RDIALUL TOHUL, and Others, Plaintiffs

v.

UCHEL ARBEDUL, and Others, Defendants

Civil Action No. 294

Trial Division of the High Court

Palau District

April 9, 1968

Action to determine title to land on Arakabesan Island. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that the High Commissioner's Land Settlement Agreement and Indenture in question merely intended to re-establish former rights rather than create new ones and thus the sitution as it existed prior to a former transfer to Japanese interests controlled.

Palau Land Law-Generally

Where High Commissioner's Land Settlement Agreement and Indenture concerning government owned land on Arakabesan Island sought to re-establish former rights rather than to create entirely new ones, such agreement restored the rights in the land in question to those who had acquired such rights directly or indirectly from the 'persons mentioned and who last held those rights prior to former transfer of land to Japanese interests, or to those who would be their successors in interest had there been no such transfer.

FURBER, *Temporary Judge*

FINDINGS OF FACT

1. In the dim and distant past the land in question was owned by the Eluil Clan. It was conquered from the Eluil Clan by the Omrekongel Clan, which is one of those considered to be under the *Ibedul* (title of the male head of the Idid Clan and as such High Chief of South Palau) in a special way.

2. The land in question was included in that in which *Ibedul* Imedob acquired full ownership by an arrangement with *Espangel* (title of the male head of the Omrekongel Clan) Kisekis, with the acquiescence of their respective

clans, in order to make it available for use by people from Ngesias. The arrangement is considered by some to constitute a purchase and by others to constitute more accurately a release by *Espangel* Kisekis on behalf of the @mrekongel Clan of the latter's interest in the land inasmuch as the land was to some extent already under *Ibedul's* authority.

3. *Ibedul* Imedob gave permission to the people from Ngesias in Peleliu to use this land.

4. After the people of Ngesis returned to Peleliu, they either released the land to *Ibedul* or it reverted to him automatically by virtue of his overriding rights in it.

5. *Ibedul* Louch, one of the successors of *Ibedul* Imedob, took control of the land and, either directly or through others acting with his consent, gave part of it to his adopted son Umong, part to his daughter Ibuuch, part to his step-daughter Ross, and part to Dirrablong (who was considered under the custom to be connected with the Idid Clan and, therefore, under the custom in' a position like that of a child of *Ibedul* Louch), to use under *Ibedul.*

6. The persons named as grantees in the preceding paragraph, or their succeSsors in interest, conveyed, with the consent of *Ibedul,* to Japanese interests before the Japanese land survey of about 1938-41 parts of the lands so given them by *Ibedul* Louch to use.

7. At the time of the last Japanese land survey of about 1938–41, all parties concerned (except for the dispute between Ibuuch and her successors and Dirrablong and her sUccessors, mentioned in the following finding of fact) acquiesced in having these lands listed as owned either by the lineage or individual to whom the use rights had been given by *Ibedul* Louch or by their respective grantees.

8. There was a dispute between Ibuuch and her successorsin interest and Dirrablong and her successors in in-

terest as to a part of the land in question which was listed in the survey of about 1938-41 in the name of Dirrablong's son Ryio. One of these groups claimed this part of the land had been given Ibuuch and the other group claimed it had been given to Dirrablong by either *Ibedul* Louch or one or more of his children acting with his consent. This matter was litigated in the Japanese courts and resulted in a determination that Lots Nos. 1444 and 1445 should be owned by Ibuuch or her successors in interest, including her half-sister Ross, and that Lots Nos. 1448, 1449, 1450, 1456 to 1460 inclusive, 1465, 1466, 1467, and 1469 should be owned by those claiming under Dirrablong, subject to a charge or lien on 20,000 yen to be paid to Ibuuch or her successors in interest, of which 9,000 yen was paid before the close of Japanese times but the balance of which has never been paid or adjusted.

9. After the last Japanese survey of about 1938-41, all of the land involved, that had not previously been acquired by the Japanese Government, was bought by the Japanese Government.

10. Prior to the High Commissioner's Land Settlement Agreement and Indenture of September 5, 1962, representatives of the eight clans of Arakabesan Island (which are the clans named in that document) had had a number of discussions with representatives of the Trust Territory Government concerning return of this land, and particularly concerning its return through some form of homestead with a waiver of certain of the usual homestead conditions in view of the extent to which the land had already been developed. The representatives of the eight clans had advanced a plan to place responsibility for distribution on *Espangel* and Uchel, as first chiefs of Arakabesan Village and Meiungs Village respectively, but no agreement had been reached about to whom the land was to be homesteaded, what the exact homestead conditions

would be, or who would handle the homestead arrangements. None of the claimants in this action or, so far as they know, anyone representing any of the claimants or any portion of the people of Arakabesan, had any discussion with representatives of the Trust Territory Government concerning the change of plan from return of the land by proposed homesteading to transfer by the High Commissioner's "Land Settlement Agreement and Indenture" of September 5, 1962, involved in this action.

