

In the matter of ownership of land lots in Iyebukel Hamlet, Koror State now depicted as worksheet lots 40308, 40309, 40310, 40311, 40312, 40313, 40314, 40315, 40316, 40317, 40318, and 40318A.

**GAYLEEN TECHIYAU SAKUMA,
TOMOMI WATANABE,
HANAKO NGELTENGAT,
TEREKIEU CLAN, and
KSPLA,
Claimants.**

LC/B 10-0035, -0036, -0037, & -0038

Land Court
Republic of Palau

Decided: May 29, 2014

Appearances:

Fuana Ngiratechekii, *pro se*, for Hanako Ngeltengat
John Rechucher, Esq., for Tomomi Watanabe, by Bessie O. Iyar
Raynold B. Oilouch, Esq. for Terekieu Clan
Debra Lefing, Esq. for KSPLA

The Honorable C. QUAY POLLOI, Senior Judge:

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I. Introduction

These four cases present competing claims to twelve worksheet lots in Iyebukel Hamlet, Koror State. The twelve lots are generally situated in the area between Mindszenty High School and Tree-D Motel and additional lots further inwards into Iyebukel Hamlet. *See*, Figures 3 and 4 below. The claims were heard before this Court in December of 2013 and February and March of 2014. The Court heard from Sylvia Tangelbad, Miser Rekemesik, Brenda Ngirmeriil, Thomas Techur, Fuana Ngiratechekii, Ignacio Santiago, Chamberlain

Ngiralmu, Sterlina Gabriel, Wataru Elbelau, Bessie Iyar, and Roman Remoket.

Below, the Court first summarizes the basis for each claim. Then, based on the preponderance of the evidence adduced and matters judicially noticed, the Court makes factual findings. The facts are then considered under the applicable legal standards in order to arrive at an adjudicated conclusion.

II. Summary of Claims

A. Basis for Gayleen Tichiau Sakuma's Claim

The claim form was filed on January 6, 2003 with the Land Court. It is stated in the form that the lot claimed is worksheet lot 40318 and the basis is that it is owned by Dirchomtilou Dibeck Mariur. Despite notices served, the claimant never appeared at the scheduled hearings.

B. Basis for Hanako Ngeltengat's Claim

The claim was filed on July 26, 1988 with the Land Claims Hearing Office as a claim for public land. Hanako stated in her claim form that she claims "Osarei" and that it belonged to her father but was taken for "Skenjio". Claimant Hanako died before the hearing and was represented by her sister Fuana Ngiratechekii.

The basis of the claim is that Hanako Ngeltengat filed a *timely claim* for public land. As to the original owner, it is claimed that Telotongang who was Ibedul lived at *Osarei* and was also referred to as Ngirchosarei. He lived on the land because he owned it while married to a woman named Tmikou Petoï who was the mother of Ngirur. In turn, Ngirur was the parent of claimant Hanako Ngeltengat and

her sister Fuana Ngiratechekii. When Ibedul Ngirchosarei Telotongang died, Osarei was given out as *chelbechiil* to Tmikou Petoï. It was Tmikou Petoï who was the *original owner* of the land when it was taken by the Japanese.

As to the *rightful heirs*, it is claimed that Hanako Ngeltengat and Fuana Ngiratechekii are the daughters of Ngiratechekii who was the son or grandson of the original owner Tmikou Petoï. As such, they are rightful heirs of the original owner.

As to *wrongful taking*, Fuana argues in closing that, "[t]he evidence further shows that the land *Osarei* was simply taken without payment of just compensation or adequate consideration or and by force." This evidence includes Hanako's statement in her 1988 claim that the Japanese took the land for a "Skenjio" without any payment or consideration.

For the foregoing reasons, Fuana Ngiratechekii, for her sister Hanako Ngeltengat, asks that *Osarei* be returned.

C. Basis for Tomomi Watanabe's Claim

There is an unsigned and undated Land Commission claim form filled by Tomomi for Tochi Daicho 584, *Iteliang*. See, Tomomi Watanabe Exhibit B. It is stated in this form that the Tochi Daicho owner is Kloteraol Ngiraungiltekoi.¹ It is further stated that the land belonged to Kliu Beouch who is Tomomi's mother. Tomomi also referred to a statement of Rechuld, dated December 20, 1987, as documentary support for the claim. It is also indicated that the land was earned as *ulsiungel*.

