REKEMESIK NGIRAIECHOL, Appellant

v.

INGLAI CLAN, Appellee

Civil Action No. 398

Trial Division of the IIigh Court _

Palau District

Apri126, 1968

Appeal from judgment order. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that because of appellant's disregard of court proceedings to which they had been summoned, they lost any right to object to action taken by District Court.

District Court decision affirmed.

1. Appeal and Error-Generally

Because of the deliberate disregard of the court proceedings to which they had been summoned, the appellants lost any-right to object to the action taken by the court at that proceeding.

2. Courts-Jurisdiction

Normally a court will not interfere in internal affairs of an organization.

3. Courts---Jurisdiction

An exception to the rule that courts will not interfere in internal affairs of an organization is when someone seeks aid from the court to preserve either vested rights, which are considered in the nature of property, or to enforce an applicable statute or other law.

4. Clans---Generally

In some respects, a clan has certain similarities to a voluntary association or political party in the United States.

5. Palau Custom-Clans---"Maderainglai"

The title known as *Maderainglai* is the Number Two title in the Inglai Clan, and, as such, the holder of that title normally is the successor to the title of *Rekemesik*.

6. Palau Custom-Clans---"Rekemesik"

Whether a clan restores the authority of the *Rekemesik* or even whether it selects the *Maderainglai* as *Rekemesik* upon the death of the present titleholder was an internal matter of clan procedure in accordance with traditional custom and the courts would not interfere.

7. Custom-Generally

When local custom fails to provide an acceptable solution for any given problem involving all residents of a governmental subdivision, it is the right of one or more of the three branches of the government, to advance a solution.

8. Palau Custom-Clans-Representative of Chief

One of the powers of a chief is to appoint someone to represent him from time to time and it may not be the same person, but that is the chief's right rather than a matter for the clan except, in an appropriate case, to concur in the selection.

9. Palau Custom-Clans---Representative of Chief

If an acting chief, exercising the powers of a titleholder, does not want a representative, none should be appointed.

10. Palau Custom-Clans

This distinction between title bearer and acting title bearer is that the acting chief functions in place of the true title bearer.

11. Palau Custom-Clans---Representative of Chief

The representative of a title bearer serves for a particular purpose of specific time as an agent of the title bearer.

12. Palau Custom-Clans---Representative of Chief

The acting title bearer is selected by the clan while the representative is appointed by the title bearer whether he is the acting or true title bearer.

13. Palau Custom-Clans-Representative of Chief

An acting title bearer, being young and healthy does not need a representative and the appointment of one in such circumstances is invalid.

14. Courts--Jurisdietion

Where the Palau District Legislature, having exclusive authority to determine the qualification of its membership, selected a person other than the acting title bearer to sit in place of the hereditary chief of a municipality, it was a clan problem which should be acted upon in accordance with traditional custom.

Assessor:	JUDGE PABLO RINGANG
Interpreter:	SINGICHI IKESAKES
Reporter:	NANCY K. HATTORI
Counsel for Appellant:	AUGUSTO U. DEMEl
Counsel for Appellee:	WILLIAM O. WALLY

TURNER, *Associate Justice*

RECORD OF HEARING

Hearing on appeal from judgment order entered by the Palau District Court in its Civil Action No. 1095, upon a petition brought by appellee and designated "Motion for Order in Aid of Judgment" was heard in Koror, Palau District, by D. Kelly Turner, Associate Justice, April 24, 1968. Appellant was not present but was represented by counsel who called one witness in appellant's behalf. Appellee was present with his counsel and declined to present additional testimony. Counsel for the parties extensively argued the matter.

FINDINGS OF FACT

1.. Rekemesik is the chief's title of the Inglai Clan in Ngatpang Municipality.

2. The clan chief is the municipal chief and as such is entitled to sit as a representative of the municipality in the semi-annual sessions of the Palau District Legislature. (Art. I, Sec. 2, Charter of the Palau District Legislature)

3. Maderainglai Meliong was determined by the District Court judgment in Civil Action No. 1095, entered July 16, 1965, to be Acting *Rekemesik* of Inglai Clan. There was no appeal from this judgment.

4. This judgment settled a disagreement between the *Rekemesik* and *Maderainglai,* who claimed to be Acting *Rekemesik* by virtue of his appointment at a meeting August 3, 1964, between *Rekemesik, Maderainglai,* and clan members at which meeting, after settlement of the matter, *Maderainglai* paid *Rekemesik* twenty U.S. dollars which, in the words of the District Court, confirmed the "peaceful relationship between brothers according to the custom".

5. Rekemesik not only ignored his own and the clan's designation of *Maderainglai* as Acting *Rekemesik,* but also ignored the District Court's judgment confirming the appointment, when he named Techur as his representative to the Palau legislative session that commenced December 5,1967.

6. Maderainglai Meliong filed his motion to enforce the previous judgment and served summons on December 6, 1967, on both *Rekemesik* and Techur. Their counsel appeared on December 7, 1967, and asked to have the matter heard the following day, December 8, at 1:00 p.m.

7. At the time set for the hearing, *Rekemesik* remained on Babelthaup, Techur remained in attendance in the legislative session and their counsel failed to appear.

8. The District Court heard testimony at 3:00 p.m., two hours after the appointed hour for the hearing. The District Court found that after the 1965 judgment, members of the Inglai Clan met and reaffirmed their former designation of *Maderainglai* as Acting Chief and in addition terminated the right of Ngiraiechol to exercise the authority of *Rekemesik,* or Clan Chief. It is noted

the court did not find a termination of the title by the clan but only terminated in the titleholder the power to exercise authority of the title.

