

has interpreted and upheld the doctrine in applying the United States Code. For examples see *Indian Towing Co. v. United States*, 350 U.S. 61, 76 S.Ct. 122; *Eastern Airline v. Union Trust Co.*, 350 U.S. 907; and cases cited in 54 Am. Jur. 634.

Therefore, the argument that the doctrine of governmental immunity should be abolished is rejected. If the Congress of Micronesia wishes to open the litigation door wider, it can do so, but not this Court.

IYAR NGIRATULMAU, Plaintiff

v.

NGIRATKAKL MEREI and KUKUMAI RUDIMECH,
Defendants

Civil Action No. 495

Trial Division of the High Court

Palau District

October 7, 1974

Dispute over ownership of Palauan money. The Trial Division of the High Court, Hefner, Associate Justice, held defendant's evidence more convincing than plaintiff's.

1. Appeal and Error—De Novo Review

The Trial Division of the High Court will not try a case over again unless it is satisfied that no other just solution of the matter is practicable.

2. Appeal and Error—Generally

In appeals from the District Court to the Trial Division of the High Court, the latter may review facts as well as the law, but it will make every reasonable presumption in favor of the trial court.

3. Appeal and Error—Evidence—Weight

Trial Division of the High Court would conclude defendant was the owner of Paluan money where the testimony for his side was more consistent and clear than that for plaintiff.

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<i>Counsel for Plaintiff:</i>	OBODEI IYAR
<i>Counsel for Defendants:</i>	MEREI NGIRAURAKL

HEFNER, *Associate Justice*

This is an appeal by the plaintiff of the judgment in the District Court which found that Palauan money in dispute, known as *Eterenged*, was owned by maternal side of Merei Ngiraurakl's family.

The transcript in this case is quite voluminous and much of the testimony related to the history of the money. When all of the testimony and argument are condensed, the positions of the parties can be summarized as follows:

1. Plaintiff claims the money from his uncle Ngirachitei Irachel by way of trade of other Palauan money (See transcript pages 4, 8 and 16) and that the money is owned by the paternal side of the family, not the maternal line.

2. Defendant Merei claims that the money was given to him by Ngirachitei Irachel, his father. (See transcript pages 36, 37, 44, 46, 51 and 60.)

3. Defendant Kukumai presently has possession of the money due to a loan she made in 1960 to defendant Merei and the latter gave her the money as security for the loan.

Without tracing all of the prior history, it is apparent from the transcript and indeed admitted by both the plaintiff and defendant at the argument of the case, that the money in question was owned by Ngirachitei Irachel. This negates clan or lineage ownership and therefore Ngirachitel Irachel owned it individually. The question is, who acquired the money from him as under Palauan custom, the individual who owns Palauan money can dispose of it as he or she sees fit.

[1] Appeals from the District Court to the Trial Division of the High Court shall be considered on the basis of the record in the District Court and the argument at the hearing. The Trial Division of the High Court shall not try a case over again on appeal unless it is satisfied that no other just solution of the matter is practicable. Rules of Criminal Procedure, 31e (made applicable to civil cases by Rule 23, Rules of Civil Procedure).

[2] In appeals from the District Court to the Trial Division of the High Court, the latter may review facts as well as the law but it will make every reasonable presumption in favor of the trial court. *Soilo v. Trust Territory*, 2 T.T.R. 368. Since the District Court Judge observes the witnesses, he is in a better position to pass on the credibility of the witnesses. However, this Court has also read the transcript of the evidence to assure a full hearing by both parties.

Up to a point, all parties concur in the findings of fact of the District Court but it is the disposition of the money from Ngirachitei Irachel which has resulted in the conflicting testimony.

One significant factor relied upon by the District Court and this Court is the fact that the money has been in possession of defendant Merei for some time. Prior to the mortgage of the money to Kukumai in 1960, defendant states he had it for at least thirty years. Therefore, for a period of at least forty-four years the defendant has claimed control of the money. There have been long lapses of time when the plaintiff failed to object or make his claim known. In 1967 there were some meetings held with the Rubaks of Airai at which the defendant allegedly told the Rubaks that he would redeem the money from Kukumai and return for another meeting to resolve the conflict between him and the plaintiff. This has not been done and

this Court does not attribute much significance to these meetings nor does it assist in resolving this dispute.

During argument, the plaintiff argued that the money was now on the paternal side as the plaintiff paid *Chelebe-chiil* when he was not under an obligation to do so and Obkal (mother of Ngiraiwete-chong who owned the money at one time) returned the Palauan money to the paternal side. The problem with this theory is that according to Palauan custom, to transfer Palauan money from the maternal line to paternal line, there must be at least equal value for the money. There is no showing that such an equal trade took place here and as a matter of fact the money in question, *Eterenged*, was more valuable than any of the other Palauan money mentioned as trade money.

[3] The testimony of the defendant and his witnesses are more consistent and clearer than that of the plaintiff and his witnesses. The District Court chose to believe that defendant acquired the money from Ngirachitei Irachel and there is more than sufficient evidence to support that finding. This Court concludes that this decision was the correct decision and affirms the District Court's Judgment with two modifications.

Since Ngirachitei Irachel owned the Palauan money, he had the right to dispose of it as he saw fit. Since it is concluded that defendant Merei now owns the money, it should be outright and with no reference to the maternal side as this could be interpreted as to some limitation on his right to deal with the money.

Secondly, the District Court attempted to spell out the rights between defendant Merei and Kukumai as far as interest is concerned. Though the Court's concern is a genuine one, it is not properly an issue to be decided. If Merei and Kukumai have a dispute as to the redemption of the money, a separate suit should be brought to resolve it.

It is therefore the Judgment of this Court that the District Court Judgment be affirmed so far as it has determined that ownership of the Palauan money known as *Eterenged* is owned by defendant Merei without limitation and that this Court makes no determination of the redemption rights of Kukumai and Merei.

Court costs shall be allowed defendants.

SANTA et al., Plaintiffs

v.

JOHNSTON et al., Defendants

Civil Action No. 63-73

Trial Division of the High Court

Truk District

November 14, 1974

Action by person allegedly handcuffed in an unnecessarily harmful manner. The Trial Division of the High Court, Hefner, Associate Justice, held the government protected by sovereign immunity statute barring assault and battery actions against the government, held police supervisors would not be liable where their knowledge of the practice was not alleged and held that the officers involved, and the police chief, if he knew of the practice, could be held liable.

1. Trust Territory—Suits Against—Sovereign Immunity

Complaint against the government, for negligent supervision of its agents, resulting in injury to plaintiff through a certain manner of handcuffing him, was based on assault and battery and thus barred by sovereign immunity statute barring suits arising out of assault and battery. (6 TTC § 252(5))

2. Assault and Battery—Liability of Third Person

Allegation that superiors of police officers who allegedly handcuffed plaintiff in a cruel manner causing injury knew of the handcuffing because one of them, the police chief, was told of it at a meeting with plaintiff's counsel, was insufficient to sustain the complaint against the superiors other than the chief.

3. Public Officers—Immunity From Suit

Public officers are immune from civil suit for money damages for negligent, nonministerial acts committed by them while they are acting within the scope of their authority and in the discharge of their official duties.