¹ The ownership listing and other details for Tochi Daicho 584 are actually blank.

Tomomi did sign and file a second claim form on May 21, 1990 before the Land Claims Hearing Office. *See*, Tomomi Watanabe Exhibit A. In this claim she again filed for Tochi Daicho 584, called *Iteliang* or *Kedelblai* and stated in the claim that Kloteraol gave the land to Tomomi's mother Kliu Beouch.

At the hearing, Tomomi was represented by her daughter Bessie O. Iyar, whose counsel was John K. Rechucher, Esq. They claim Tochi Daicho 584, *Iteliang*, which they also claim consists of worksheet lots 40313, 40314, 40315, and 40316.

The core basis of the claim is that Tochi Daicho 584 was given by Ngiraungiltekoi as *ulsiungel* to Kliu Beouch because she "took care of him for a long time." *Tomomi Closing* at 2. "Before he died, Ngiraungiltekoi told Rechuld that he had already given his land *Iteliang* as *ulsiungel* because she took care of him." *Id.* The land was then inherited by Kliu's daughter Tomomi Watanabe, the claimant. Tomomi is now deceased, so the land would go to her rightful heir being her daughter Bessie O. Iyar.

It is asserted that the land never became public land. Alternatively, if it did become public land, it was wrongfully taken.

D. Basis for Terekeiu Clan's Claim

On November 18, 1974, Imerab Rengiil filled a Land Acquisition Record for *Kedelblai* consisting of various Tochi Daicho numbers including 584. It is stated that the land is a traditional property of Terekeiu Clan.

On November 30, 1988, Wilhelm Rengiil, son of Imerab Rengiil, also filed a claim with the Land Claims Hearing Office. He also stated that the land is a traditional property of Terekeiu Clan.

E. Basis for KSPLA's Claim

KSPLA claims that the lands were owned by the Trust Territory Government and then deeded to the Palau Public Lands Authority which deeded the same to KSPLA. KSPLA claims that the lands are public lands which it owns and maintains as evidenced by leases to the several individuals living on lease lots on the land.

III. Findings of Fact

1. In 1914, World War I began and on "October 8, 1914, warships of the Japanese Imperial Navy steamed into Palau and took over the islands without a fight."² The war ended in 1918 and then "Japanese rule of Micronesia was approved by the new League of Nations in 1920. Two years later, Japan set up a colonial government in Koror."³ Specifically, "in April 1922, Nan'yo-cho, the Japanese civilian government, was established in Micronesia by formal ordinance."⁴
2. From 1938 to 1941, the Japanese Administration conducted the land survey of Palau to register land ownerships leading to the Tochi Daicho. Tochi

² James E. Davis & Diane Hart, *Government of Palau: A Nation that Honors Its Traditions* at 45(2002); *see also*, Elizabeth D. Rechebe & Samuel F. McPhetres, *History of Palau: Heritage of an Emerging Nation*, Ministry of Education at 138 (1997).

³ Davis & Hart, *Government of Palau*, at 45; *see also*, Francis X. Hezel, S.J., *Strangers in their Own Land: A Century of Colonial rule in the Caroline and Marshall Islands*, at 156, University of Hawaii Press, (1995).

⁴ Hezel, *Strangers in their Own Land*, *supra*, at 166.

Daicho 584 was listed but no ownership or other information were registered for the lot.

3. In 1941, the Tochi Daicho was completed. Later in the year, on December 7, Japanese bombers attacked Pearl Harbor causing the United States to declare war on Japan.
4. On September 15, 1944 the Battle of Peleliu began where U.S. forces attacked the entrenched Japanese forces on the island.⁵
5. “On Sept. 5, 1945, one year after the opening attack on Beliliou and Ngeaur, the Japanese commander formally surrendered to the Americans just outside of Irrai. This is the same day the Japanese government surrendered to the Americans on board the *USS Missouri* in Tokyo Bay.”⁶
6. On September 27, 1951, a vesting order was issued and title to real property owned by the Japanese government or Japanese nationals was vested in the Alien Property Custodian of the Trust Territory Government. This vesting order was later codified in 1966 at 27 TTC §1 et seq. *See*, Figure 1.
7. On May 11, 1956, a sketch of *Ngerkeailked* was made showing a total land area of 36,727 square feet. The sketch also shows the name Barau

⁵ *See*, James E. Davis & Diane Hart, *Government of Palau: A Nation that Honors Its Traditions*, 48 (2002); Hezel, *Strangers in their Own Land* at 236.

