage control. In this survey, the administration made careful provision for proof that the clan or lineage involved consented to the transfer of particular lands to individual ownership in the manner required by custom for transfer to another group."

The foregoing decision was followed in *Orrukem v*. *Kikuch*, 2 T.T.R. 533, the court saying: "... in the case of individual land, the lineage or clan from which it came retains no control over it ...." This court recognizes the soundness of these decisions and because the court is bound by the Appellate Division judgment, it must be applied here.

The plaintiffs also attempted to show that Derbai wanted to or attempted to transfer the land in question prior to his death to Yuriko. The fact remains he failed to carry out this intent, if he ever had it. The weight of the evidence is that shortly before his death he passed this land to defendants Armaluuk and Armaluuk's sisters, Aot and Mukurur. It was a completed gift causa mortis

and was within Derbai's power to make. For gifts at death see: Rechemang v. Belau, 3 T.T.R. 552.

[2] The court concludes from the foregoing that on its merits the dispute must be settled favorably to the defendants. Were it not for the court's desire to emphasize the principles applicable to individual land ownership concepts and to give further guidance to those clan or lineage traditionalists who resort, usually as a matter of self-interest, to the theory of the inalienable right of the clan or lineage to control land no matter what the abstract or chain of title shows, we need not have considered the merits in this case at all. It is clear the two-year statute of limitations relating to actions against representatives of decedents in possession of an estate precludes plaintiffs from recovering the land from defendants some ten years after the defendants took possession and control of the land upon the death in 1957 of Derbai, their predecessor.

It was generally agreed by witnesses for both sides that the only persons on the land at the time of Derbai's death was defendant Armaluuk's sisters and their families. Yuriko "lived" with Mukurur but actually was away attending school both before and after Derbai's death. A member of the plaintiffs' lineage, who had lived on the land during Derbai's lifetime and left before his death, returned and built a house on the land (with the defendants' consent) some three or four years after the defendants assumed exclusive possession.

The evidence demonstrates the defendant Armaluuk and his sisters, as matrilineal nephews and nieces of decedent, represented him and upon his death took possession of that part of his estate represented by the land in question. The cause of action, if any, against the decedent concerned his disposition (before his death) of the land, contrary to custom and in violation of the traditional mandate

land can be transferred only upon consent of the senior lineage members.

The evidence shows the only objection raised by the plaintiffs' lineage to the defendants' occupancy of the land was approximately a year after Derbai's death, when plaintiffs Maria, Kesolei, and Uchelbesang discussed return of the land to lineage control with Ngirchomlei Merar, who is related to the defendants but who had no direct interest in the land in question and did not live there. According to his testimony, he persuaded them the lineage had no interest in the land. In any event, they took no further action and waited until September, 1967, before bringing the matter to court. Their time to take action against the defendants who were in possession of Derbai's land as his successors in interest had long since expired.

#### JUDGMENT

It is ordered, adjudged, and decreed:-

- 1. As between the parties and all persons claiming under them, the land known as Suuch and listed in the *Tochi Daicho* as Lot No. 877, comprising 656.9 tsubo, located in Koror Municipality, Palau District, is the individual property of the defendants, except that portion of approximately 160 tsubo transferred to Delemel Ngiratmarikel and that portion of approximately 100 tsubo given by Derbai Ucherkemur to Lisa Yuriko Omdasu, the intervenor.
- 2. That the Olngebang Lineage of Ikelau Clan, Koror, does not have any right, title, interest, or control of the land above described.
- 3. This judgment shall not affect any rights-of-way over the land in question.
- 4. Defendants are awarded such costs as may be claimed by them in accordance with law.