TABELUAL, Plaintiff

v.

MAGISTRATE OMELAU and

NGIRAKEBOU EMEDUU, Defendants

Civil Action No. 283

Trial Division of the High Court

Palau District

February 5, 1964

Action to determine ownership of land in Nghesar Municipality which was owned formerly by lineage and loaned to municipality for thirty years, to be used as community coconut plantation. Land was listed in Japanese land survey as under administration of chief of community. The Trial Division of the High Court, Chief Justice E. P. Furber, held that lineage successfully rebutted presumption arising from listing in Japanese land survey and that land belongs to lineage.

1. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   Where land was taken by government in 1922 to be used as community land, taking is subject to review in accordance with established Trust Territory policy. (Policy Letter P-1, December 29, 1947)

2. **Palau Land Law—Japanese Survey—Rebuttal**
   Where evidence is clear and specific that lineage land was loaned to community and that negotiations for loan were public, presumption arising from listing of land in Japanese survey as community land is successfully rebutted.

3. **Palau Land Law—Lineage Ownership—Use Rights**
   Where lineage lends land to municipality for coconut plantation for approximate number of years coconut trees bear well, lineage is held to have consented to such use of land for as long as trees originally planted bear well enough to be of economic value.

4. **Palau Land Law—Lineage Ownership—Use Rights**
   Municipality in Palau which assumes control of community plantation under American Administration succeeds to whatever rights in land community formerly held under its traditional leaders, and municipality has no greater rights than community held.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Before the establishment of the community coconut plantation on it, the land in question was owned by the matrilineal lineage of which the plaintiff Tabelual is a member.

2. About 1922 the defendant Ngirakebou Emeduu, as chief of Nghesar, obtained permission from the leaders of the plaintiff's lineage to use the land for a community coconut plantation on the promise to return it after thirty (30) years when the coconut trees were no longer bearing nuts.

3. All of the coconut trees now on the land were planted at substantially the same time, around 1922, and no effort has been made to replace those that have died in order to maintain the plantation beyond the life span of the trees originally planted.

4. The land was listed in the official Japanese land survey of about 1938 to 1941 as under the administration of the defendant Ngirakebou Emeduu, although therein designated by his other name Ultirakl, by order of a Japanese official after consultation with only the traditional leaders of Nghesar and without any consultation with or consent of the plaintiff Tabelual's lineage, except so far as all lineages of Nghesar may in a sense be considered to have been represented by the traditional leaders of the community; no protest against this listing was made during the remainder of the Japanese Administration.

OPINION

This is an action for recovery of land which has admittedly been used continuously since at least 1922 as a community coconut plantation in what is now Nghesar Municipality, Palau District. There is no dispute but what

this was planted as a part of a program sponsored by the Japanese Administration under which each of the communities, now constituting municipalities, at least on Babelthaup and perhaps in other parts of the Palau Islands, were expected to plant one thousand (1,000) coconut trees a year for five (5) years on lands to be selected by the community leaders and then approved by the Japanese Administration. The land now in question was a part of Nghesar's first such coconut plantation. The dispute between the parties is as to the terms under which the use of the land for the coconut plantation was arranged.

The plaintiff Tabelual claims that permission was given for use only for thirty (30) years, which have now expired, and that upon the expiration of that period the land was to be returned, together with any coconut trees remaining on it. The defendant Ngirakebou Emeduu, who was admittedly chief of Nghesar at the time and took part in arranging for the use of the land, strongly supports the plaintiff's views. This defendant, while still holding the title as chief of Nghesar, no longer lives there and has delegated his authority generally to one of his "brothers under the custom" as acting chief. The defendant Omelau, as elected Magistrate and representative of Nghesar Municipality, strongly opposes this view and claims that the land is now municipal property. He is supported in this by at least a substantial part of the Municipal Council and, finally, by the acting chief, although the acting chief earlier expressed a willingness to acquiesce in the views of Ngirakebou Emeduu and seems to be particularly disturbed by Ngirakebou's having announced his intention of returning the land without first going over the situation with the acting chief.