⁶ Elizabeth D. Rechebei & Samuel F. McPhetres, *History of Palau: Heritage of an Emerging Nation*, Ministry of Education at 198 (1997).

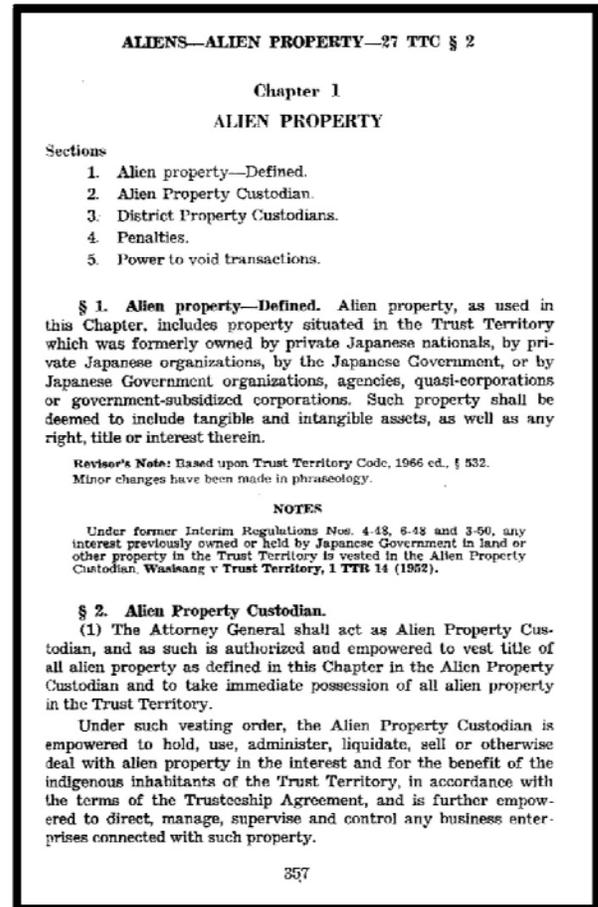


Figure 1 Vesting Order

Tucherur and the number “127”. *See*, Terekieu Exhibit G (7 pages).

8. On August 28, 1956, Barau Tucherur prepared a statement for Claim No. 127. In the statement, Barau Tucherur stated that he claims the tract known as *Itechetii* and that money was paid by a Japanese company for the land but none of the money was received by Terekieu Clan. *See*, Ngeltengat Exhibit B. Claim No. 127 is for the lot that is generally described as the site of the present Harris Elementary School. *See*, Terekieu Exhibit H.

