NGERDELOLEK VILLAGE, Peleliu Municipality, represented by OBAK KLOULUBAK and IDERRECH NGOTEL, Plaintiff

v.

NGERCHOL VILLAGE, Peleliu Municipality, represented by OBAK SKIBANG, and ELSAU LINEAGE, represented by LOUCH NGESKESUK, Defendants

Civil Action No. 237

Trial Division of the High Court

Palau District

March 12, 1963

Action to determine rights in land on Peleliu Island, in which use rights in village land were assigned to defendants, who now object to subsequent decision of village to erect certain municipal buildings thereon. The Trial Division of the High Court, Chief Justice E. P. Furber, held that assigned use rights cannot be changed without good reason, but may be changed when public interest reasonably requires, as in case of erection of municipal buildings.

1. **Palau Land Law—Use Rights**
   Although there was formerly no concept in Palau Islands of vested use rights in land, chiefs are now required to have good reason for making re-assignments of use rights.

2. **Palau Land Law—Use Rights**
   Well accepted limitation on use rights in Palau Islands is chief's right to direct that any part of village lands be used for things reasonably considered to be public use, without compensation to persons previously using that part of land.

3. **Judgments—Res Judicata**
   Where judgment of court only purports to adjudicate as between "parties and all persons claiming through or under them", claim of one who was neither party to such action nor claiming through one who was party, is not barred in subsequent action.

4. **Administrative Law—Land Title Determination—Appeal**
   Unless and until decision of District Land Title Officer is reversed or modified by High Court, legal interests of persons designated as owners is shown on determination of ownership. (Office of Land Management Regulation No. 1)

5. **Administrative Law—Land Title Determination—Parties**
Determination of ownership by District Land Title Officer determines natters only between government and its agencies and representatives on one side and those filing claims against it on the other. (Office of Land Management Regulation No. 1)

6. **Administrative Law—Land Title Determination—Parties**
Determinations of ownership by District Land Title Officer are not intended to determine private ownership good against all the world. (Office of Land Management Regulation No. 1)

7. **Administrative Law—Land Title Determination—Parties**
Proceedings before District Land Title Officer for determination of ownership are only quasi in rem.

8. **Administrative Law—Land Title Determination—Parties**
Determinations of ownership made in proceedings before District Land Title Officer in favor of private parties are only binding upon those claiming under or through such parties or properly represented by them.

9. **Palau Land Law—Use Rights**
Use rights in land assigned by village in Palau cannot be changed without good reason but may be changed when public interest so requires, including providing space reasonably required for present-day municipal needs.

FURBER, *Chief Justice*

At the trial the plaintiff expressly waived all claim to so much of the area described in its complaint as consists of the taro swamp Olisukl and the dry land immediately surrounding it. The plaintiff then limited its claim to the parts of the area known as Klouklubed, which are shown in the sketch attached to the pre-trial order in Palau District Civil Action No. 142 as being (1) the area north of the main road, and (2) the area south of the main road and west of the road to Wosech. All references in this judgment order to "the land in question" are to be considered limited to these two areas to which the plaintiff limited its claim.

FINDINGS OF FACT

1. The gift or transfer of the taro patch Olisukl by the plaintiff Ngerdelolek Village, on which the defendant

Elsau Lineage principally bases its claim, did not include the land now remaining in question.

2. The land in question was assigned long ago by the Ngerdelolek Village to the Luill Clan, whose highest male title is *Iderrech*, to administer.

3. In German times, when the German Administration was pressing for the planting of more coconut trees, the plaintiff Ngerdelolek Village and the Luill Clan agreed that this land might be used for coconut planting by people of the defendant Ngerchol Village, and authorized the latter's traditional chief, whose title is *Obak*, to supervise for them the use of this land for coconut planting. All coconut trees planted on the land during German and Japanese times were planted under this authorization. Some of these trees were "village plantings" made on behalf of the village as a whole and some were made by individuals acting for themselves.

