

KEBLIIL era KEDAM, or YOULKEDIDAI by
RISONG RECHETMOL, Plaintiff

v.

MUKUI UCHERREMASCH, IDERRECH, and
DIRREMASCH OCHEBIR, Defendants

Civil Action No. 406

Trial Division of the High Court

Palau District

December 22, 1969

Review of summary judgment of Palau District Court upholding appointment of principal male title holder of Kedam or Youlkedidai Clan of Angaur Municipality, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, affirmed District Court's judgment holding that by traditional custom authority of senior *ochel* member of clan is greater than all others and her exercise of that authority, when approved, is not to be set aside.

1. Palau Custom-Clans-"Ochel"

Under Palauan custom true *ochel* descendants are the strongest members of a clan followed in order of authority by *ulechel* members, by adoptive

members and finally, members by "drifting" or sometimes called "through the floor", or "some other way".

2. Palau Custom-Clans--"Ochel"

When a group in authority no longer exists or the membership in it is too young to exercise authority, the next succeeding group exercises control over clan affairs and properties in lieu of the true *achel* or *ulechel* lines.

3. Palau Custom-Clans--"Ulechel"

A *ulechel* member who bears the principal title in a clan has authority, subject to approval and in the absence of senior *achel* members, to appoint the male title bearer in the clan.

4. Palau Custom-Clans--"Ochel"

When clan membership is not separate and distinct, the senior *achel* of the total group comprising the two clans has the power to appoint the male title bearer, subject to approval by the senior membership and village counsel.

5. Palau Land Law-Clan Ownership-Income Distribution

Other than the mandate to pay funds to the male titleholder, there is no specific provision for distribution to the clan members in the Mining Trust Agreement.

6. Palau Land Law-Clan Ownership-Income Distribution

Money paid from the Mining Trust Agreement is paid for the benefit of the clan, all members, not just the titleholder or his immediate family or friends and if there is any failure in that respect the clan may petition for an accounting and such orders for equitable distribution as may be appropriate.

7. Palau Custom-Clans--"Ochel"

By traditional custom the senior *achel* member of the clan has authority which is greater than all others and her exercise of that authority, when approved, is not to be set aside.

Assessor:

Interpreters:

Reporters:

Counsel for Plaintiff:

Counsel for Defendants:

JUDGE PABLO RINGANG
KAZUMOTO H. RENGULBAI
and SINGICHI IKESAKES
NANCY K. HATTORI and
SANAE N. SHMULL
JOHN O. NGIRAKED
BAULES SECHELONG and
WILLIAM O. WALLY

TURNER, *Associate Justice*

This case was brought for review of a summary judgment entered upon stipulation in Palau District Court Civil Action No. 1308. The plaintiff requested review and permission to introduce evidence. Although the District Court judgment was entered upon an agreed statement of facts, the plaintiff did not approve the result. The plaintiff's counsel in the District Court resigned and, she is represented now by new counsel.

This court decided that in all fairness, the facts agreed to by counsel without introduction of evidence should be supplemented with testimony from both sides. The controversy arises over the appointment of the principal male titleholder, the *Uchelsias*, of Kedam or Youlkedidai Clan of Angaur Municipality. The clan will be referred to as Kedam. The other clan here involved is the Kedidai, sometimes referred to as Babelkedidai when used in juxtaposition with Youlkedidai.

Although there are two clans involved in the dispute, there is only one membership because for the last twenty years-since Harry Uyehara, former Palau District anthropologist, listed membership of all Angaur clans for Angaur Mining Trust purposes-the membership of Kedam and Kedidai have been the same. Titles, male and female, are different in the two clans as are properties and income. It is, perhaps, possible to segregate members on the basis of their lineage. The plaintiff sought to do this. The defendants did not. The District Court judgment did not segregate the membership. The court held:-

"When the majority of the stronger members of a clan appoint a person to a title, such appointment shall be valid. The person so appointed will have full authority, unless objected to by the village chiefs, until removed, replaced, or death of the person."

Like so many of these clan or lineage disputes, almost invariably over ownership or administration of land, the

parties to the controversy wanted to trace the history of the group from its founding. As is usually true, the early story in this case did not resolve the present dispute. It did assist in understanding the controversy as to who has authority to appoint the male titleholder of Kedam.

This early history shows a most complex system of clan administration, which mayor may not have arisen from the existence of two clans with a single membership. The evidence shows that titles of the two clans were simultaneously held by one person on several occasions, and it also shows that appointive powers were exercised by persons holding title in one clan who appointed titleholders in the other. Similar relationship of two clans of Peleliu is considered in: *Louch v. Mengelil*, 2 T.T.R. 121.

