

ORRUKEM v. KIKUCH

LUSII ORRUKEM, Plaintiff

v.

FRANCISCO KIKUCH and BECHESELRAK, Defendants

Civil Action No. 259

Trial Division of the High Court

Palau District

February 3, 1964

Action to determine ownership of land in Koror Municipality which was transferred to defendant by valid will of one who owned it as individual land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that in case of individual land, lineage or clan from which it came retains no control over it, so that individual owner's failure to live up to traditional obligations owed to clan does not impair his ownership.

1. Palau Land Law—Individual Ownership

Concept of individual land ownership was introduced in Palau Islands in order to get away from complications and limitations of Palau custom.

2. Palau Land Law—Individual Ownership

In case of individual land in Palau Islands, lineage or clan from which it came retains no control over it.

3. Palau Land Law—Individual Ownership

Failure of owner of individual land in Palau Islands to live up to traditional obligations to lineage or clan from which land came does not in and of itself impair or limit his ownership of land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The deceased Ngiracheluol (sometimes spelled Ngiracheluoluh) owned the land in question as his individual land.

2. Ngiracheluol made a valid will giving this land either to the defendant Kikuch and his brother Isak, or to Isak alone.

3. Isak has consented to the sale of the land by Kikuch to the defendant Becheselrak.

OPINION

This action involving land located in Koror Municipality, Palau District, is governed almost entirely by the principles discussed in conclusions of law by this court in the case of *Ngiruhelbad v. Merii, Imesei, and Tarkong*, 1 T.T.R. 367 and the opinion of the Appellate Division in that action which was 2 T.T.R. 631, affirming the decision of the Trial Division. See also the opinion in the case of *Lusii Orrukem v. Kikuch and Issak*, Palau District Civil Action No. 194.

[1-3] Much of the plaintiff's evidence had to do with the defendant Kikuch's alleged failure to fulfill his traditional obligations to the lineage from which this land came. As brought out clearly in the *Ngiruhelbad v. Merii* action cited, the introduction of the concept of "individual land" ownership was a distinctly new one which had no place originally in Palau customary land law and the very purpose of introducing this concept was to get away from the complications and limitations of the Palau customary land law. Consequently the court feels forced to hold that in the case of individual land, the lineage or clan from which it came retains no control over it, and that any failure of the owner of such land to live up to his traditional

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obligations does not in and of itself impair or limit his ownership of the land.

The court therefore holds that the sale of this land by the defendant Francisco Kikuch to the defendant Becheselrak with the consent of Kikuch's brother Isak was valid.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land shown as Lot No. 1029 on the map of Koror on file in the Palau District Land Office, containing 329.3 tsubo (or 11,845 square feet), consisting of a part of the land known as Keklau, and located in Koror Municipality, Palau District, is owned by the defendant Becheselrak who lives in Koror Municipality, Palau District, as his individual land.

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

3. The defendants are awarded such costs, if any, of this action as they may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided they file a sworn itemized statement of them within ten (10) days after the entry of this judgment. Otherwise no costs will be allowed.