4. The defendant Elsau Lineage (or clan) gradually assumed the control of the use of much of the land in question, with at least the acquiescence of the plaintiff Ngerdelolek Village, the Luill Clan, and the *Obak* of the defendant Ngerchol Village, but made no claims known to the plaintiff Ngerdelolek Village adverse to it before 1955, when certain members of Elsau made claim to outright ownership of a part of the land in question in proceedings before the Palau District Land Title Officer. The older men of Ngerdelolek Village heard of the purported sale of part of the land by Mengelil to the Japanese Navy authorities, but believed there was nothing either they or Mengelil could do about the land then because no one could do anything at that time against the Japanese Navy.

5. In the latter part of Japanese times a Japanese company cut various types of lumber (other than coconut trees) on the land in question under permission from the

Iderrech of the Luill Clan, and paid him for it, the company having first applied to the chief of the plaintiff Ngerdelolek Village for this permission and being referred to *Iderrech.*

6. During or shortly before World War II all the coconut trees on the land in question were destroyed, the *Obak* of the defendant Ngerchol Village has made no new assignments of any of this land for coconut plantings, and it has not been used for coconut plantations since that war.

7. The Japanese land survey of about 1938–41 was never completed in Peleliu and the results were not announced there before the American occupation. In a listing prepared by the Nanya Kohatsu Kaisha the land in question was listed in the name of Mengelil, who is a member of the defendant Elsau Lineage (or clan), but this was done without the knowledge or consent of either the plaintiff Ngerdelolek Village, the Luill Clan or the *Obak* of defendant Ngerchol Village.

8. After the American occupation of Peleliu, a large part of the population of Peleliu were either permitted or directed by the United States Naval authorities to occupy buildings which had been built on the land in question during the war, and the people have never been re-settled, so that the land in question is now a main portion of the principal inhabited area on Peleliu.

9. About 1951 a meeting was held between representatives of the plaintiff Ngerdelolek Village and the defendant Ngerchol Village, at which the Luill Clan and the defendant Elsau Lineage were represented. At this meeting the claims of the plaintiff Ngerdelolek Village to the whole of the areas of the former village of Ngchemiangel, of which the land in question is a part, were discussed and it was agreed that the ownership of this entire area (with the exception of the taro patch known as Olisukl and the dry land immediately surrounding it, which it has now

been agreed belongs to the Elsau Lineage (or clan) should remain in the plaintiff Ngerdelolek Village, but that the use rights, subject to the rights of the plaintiff, should remain as they were then being exercised. The plaintiff Ngerdelolek Village thereby purported to re-assign any use rights previously existing in the land now in question.

10. About 1958, when the people of Peleliu were in need of a new schoolhouse, a meeting was held between leaders of the plaintiff Ngerdelolek Village, the defendant Ngerchol Village, and Mengelil, supposedly representing the defendant Elsau Lineage, at which it was agreed that the new schoolhouse might be put where its predecessor was on the land in question. Louch Ngeskesuk was not at the meeting and ever since has been protesting the erection of the new school and demanding either rent or that the land where it is be purchased from the Elsau Lineage.

OPINION

This action raises complicated questions as to the extent, if any, to which the traditional land pattern on Peleliu, the southernmost island within the reef surrounding the main part of the Palau Islands, has been changed as a matter or law. There is no question but what the land involved was owned by the plaintiff Ngerdelolek Village in pre-Spanish times. It had formed a part of the village of Ngchemiangel, which village had been completely obliterated in a local war of long ago with the result that the land had been allowed to go wild with very little attention by anyone for years. It was, therefore, quite naturally picked upon for coconut planting when the German Administration pressed for such planting. The land being much nearer to the defendant Ngerchol Village than it was to plaintiff Ngerdelolek Village, arrangements were made as set forth in the third finding of fact above, and the area came to be generally considered as being in defendant

Ngerchol Village and is sometimes still referred to as being in Ngerchol Village. Except for the plantings of coconuts by the village and individuals in it and keeping these from interfering with each other, the area appears to have been allowed to remain in a rather wild state without much attention until the Japanese became interested, first in using lumber from it, and later in using part of it for military purposes, shortly before World War II.