9. On March 27, 1957, the Trust Territory Government filed its claim for lot G-10, *Ngerkeialked* lot #27, for which adjacent land owners were Rechuld, Sasao V.O., Tomomi, and Government. It is further stated in ¶3 of the claim that the land was received from Terekieu Clan. On the same date, the District Land Office gave public notice of a hearing on the claim to the public and personally to Barau Tucherur. *See, Id.*
10. On April 24, 1957, a hearing for lot G-10 was held before D. W. LeGoullon, District Land Title Officer. Barau Tucherur testified that *Ngerkeailked*, lot 127, was owned by Terekieu Clan but was then registered in his name during the land survey of 1938-1939. He then rented the land to Mizungami for 174 yen a year. Later, he sold the land to Hosino on February 15, 1943. Hosino got 3,000 yen from the Nambo Company, kept 1,000, and gave 2,000 to V. O. Sasao who then gave the money to Barau. The Nambo Company then started to use the land and Sasao stopped the company because the land was supposed to belong to Hosino. The company then explained that they furnished the 3,000 yen to buy the land and that they would pay 4,000 yen more. Sasao wanted to see Hosino to straighten out the matter. However, Hosino left on a ship never to return. Thereafter, the company did not use the land. *See, Id.*
11. On or after the April 24, 1957 hearing, D. W. LeGoullon made factual findings including the following: (1) *Ngerkeailked* is known as lot 127⁷ that was “recorded in the Japanese Land Register in the name of Barau Tucherur”; (2) the land formerly belonged to Barau Tucherur; and (3) “Tucherur sold the land to the Nambo Company on February 15, 1943 for a stated price of 3000 yen, [yet] he received only 2000 yen.” *See, Id.*
12. On July 3, 1957, District Land Title Officer D. W. LeGoullon, issued Determination of Ownership and Release No. G-10. The land name is listed as *Ngerkeailked* and identified as sketch #G10 on land office map #K2. LeGoullon recommended that the land be registered with the Alien Property Custodian of the Trust Territory. *See, Terekieu Exhibit G and H.*
13. On February 3, 1963, Barau Tucherur, age 98, testified before Chief Justice E. P. Furber in Civil Action No. 257, *Imerab Rengiil v. I. Rudimch* regarding the land *Ituu*. Among other things, Barau Tucherur testified that (1) he bears the title Tucherur

⁷ The Court takes notice that Tochi Daicho lot 127 is in the name of Ngirchorachel and not Barau. *See, Koror Tochi Daicho*. Barau Tucherur did file a claim for lot 127, *Itechetii*, which is the Harris Elementary School site. *See, Ngeltengat Exhibit B, Statement of Barau Tucherur*. Barau Tucherur also filed a claim for lot G-10, *Ngerkeialked*, the lot at issue in this case. During his 1950’s testimony for G-10, Barau Tucherur mentioned lot 127. *See, Statement of Barau attached to Terekieu Exhibit G*. It is likely the case that the number 127 became confused in the two separate claims for two separate lands by the same claimant before LeGoullon.

- of Terekieu Clan; (2) Terekieu Clan is comprised of Terekieu Lineage, Ituu Lineage, Ikekemongel Lineage, and Iteliang Lineage; (3) the land *Ituu* was wrongfully listed under Rechuld's name; (4) that a Japanese named Ngirachemutii lived on *Kantor*; (5) that Rechuld lived on the land *Kedelblai*; (6) that he told Imerab that Rechuld took *Ituu* by force; (7) Rechuld became Buiktucherur without Barau Tucherur's knowledge; and (8) he was aware that Rechuld was collecting rents for the lands from tenants during the Japanese period. *See*, Tomomi Watanabe Exhibit F.
14. On February 27, 1963, Chief Justice E. P. Furber entered a Pre-Trial Order in Civil Action No. 257, *Imerab Rengiil v. I. Rudimch* regarding the land *Ituu*. In the order, the Chief Justice identified crucial allegations by the parties. For instance, Plaintiff Imerab Rengiil alleged that *Ituu* was administered by Recheluul but that Rechuld stole Recheluul's seal and may have used it to fraudulently transfer ownership of the land to himself. Defendant I. Rudimch, on the other hand, alleged that Recheluul and Obechad⁸, uncles of Rechuld, were present when the survey was made and *Ituu* was registered in Rechuld's name. Chief Justice Furber also listed several important issues for trial. *See*, Tomomi Watanabe Exhibit J.
15. On May 15, 1964, Associate Justice Paul F. Kinnare entered a judgment in Civil Action No. 298, *Barao Tuchurur v. Rechuld*, regarding Tochi Daicho lots 588 and 589, both listed under Rechuld. Justice Kinnare found that the issues in this case were the same as those raised in Civil Action No. 257. Furthermore, Plaintiff Barao Tuchurur was in privity with Plaintiff Imerab Rengiil in the earlier case, while Defendant Rechuld was in privity with Defendant I. Rudimch of the earlier case. Finally, the land in the case before Justice Kinnare is adjacent to the land that was the subject of the earlier case, all of which were listed as owned by Rechuld in the Tochi Daicho. Accordingly, based on the doctrines of *res judicata* and *stare decisis*, the matter was dismissed. *See*, Tomomi Watanabe Exhibit N.
16. On May 10, 1968, in Civil Action No. 405 regarding the land *Iteliang* Tochi Daicho 579, Rechemiich and Barau Tucherur sued Kliu Beouch, mother of Tomomi Watanabe, seeking to evict her from *Iteliang*. *See*, Tomomi Watanabe Exhibit L.
17. On January 13, 1970, Associate Justice Burnett entered judgment in Civil Action No. 405. After noting that Barau had passed away and Rechemiich no longer wished to continue, and that Barau transferred ownership in writing to Kliu, the land *Iteliang*, Tochi Daicho lot 579, belongs to Kliu. *See*, *Id* and Figure 2.