A typical and recent example of this interchanging relationship between Kedidai and Kedam is that in the plaintiff's genealogical chart, she does not recognize defendant Iderrech as a member of either clan yet his natural mother, Maria, bore the female title, *Dirremasch*, of Kedidai Clan prior to appointment of Ochebir to that title. Furthermore, defendant Mukui's mother and Iderrech's mother were sisters. Still another example of interchanged titles is that Batil-who the plaintiff's chart shows to be a member of Kedam-at one time, according to the plaintiff's daughter, Amania, held not only the male title of *Uchelsias* in Kedam but at the same time held the male title, *Ucherremasch*, of Kedidai. Also the plaintiff's daughter testified that Maungil, who adopted Tmeleu together with Tmeleu's adopted daughter, the plaintiff Risong, into Kedam Clan, held not only the female title in Kedam but at the same time the female title in Kedidai.

The apparent reason for these confusing practices is because of the intermingling of lineages by birth and adoption and the insistence by all members to attempt to

distribute the total membership group into two clans. It seems to the court the membership would resolve some of these problems by recognizing the fact of single membership having competing factions or perhaps lineages within the membership. In any event, all senior members should, in the future, have a right to approve or veto appointments to title in either clan.

It is noted that some benefit should be derived by the parties and their followers by this action in that for the first time, there has been a detailed presentation of evidence touching on the organization and exercise of authority by titleholders of the Kedidai and Kedam clans of Angaur. The counsel for the parties are to be complimented for their presentation of this complex problem.

Kedidai, by tradition, was the "original clan" and the people who later were designated as Kedam "drifted" to Kedidai where they established a lineage of lesser authority and which became known by the house to which it was assigned. It subsequently became regarded as a clan of the same name. In any event, the ancient lineage disappeared and the "modern" membership, beginning four generations before Ochebir and five generations before Risong, originated with three sisters: Kamril, Limei, and Ebibech. The plaintiff, without adequate reason, listed the descendants of Ebibech as the Kedam Clan and descendants of Kamril and Limei as Kedidai Clan. We reject the unsupported differentiation and accept the 20-year old finding the membership of both clans is the same, even though titles and title bearers are sometimes different for each and sometimes are the same.

[1, 2] Even under the plaintiff's genealogical chart, the plaintiff is not shown to be equal in authority to the defendant Ochebir. The plaintiff Risong is *ulechel* by birth and was adopted into an *ochelline* descended from Ebibech while Ochebir is a true *ochel* in her lineage descended

from Kamril. It is accepted Palauan custom that true *ochel* descendants are the strongest members of a clan followed in order of authority by *ulechel* members, by adoptive members and finally, members by "drifting" or sometimes called "through the floor", or "some other way". When one group no longer exists or the membership in it is too young to exercise authority, the next succeeding group exercises control over clan affairs and properties in lieu of the true *ochel* or *ulechel* lines.

The plaintiff is female title bearer, the *Rechetmol*, of Kedam and claims the right to appoint the male title bearer, the *Uchelsias*. She wants to appoint her husband, Ngeskebei. The plaintiff disdained identifying the defendant Iderrech by a clan title. For many years, he has been the number two titleholder of Kedam, the *Ucheresomel*. He was thus listed by Uyehara in his official compilation of April 18, 1950. The other two defendants, who are the principal male and female title bearers of Kedidai Clan, insisted they and the group they represent have appointed Iderrech as *Uchelsias* of Kedam Clan. The predecessor *Uchelsias*, Derbai, husband of Tmeleu, dropped the title or died (the evidence is unclear) when his wife died in 1965. Tmeleu was a strong member of the group in that she was an adopted *ochel* in one lineage and *ochel* by birth in another. She appointed the plaintiff Risong as successor *Rechetmol*, female title bearer of Kedam. There was some attempt made to show that she also "took away" the title of the defendant Ochebir as *Dirremasch* of Kedidai. But even if the evidence demonstrated Tmeleu went through with her announced intention of removing Ochebir's title, which in fact was not shown, the attempt would have been contrary to Palauan or clan custom because Tmeleu did not appoint Ochebir and her authority did not extend to such action as removal of her title in a clan in which they both were true *ochel* members. Furthermore,

Ochebir was the senior female *ochel* member and under the custom, the strongest clan member when Tmeleu died and prior to that time she and Tmeleu had equal authority in Kedidai Clan because both were senior *ochel* members. The principal distinction between the two was that Tmeleu bore the principal title in Kedam because of her adoption into that clan before Ochebir was chosen principal title bearer in Kedidai. See: *Dirralemau Elechuus v. Mad Kdesau*, 4 T.T.R. 444.

[3,4] On its face the issue in this case could be reduced to the question whether an *ochel*, bearing title in one clan, Kedidai, has authority to appoint (subject to membership approval) the male title bearers in the other clan, Kedam, or whether a *ulechel*, bearing the female title in Kedam, has authority to appoint the male title bearer in Kedam in the absence of senior *ochel* members. If there were separate memberships, the answer would be readily obtainable. The *ulechel* member, who bears the principal title, has the authority (subject to approval) in the absence of *ochel* members. But when the membership is not separate and distinct, the senior *ochel* of the total group comprising the two clans has the power of appointment, subject to approval by the senior membership and village council. The District Court accepted the stipulation the majority of the membership approved Ochebir's action and only a small minority opposed it or at least preferred to support the intended appointment by Risong of her husband Ngeskebei.

