

NGIS EDEYAOCH, Plaintiff

v.

**TIMARONG and IDESIAR TECHUR, Palau District Acting Land
Management Officer, successor to JOHN O. NGIRAKED,
Defendants**

Civil Case No. 494

Trial Division of the High Court

Palau District

July 10, 1974

Dispute over ownership of land. The Trial Division of the High Court, Hefner, Associate Justice, held that land listed to decedent in the Tochi Daicho

belonged to his heirs upon his death and that there was no evidence that government owned the land.

1. Palau Land Law—Japanese Survey—Presumptions

Plaintiff claiming that she and her sister, as heirs of their father, were entitled to land listed under the name of the father in the Tochi Daicho was entitled to presumption that the listing in the Tochi Daicho was correct unless there was a clear showing that the determination which resulted in the listing was wrong, and opposing party had the burden of proving the listing wrong.

2. Palau Land Law—Japanese Survey—Particular Cases

Where land was correctly listed to father of plaintiff, heir to her father, in Tochi Daicho, Government of the Trust Territory, which claimed the land through an unproven sale, could not divest plaintiff of ownership on the basis of its land title determinations, surveys and issuance of homestead permits relating to the land.

3. Real Property—Adjudication of Ownership

Where there was no evidence that landowner sold his land to the chief of his municipality or to the Japanese Government and no evidence that the chief owned the land or sold it to the Japanese Government, and the chief did not have the right to sell individual land not belonging to him, Trust Territory's claim it owned the land because of sale to Japanese Government and statute making all lands owned by the Japanese Government public property could not be sustained. (67 TTC § 1)

4. Real Property—Uncontested Claims

The government cannot acquire title to individual land by simply claiming it by public notice and considering the land its own if the owner does not contest the government.

5. Real Property—Adjudication of Ownership—Notice and Hearing

Land Title Determination hearings must provide a measure of due process to the landowner with adequate and reasonable notice of the right to file claims and be heard, and to also be informed of the fact that his land, sufficiently described, is being claimed.

6. Palau Land Law—Individual Ownership—Decedents' Estates

Individually owned land passes to a decedent's heirs, which by custom are his children, and a brother of decedent has no right to claim or administer the land.

7. Palau Land Law—Individual Ownership—Clan or Lineage Rights

Once land becomes individual land, the clan or lineage loses all control over it.

<i>Assessor:</i>	SINGICHI IKESAKES, <i>Associate Judge, District Court</i>
<i>Interpreter:</i>	AMADOR D. NGIRKELAU
<i>Reporter:</i>	SAM K. SASLAW
<i>Counsel for Plaintiff:</i>	ROMAN TMETUHL
<i>Counsel for Defendant Timarong:</i>	KAZUMOTO RENGULBAI
<i>Counsel for Defendant Idesiar Techur:</i>	JOHN F. VOTRUBA, <i>District Attorney</i>

HEFNER, *Associate Justice*

This matter concerns a dispute over certain real property located in Dims, Ngiwal Municipality, Palau. Although there was a referral to a Master for further hearing, this referral is rescinded and trial on the merits was held in the High Court.

At the beginning of the trial it was stipulated that the nine lots listed in the plaintiff's complaint were registered in the Japanese Tochi Daicho in the name of Edeyaoch who is now deceased. The plaintiff is his daughter. The plaintiff claims all of said nine lots for herself and her one sister.

It was also stipulated that the exhibit identified as Court's Exhibit No. 1 be admitted into evidence and that the defendant Trust Territory Government claims all land to the West of the red line on said exhibit. This puts in issue the ownership of portions of Tochi Daicho Lots Numbered 129, 130, 172, 176 and 179. The balance of the lots are conceded to be those of the plaintiff.

The red line on the Court's Exhibit 1 was apparently the result of a 1959 survey at which time the Government began issuing homestead permits, one of which was given to co-defendant Timarong in 1960. Any rights of Timarong flow from the Government.

The plaintiff's claim is that the land in question has been used by her father and herself for many years and that the

Tochi Daicho recognized the ownership as the individual land of Edeyaoch and that she and her sister, as the heirs of Edeyaoch are entitled to the land.

The Government and Timarong claim that although the Tochi Daicho showed the land as registered in the individual name of Edeyaoch, the land was sold to the Japanese Government or a Japanese Company and therefore pursuant to 67 TTC 1, the Trust Territory Government became the owner of the land. Land Determination hearings, Government surveys and the homestead program of the Government are cited as evidence of the claim of the Government and the right of Timarong to his homestead parcel.