⁸ This is likely Kloteraol Ngiraungiltekoi who was Rechuld's uncle who purportedly bore the title *Tucherur* but then became *Obechad* of Okelang Clan.

18. On August 24, 1971, Kliu filed an eviction action against Iblai Sasao, in Civil Action No. 1763. Kliu sought to evict Iblai Sasao from *Iteliang*, the land that was awarded to Kliu in Civil Action No. 405. *See*, Tomomi Watanabe Exhibit M.
19. On February 6, 1974, in the matter of *Kliu v. Iblai Sasao*, Civil Action No. 30-73, judgment was entered declaring Kliu to be the owner of Tochi Daicho 579, *Iteliang*. Later in 1980, Kliu Beouch deeded this land to Lorenza K. Nelson. *See*, Terekieu Clan Exhibit I and Figure 2.

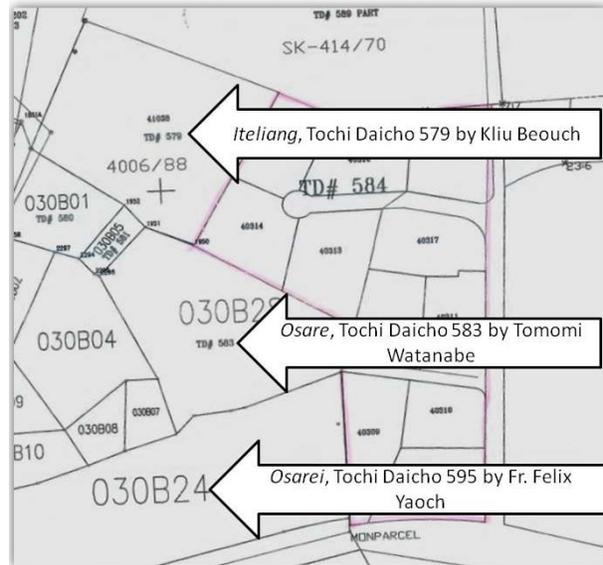


Figure 2 *Iteliang* by Kliu Beouch, *Osare* by Tomomi Watanabe, and *Osarei* by Fr. Felix, all of which are adjacent and west of the lands claimed before this Court.

Exhibit L and Figure 2 *supra*.

- On November 7, 1974, a Land Acquisition Record was prepared for the Catholic Church by Fr. Felix Yaoch. The land claimed is *Osarei*, Tochi Daicho 595. A sketch of Tochi Daicho 595 in the Land Acquisition Record shows that it is adjacent to the main road on the south and to Tochi Daicho lots 594, 593, and 583 to the north. This land is the present site of Mindszenty High School which runs all the way down to the turn into Iyebukel Hamlet. *See*, Terekieu Clan Exhibit M and Figure 2 *supra*.
20. On November 11, 1974, a Land Acquisition Record was prepared for Tomomi Watanabe Iyar. The land claimed is *Osare*, Tochi Daicho 583 which is listed in the Tochi Daicho under the name of Tomomi. A sketch of Tochi Daicho 583 shows that it is adjacent and north of the present site for Mindszenty High School. To the east of Tochi Daicho 583 is government land. Later on February 16, 1990, Tomomi Watanabe deeded this land to John K. Rechucher. *See*, Terekieu Clan

21. On November 18, 1974, a Land Acquisition Record was prepared by Imerab Rengiil for *Kedelblai* consisting of various Tochi Daicho lots including Tochi Daicho 584. *See*, Terekieu Exhibit A.
22. On August 4, 1978, Imerab Rengiil and several other persons prepared a document regarding Terekieu lands. It is stated in the document that Ngirachewes was a trustee for two of the lands one of which was sold to a Japanese man who was married to Kliu.⁹ This land was a principle house site for Terekeiu. Persons

⁹ This land that was purportedly sold by Ngirachewes to Kliu’s Japanese husband is possibly *Iteliang*, Tochi Daicho 579. Kliu’s Japanese husband is possibly the one referred to as Ngirachemutii. Tochi Daicho 579, like Tochi Daicho 584, was blank as to ownership and other details.

