

[11, 12] The court believes that either bail or suspension of imprisonment is as much a modification as if it were now to attempt to reduce the sentence. When sentence has been imposed the court loses jurisdiction of the case except for certain purposes connected with an appeal. This want of jurisdiction is briefly discussed in the judgment order entered August 20, 1968, in *Trust Territory v. Takeo Yamashiro*, 4 T.T.R. 95. Modification may be accomplished only by the High Commissioner's power of parole.

JUDGMENT

It is the judgment of the court that the accused, Mikel Mad, is guilty of murder in the first degree and that he shall be sentenced to life imprisonment.

BAULANG IKEDA, Plaintiff

v.

IKEDA NGIRACHELBAED, Defendant

Civil Action No. 436

Trial Division of the High Court

Palau District

May 25, 1970

Complaint for divorce, property settlement and children's support. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that as wife had been cast off under the custom by the husband her relief of property settlement should be decided by custom rather than under the Code and decreed property settlement accordingly.

1. Palau Custom—Divorce—"Tilobed Ra Rebai"

When a wife is *tilobed ra rebai* she is cast off under Palauan custom by the acts of the husband amounting to adultery or by a new marriage with another under the custom.

2. Palau Custom—Divorce—"Olmesumech" and Food Money

Under Palauan custom when a wife is *tilobed ra rebai* she is entitled to a property settlement in addition to the payments of *olmesumech*, or "parting money."

IKEDA v. NGIRACHELBAED

3. Palau Custom—Divorce—“Olmesumech” and Food Money

Under Palauan customary law *olmesumech* and food money, if any, are due to the same extent and under the same circumstances after a court divorce as after a divorce under local custom, but they should be handled as a separate matter from the divorce so far as the courts are concerned and the same opportunity should be given to settle them through traditional channels as after a divorce under local custom.

4. Domestic Relations—Divorce—Custody

Unless it is demonstrated by the evidence that the mother is not a fit and proper person to have custody, the court normally will award custody of minor children to the mother.

5. Domestic Relations—Support

Under Palauan statute the offending husband must provide for his minor children's support.

6. Palau Custom—Divorce—“Tilobed Ra Rebai”

As to marital or communal property traditional custom provides that the wife who is *tilobed ra rebai* is entitled to all marital property except the personal items necessary to the man's welfare, and the family automobile may be such an item.

7. Domestic Relations—Divorce—Custody

Whoever has custody of the minor children should hold the family house in trust for them.

<i>Assessor:</i>	<i>Presiding Judge, PABLO RINGANG</i>
<i>Interpreter:</i>	<i>PETER NGIRAIBIOCHEL</i>
<i>Reporter:</i>	<i>SAM K. SASLAW</i>
<i>Counsel for Plaintiff:</i>	<i>JOHN O. NGIRAKED</i>
<i>Counsel for Defendant:</i>	<i>ROMAN TMETUHL</i>

TURNER, *Associate Justice*

Plaintiff filed complaint for divorce, property settlement and children's support against the defendant. Plaintiff did not specifically claim relief under Section 402, Palau District Code, but sought what amounted to the same result as provided by the statute which requires payment by the father, when he is at fault in breaking up the marriage, of child support.

Plaintiff and defendant were married in 1947 and had ten children. Only six of these are under 18 years of age

and therefore entitled to child support payments. The defendant husband forced the wife to leave the marital home approximately one year prior to the trial. He required, however, that the children remain in the home with him and with the woman he claims to have married under the custom. The testimony indicated the defendant was having relationships with the woman for approximately 10 years prior to the trial.

[1, 2] The plaintiff was *tilobed ra rebai*, that is, cast off under Palauan custom by the acts of the husband amounting to adultery or by a new marriage with another under the custom. The wife's entitlement to relief is not covered in the District Code section but she is entitled to a property settlement in addition to the payments of *olmesumech*, or "parting money". An extensive review of entitlement of the wife is found in *Santos Ngodrii v. Robert Kumaichi and Rekesuk Kumaichi*, 5 T.T.R. 121.

In this case even though the parties had been separated approximately one year the traditional meeting of the families of the parties followed by the payment of *olmesumech* has not been held nor payment made. This judgment is not intended in any manner to prevent, modify, or interfere with the traditional meeting and payment of *olmesumech*.

[3] The Palau District case, *Itelbang v. Gabrina*, 2 T.T.R. 194, explains the position of the court in this regard:—

"It is believed that under Palauan customary law *olmesumech* and food money, if any, are due to the same extent and under the same circumstances after a court divorce as after a divorce under local custom, but that they should be handled as a separate matter from the divorce so far as the courts are concerned and the same opportunity should be given to settle them through traditional channels as after a divorce under local custom."

The plaintiff does not ask for alimony and none will be granted. She may be entitled to receive *olmesumech* arranged between the relatives of the parties.

[4, 5] The plaintiff asks for custody of the six minor children under 18 years of age. Unless it is demonstrated by the evidence that the mother is not a fit and proper person to have custody, which certainly is not the situation in this case, the court normally will award custody of minor children to the mother. Under Palauan statute the offending husband must provide for their support.

[6] As to the marital or communal property the court will follow the traditional custom that provides that the wife who is *tilobed ra rebai* is entitled to all marital property except the personal items necessary to the man's welfare. We make a significant exception, or addition, to "necessary" items by including the family automobile.

[7] The family house, on land leased from the government, is awarded to all the children of the parties, both adults and minors, to be held in trust for them by the plaintiff so long as she shall have custody of the minors. Whoever has custody of the minor children should hold the house in trust for the children.

Whatever other personal properties the parties may have acquired appears to have been divided outside of court.

JUDGMENT

It is ordered, adjudged, and decreed:—

1. That the plaintiff is hereby granted a divorce from the defendant and the bonds of matrimony heretofore existing between them be and the same are hereby abrogated and set aside.
2. The plaintiff is granted custody of the minor children until further order of the court.
3. That the individual property—land leased from the government, building, and furnishings—shall be held in

trust by the plaintiff for the benefit of the minor children of the parties and with right of immediate occupancy therein, and if at any time the plaintiff no longer has custody of the minor children the person having such custody shall hold the property in trust for them with right of occupancy.

4. That the defendant shall pay to the plaintiff as and for support and maintenance of the minor children of the parties the sum of fifty dollars (\$50.00) per month payable on the first day of each month commencing June 1, 1970, and continuing thereafter until further order of the court. Said payments shall be made through the Clerk of Courts.

5. That the 1968 Toyota automobile, now in the possession of the defendant, be and the same hereby is awarded to the defendant and he shall be obligated to make the payments remaining due on said vehicle.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

JUAN LEON GUERRERO MANALO

Criminal Case No. 242

Trial Division of the High Court

Mariana Islands District

June 4, 1970

Prosecution for rape and burglary. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that evidence failed to establish essential elements of crime of rape and acquitted accused of that charge, however, court found evidence was sufficient to support conviction of charge of burglary.

1. Rape—Elements of Offense

Elements of the crime of rape in the Trust Territory are that the act of sexual intercourse must be unlawful, by force, and against the will of the female. (T.T.C., Sec. 387)