This whole situation is very much complicated by the change of administration in the Palau Islands which took

place during the use of the land as a community plantation. The court takes judicial notice that, under the Japanese Administration, the chiefs of what have now become municipalities in the Palau Islands were on the administration's payroll and were to a very large extent a part of the Japanese Administration, and that their position now, under the American Administration, is very different.

[1] It may well be that, from the Japanese point of view, the listing of this land as under the administration of the then chief constituted a taking by the government and was intended to show, as the defendant Omelau contends, that this was community or government land. Any such taking, however, was well after the cutoff date established by the Deputy High Commissioner's Trust Territory Policy Letter P-1 of December 29, 1947, and is therefore subject to review in accordance with the policy therein announced. There is no intimation that any consideration was ever paid for the land, nor has there been any evidence of any specific sale or transfer by the plaintiff's lineage other than the original permission to use the land. There is evidence that other land included in Nghesar's community coconut plantations, was given to the Municipality. There is also evidence that part of a similar community plantation in Ngaraard Municipality was definitely recognized in the official Japanese land survey of about 1938–1941, as being on only a loan basis and, after the issue was raised and considered, the land was listed in the name of the private owner.

[2] The claims on behalf of the Municipality are based almost entirely upon the listing in the Japanese land survey of about 1938–1941 and the failure of those who conducted the original negotiations to report to the present leaders of the community, prior to the plaintiff Tabelual's request for its return, the terms under which per-

mission for the use of this land was granted. On the other hand, there is very clear and specific evidence that the terms were quite publicly negotiated at the time in the presence of a considerable number of residents, most of whom have now died. The court therefore holds that the plaintiff has successfully rebutted any presumption that this is municipal land arising from its listing in the Japanese survey of about 1938–1941 as under the administration of the chief.

[3] In view of the above holding and the facts found, the principal remaining question in this action is as to the exact meaning or effect of the ambiguous words used in stating the length of time for which permission for the use of this land was granted, as shown in the second finding of fact above. While the court recognizes that there is a general idea that coconut trees bear best for about thirty (30) years, it is also obvious from the testimony in this case that a number of the coconut trees involved here are still bearing, although the thirty years has expired. On all of the evidence the court considers that the leaders of the plaintiff's lineage must be held to have consented to the use of this land for a coconut plantation for as long as the trees originally planted (and there is no evidence that any others have been planted) continue to bear well enough to be of economic value.

[4] It further appears that, since the organization of the Municipality of Nghesar under the American Administration, the Municipality has assumed control of the coconut plantation in question and has been leasing it out without objection from any other governmental or traditional authority. The court therefore considers that, so far as this action is concerned, the Municipality has succeeded to whatever rights in the land the community formerly held under its traditional leaders, but holds that the Mu-

nicipality acquired no greater rights than the community lawfully held in the land in question as outlined above.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land located in Nghesar Municipality, Palau District, listed in the Tochio Daicho (Summary Report) of the official Japanese land survey of about 1938 to 1941, as Lot No. 577, containing fourteen thousand eight hundred thirty (14,830) tsubo more or less, and so shown on the sketch marked Exhibit A attached to the Record of Trial in this action, is owned by the matrilineal lineage of which the plaintiff Tabelual is a member and of which Oseked-Buk, who lives in Nghesar, is the present senior male member, but this ownership is subject to the rights of the Municipality of Nghesar set forth below.

2. The Municipality of Nghesar owns the coconut trees on the land which are still bearing well enough to be of economic value by Palauan standards, and has the right to have its agents or representatives go on the land to harvest from and care for those trees according to good Palauan agricultural practices without causing any more damage or inconvenience than is reasonably necessary for such harvesting and care, so long as said trees continue to bear well enough to be of economic value by Palauan standards, but the Municipality and its agents or representatives are to make no new or further plantings on the land even in replacement of their trees now there.

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

4. No costs are assessed against any party.