- signing the document, such as Dirrarekong Lusii Orrukem, were purportedly related to Ngirachewes, and they do not dispute Imerab Rengiil's position that the lands belong to Terekieu Clan. The document then lists the names of those lands that were listed as government land and those that remained with the clan. *See*, Terekieu Exhibit E.
23. On August 13, 1980, Kliu Beouch deeded Tochi Daicho lot 579, *Iteliang*, to Lorenza K. Nelson. *See*, Terekieu Exhibit I.
24. On December 20, 1987, Rechuld, as a nephew of Kloteraol Ngiraungiltekoi, prepared a written statement in support of Tomomi Watanabe's claim that Kloteraol Ngiraungiltekoi bore the title *Tucherur* and gave the land *Iteliang* to Kliu Beouch as *ulsiungel*. *See*, Tomomi Watanabe Exhibit E.
- On or after December 20, 1987, Tomomi Watanabe's claim for Tochi Daicho 584 was prepared on a Land Commission claim form. In this document, Tomomi claims that the Tochi Daicho owner is Kloteraol Ngiraungiltekoi and that the land was given to Kliu as *ulsiungel* and that Rechuld Tucherur was a witness who had a prepared statement. *See*, Tomomi Watanabe Exhibit B.
25. On January 25, 1988, Wilhelm Rengiil, for Terekieu Clan, wrote to Domestic Affairs Director Mr. Daiziro Nakamura requesting assistance in identifying locations and boundaries for 24 land names, presumably in Iyebukel Hamlet. *See*, Terekieu Exhibit F.
26. Before the deadline date of January 1, 1989, Wilhelm Rengiil, for Terekieu Clan, filed claims for *Ngerkeai el Ked*, *Osarei*, *Terekeiu*, *Kedelblai*, *Ituu*, *Iteliang*, *Ingereklii*, *Uchul a Bars*, and *Tmochorosis* with the Land Claims Hearing Office. *See*, Terekieu Exhibits B, C, & D.
27. On February 16, 1990, Tomomi Watanabe deeded Tochi Daicho 583 to John K. Rechucher.
28. On May 21, 1990, Tomomi Watanabe filed her claim for *Iteliang* or *Kedelblai* Tochi Daicho 584 and stated that Kloteraol Obechad¹⁰ owned Tochi Daicho 584 and that Kloteraol Obechad and Kliu, mother of Tomomi, are from the same clan and Kloteraol gave the land to Kliu.
29. On December 30, 1990, John K. Rechucher filed his claim for *Osare* or *Melekei*, Tochi Daicho 583.
30. On May 25, 1994, in Formal Hearing No. 12-20-94, *John K. Rechucher v. Benacio Sasao*, Tomomi Watanabe testified that her father purchased *Osare*, Tochi Daicho 583 from Ngirachewes. That is why it became listed in the Tochi Daicho in Tomomi's name.
31. On November 27, 1995, a Certificate of Title was issued by the Land Commission naming the Catholic Mission as owner of Cadastral Lot 030 B 24, Tochi Daicho 595, called *Osarei*.

¹⁰ This is likely the same person as Kloteraol Ngiraungiltekoi who purportedly held the title *Tucherur* of Terekieu Clan but later became chief *Obechad* of Okelang Clan in Ngerchemai Hamlet.