There is much more at stake than power of appointment, however. The income from the Angaur Mining Trust Fund is paid to male titleholders of Angaur clans. The *Uchelsias* is entitled to payment of the Kedam share. Unfortunately, there has been a long history of mismanagement and arbitrary distribution of these funds in this clan by both sides of the controversy whenever they were in power. The controversies came to a head in 1964 when

Iderrech, as *Ucheresomel*, the number two title bearer, sued *Rechetmol* Tmeleu, the female title bearer, and her husband, *Uchelsias* Derbai, the male title bearer, for a more equitable distribution of the income. Trial was begun March 8, 1966, and then suspended when Chief Justice Furber referred the controversy back to the clan to resolve "their difficulties through traditional channels". In the meantime, Tmeleu, the title bearer and member of Kedam by adoption and *ochel* of Kedidai, died June 28, 1965. Risong was named defendant in her place, and subsequently Gabriel Ngeskebei was named representative of *Uchelsias* Derbai.

The referral back failed to settle the income distribution question and engendered further controversy over appointment of successor title bearers. March 25, 1966, this court appointed the parties to the then pending suit as a committee to collect the trust income until "a new *Uchelsias* is chosen by the clan". *Ucheresomel Iderrech v. Uchelsias Derbai and Risong*, Palau District Civil Action No. 309 (not reported).

The defendants soon thereafter elevated Iderrech from number two to principal title bearer. February 16, 1967, less than a year after dismissal of the preceding suit, the controversy came back into court when Risong as principal female title bearer of Kedam, and representing Kedam, sued Iderrech and the two Kedidai principal title bearers, the defendants Mukui and Ochebir, to establish her right to appoint her husband, Ngeskebei, as the number one title bearer of Kedam. Risong was not concerned about the distribution of income because once she had named the title bearer the income "belongs to us" according to the philosophy expressed in testimony and apparently adhered to in the past.

[5,6] Other than the mandate to pay funds to the male titleholder, there is no specific provision for distribution

to the clan members in the trust agreement. This does not mean, however, the money "belongs" to the titleholder to spend or do with as he sees fit. It is paid for the benefit of the clan-all members, not just the titleholder or his immediate family or friends. We emphasize again what was said in *Lalou v. Aliang*, 1 T.T.R. 94 at 98:-

"The clan is entitled to work out such division of the money received from the trust as it desires so long as it gives fair consideration to the welfare of all its members in accordance with accepted Palau custom."

If there is any failure in this respect by the *Uchelsias* for the Kedam Clan or, for that matter by the male titleholder for any Angaur clan, the aggrieved members of the clan may petition for an accounting and such orders for equitable distribution as may be appropriate. As in the present case, orders enjoining payment until settlement of the controversy may be obtained upon petition and appropriate showing.

[7] The District Court judgment shows the parties, through their counsel, agreed that the "defendants" represent some 200 persons including children and that the plaintiff represents approximately 40 persons. The District Court held that the majority should rule and sustained the appointment of Iderrech as *Uchelsias* by *Dirremasch Ochebir*. The testimony presented to this court as to the practice in the past history of the two clans leads to the conclusion that the District Court decision was correct, not only on the theory the majority should govern, but for the further reason that the appointment was by the senior *ochel* member of the membership. By traditional custom, her authority is greater than all others and her exercise of that authority, when approved, is not to be set aside.

The only way this court could set aside the appointment would be on a showing that there are two separate and distinct clans with separate, although perhaps related, mem-

berships. Under such circumstances, the strongest member of one clan could exercise authority in only that clan and not the other. But that has not been the practice in the past in the Kedidai-Kedam membership, and this court does not intend to change clan custom. If the members decide among themselves in the future to separate into two distinct groups and thereafter limit authority of members of one group over the other-which is the general custom followed in Palau-they may do so, and this court probably will uphold a clan decision of that kind upon petition and appropriate showing of the action taken.

It is, therefore,

JUDGMENT

Ordered, adjudged, and decreed:-

1. That the decision of the District Court in Civil Action No. 1308, that the authority vested in the defendant Iderrech by his appointment as *Uchelsias* of Kedam Clan may be exercised in full by him, be and the same hereby is affirmed.

2. That the Temporary Restraining Order issued by this court January 28, 1969, which enjoins all parties to this action, their agents or representatives from withdrawing, or expending any funds due, or that may become due to Kedam Clan from the Mining Trust Fund, is hereby quashed, set aside, and vacated.

3. That this judgment shall constitute notice to the District Administrator in accordance with the provisions of the judgment entered March 25, 1966, in Palau District Civil Action No. 309, that Kedam Clan has chosen Iderrech as *Uchelsias* and that he is authorized to receive any funds now due or that may become due, as long as he continues to bear the title, from the Angaur Mining Trust Fund to the Kedam Clan of Angaur.

4. That no costs are assessed.