At the time of trial, Felix Udui appeared on behalf of his father, Saoremang, asking to intervene. His claim is based on the fact that Saoremang is the oldest living brother of Edeyaoch and is entitled to administer the land pursuant to Palauan custom.

[1] The plaintiff is entitled to the presumption that the listing in the Tochi Daicho is correct and the Court is bound by that listing unless there is a clear showing that the determination is wrong. *Elechus v. Kdesau*, 4 T.T.R. 444. There is no claim here that the property was clan or lineage land and there is no dispute that Edeyaoch used the land as his individual land for many years, avoiding the complications and limitations of the matrilineal clan and lineage system. *Ngiruhelbad v. Merii, et al.*, 1 T.T.R. 367.

Once the Tochi Daicho Registration is established, the burden is on the opposing party in this case, the Government and Timarong, to rebut and overcome the ownership as listed. This, they have attempted to do by establishing a sale of the property in question and the subsequent actions of the Government relying upon that sale.

[2] The Court cannot find that the Government has sustained its burden and although the Government assumed it had a right to issue homestead permits for the land in question, none of its acts or actions such as holding land title determinations and issuing homestead permits were legally sufficient to divest the plaintiff of the ownership of her land.

[3] The testimony of the purported sale is minimal. According to the former land management officer, sometime during Japanese times the Chief of Ngiwal, known as Uong, allegedly sold a large parcel of land, including the land in question to a Japanese Company for a blanket, machete and some cloth. Thereafter, as proof of said sale, maps were prepared by the Japanese showing the land claimed by the Government. The Government Exhibits A and B purport to be tracings of the original maps which were apparently destroyed. The testimony of the Government witnesses correlate the red line on the Court's Exhibit No. 1 with the boundaries of Government land as shown on defendant's exhibits A, B and C.

The fatal flaw in the claim of the Government and Timarong is that if the original purported sale by Uong was not effective as to the land in question, then all subsequent acts of the Government and Timarong and any reliance of the Government on the Japanese maps cannot divest the plaintiff of ownership in her land. One cannot convey away land which does not belong to him. There is no evidence that Edeyaoch or the plaintiff sold any of the land in question to the Japanese Government or company. On the contrary, the plaintiff testified that neither she nor her father leased or sold the land to the Japanese. The testimony also indicates the plaintiff and her father farmed and used the land since approximately 1913. There is no evidence that the land was ever used by the Japanese. Whenever the Government surveyors came on the land, the plaintiff or

her sister told them not to include their land in the claim of the Government.

There is no evidence supporting the proposition that the land was owned by Uong. Although the concept of individually owned land was starting about the time Edeyaoch first acquired his interest, by the middle of the late 1930's, it was a well accepted alternative to the clan and lineage customary land control. *Elechus v. Kdesau*, supra.

Each municipality in Palau has a traditional chief. If the municipality needs private land for public use, it is the custom in Palau that the Chief and the Council of Chiefs (Klobak), consisting of the other nine clan leaders of the municipality, meet with the owner and all must agree to the acquisition. Even if the owner agrees the municipality only acquires use rights and ownership of the land remains in the individual. There is no precedent in Palauan custom for a Chief of a Municipality to sell land owned by another individual.

The consideration of the purported sale was certainly inadequate as one machete, one blanket and some cloth given to the chief in the late 1930's had little value when these items were fairly common.

The Government argues that Policy Letter P-1, dated December 29, 1947, applies in this case, assuming the Japanese Government took the property in question. However, there is no evidence that Edeyaoch or the plaintiff sold their property or that they received any of the meager consideration obtained by Uong, the chief of the municipality.

The main thrust of the defendant's claim is that the Japanese Government must have acquired the property in question because defendant's Exhibit A, purports to be a tracing of an original 1937 "South Seas Government Map". This map is the source of the two other maps, Exhibits B and C, and the red line appearing on the Court's Exhibit No. 1.

The Court is unable to reconcile the fact that although defendant's Exhibit A is dated 1937, the official Japanese land registration (the Tochi Daicho) and finalized in 1941, still shows Edeyaoch is the individual owner of the lots in question. Only two alternatives are possible. Either the map is erroneous, or subsequent to the map, a correction was made to correctly show Edeyaoch as owner of the Tochi Daicho lots. The evidence in this case reveals that the Japanese company, which was supposed to buy the land in question, did not buy any land in Ngiwal after 1935. If any sale was made, it would be reflected in the Tochi Daicho no later than six months after the sale.