As this court has indicated in a number of previous decisions, the Japanese land survey of about 1938–41, as carried out in Koror and Babelthaup, endeavored in a pretty careful and thorough manner to clarify land holdings and obtain definite agreements or determinations as to different classes of ownership. Unfortunately, however, it appears that this process was never completed with regard to Peleliu and that no consents were obtained or other steps actually taken to cut off the rights of the plaintiff Ngerdelolek Village or clarify the status of the use rights in the land in question, in spite of the listing of the land in the name of Mengelil in such record as there is of that survey in Peleliu. No party in this action claims the listing in Mengelil's name was correct.

Both the Palau District Land Title Officer and this court, in proceedings in which neither the plaintiff Ngerdelolek Village nor the defendant Ngerchol Village were parties, have determined that the listing of the land in the name of Mengelil was erroneous, and have held that, as between Mengelil and the Elsau Clan, the land, or the part of it then involved, belongs to the latter.

See: Palau District Land Title Officer's Determination and Release No. 66 filed with the Palau District Clerk of Courts June 25, 1957. *Ngeskesuk Louch v. Mengelil Olikong*, 2 T.T.R. 121.

Counsel for the defendant Elsau Lineage has stated that he believes, and the court sees no reason to disagree,

that it makes no difference so far as this action is concerned whether Elsau is a clan, as claimed by Louch Ngeskesuk and found in the action brought by him against Mengelil, or is merely a lineage, as the plaintiff Ngerdelolek Village and the defendant Ngerchol Village allege. Therefore, the question of whether Elsau is more properly described as a lineage or a clan has not been explored in this action and no determination is made on that point, but whichever designation is used applies to the same group, the only doubt on that point being as to the status of the group.

[1, 2] It appears that in ancient times village lands in the Palau Islands were assigned and re-assigned by the village chiefs quite freely according to their belief as to what best served the interests of the village as a whole under changing circumstances, without much, if any, consideration of what we might now call "vested use rights" in such lands. There was no thought of any need for compensation in connection with the re-assignment of such lands. The welfare of the community as determined by the chiefs was the controlling factor and all were expected to accept that. The chiefs were expected to take a fatherly interest in the welfare of all the inhabitants and not leave anyone destitute by these re-assignments, but the holder of use rights in any particular piece of land had no specific claim against any one for the re-assignment of that piece —though some right might be recognized in crops he had planted there with proper authorization. With the introduction of foreign ideas of property rights in land, the idea appears to have become stronger that the chiefs should have a definite and good reason for making re-assignments, but it is clear they could still direct that any part of the village lands be used for things they reasonably considered to be a public use, without any compensation to the person or persons previously using that part

of the land. This was a well accepted limitation on the right of any one to use such land.

In the present instance, the defendant Elsau Lineage (or clan) has specifically stated it makes no objection to the maintenance of the community "abai" (traditional men's house) and the dispensary on the land in question, on the ground that those are traditionally accepted uses by the community of clan or lineage land, but the lineage does very much object to the maintenance of the school, the municipal office, and the municipal store on this land, unless the lineage is satisfactorily compensated, claiming that these are not traditionally permitted uses of lineage or clan land. Fortunately, all parties concerned have expressed their consent to the persons remaining on the land, who have made their homes there in accordance with the early permission or direction of the United States Naval authorities. The only question so far as they are concerned appears to be as to what rights of any of the parties, the rights of these individuals are subject to or dependent upon.

The present head of the defendant Elsau Lineage (or clan) has admitted that the plaintiff Ngerdelolek Village's ownership of parts of the former village of Ngchemiangel was recognized at the meeting about 1951 referred to in the ninth finding of fact, only he says the land now in question was included in the exception covering the taro patch Olisukl. No claim has been made the plaintiff Ngerdelolek Village could not re-assign its village lands as it attempted to do at this meeting.

