

ISEBONG, Plaintiff
v.
SADANG and OSARCH KODEB, Defendants
Civil Action No. 38
Trial Division of the High Court
Palau District
February 14, 1958

Action to determine rights in land in Ngaraard Municipality, in which defendants and their predecessors in interest regularly used land since German times, under claim of right and adversely to claims of clan represented by defendant. The Trial Division of the High Court, Chief Justice E. P. Furber, held that clan had ample opportunity to take matter up with Japanese Administration and it is now too late to correct any wrong.

Former Administrations—Redress of Prior Wrongs

If transfers in 1920 of which party now complains were wrongful, it is now too late to expect courts of this administration to correct the wrong.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The land in question has been used regularly under claim of right by one or the other of the defendants Sadang and Osarch Kodeb, or those through whom they claim, since German times, without serious objection being made by any of the Butelbai Clan until shortly before the bringing of this action.

2. This use has been clearly adverse to the claims of the Butelbai Clan at least since the 1920's or earlier.

3. If there was anything wrong about this use, the plaintiff Isebong and the Butelbai Clan, for whom she claims, had ample opportunity to take the matter up with the proper authorities of the Japanese Administration.

CONCLUSIONS OF LAW

1. The plaintiff Isebong in this action complains principally about transfers, or alleged transfers, occurring in

the 1920's or earlier. It is not at all clear that there was anything wrong about these. But if there was, it is now too late to expect the courts of this administration to try to correct the wrong. See *Aneten v. Olaf*, 1 T.T.R. 606, and the second paragraph of the Conclusions of Law in *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14.

2. The defendant Sadang lays stress on the fact that he owns this land as a member of the Ongiong lineage. No issue as between him and this lineage has been raised in this action. He and the lineage appear to be in complete harmony. The defendant Osarch Kodeb admits that he is using the land under Sadang, and Osarch Kodeb, as the senior member of the lineage, joins with Sadang in claiming merely that the land is either Sadang's individual land, or the land of the Ongiong lineage which has been assigned to Sadang to use. Therefore, no determination is made in this action as to rights as between Sadang and the lineage.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

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

(a) The Butelbai Clan of Ngruil Village in Ngerche-long Municipality, represented in this action by the plaintiff Isebong, has no rights of ownership in the land known as Uluchel, located in Achol Village in Ngaraard Municipality in the Palau District, consisting of about 5,710 tsubo of coconut land registered in the official record of the Land and Claims Office, Koror, Palau District, "Daichio ra Chutem ra Ngerard Municipality, 1941" No. 1; and

(b) The land described above is either the individual land of the defendant Sadang, who lives in Achol Village, or is the property of the Ongiong lineage of the Btelulechang Clan of Achol Village, assigned to the

defendant Sadang to use. The Ongiong lineage is represented in this action by the defendant Osarch Kodeb, who lives in Achol Village.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. The defendants are granted judgment against the plaintiff Isebong, who lives in Melekeich Municipality in the Palau District, for Five Dollars (\$5.00) costs.

NGIRUHELBAD, Plaintiff

v.

MERII, IMESEI, and TARKONG, Defendants

Civil Action No. 44

Trial Division of the High Court

Palau District

February 14, 1958

Action to determine ownership of land in Koror Municipality, in which plaintiff claims that individual land of deceased, if it came from lineage or clan of which deceased was member, should be controlled after his death by matrilineal lineage or clan from which it came. The Trial Division of the High Court, Chief Justice E. P. Furber, held that son of deceased, to whom deceased directed property should pass, owns property free and clear of any rights in plaintiff as deceased's brother or in matrilineal lineage or clan of which deceased was a member.

1. Palau Land Law—Individual Ownership

Individual land was foreign concept that had no place originally in Palau customary land law.

2. Palau Land Law—Individual Ownership

Purpose of introducing concept of individual land in Palau was to get away from complications and limitations of Palau matrilineal clan and lineage system and to permit individual control of land and patrilineal inheritance.

3. Palau Land Law—Individual Ownership

Older Palau custom is of little help in determining exact effect and implications of concept of individual land.