

Ngiraingas v. Isechal, 1 ROP Intrm. 36 (Tr. Div. 1982)
KOKICHI NGIRAINGAS, et al.,
Plaintiffs,

v.

YASHINTO ISECHAL and the
BANK OF HAWAII, et al.,
Defendants.

CIVIL ACTION NO. 84-77

Supreme Court, Trial Division
Republic of Palau

Memorandum opinion
Decided: July 22, 1982

BEFORE: ROBERT A. HEFNER, Designated Associate Justice.

BACKGROUND

For several years prior to 1969, efforts were made by the United States to negotiate an agreement with Japan to pool funds, goods, or services to compensate the inhabitants of the Trust Territory of the Pacific Islands for damages they suffered in World War II. The negotiations culminated in an agreement whereby Japan would contribute a certain amount of goods and services and the United States would contribute funds. By 1971, the United States Congress had passed the Micronesian Claims Act (Public Law 97-39, 85 Stat. 92, July 1, 1971).

As can be seen from the Act, damage awards are made according to Title I or Title II. These titles relate to two significant periods. The so called "pre-secure" period (Title I) was for damages resulting in hostilities between the two countries and prior to the time that a certain area was taken by U.S. military forces.

The second period (Title II) was the "post-secure" period which encompassed the time of seizure by the U.S. and until the land or other facility was returned to the landowner. Post-secure damages principally relate to the U.S. military use of land owned by Micronesians after the last battle was over.

Pursuant to the provisions of the Act, a Commission was formed and the filing of claims, investigating of same, and the process of making awards was commenced. By 1975, most of the decisions and awards were made including the award in **L37** Decision No. 8688 which is the subject of this litigation. Exhibit 1 of Intervenor Ngiramechelbang is a copy of that decision.

Due to the Commission's practice in making an award to a clan, family, chief, etc., many lawsuits were filed in the Trust Territory High Court. The claim of the Uchelkeyukl Clan of

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Peleliu is one of those lawsuits. However, the history of this litigation is even more torturous because of factors beyond the control of the litigants or counsel.

The Micronesian Claims Commission awards were paid in the summer of 1977 and the original complaint here was filed in August of 1977. An Order prohibiting the withdrawal of the funds from the bank was entered on November 27, 1977. A Master's Report was ordered and filed on December 29, 1978. After an extensive trial, judgment was entered September 27, 1979. Appeals were filed. However, the court reporter never prepared a transcript of the trial and finally on December 1, 1981, the Appellate Division of the High Court remanded the case for a new trial.

On December 23, 1981, the Supreme Court of the Republic of Palau was certified pursuant to Department of Interior Secretarial Order 3039 and this case, along with others, was transferred from the High Court to the Supreme Court of Palau.

On March 12, 1982, a pre-trial conference was held and an order issued and a trial date set. The matter proceeded to trial July 11 to July 15, 1982, and it is now submitted for decision.

POSITIONS OF THE LITIGANTS

There are four parties to this litigation. Each party represents a number of people since, as a traditional and practical matter, a representative is selected to present the lineage or clan as the case may be.

The plaintiff claims the entire proceeds of the award on behalf of two families, whom he asserts, compose the Modngerur lineage of the Uchelkeyukl Clan. The land for which the damages were awarded is alleged to be the individual land of plaintiff's predecessors.

The defendant claims the entire proceeds as the head of the Uchelkeyukl Clan. All proceeds are claimed by him for the clan as all the property for which the damages were awarded, belonged to the clan. It is further claimed that all 138 lineages of the clan are extinct except for Kolebas and therefore all the money goes to the oldest living male member (the defendant) to distribute the money as he sees fit.

There are two intervenors. The first, Telbong, represents the members of Telbudel lineage of Uchelkeyukl Clan. It is asserted that the original members of the lineages have died[,] and there are two lineages, Ngeraol and Telbudel and two sub-lineages, Modngerur and Kolebas but that all four lineages should share equally by Palauan custom. It is claimed that the land belongs to the clan and a fair distribution should be made.

The other intervenor, Ngiramechelbang, claims there is no high chief of the clan and the Ngeraol lineage of which the intervenor is a member is the first lineage, Telbudel, the second, and Tkabuu the third. Kolebas and Modngerur are houses and not lineages. Ngiramechelbang claims the chief title of the clan and states that the clan owns the property and that he should distribute the money by agreement of the clan.

ACCOUNTING OF FUNDS ON HAND

The defendant, Yashinto Isechal was the recipient of the funds paid out pursuant to Micronesian Claims Commission Decision 8688. Preceding and during the trial, the Court ordered the defendant to provide an accounting of the funds[,] but this was only partially complied with[,] and it appears that a complete accounting is not forthcoming. The defendant was advised by the Court that it would charge the defendant with certain sums received and interest charged at a rate which defendant should at least have obtained from the bank. The defendant was invited to provide any proof to demonstrate that the court's approach was erroneous but no such proof has been made.

