NGIRAMECHELBANG NGESKESUK, DIRRALALO BILUNG, EBIL RENGULBAI, and MARBOU RENGURUCHEL, Appellants

v.

RIDEP SOLANG, Appellee

Civil Action No. 49-73

and

RIDEP SOLANG, Appellant

v.

NGIRAMECHELBANG NGESKESUK, DIRRALALO BILUNG, EBIL RENGULBAI, and MARBOU RENGURUCHEL, Appellees

Civil Action No. 56-73

Trial Division of the High Court

Palau District

March 21, 1974

Appeals from land commission ownership determinations. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that upon individual's death, her land was inherited by her heirs, not her clan or lineage, and her "heirs" were her brothers, sisters and adopted son, not the extended family.

1. **Appeal and Error—Record on Review—Adequacy**

   Although pleadings in appeals were so inadequate, incomplete and contrary to the rules for appeals that the court could have justifiably

dismissed them, appeals would, in fairness to the parties, be accepted where the fault lay with counsel who carelessly prepared completely inadequate pleadings apparently knowing they would not appear at the appeal hearing.

2. **Wills—Oral—Invalid Wills**

Statement by son, who was upset when his mother interceded in an argument with his brother, that when he returned from WW II he was going to Japan and would never return so that all his parents' property, registered in him under the Tochi Daicho as his father was a Japanese national and thus could not own land at the time of the survey, would go to his brother, was not an effective will.

3. **Wills—Disposable Property—Testator's Interest**

Where Japanese national's land was registered to his son under the Tochi Daicho survey because Japanese nationals were prohibited from owning land, and father sold the land in 1942, son, who was killed in 1943 in the war, could not leave the land to his brother because he had no land to leave by will.

4. **Land Registration—Prior Determinations—High Court**

Former High Court judgment on ownership of land was binding on Land Commission in commission's proceeding to determine who owned the land. (67 TTC § 112)

5. **Palauan Land Law—Clan Ownership—Reversionary Rights**

Individually owned land did not, prior to 1957 statute of descent and distribution, revert to the lineage or clan upon death of the owner intestate.

6. **Palauan Land Law—Individual Ownership—Decedent's Estates**

Upon individual's death, her land was inherited by her heirs, not her clan or lineage, and her "heirs" were her brothers, sisters and adopted son, not the extended family.

7. **Real Property—Joint Interests—Division and Distribution**

The division and distribution of land inherited by five persons was for their determination as owners in joint tenancy.

Assessor: SINGICHI IKESAKES, *Associate Judge, District Court*
Interpreter: AMADOR D. NGIRKELAU
Counsel for Ridep Solang: BAULES SECHELONG
Counsel for Ngiramechelbang Ngeskesuk, and others: JOHN O. NGIRAKED

TURNER, *Associate Justice*

[1] The state of the pleadings in the two appeals is so inadequate, incomplete and contrary to the appellate code the Court would have been justified in dismissing both appeals. In neither case did counsel who appeared at the appeal hearing in representation of the parties prepare the appeals. Because the appeals were made by representatives who apparently had no intention of appearing in court in support of the appeals, the pleadings were carelessly prepared and completely inadequate.

The court considered it unfair to penalize the parties, because of the failures of former counsel, by dismissing the appeals and depriving the parties of their day in court. A dismissal at time of hearing would have ended the matter because the time for appeal had expired. With the help of counsel for both sides at the hearing the Court has been able to dredge out the real issues involved.

The parties are the same, although reversed in the two appeals. The lands in dispute are also the same in the two cases except that in No. 49-73 the amended notice of appeal includes an additional parcel for which neither Ngeskesuk nor Solang make any claim.

The parcel consisted of 11,598.4 square meters of fill-land adjoining some of the lots involved in the appeals. This fill-land, located in Meyungs Hamlet, Arakabesan Island, is described as Lots 008 A 7 and 10, depicted on the Division of Lands and Surveys Official Cadastral Plat dated May 25, 1973. The Land Commission determination of ownership held that the fill was public land and that the chiefs of the four Arakabesan Clans together with Uchel Arbedul Remeliik, as spokesmen, were trustees for the clans as owners.

Although No. 49-73 purported to appeal the ownership determination for the fill-land it failed to do so. Neither

the clans nor their chiefs were made parties to the appeal, they were given no notice of appeal and, in fact, appeal hearing counsel in No. 49-73 disavowed any claim by his clients, the designated appellants, to the fill-land.

