

BEDOR BEANS, Plaintiff-Appellant

v.

**RIMIRCH MESECHEBAL, ISIDA TAMAKONG, and
MARHENS MADRANGCHAR, Defendants-Appellees**

Civil Appeal No. 240

Appellate Division of the High Court

Palau District

January 16, 1980

Appeal from a Trial Court Judgment that defendant was entitled to build a house on a certain parcel of land over the objection of plaintiff. The Appellate Division of the High Court, Burnett, Chief Justice, and Laureta, Temporary Justice, held that since consent of all the senior members of the owning clans was not obtained, "use right" obtained by defendant-appellee was without effect, and therefore judgment of Trial Court was reversed.

1. Palau Land Law—Use Rights

Palau "use right" is an important property right similar to a life estate, subject to condition, and far different from a tenancy at will as those terms are understood in the United States.

2. Palau Land Law—Use Rights

There must be a showing of good reason whenever there is a reassignment of use rights.

3. Palau Land Law—Clan Ownership—Transfer

Chief of clan has no authority to dispose of clan land without the consent of the clan.

4. Palau Land Law—Lineage Ownership—Transfer

Senior members of the clan or lineage must unanimously consent before a transfer of clan land is effective.

5. Palau Land Law—Clan Ownership—Transfer

Clan land may be transferred to an individual only upon the approval of all adult strong members of the clan.

6. Palau Land Law—Clan Ownership—Transfer

Where the consent of all the senior members of the owning clans was not obtained, purported "use right" grant of clan land to appellee was without effect.

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Before BURNETT, *Chief Justice*, and LAURETA, *Temporary Justice*

This is an appeal from a Trial Court Judgment that the defendant-appellee, Marhens Madrangchar, is entitled to build a house on a certain parcel of land in Umetate Village of Meyuns, Palau, over the objection of plaintiff-appellant. Sometime after World War Two, appellant Bedor Beans built his house on a piece of land in Meyuns on Arkabesang Island, on land belonging to his clan, Uchelkumer. Beans cleared and cleaned the adjacent clan land, filling in the areas which had been bombed during the war in order that he could farm the land. Beans also cleared a portion of land of mangroves so that there was access to the land by water. It is that adjacent parcel of land which is the subject of the dispute herein.

After the appellant was already on the land, the Trust Territory Government claimed all of Arkabesang Island until 1962, at which time the land was returned by the High Commissioner to the four high clans in Meyuns. From 1962 until 1977, appellant continued to farm and improve the land in question, paying no rent for its use. Sometime in 1977, Marhens Madrangchar, who is married to the daughter of Espangel Esbei, one of the four high chiefs of Ngerkebesang Village, requested permission to build a house in Meyuns on land known as Morisong within the area of land called Umetate. At the request of Espangel Esbei, a document entitled, "Statement of Chiefs of Meyuns" was drawn up in English and presented to the four high chiefs of Meyuns Village for their signatures. The document failed to indicate on which parcel the house was to be built.

Sometime after the document was signed, construction was begun by Marhens Madrangchar, and appellant, upon

discovery of the construction, attempted to halt said construction. This occurred sometime in October, 1977. A temporary restraining order was granted, dissolved on the date set for hearing, and the matter set for trial almost immediately thereafter. The Trial Division subsequently held that under Palauan custom, no general meeting of the four high clans of Meyuns was necessary to grant a use for the land, nor consent of senior members of the clans required, the approval of the four high chiefs being sufficient. The Court also held that even though the "Statement of the Chiefs of Meyuns" did not specify the parcel for the house, this was cured when one of the four high chiefs pointed out the parcel to Madrangchar. Furthermore, the Court noted that appellant's rights were subordinate to the use rights granted by the above-mentioned document. It is from this adverse judgment plaintiff-appellant appeals.

[1] Of initial concern to this Court is the question, whether the approval of the chiefs of the four clans of Meyuns was sufficient to grant a use right to defendant Marhens Madrangchar. The Trial Court noted that the document purports to give Marhens Madrangchar "the right to build a house on the land and to live there." Falling short of a transfer of title to land, it does nevertheless attempt to convey an exclusive use right to defendant. Chief Justice Furber in *Imong v. Ebau*, 3 T.T.R. 144, 146 (Tr. Div. 1966), in discussing the importance of use rights, stated that a use right is

common among Palauans and is an important property right similar to a 'life estate, subject to condition' and far different from a 'tenancy at will' as those terms are regularly understood in the United States.