OPINION

This action involves the proper construction of the High Commissioner's Land Settlement Agreement and Indenture No. PL-LS-129, dated September 5, 1962, recorded September 20, 1962, in Book V, pages 123 to 133, in the office of the Clerk of Courts for the Palau District, by which it is alleged by all concerned, he purported to "return" the major part of Arkabesan Island to the people. According to the terms of the agreement and indenture, the High Commissioner remised, released and quitclaimed unto "the Clans -Ngitechob, Ngeskesuk, Tikei, Uchelkumer, Omrekongel, Ucheliou, Odilang and Eluil, and unto the members of said clans, and all others claiming through, from or under the said clans, as their interest may appear among them", all the Government's right, title and interest in the major part of Arakabesan Island, including all of the land in question in this action.

Two major disputes have been presented in thisaction. The first is between the representatives of the OmrekongelClan and all other claimants. The second is between the chiefs of Meiungs Village and all other.claimants.

The claim of the OmrekongelClan turns oil the question of whether or not the land in question was included in that acquired by *Ibedul* Imedob by an- arrangement with *Espangel* Kisekis, the existence of which agreement

has not been disputed by any of the parties, and the effect of that arrangement. The second finding of fact disposes of the major issue in that dispute. The court holds that this arrangement cut off all rights of the Omrekongel Clan in the land.

The claim of the chiefs of Meiungs Village is based primarily on two points. The first is that the land in question, after having been acquired by *Ibedul* Imedob and included in that given by him to the people of Ngesias to use, became community property of Meiungs Village. Their second point is that, under the arrangements discussed with representatives of the Trust Territory Government, all of the lands set forth in the High Commissioner's "Land Settlement Agreement and Indenture" of September 5, 1962, were to be homesteaded and l'esponsibility for the distribution given to *Espangel* and Uchel, as the first chiefs of Arakabesan Village and Meiungs Village respectively. It is their claim that the High Commissioner's agreement and indenture was intended to carry out that arrangement, and that in view of the separation of Meiungs Village and Arakabesan Village, the Meiungs chiefs should be allowed to handle distribution of this land. On this basis they have claimed in the past a right to impose restrictions on ownership which in effect would constitute a new type of ownership. According to their counsel, however, they have now receded from that view.

The first of these points is disposed of by the fourth finding of fact above. While there is some conflict in the testimony, the overwhelming weight of it shows that at least for some years prior to the close of the Japanese administration, there had been very open use of the land now in question utterly adverse to any thought of community ownership and without any protest whatever by the community.

On the second point, the tenth finding of fact above shows that no definite arrangement had been reached for such distribution and the wording of the Land Settlement Agreement and Indenture certainly on its face appears inconsistent with any intention on the part of the High Commissioner to create new rights or to authorize any such distribution without regard to former rights. Since from the findings of fact and the agreements stated in the Pre-Trial Order it is clear that before delivery of the High Commissioner's Land Settlement Agreement and Indenture, it had been established that the land here involved was owned by the Government, it follows that the words "as their interest may appear" in that agreement and indenture cannot have been intended to refer to any actual legal interest then existing. At the same time it appears that the High Commissioner's intention was to re-establish former rights rather than to create entirely new ones. Under all of the circumstances, the court holds that the agreement and indenture in question must be construed to restore the rights in the lands to those who had acquired such rights directly or indirectly from or under any of the clans named and who last held these rights prior to transfer of a particular part of land to Japanese interests, or to those who would be their successors in interest had there been no such transfer to Japanese interests.

The foregoing disposes of the major matters litigated in this action to date. There is a subsidiary dispute between the successors of Ibuuch and the successors of Dirrablong as to one part of the land in question. The factual situation on which this dispute turns has been covered by the eighth finding of fact above. The exact present result of that factual situation has not been extensively explored in this action and it is hoped that, on the basis of the facts as found by the court, the parties involved

in that dispute may be able to come to agreement. If they are unable to do this, the court believes that a further hearing will be necessary before a just determination can be made as to the present-day result of that situation.