This fill was made by the Japanese navy after it had purchased the other lands of Arakabesan Islands. Thus there was no former owner to claim it when the Trust Territory government attempted to "return" the major part of the island "to the people" through the High Commissioner's Land Settlement Agreement and Indenture dated September 5, 1962. *Torul v. Arbedul,* 3 T.T.R. 486, 489. Several claimants, whose lots on the island had been used to make the fill, made claims to the fill. These claims were denied by the Land Commission for the reason that the fill had been taken from lots previously purchased by and owned by the Japanese navy.

These claimants, not the parties in the present two appeals, were "aggrieved parties" entitled to appeal from the determination the fill was public land owned by Meyungs Hamlet. They made no appeal.

Any attempted appeal to the fill-land determination is rejected and the Court will consider the other two appeals in which the same parties are named on opposite sides, but in which both sides dispute the determination of ownership of Tochi Daicho designated lots Nos. 1448, 1449, 1450, 1456, 1457, 1458, 1459, 1460, 1465, 1466, 1467, 1467B and 1469.

The two appeals are an anomaly. Both sides object to the ownership determination of the Land Commission. The Commission is not a party to the appeals. Only its record is before the Court. The Court will sustain or reject the determination based upon the attacks upon that record by the two sets of appellants and whether or not as result of such attacks the Commission record sustains the determination.

In Civil Action No. 49-73 the appeal was made from the determination that 12 of the 13 lots, heretofore listed, were owned by the heirs of Dirrablong and that these heirs were the appellants, together with the appellee, Ridep Solang. The appeal was brought on the grounds that the "lawful heirs," under Palauan customary law, of Dirrablong included the "extended family" of perhaps many hundreds of persons. Further ground for appeal was the alleged erroneous inclusion of the appellee, Ridep, in the "matrilineal line of successorship" and the exclusion of others of the matrilineal line, including Ridep's father. The four matrilineal appellants alleged Ridep was an *ulechell*, child of a male *ochell*.

Ulechell is the Palauan term for patrilineal line and *ochell* is of the matrilineal descent. An *ochell* member is a stronger member of a lineage than an *ulechell* member. Ridep was an *ulechell* by birth but was adopted by his grandmother and became an *ochell* member of the lineage. However, a member whose status is derived from adoption is a "weaker" member of the lineage than an *ochell* member by birth.

The Court is obliged to consider the appeal in No. 49-73 brought by the sisters and brothers of Dirrablong, rather than the appeal by Ridep in No. 56-73 because No. 49-73 includes all but one of the lots in question while that is the only lot named in No. 56-73. At the appeal hearing it was clear the parties did not intend the limitations imposed by their pleadings.

For the record, Ridep's appeal, prepared for him by Micronesian Legal Services, who abandoned him when it came time to appear in court, is both incomplete and inadequate. It is incomplete in that it lists only one of the lots of the 13 included in the Commission determination. This was the one lot omitted in No. 49-73. It is inadequate in

that it fails to comply with the code provisions governing appeal from a District Court decision to the Trial Division of the High Court. These appeal provisions govern appeals to this court from Land Commission determinations by the terms of 67 TTC § 115.

Rule 21, Trust Territory Rules of Civil Procedure provides:—

> "The notice of appeal shall set forth . . . concise statement of the grounds on which he appeals."

The procedure governing appeals from Land Commission determinations is discussed at length in the decision entered June 7, 1973, *Kumangai v. Ngiraibiochel*, 6 T.T.R. 217.

The notice in No. 56-73 fails to set forth any grounds for appeal. Since Ridep appeared and was represented by competent counsel at the appeal hearing the Court can settle his appeal upon the basis of No. 49-73. The Court will overlook the procedural inadequacies as within the purview of 6 TTC § 351.

Ridep claimed sole ownership of the 13 lots in question. His claim is based upon an alleged will by his brother by adoption, Riyo, as affirmed by his adoptive mother Dirrablong. The Land Registration team and the Land Commission both held there was no transfer by will to Ridep. The testimony at the appeal hearing was not sufficient to upset this finding of fact and conclusion.

The record shows the land was originally purchased during the Japanese administration by Seki, a Japanese national married to Dirrablong. They were the adoptive parents of Ridep. Seki also was the natural father and Dirrablong the natural mother of Riyo.

At the time of the Tochi Daicho survey and registration (1938–1941) the land in question was listed in the name of Riyo. It is assumed this was done because of the

Japanese Administration prohibition against individual Japanese nationals acquiring ownership of land. In any event, Seki and Dirrablong did not consider the registration in their son's name a binding transfer because in 1942 at the sale of these and other Arakabesan lots to the Japanese navy they collected the payment from the Japanese.

