

KEREKERIIL TECHEKII, Plaintiff

v.

IBEDUL NGORIYAKL, Defendant

Civil Action No. 254

Trial Division of the High Court

Palau District

March 12, 1963

Action to determine ownership of land in Koror Municipality, in which clan land was sold with consent of all available strong members of clan except plaintiff. The Trial Division of the High Court, Chief Justice E. P. Furber, held that since plaintiff is weak-willed and unable to take normal part in deciding clan property matters, land could still be sold in spite of opposition of members by adoption of plaintiff's lineage.

1. Palau Land Law—Clan Ownership—Transfer

Under Palau custom, consent of strong member of clan is normally required for transfer of lineage land if member is able to give it personally.

2. Palau Custom—Clans—Membership

Under Palau custom, appointment by court or other authority of formal conservator or guardian for clan member who is weak-willed is not provided for.

3. Palau Land Law—Clan Ownership—Transfer

Under Palau custom, attempts by head of clan to sell lineage land with consent of all available strong members of clan, except one who is weak-willed, is within his powers.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Kerekeriil Techekii has long been and still is too weak-willed to take a normal part in deciding on clan and lineage property matters or in carrying out the usual obligation of a member of a high clan under the Palauan system of society.

2. The plaintiff Kerekeriil Techekii has at least twice purported to consent to the transfer to which she objects in this action and to which she has also objected previously.

OPINION

This action presents a sad conflict between the plaintiff's blood relatives and her relatives by adoption. It turns entirely upon the question of who is entitled under Palauan custom to act in clan and lineage matters for a member who is too weak-willed to act for herself.

[1, 2] The transfer of the land in question is complicated by rights of other lineages within the Idid Clan as a result of the history of this particular piece of land, and this decision is not to be taken as holding that a clan can ordinarily control disposition of land owned by a lineage within it. Clearly the plaintiff's consent would normally be required for a transfer of the land here involved, if she were able to give it personally. Clearly also the appointment by a court or other authority of any formal conservator or guardian for such a person is not provided for by Palauan custom.

[3] Under the circumstances disclosed in this action the court holds that the defendant Ibedul Ngoriyakl's attempt to sell the land in question with the consent of all except the plaintiff of the available strong members of the plaintiff's clan, of which the defendant Ibedul Ngoriyakl is the head, is within his powers and is effective in spite of the opposition of the members by adoption of the plaintiff's lineage.

JUDGMENT

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

1. As between the parties and all persons claiming under them the land known as Lot No. 872, consisting of part of that known as Ngermesungil, located in Meketii Village in Koror Municipality, Palau District, is subject to sale by the defendant Ibedul Ngoriyakl with the consent of all the other available strong members of the Idid

Clan without action by the plaintiff Kerekeriil Techekii in view of her condition.

2. The sale to the Western Carolines Trading Company of this land which the defendant has arranged with such consent is lawful.

3. In view of the plaintiff's condition no costs are assessed against either party in this action.

FIRETAMAG, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 87

Trial Division of the High Court

Yap District

March 25, 1963

Defendant was convicted in Yap District Court of malicious mischief in violation of T.T.C., Sec. 398. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant's acknowledgment that he had committed crime, made outside of court in presence of prosecutor and defense counsel, did not alone constitute sufficient evidence on which to base conviction when defendant pleaded not guilty at trial.

Reversed and remanded.

1. Constitutional Law—Due Process

No person in Trust Territory may be deprived of life, liberty or property without due process of law. (T.T.C., Sec. 4)

2. Constitutional Law—Self-Incrimination

No person in Trust Territory may be compelled in any criminal case to be witness against himself. (T.T.C., Sec. 4)

3. Constitutional Law—Public Trial and Confrontation of Witnesses

In all criminal prosecutions in Trust Territory, accused has right to public trial, and to be confronted with witnesses against him. (T.T.C., Sec. 4)

4. Criminal Law—Rights of Accused—Confrontation

Accused in criminal proceedings in Trust Territory may only be convicted after trial before impartial court, on basis of information presented as provided by law before court and in presence of interested members of public, subject to certain exceptions involving minors and scandalous matter. (T.T.C., Sec. 4)