

MARTANG NGIRCHOKEBAI, Plaintiff
 v.
NGIRCHOKEBAI UCHEL and TARKONG PEDRO, Defendants
 Civil Action No. 59-73
 combined with
 Civil Action No. 14-74
 Trial Division of the High Court
 Palau District
 April 30, 1974

Appeal by husband against whom divorce was granted. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that claim husband sold marital land would be remanded.

1. Palau Custom—Divorce—“Olmesumech” and Food Money

Under Palauan custom, the offended spouse in a marriage which breaks up for misconduct is entitled to *olmesumech* from the offending spouse's family.

2. Palau Custom—Divorce—Marital Estate

Where plaintiff-appellee in divorce action claimed on appeal that husband sold property which had been given to plaintiff and her husband by defendant's uncle and that the property was part of the marital estate, claim would be remanded for decision, and if plaintiff was entitled to the property, and maybe if she was entitled to one-half of it, husband had no right to sell it and purchaser, not being an innocent purchaser for value since he hadn't paid the purchase price, would have to give up the property.

Assessor:

SINGICHI IKESAKES, *Associate
 Judge, District Court*

Interpreter:

AMADOR NGIRKELAU

Counsel for Plaintiff:

BAULES SECHELONG

Counsel for Defendants:

JOHN O. NGIRAKED

TURNER, *Associate Justice*

These are combined matters which are an outgrowth of a trial and entry of decree of divorce in the District Court.

The defendant in the divorce case, Ngirchokebai Uchel, appealed from the decree on the grounds of insufficient evidence by counsel other than counsel in this hearing. At the hearing, with defendant present, his counsel moved to withdraw the appeal.

In addition to the appeal two matters were presented by plaintiff's counsel. The first of these was a motion for order in aid of judgment because of the failure of defendant to pay plaintiff the \$3,000 lump sum alimony settlement ordered by the District Court. The petition also requested an additional \$2,000 payment from defendant for the cost of preparation of food for defendant's family in connection with defendant's promise to pay the alimony ordered. Plaintiff prepared food on two occasions but defendant failed to meet his obligation under the decree both times.

The other question raised by plaintiff was in connection with a civil action for ejectment, No. 14-74, brought against defendant Ngirchokebai and Tarkong Pedro, who was included in the action as purchaser of the property in question, Tochi Daicho designated Lot 966. The ejectment complaint recites that the land was given to plaintiff and her husband by defendant's uncle and because of the many years of the marriage became a part of the marital estate.

[1] In any event, plaintiff was granted a divorce because of adultery by the defendant and under Palauan custom when a marriage breaks up for misconduct the offended spouse is entitled to *olmesumech* from the family of the offending spouse.

This court said that *olmesumech* should be decided through "traditional channels" but that the Court was free to award alimony and support also. *Ngodrii v. Kumaichi*, 5 T.T.R. 121. Also pointed out in the *Ngodrii* decision is the entitlement of the "cast-off wife" pursuant

to *tilobed ra rebai* to take community property with her. This is the claim of the plaintiff in Civil Action No. 14-74.

[2] Because the decree made no mention of Lot 966 it now seems appropriate to refer this matter back to the District Court for its findings of fact and determination as to the plaintiff's entitlement to the land. If plaintiff is entitled to the property, or perhaps if the court finds she is entitled to one-half of Lot 966, then defendant had no right to sell it to the defendant Pedro. At the time the complaint was filed defendant Pedro was not an innocent purchaser for value because according to the complaint, he had not paid the purchase price. Under the circumstances, if the District Court finds for the plaintiff it also may recover the land from Pedro and order the defendant to reimburse Pedro for whatever purchase money the court finds he may have paid.

Because the divorce case is being referred back for determination as to entitlement to Lot 966 and thereby supplying the basis for settlement of Civil Action No. 14-74, it becomes unnecessary to determine the question of defendant's obligation to reimburse plaintiff for the cost of the food she prepared for the two *olmesumech* meetings which defendant asked for but failed to attend with his family to pay the alimony the court ordered.

The referral to the District Court does not affect the obligation of the defendant to pay the plaintiff alimony in the sum of \$3,000.00. Plaintiff also is entitled to interest on the judgment amount. In the event the defendant fails to comply with the order entered upon this hearing the plaintiff should file her motion for an order to show cause why the defendant should not be punished for contempt of court.

In accordance with provisions of the foregoing opinion, it is

Ordered:—

1. The defendant shall pay the plaintiff the sum of \$1,000.00 together with interest at the rate of 6% per annum in the amount of \$135.00 on or before May 6, 1974, and

2. That defendant shall pay the plaintiff the sum of \$2,000.00 together with interest at the rate of 6% per annum in the amount of \$120.00 on or before August 1, 1974.

3. That Civil Action No. 59-73, being the appeal from the decree of the District Court in its Civil Action No. 55-73, be remanded to the District Court for further hearing, and, if appropriate, amendment of its decree to determine ownership of Lot 966, Tochi Daicho designation, and

4. That determination be made, together with amendment, if appropriate, of plaintiff's entitlement to recover costs of preparing food for *olmesumech*.

5. That said decree as may be amended after further proceedings shall be filed with High Court Civil Actions No. 59-73 and No. 14-74.