Accordingly, it is found that the defendant received the following funds on behalf of the Uchelkeyukl Clan for its claim awarded in Decision 8688:

July, 1977	\$111,674 ¹
November 1978	<u>\$ 63,143²</u>
Received:	\$174,817

139 The Court charges defendant with interest at the average rate of 10% per annum for an average of four years and the total interest charged to the defendant is \$69,926.80.

Total charged to defendant:	\$174,817.00
	<u>69,926.80</u>
	244,743.80

The defendant has, according to his records, distributed \$8,500 to clan members; \$1,900 is acknowledged as being received by the plaintiff but none by either of the intervenors.

According to the defendant there was on hand at the Bank of Hawaii, Koror Branch, \$185,208.30 at the time of trial--July 12, 1982. However, as indicated above, the court in its judgment will distribute the amount charged to defendant, \$244,743.80 with any credits to which he is entitled.

¹ This is the amount per Exhibit "A" attached to the original complaint. Defendant, in his answer admits receiving these funds.

² This amount was in one check that defendant acknowledges receiving.

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THE UCHELKEYUKL CLAN OF PELELIU

The Clan system is deeply imbedded in the everyday life of Palau. It has been said that clan membership is one of the basic protections of a Palauan and it is doubtful whether he or she can completely lose his membership under any circumstances. *Lalou v. Aliang*, 1 TTR 94 (Tr. Div. 1954).

It is through clan membership that an individual acquires use rights in land which provides a means to obtain food and shelter for the individual and his family. Clan membership is also important in marriage, divorce, and death matters.

In aboriginal Palau, land was divided into public domain and clan lands. The former was controlled generally by the village council. The latter was controlled by the head of the clan for the members. Clan lands are comprised of properties essential to maintain a livelihood. Thus home sites, taro paddies, coconut farms, etc., would provide shelter and areas to subsist on.

Clan lands are assigned to the member lineages. Each lineage has its own principal house site and these generally bear the name of the lineage. Each lineage is assigned use rights in taro paddies, etc., from which to grow crops. In each lineage there is a male and female lineage head.

The clan, as a group, retains ultimate title to its land[,] and individual members or lineages cannot, without the approval of the clan or at least the strong members of the 140 clan, alienate control of its land. *Techekii v. Ngoriakl*, 2 TTR 411 (Tr. Div. 1963); *Merar v. Ucherbuuch*, 1 TTR 359 (Tr. Div. 1958); Land Tenure Patterns at page 301.

The traditional Palauan clan is composed of family lineages related by blood[,] and members of that type of clan structure may not intermarry[,] and their clan land is subject to ultimate control by the clan as a whole. *Adelbai v. Ngirchoteot*, 3 TTR 619 (App. Div. 1968).

Within the clan the strongest members are those termed ochell or female line as opposed to the ulechell or male line. Generally, the senior ochell of the clan appoint the male title bearer. However, if there are no senior ochell then the next succeeding group exercises control over clan affairs. *Risong v. Iderrech*, 4 TTR 459 (Tr. Div. 1969).

Each lineage may also have title bearers which are selected within the lineage.

As will be seen later, membership in a clan and even the lineages that are within the clan are sometimes difficult to determine.

If a child is born of a female member, that child becomes an ochell member. If a child is born of a male member, the child is an ulechell member.

Some other ways a person can become a member of a clan is for a child of a female or male child to be taken and raised by the grandmother or grandfather; adoption into the clan; by being a step-child; or even just drifting into the clan.

Not surprisingly, the history of a clan such as the Uchelkeyukl Clan can go back into history a considerable period. The history is as accurate as the stories told by one generation to the next. At least, at the outset, certain things are fairly clear in so far as the Uchelkeyukl Clan is concerned.

The Clan has existed on the southern part of Peleliu since at least the Spanish Administration (around the turn of the century). The highest male title of the clan is Aderkeroi. The female title of the clan is Obechadratelbudel. Presently, this is a woman named Iroro from the Modngerur lineage.

During the Japanese Administration and specifically in 141 the late 1930's, Emautelngal was the Aderkeroi of Uchelkeyukl Clan. It was during this time that the Japanese company known as Nanyo Kohatsu Kaisha (NKK) prepared land documents referred to as the Tochi Daicho for Peleliu Municipality. At the trial, it was stipulated by all parties that this document shows Lot 1934 as being owned by Emautelngal and Lots 1841, 1842 (listed in Decision No. 8688 at Lot 1847), 1891 and 1895 as being owned by Kerai, Emautelngal's nephew. This, then, leads into the resolution of the first issue to be determined which is whether plaintiff, as the successor to Kerai and Emautelngal should receive the award rather than the Uchelkeyukl Clan.