The Court concludes that if any sale of land in Ngiwal did occur it could not and did not affect plaintiff's land.

The Government's reliance on defendant's Exhibits A, B and C is understandable but the ignoring of the Tochi Daicho is not. Once the maps and the Tochi Daicho are compared, an obvious conflict appears. This conflict was there for the Land Management Office to see at the time it initiated its Homestead Program in Ngiwal in 1959.

[4] Two land title determinations (Claims 23 and 24) were made in 1956. These two claim files were delivered, not as formal exhibits, but for the Court to take judicial notice so that upon completion of review of the files, they can be returned to the Land Management Office. The land involved in the claims did not include the plaintiff's land and the notice of hearing and sketch of the land claimed by the government cannot be considered as putting the plaintiff on notice that unless she filed a claim, the Government would take her land. The Government cannot acquire title to individual land by simply claiming it by public notice and consider the property its own if the individual does not contest it. Land Management Regulation No. 1, cited by the Government, deals with the procedure for the determination of ownership of lands now or formerly used

or occupied or controlled by the United States Government or the Trust Territory Government, and to effect the return of those lands no longer needed to the prior owner. The regulation was not promulgated for the taking of individual land.

[5] If the Government intended to have the plaintiff's land determined at its hearings in 1956 they would have had to give her private notice (Sec. 6) and describe the land sufficiently (Sec. 11) which clearly would be the Tochi Daicho lot numbers. Therefore, the land determination hearings of 1956 had no effect or bearing on the property in question. Land Title Determination hearings must provide a measure of due process to the land owner with adequate and reasonable notice of the right to file claims and be heard, and to also be informed of the fact that his or her land, sufficiently described, is being claimed. The claim files submitted to the court fail to meet that test in so far as the plaintiff is concerned.

The last two arguments of the Government are, in effect, based on the theories of adverse possession and estoppel.

Timarong was given his homestead entry permit in 1960 and although there is a question as to the amount of use he made of the land (pursuant to defendant's Exhibit D, the Government, in 1966, noted that the plaintiff planted all the crops and not Timarong), the plaintiff must have known he claimed a portion of her land. Although Palauan custom does not recognize the principle of acquiring land by adverse possession, the Trust Territory Code does provide a 20-year statute of limitations for the recovery of land. 6 TTC Sec. 302. Approximately ten years expired when Timarong was given his entry permit and when the plaintiff commenced her suit. Therefore, any possible grounds for adverse possession cannot be considered.

A relative of the plaintiff, Kaleb, was apparently given a homestead permit in 1960 over another portion of the prop-

erty in dispute and the plaintiff did nothing to protest this. The Government argues that this was tantamount to an acknowledgment of the propriety of the homestead program and concession of the Government's claim.

Whatever the reasons of the plaintiff for not objecting to the particular entry permit are moot as there is no evidence that the recipient of the permit ever entered upon or used the land and, in fact, the Government, in 1966, found he had done nothing at all on the land. (Defendant's Exhibit D, page 16.)

The sole remaining question is whether the plaintiff or the intervenor Saoremang should be acknowledged to be the owner of the nine Tochi Daicho lots listed in the plaintiff's complaint.

[6] Since this is individual land, the land passes to the descendant's heirs which by custom are the children of the decedant. The brother of the deceased, Saoremang, does not have the right to claim or administer individual land. *Lekeok v. Ilangelang*, 7 T.T.R. 27.

[7] Once the land became individual land, the clan or lineage lost all control over it. *Lekeok v. Ilangelang*, supra.

It is therefore ordered, adjudged and decreed that lots Nos. 126, 129, 130, 134, 172, 176, 178, 179 and 180 is the individually owned land of the plaintiff who shall hold said property for herself and her sister, Tmol Edeyaoch. Any claims of the defendants, Trust Territory Government and Timarong, to any portions of said lots are without merit and the defendant Timarong shall not occupy or use the land of plaintiff without her permission. Any homestead entry permit in conflict with this judgment is void. The Government shall remove any monuments placed on the plaintiff's land which is not consistent with this judgment.

No costs are allowed plaintiff.