[3] The defendant Elsau Lineage appears to rely in part on the judgment of this court in 2 T.T.R. 121, and the Palau District Land Title Officer's Determination and Release No. 66, both referred to above. That judgment of this court, however, only purported to adjudicate ownership "as between the parties and all persons claiming

through or under them". The plaintiff Ngerdelolek Village was not a party to that action nor does it claim through or under any party to that action. The judgment therefore is not a bar to the plaintiff's claim in this action.

[4–8] The Land Title Officer's Determination raises more of a problem. That states, without any express limitation, that the part of the land then involved was determined to be the property of the Elsau Clan in fee simple. The determination was made, however, under Office of Land Management Regulation No. 1, Section 13, of which reads as follows:—

"*Sec. 13. Determination of ownership, effect.* Unless and until the decision of the District Land Title Officer is reversed or modified by the High Court, the legal interests of persons designated as owners shall be as shown on the determination of ownership, *except that no person can convey better title than he has at the time of the conveyance.*" (Emphasis added)

The exception contained in Section 13, and the nature of the whole regulation, seem to indicate an intention to provide for determinations between the government and its agencies or representatives on one side and those filing claims against it on the other, rather than to provide for determinations of private ownership good against all the world. The question of the effect of such determinations on persons not parties to the proceedings in which they are made, came before this court before as a preliminary matter in *Ngiratechekii v. Trust Territory and Others*, Palau District Civil Action No. 69. That was an appeal by one private party from a title officer's determination in favor of the Trust Territory's Alien Property Custodian covering certain land which included part of that which the title officer had held was the property of another private party in a previous determination in proceedings in which the appellant was not a party. In that instance, however, the other private party concerned was

allowed to join in the appeal and agreed to having the matter of ownership of the land covered by the conflicting decisions of the title officer reopened and determined by the court, so that no final ruling as to the effect of the title officer's prior determination had to be made. In accordance with the opinion expressed in the memorandum of pre-trial conference in this case, however, the court now holds that proceedings before District Land Title Officers for determinations of ownership in accordance with Office of Land Management Regulation No. 1 are only "quasi in rem" and that determinations in them in favor of a private party or parties are only binding upon those who are parties to the proceeding in which the determination is made and those claiming under or through such parties or properly represented by them. 1 Am. Jur. 2d, Actions, § 41. 30A Am. Jur., Judgments, § 137.

[9] Under the circumstances disclosed in this action, the court holds that the rights of the plaintiff Ngerdelolek Village have not been cut off in any of the land remaining in question, that the re-assignment of use rights in this land by the plaintiff about 1951 was within its rights and effective, that the rights so assigned cannot be changed without good reason, but may be changed by the plaintiff when the public interest reasonably requires, and that this public interest includes providing space reasonably required for present-day municipal needs even if such needs are of a nature that was unknown in pre-Spanish times.

JUDGMENT

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

1. As between the parties and all persons claiming under them:—

a. The parts of the area known as Klouklubed, located in or near Ngerchol Village on Peleliu Island in the

Palau District, which are shown in the sketch attached to the pre-trial order in Palau District Civil Action No. 142 as being (1) north of the main road, and (2) south of the main road and west of the road to Wosech, are owned by the plaintiff Ngerdelolek Village as village land.

b. This land is subject to the use rights assigned by the plaintiff Ngerdelolek Village about 1951 to those actually using the various parts of it then, except for such re-assignments, if any, as the plaintiff may properly have made since then.

c. Such use rights may not be interfered with or changed by the plaintiff Ngerdelolek Village without good reason, but may be changed by it as the public interest, including municipal needs, reasonably requires.

d. The defendants Ngerchol Village and Elsau Lineage (or clan) have no rights in the land in question except such use rights, if any, as may have been assigned to either of them in the general re-assignment of use rights made by the plaintiff about 1951.

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

3. No costs are assessed against any party.