PLAINTIFF'S CLAIM BASED ON THE TOCHI DAICHO

It is found that Lots 1934, 1841, 1842, 1891, and 1895 were properties of the Uchelkeyukl Clan at the times pertinent herein.

This finding is supported by several facts and testimony adduced at trial.

The High Court of the Trust Territory has given weight and presumptions of correctness to the Tochi Daicho prepared for certain municipalities of Palau. This was based on the apparent care and formality of the survey and recordation of the findings of the Japanese Government or its South Seas Bureau. The same status has not been accorded the Peleliu Tochi Daicho. *Ngerdelolek Village v. Ngerchol Lineage*, 2 TTR 398 at 403 (Tr. Div. 1963). This is because the care, formality, and completeness is not apparent. It was also testified that NKK only listed names of the users of the land and translated that into owners.

Based on the testimony, it is clear that the Uchelkeyukl Clan was a major clan and in fact the highest clan of Ngerkeyukl Village on Peleliu. To conclude that it had no land or minimal land by the early 1940's does not comport with the testimony of the activities of the clan.

Emautelngal was the Aderkeroi at the time of the preparation of the Tochi Daicho[,] and it can be easily surmised why and how his name and that of his nephew could be inserted as owners.

It is concluded that any listing of the names of Emautelngal and/or Kerai did not vest individual ownership in them as the lands were clan lands. This conclusion is buttressed by the

testimony of several witnesses surrounding the filing of the clan's claim for the Title I and Title II **142** awards.

At the time the claims were filed with the Micronesian Claims Commission, the Aderkeroi was Ngirabiol Udel. He was assisted by the defendant. Also present at this important state was Baulechong, the oldest son of Emautelngal. Had the property been the individual property of Emautelngal, certainly Baulechong would not have allowed the claim to be filed on behalf of the clan if the land belonged to him. There is no credible testimony to indicate any overt or significant objection to the claim being filed for the property on behalf of the clan. Indeed, there appears to be no objection to the handling of the entire claim until after the award was issued and the money came into the hands of the defendant.

The fact that the names of Emautelngal and Kerai appear on Decision 8688 opposite the respective lot numbers does not alter the above conclusion. This appears to be only of designation purposes. It is clear that the claim was for the clan and the award was to the defendant who purports to succeed Ngirabiol Udel as Aderkeroi since the latter died before the decision was issued.

WHO IS THE PRESENT ADERKEROI?

Much of the testimony at the trial was directed at the issue of who bears the male title of the clan.

This issue was raised by the Intervenor Ngiramechelbang who claims to be the Aderkeroi. This is important in the distribution of the monies awarded since, it is asserted, the male title bearer of the clan can take the money and distribute it as he sees fit. In view of the Court's holding in this case, it is determined that any dispute over the title be best referred to the clan for settlement and the Court finds it would be premature and unwise to make a determination of title in the present posture of this case. Suffice it to say, that the defendant represents the Kolebas lineage from which he comes and Ngiramechelbang represents the Ngeraol lineage from which he comes.

It is further noted that the defendant has acted as the Aderkeroi since 1975 without apparent major objection and it was only after the money from the claims decision was delivered, that overt objections surfaced. For the purposes of this litigation, the money received by the defendant will be kept by him until paid out pursuant to the Court's judgment.

****143** WHO'S WHO IN UCHELKEYUKL CLAN?**

The most complex and puzzling issue to be resolved is the structure of the Uchelkeyukl Clan. There is little agreement between the four parties as to the lineages within the clan, and further, the strengths of the lineages.

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Normally in a clan, the lineages are listed in order of strength. Strength depends on whether the lineage is Ochell, Ulechell or with lesser connections to the clan.

A review of the testimony reveals five lineages which at one time or another may or may not have been within the clan. These are the Modngerur (represented by the Plaintiff), Kolebas (represented by defendant), Telbudel (represented by Intervenor Telbong), Ngeraol Lineage (represented by Intervenor Ngiramechelbang) and Tkabuu.

The latter was assertedly given out as Chelebechiil (transfer of property upon the death of someone) when the last of the lineage died. It is noted that the Master in his report found no such lineage existing. The only party to present any testimony of the existence of Tkabuu lineage was the Intervenor Ngiramechelbang[,] and some of his witnesses indicated that Tkabuu is a lesser lineage if it does exist.

It appears the term "Tkabuu" did specify a certain piece of land which at one time may have been inhabited by a lineage. However, it is concluded that for the purposes of awarding money herein, the Tkabuu lineage was not in existence at the pertinent time involved and therefore does not share in the award.

The Court finds that for the periods involved for which the award was made in Decision 8688, to wit, during the war (Title I) and for the post-securepost-secure use (Title II) there were four lineages of the clan -- Modngerurclan--Modngerur, Kolebas, Telbudel, and Ngeraol.