9. After the District Court ruled in favor of *Maderaing-lai* on his motion for an order in aid of judgment on December8, 1967, the *Rekemesik* and male and female members of the council of the Inglai Clan appointed, by written document submitted by appellant at the appeal hearing, Iked Etpison as *Rekemesik's* representative "at all sessions of the Palau Legislature". The "appointment" was dated March 15, 1968, and the legislature, after hearing before a special committee, accepted the appointment of Etpison "to attend the current session of the Palau Legislature and the future sessions of the Palau Legislature until you shall be incapacitated".

OPINION

This was an appeal from a District Court determination and Order in which the appellants clearly had no basis for objecting to the court order because of their wilful default in failing to respond to the court summons.

[1] Appellant's counsel, at the appeal hearing, argued the District Court had no jurisdiction to enter its order of December 8, 1967. The court holds that because of the deliberate disregard of the' court proceedings to which they had been summoned, the appellants lost any right to object to the action taken, and that the District Court had jurisdiction to enforce its own prior judgment in accordance with the motion for relief.

This should sufficeto decide the appeal. There .are, however; several questions remaining, including the important one as to whether the District Court, or any 'court, may exercise jurisdiction over and rule upon questions 'arising from internal government and proceedings of a clan.

[2-4] Normally, a court will not interfere in internal affairs of an organization. An exception to this general rule is when someone seeks aid from the court to preserve either vested rights, which are considered in the nature of property, or to enforce an applicable statute or other law. In some respects, a clan has certain similari_ ties to a voluntary association or political party in the United States. As to court jurisdiction over such organizations, see 25 Am. JUI'. 2d, Elections, §§ 126, 127.

Under the exception to the general rule, it is appropriate to review the determinations of the District Court in this case.

[5,6] In accordance with the findings of fact, we hold. the appellee has a vested right to be the Acting *Rekemesik* of the Inglai Clan and the acting traditional chief of Ngatpang Municipality. This court affirms the District Court determination that the title known as *Maderainglai* is the Number Two title in the clan, and, as such, the holder of that title normally is the successor to the title of *Rekemesik,* now held by the appellant. This court also holds that the title bearer, *Rekemesik* Ngiraiechol, has been divested of authority to exercise the powers accompanying the title by the clan due to his physical inability to perform his duties. We point out, however, that whether the clan restores this authority or even whether it selects *Maderainglai* Meliong as *Rekemesik* upon the death of the present titleholder is an internal matter of clan procedure in accordance with traditional custom and the courts will not interfere. When action has been taken in the future, the court will uphold the vested rights conferred by the clan in the same manner as the court has upheld in the past clan actions.

[7] A similar case was decided in *Trust Territory v. Benido and Pilmon Lohn,* 1 T.T.R. 46, which involved the selection of the *Nanmarki,* a title comparable to the

title of *Rekemesik* of the Inglai Clan in Ngatpang Municipality. In that case, the court said:

"A recognition of Max Iriarte as *nanmarki* by one group of people and the recognition of Benido as *nanmarki* by another group of people, brought about a feeling of extreme bitterness between the two groups, ...

"UnderPonapean custom, there was no way of settling the dispute which provoked the enactment of the regulations in question, other than war. By the provisions of Article 5, Section 3, of the Trusteeship Agreement, the administering authority has accepted responsibility for 'the maintenance of law and order within the Trust Territory'. When local custom fails to provide an acceptable solution for any given problem involving all residents of a governmental subdivision, it is the right, perhaps even the duty, of one or more of the three branches of the government, to advance a solution."

The court holds, therefore, that until the clan takes some lawful action in accordance with the custom, the acting chief of the clan is Meliong.

[8,9] One of the powers of a chief is to appoint someone to represent him from time to time. It need not be the same person. But this is the chief's right rather than a IIlatterfor the clan except, in an appropriate case, to concur in the selection. If the acting chief, exercising the powers of a titleholder, did not want a representative, none should be appointed.

[10, 11] The distinction between title bearer and an acting title bearer is that the acting chief functions in place of the true title bearer. The "representative" of a title bearer serves for a particular purpose of specific time as an "agent" of the title bearer. The appointment of a representative is a modern concept of the custom, dating back only to Japanese times when the practice began. Its precise nature is not settled by tradition and the court, therefore, has applied principles of modern law to defining and classifying a "representative" as an agent

as distinguished from an acting titleholder who is a substitute for the titleholder.

[12, 13] The acting title bearer is selected by the clan while the representative is appointed by the title bearer whether he is the acting or true title bearer. We agree with the District Court which held that the acting title bearer, being "young and healthy" and therefore did not need a representative, thus holding that the appointment of Techur, by implication without directly stating so, was invalid. It follows from this that the appointment of Etpison was equally invalid as a clan action.

However, the District Legislature, having exclusive authority to determine the qualification of its membership (an authority with which the court will not directly interfere after action has been taken by that body) selected Etpison as against Meliong to sit in place of the hereditary chief of Ngatpang Municipality. It now remains for the clan or Meliong to take such action as may be appropriate in the light of this opinion.

[14] As the matter now stands, Etpison represents the chief in the legislature, but the chief, by prior clan action, was replaced by an acting chief. The clan, rather than the court, should solve this problem. Once the clan has acted in accordance with traditional custom, the court may be called upon to enforce that action.

We conclude from the foregoing that, it is

Ordered, adjudged, and decreed : –

That the court affirms the decision of the District Court which holds that the appellee, Meliong, is the acting title bearer of Inglai Clan of Ngatpang Municipality, and unless his authority is taken from him, he has the right, under the custom, to appoint his own representative, if one is necessary.

It is further ordered : –

That the decision of the District Court is affirmed that

the title known as *Maderainglai,* held by Meliong, is a successor title to the chief's title, and that the appellant *Rekemesik* Ngiraiechol bears the chief's title and will continue to do so until his death or selection of a replacement *Rekemesik* in accordance with custom.