According to Ridep's testimony when Riyo left home to go to war (he got as far as Airai where he was shot and killed by an American plane) he told his parents that if he did not return his Tochi Daicho registered land (the lots in question) should go to Ridep. The Land Registration team found the facts to be:—

There was an argument between Riyo and Ridep. That Dirrablong interceded to stop the dispute; that this angered Riyo and he told his mother, "When I return from the Airai airfield work I am going to Japan and never return so all your property will go to Ridep."

[2, 3] This was not an effective will, the registration team concluded, and the Court agrees with this conclusion as a matter of law. *Rechemang v. Belau*, 3 T.T.R. 552. The further reason that the so-called will was ineffective was Riyo was not killed until 1943 after the land had been sold to the Japanese navy in 1942. Riyo had no land to leave to Ridep by will.

The same result is reached as to the alleged gift by Dirrablong to Ridep. She died in 1951. The land had been sold in 1942, was acquired by the Trust Territory in 1945 and was not returned "to the people" by the High Commissioner until 1962. Ridep's claim as individual owner cannot be sustained.

[4] If Ridep didn't own the land, then the Land Commission was obliged to determine who did own it after its return by the High Commissioner. The question was liti-

gated but not specifically decided in *Torul v. Arbedul*, supra. The court held the lots in question were owned by the "heirs of Dirrablong, represented in this action by the defendant Ngiramechelbang." This Judgment was binding upon the Land Commission pursuant to 67 TTC § 112.

In spite of the Tochi Daicho listing in the name of Riyo as his individual property this Court concluded the land was, when it was returned by the government, the property of Dirrablong's heirs and not Riyo's heirs. This Court will not explore the record in the former case and accepts the holding. Who then inherited from the individual ownership of Dirrablong?

[5] The Court immediately rejects the argument that prior to the enactment of the district statute of descent and distribution by the legislature in 1957, individually owned property reverts to the lineage or clan if there is no will. Whenever the question of reversion to the control of a lineage has arisen this Court, for sound reasons, has rejected the theory. We again refuse to accept it. *Ngiruhelbad v. Merii*, 1 T.T.R. 367 and affirmed on appeal, 2 T.T.R. 631. *Orrukem v. Kikuch*, 2 T.T.R. 533. *Obkal v. Armaluuk*, 5 T.T.R. 3. *Watanabe v. Ngirumerang*, 6 T.T.R. 269.

The land registration team observed that prior to the enactment of the statute of descent "there was no law, policy, rules or regulations about inheritance of individual property when there is no will." The team decided then:—

> "Since there was no law about inheritance during Japanese times, we must look to Palau custom to decide who are the heirs."

It was concluded: ". . . the heirs of her individual property are Dirrablong's true sisters and brothers, Dirralalo, Ebil, Ngiramechelbang and Marbou and also her adopted son Ridep . . . ." Ridep, the team concluded "has less voice and power than (the) others according to Palau custom be-

cause his level and position with them is weak for the reason, he was adopted son from Solang."

From this conclusion the brothers and sisters appeal on the ground that "heirs" means every relationship, no matter what the degree. In effect these appellants say that Dirrablong's Lineage should be named as owner and that the oldest male member should be the trustee for the unknown number, but certainly many, persons related by blood to Dirrablong. As was true at the time of the decision in *Torul v. Arbedul*, supra, Ngiramechelbang should be the representative of or administrator for the lineage.

This argument sounds plausible until consideration is given to the comment of Ridep's counsel that this is the first time that a lineage has ever claimed individually owned land. The Court agrees that such claim is improper. The Court cannot, of course, go to the next step that Ridep is the only heir and thus the individual owner.

[6, 7] Because the conflict must be resolved upon the basis of Palauan custom and because the Land Commission and its registration team concluded, on the basis of Palauan custom, that the five parties to these two appeals are the heirs of Dirrablong, the Court accepts that conclusion. The Court also agrees that how the land shall be divided and distributed or how it shall be used is a matter for determination of the five heirs as owners in joint tenancy. It is therefore

Ordered, adjudged and decreed that the determination of ownership by the Palau District Land Commission of Tochi Daicho designated lots Nos. 1448, 1449, 1450, 1456, 1457, 1458, 1459, 1460, 1465, 1466, 1467, 1467B and 1469 as shown on the Division of Lands and Surveys Official Cadastral Plat number 008 A 00 dated May 25, 1973, is owned in fee simple by Dirralalo Bilung, Ebil Rengulbai, Ngiramechelbang Ngeskesuk, Marbou Renguruchel and

Ridep Solang is affirmed and that a certificate of title shall be issued accordingly.