This finding is based on the testimony of the various witnesses. Some of the witnesses listed three of four lineages (including Tkabuu) while omitting others. The defendant originally asserted that only the Kolebas lineage is to be considered[,] but during his rebuttal testimony he conceded Modngerur exists as a sub-lineage and in fact Iroro, the present female title bearer comes from that lineage. In addition, the defendant concedes that Telbudel is the "seat of the clan."

144 The Master found the existence of the four lineages and from the evidence in the case, this appears to be substantiated.

Presented as Exhibit 2 for Intervenor Ngiramechelbang is an extensive genealogy chart. According to the witnesses of Ngiramechelbang, this portrays the relationships from a common ancestor Mireng. If this Exhibit is accurate, the Intervenor's strength is evidenced in the connection to the ochell line, while the status of the defendant is reduced to an outsider for all intents and purposes. At argument, the Intervenor Ngiramechelbang suggested that more money be awarded to the stronger lineages than the weaker ones because of their responsibilities. On the other hand, the Intervenor Telbong suggests a more equal distribution.

The relative strengths of the four lineages are most difficult to discern. It is apparent that several male title bearers came from lineages which some witnesses conceded were the weak lineages. The reason for this is the fact that at the time of the appointment of the Aderkeroi there were no senior male members of the strong lineages. Also, at other times, there were no senior

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female members to appoint the Aderkeroi[,] and the succeeding lineage made the appointment. Thus, the responsibility of the senior lineages has been delegated to the lesser lineages for a large part of the time in the recent history of the Uchelkeyukl Clan.

Thus it appears not to be entirely consistent to award more money to the stronger lineages based on its customary responsibilities.

Another factor must be considered. The award of Title I and Title II monies was for the clan. The award is not a customary payment but an external infusion of funds into a clan which, except for the war and its aftermath, would never have been paid.

The purpose and intent behind Public 92-39, the Micronesian Claims Act, is to compensate the inhabitants and owners for losses suffered during and after the war. When viewed in this context, it is difficult to accept the proposition that the head of a clan should have absolute authority to decide who gets what of the award. Likewise, it is difficult to see why a lesser lineage member should receive less than a stronger lineage member when the former probably suffered as much or possibly more than the latter.

145 Referring to Exhibit 1, Decision 8688, it is clear that the damages and use compensation of the Clan's land was universally awarded and not segregated just as all members of the clan are entitled to use the land for shelter and for the production in food.

There is no indication in the award nor is there any evidence that one lineage or person suffered greater losses than any other. If any greater amounts are to be awarded one lineage over another, some factual basis must support that differential such as a larger number of persons in one lineage as compared with another lineage or where the land assigned to one lineage was damaged or used more than land of another lineage.

In the Master's report, it is indicated that the senior members of the four lineages are about equal in number. It is not known nor can it be speculated as to how many people claim to be in one lineage or another. It would appear that in this one area, Palauan custom and the intent of the Micronesian Claims Act coincide. Under custom, deference, respect, and money are paid to the senior members. Under the Act, the intent is to compensate those who suffered during and after the war. These persons, of course, are the senior members of the clan who lived through and survived those perilous times.

With this in mind, the Court determines it is not necessary to assess the relative strengths of the lineages of Uchelkeyukl Clan. Each lineage, consisting approximately of an equal number of senior members, will share equally. The history of the Clan and each lineage is such that any of the four may claim the most senior position. Yet, the testimony of the various witnesses tend to point out the weaknesses of the claim of any of the four. It is noted that the Master did not attempt to determine the relative strengths of the lineages.

Accordingly, it is concluded that 25% of the total amount received plus interest accrued shall be awarded to each of the four lineages of Uchelkeyukl Clan. The representatives of each

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respective lineage will be paid the money with the responsibility of making distribution to members of the lineage.

It is noted that the defendant has invested in certain money market certificates which do not mature until some months more. Each representative may wait until maturity or receive distribution now[,] but in such a case, any loss of interest shall be charged to the distributee.

¶46 At the Pre-Trial Conference the Court reserved decision on Intervenor Ngiramechelbang's motion for reimbursement of costs for the continuance granted at the request of the defendant in March. After considering the length of the trial, the majority of which was consumed by the presentation of Intervenor Ngiramechelbang's case, it is clear that the case could not have been heard at the last sitting of the Court. The Intervenor was not realistic in his demand to proceed to trial last March and the matter would have had to be continued in any event due to the Court's other matters. Additionally, the request of \$1,400 reimbursement is not substantiated in any way. Accordingly, no reimbursement for costs will be allowed.

This Memorandum Opinion shall constitute the Court's Findings of Fact and Conclusions of Law pursuant to Rule 41(a), Rules of Civil Procedure.