

OSEKED BUK and Others, Appellants

v.

SIANGELDEB BASILIUS, Appellees

Civil Action No. 338

Trial Division of the High Court

Palau District

March 31, 1966

Appeal from judgment of Palau District Court which held that defendant, who had paid out children's money which he was entrusted to hold for individual, must reimburse value of money paid out and would receive no credit for second piece of Palauan money which he gave in exchange for children's money. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant had obligation to keep money intact or to replace it with piece of Palauan money of greater value, but that defendant will be credited with value of money given in exchange for children's money.

Modified and affirmed.

1. Palau Custom-Children's Money

Under Palau custom, basic obligation of person holding children's money for safekeeping is to either keep it intact and not use it for any other purpose or, if he pays it out, to replace it with piece of Palauan money of greater value.

2. Palau Custom-Children's Money

Under Palau custom, there is no justification for redesignating, without consent of payee, a payment of children's money that has once been voluntarily made without any indications of fraud or duress.

3. Palau Custom-Children's Money

Under Palau custom, attempted designation of money paid for food and services as "children's money" is of no legal effect.

4. Palau Custom-Children's Money

Where money exchanged for children's money has substantial value, defendant who wrongfully pays out children's money will be credited for value of money paid for it.

BUK v. BASILIUS

<i>Assessors:</i>	JunGE PABLO RINGANG, and JUDGE RUBASCH FRITZ
<i>Interpreter:</i>	SYLVESTER F. ALONZ
<i>Counsel for Appellants:</i>	MOSES MOKOLL
<i>Counsel for Appellee:</i>	Pro se

FURBER, *Chief Justice*

This is an appeal from a decision concerning the adjustments to be made as a result of a series of transactions with Palauan money. In accordance with the request of the Palau Bar Association as to such actions, the court used two assessors in an effort to insure a clear understanding of all aspects of Palau custom involved.

There is little or no dispute about the main outline of the facts involved. Although several other transactions are collaterally involved, it is believed the following outline will be sufficient to an understanding of the case. In 1947, the defendant Oseked Buk received for safekeeping a piece of Palauan money known as "Nglalemiaur" as children's money of the plaintiff Siangeldeb Basilius' nieces, Francisca and Katarina, but gave in exchange for it a piece of Palauan money known as "Bisech", which appears to have been considered worth roughly two-sevenths of a "Nglalemiaur", so that in effect Francisca's and Katarina's children's money was roughly five-sevenths of the value of the "Nglalemiaur". Later, Oseked Buk paid out the "Nglalemiaur" without the consent of anybody else, and it is now in the possession of his co-defendant Ngirudelsang. About 1960 or 1961, Oseked Buk paid a piece of Palauan money known as "Belelai" to the plaintiff's father for food and labor and received as change the piece of money known as "Ulengiil". On July 17, 1962, Oseked Buk and others joined in executing a document by which they purported to convert this same piece of money known as "Belelai" into the children's money of

Francisca and Katarina, but without the consent of the plaintiff's father to whom they had already paid it for food and services.

Counsel for the appellants acknowledges that when children's money is paid out as Oseked Buk did in this case, it should be replaced with a larger piece. He claims that "Belelai" was so valuable that it overpaid the food and services for which it was originally given, that therefore it was permissible for Oseked Buk and those who joined with him later to designate it as children's money, and that having been paid to the plaintiff's father, the latter can hold the money as both payment for the food and services and, at the same time, as children's money.

The appellee argues that there is no Palau custom under which money once paid out for food and services can then be redesignated to constitute children's money at the same time, and that his father is not the proper person to hold this children's money.

OPINION

[1] The basic obligation of a person holding children's money for safekeeping to either keep it intact and not use it for any other purpose or, if he pays it out, to replace it with a piece of Palauan money of greater value is clear and has been acknowledged by all concerned in this action.

[2, 3] This court, after careful consideration of the matter, however, can find no justification under Palau custom for redesignating, without the consent of the payee, a payment that has once been voluntarily made in Palauan money without any indications of fraud or duress, and therefore affirms the District Court's determination that the designation by Oseked Buk and others of the money "Belelai" as children's money was of no legal effect.

[4] The District Court held that because Oseked Buk had paid out the money "Nglalemiaur" without the con-

sent of anybody else, he should now replace its full value without any deduction for the value of the piece known as "Bisech", which he had originally given as change. Since, however, this piece of money originally given as change obviously had quite a substantial value, it is believed that it will be fairer to all concerned if on replacing the money "Nglalemiaur", he is allowed to receive for himself Palauan money to the value of the two-thirds of the piece "Bisech", thereby increasing the value of the children's interest in "Nglalemiaur" by one-third the value of the money known as "Bisech".

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. The judgment of the Palau District Court in its Civil Action No. 1121 is modified by changing paragraph 1 to read as follows : -

"The defendant Oseked Buk is directed to return Francisca's and Katarina's money to the plaintiff Siangeldeb Basilius, either in the form of the money 'Nglalemiaur' upon the payment by Siangeldeb Basilius to Oseked Buk of a piece of Palauan money of the value of two-thirds the value of the money 'Bisech', or in the form of another piece of Palauan money of the value of 'Nglalemiaur' less two-thirds the value of the money 'Bisech'. Payment as specified above is to be made within thirty (30) days after this judgment takes effect."

2. As so modified, the judgment is affirmed.