[2] Furthermore, although formerly, there was no concept in Palau of vested use rights in land, the introduction of foreign idea of property rights in land now requires the showing of good reason whenever there is a reassignment

of use rights, *Ngerdelolek Village v. Ngerchol Village*, 2 T.T.R. 398 (Tr. Div. 1963), especially, as here, since the development of the land by Bedor Beans gives him strong claim to the land. *Rekewis v. Ngirasewei*, 2 T.T.R. 536 (Tr. Div. 1964).

[3, 4] It is clear that the grant of a use right is not a minor matter, to be made without regard to the consequences. We recognize, however, that this Court has never squarely addressed the issues concerning the permission necessary to allow use rights to be given to an individual of clan or village land. This Court has held in the past, however, that the chief of the clan has no authority to dispose of clan land without the consent of the clan. *Ngirchongerung v. Ngirturong*, 1 T.T.R. 68 (Tr. Div. 1953). This rule was clarified to require that the senior members of the clan or lineage must unanimously consent before a transfer is effective. *Armaluuk v. Orrrukem*, 4 T.T.R. 474 (Tr. Div. 1969). See also *Maidesil v. Remengesau*, 6 T.T.R. 453 (Tr. Div. 1974).

[5] We have noted also that clan land may be transferred to an individual only upon the approval of all adult strong members of the clan. *Llecholech v. Blau*, 6 T.T.R. 525, 528 (Tr. Div. 1974).

This situation here is unlike that found in *Sngaid v. Ngoriakl*, 6 T.T.R. 483 (Tr. Div. 1974) wherein the Trial Division held that a clan member could live on chief's title land with the approval of the chief of the clan since said chief is entitled to its exclusive use and control. See also *Kisaol v. Gibbons*, 1 T.T.R. 597 (App. Div. 1956). Rather, the evidence here indicates that the land is owned by the four top clans of Meyuns and is not chief title land.

This situation is similar to that in *Irewei v. Omuhuwong*, 5 T.T.R. 240 at 242 (Tr. Div. 1970). There, the plaintiff brought an action to stop defendant from occupying and building on a certain parcel of land known as Itungelbai.

Defendant claimed that as a member of the Itungelbai lineage and with the consent of Bilung, female head of Idid Clan, of which Itungelbai is a part, she had the right to use the land. The Court noted that “whatever might be required to grant use rights in the land to a member of the lineage, it seems clear that there must be approval of the lineage itself.”

Also of consequence is the case of *Metecherang v. Sisang*, 4 T.T.R. 469 (Tr. Div. 1969). There, the defendant Sisang had been granted permission to live on the land known as Illames by defendant Kiuelul. The Court held that it was clear that Kiuelul was not the administrator of the land and thus had “no authority to permit a stranger to the lineage to occupy and use the land without payment of fair rental for the benefit of the membership.”

The Court further noted, “the defendant Sisang may not remain on the land without the consent of the plaintiff (an Ochel member) and the other lineage members without the payment of rental to the lineage.”

We should also note that this appeal involves more than the grant of a use right to appellee. A necessary result of that grant, should it be upheld, is to dispossess the appellant, a member of one of the owning clans, of land which he improved and occupied for many years.

[6] Based on the discussion above, we are of the opinion that granting of a use right as one contemplated by the “Statement of Chiefs of Meyuns” requires the consent of all the senior members of the high ranking clans of Meyuns. Such consent was not obtained.

Accordingly, we REVERSE. The case is remanded, and the Trial Division is directed to enter judgment consistent with this Opinion.

It follows that appellee, Marhens Madrangchar, has no rights in the land superior to appellant Bedor Beans, and cannot remain on the land without the consent of the senior

members of the owning clans. In all fairness to him, however, he should be given a reasonable time to work out some arrangement to either remain, or to vacate the land.

Following oral argument, Associate Justice Nakamura determined that he must disqualify himself because of personal relationship to one of the parties.