It should be noted that no one in this action has made claim on behalf of either the Idid Clan or the Uchelkumer Clan. *Ibedul* Louch, whose authority at that time appears not to have been questioned by anyone concerned, was not only the chief of the Idid Clan, and as such had a very special relationship to all of what is now Meiungs Village, but was also a strong member of the Uchelkumer Clan; There is definite indication that at least some of those to whom parts of the land were given, either by *Ibedul* Louch or by others with his consent, considered that they had received the lands with the consent of both the Uchelkumer and the Idid Clans and that consequently one or both of these clans, or the holder of the title *Ibedul,* may have rights in some or all of the land involved.

Similarly no claim was made in this action on behalf of either the Olngebang Lineage or the Ikelau Clan. Yet since claim is made for two alleged sub-lineages within the Olngebang Lineage of the Ikelau Clan, it would appear the Olngebang Lineage or the Ikelau Clan, or both, may have rights in some of the land. As these clans, this lineage, and the holder of the title *Ibedul,* were none of them represented, no determination is made or implied as to what rights, if any, any of them (or any other group not represented) may have, or have had, in any of the land.

Since, however, the court construes the Land Settlement Agreement and Indenture as intended to restore former rights, it is believed that the rights so restored must be held to be subject to those customary rights or obligations, if any, which the lands or holders of rights in them were under just prior to transfer of the lands to Japanese interests, to the extent that such rights or ob-

ligations are still recognized under present-day custom, even though the ones to whom those obligations run, or by whom such rights are held, were not named in the agreement and indenture.

No question has been raised in this action as to who are the heirs of Umong, the heirs of Ross, the heirs of Ibuuch, orthe'heirs of Dirrablong.

JUDGMENT

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

1. As between the parties and all persons claiming underthem:-,

a. TheOmrekongel Clan, represented in this action by the plaintiffs Rdialul Torual, Rebai, and Ucheliei Gibbons, has no rights of ownership in any of the lands in question.

b. The defendantsUchel Arbedul, Ngirchonger Rechucher, and Obak Erungel, and the village of Meiungs for which they claim, have no rights of ownership in any of the land in question, although said land, as a part of the area under the governmental jurisdiction of the village of Meiungs, is subject to whatever governmental control these defendants and the chief of the Tikei Clan may lawfully exercise as the four chiefs or *rubaks* of'Meiungs.

c. The portion of the land in question outlined in red on Sketch SK-233..E filed in this action, exclusive of Retention Area No.7, is owned by the heirs of"Umong, subject to all the obligations under Palau custom in effect at the time of the conveyance of said land to Japanese interests, to the extent that such custom is still in effect. Said portion of land is intended to represent Lots Nos. 1439 to 1443 inclusive as, shown on map in the Palau District Land Office designated AR.P-1 Serial –'– copied by Taro Alexander November 21/53, from map of 1938, hereinafter referred to as map AR.P-l. Said heirs of Umong are represented in this action by the defendants

Maria Obkal and G. Kesolei who consider that these heirs constitute the Dudul sub-lineage of the Olngebang Lineage of the Ikelau Clan.

d. The more easterly portion of the two areas outlined in red on Sketch SK-232-D on file in this action, intended to represent Lots Nos. 1444 and 1445 on map AR. **P-1** is owned by the heirs of Ross, subject to all the obligations under Palau custom in effect at the time of the conveyance of said land to Japanese interests, to the extent that such custom is still in effect. Said heirs are represented in this action by the defendants Ruchuldak Tetsuo and Merii Dirradai who consider that these heirs constitute the Iwaiuh sub-lineage of the Olngebang Lineage of the Ikelau Clan.

e. The portion of the land in question outlined in red on Sketch SK-230-B on file in this action, intended to represent Lots Nos. 1448, 1449, 1450, 1456 to 1460 inclusive, 1465 and 1466, and the parts of Lots Nos. 1467 and 1469 outside of Government Retention Area No.5, on map AR.P-1 is owned by the heirs of Dirrablong, represented in this action by the defendant Ngiramechelbang, subject to all the obligations under Palau custom in effect at the time of the conveyance of said land to Japanese interests, to the extent that such custom is still in effect, and also subject to a charge or lien originally to secure payment of 11,000 yen which was payable to the heirs of Ibuuch before the close of the Japanese administration.

2. This judgment shall not affect any rights-of-way there may be over any of the land in question.

3. If the heirs of Dirrablong and the heirs of Ibuuch are not able to come to agreement on the adjustment to be made for the charge of 11,000 yen due before the end of the Japanese period, anyone of them may file a motion in this action for a further determination of this matter.

4. No costs are assessed against any party.