32. On August 22, 1996, Certificate of Title No. LC-11-96 was issued naming John K. Rechucher as owner of Lot No. 030 B 28, Tochi Daicho 583-part known as *Osare*. See, Terekieu Exhibit L.
33. On October 10, 2006, Tomomi Watanabe signed a Land Claim Monumentation Record acknowledging that *Iteliang/Kedelblai* Tochi Daicho 584 is comprised of worksheet lots 40313, 40314, 40315, and 40316.
34. On November 29, 2010, Land Court Determination of Ownership No. 12-736 was issued naming Terekieu Clan as owner of lot 182-123C measuring six square feet. See, Terekieu Exhibit J.
35. On July 20, 2011, a transcript of Civil Action No. 03-384, *Bilung Gloria Salii v. Terekieu Clan*, was prepared in which Bilung Gloria Salii testified that Terekieu Clan owned most of the land in Iyebukel but gave out much of these lands to other clans including Tmong Clan. See, Terekieu Exhibit K.
36. On January 21, 2011, Associate Justice Alexandra F. Foster issued a judgment along with a Decision in *Terekieu Clan v. Bilung Gloria G. Salii and John C. Gibbons*, Civil Action No. 03-384. Among several findings, Associate Justice Foster found the following: (a) Terekieu was originally divided into three lineages these being Iteliang, Ituu, and Ikekemongel but only Ituu remains; (b) Terekieu Clan's stone platform existed at what is now Hatsuichi Ngirchomlei's

leasehold (lot 40314) and members of Terekieu were buried there long before the land was wrongfully taken during the Japanese period; (c) "the land known as Iteliang, along with its house site, is off the main road into Iyebukel tucked behind Ellen's Laundromat"; (d) Rechuld was not an *ochell* of Terekieu Clan as he was apparently an *ochell* of Okelang Clan; and (e) in the 1950's Rechuld filed a claim for the Harris Elementary School site on behalf of Okelang Clan and not Terekieu Clan. See, Terekieu Clan Exhibit S.

IV. Conclusions of Law

A. Legal Framework

1. Return-of-Public-Lands Claims

A party who filed a claim for the return-of-public-lands concedes that the land became public land. See, *Palau Pub. Lands Auth. v. Tab Lineage* 11 ROP 161 (2004). To prevail on the claim, the party must then show that: (1) he or she is a citizen who filed a claim by January 1, 1989; (2) that he or she is either the original owner or one of the original owner's proper heir; and (3) the land at issue became public land through a wrongful taking (*i.e.*, force, coercion, fraud, or without just compensation, or adequate consideration). See, 35 PNC §1304(b). Under this legal standard, the government does not have the burden to prove how the land became public land. Instead, the burden is on the private claimant to prove the elements listed above. See, *Masang v. Ngirmang*, 9 ROP 125, 128 (2002).

2. Superior Title Claims

Under the superior title standard, a claimant claims that the land never became

public land. See, *Wasisang v. Palau Pub. Lands Auth.* 16 ROP 83, 84 (2008). Under this standard, both the claimant and the public lands authority stand on equal footing and must prove their claims by a preponderance of the evidence. However, unlike the return-of-public-lands standard, affirmative defenses are available for the government when a claimant makes a claim under the superior title standard. These affirmative defenses include laches, estoppel, waiver, stale demand, and the statute of limitations. See generally, *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 5, (2004). Finally, although ordinarily both the government and the private claimant stand on equal footing, if there is an adverse Tochi Daicho listing for the land, the claimant has the “added burden of establishing by clear and convincing evidence that [it is] incorrect.” *Wasisang* 16 ROP at 85.

3. Standard of Proof

Unless otherwise specified, the Court applies the preponderance of the evidence standard in addressing each claim below. Preponderance of the evidence means, “the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” *Black’s Law Dictionary*, 7th Ed. (2004) at 1220. Phrased briefly, in light of all of the evidence submitted, is it more probable that the ultimate asserted fact is true or not true? The Court does this to make additional findings of fact on highly disputed factual issues that are materially relevant for each claim.

B. Merits of the Claims¹¹

1. Terekieu Clan is comprised of at least three lineages: (1) Ituu; (2) Ikekemongel; and (3) Iteliang. These lineages are also the names of lands or house sites in Iyebukel Hamlet. The house site for Ituu Lineage is located further into Iyebukel north of Kukumai Rudimch’s residence. The site for Ikekemongel Lineage is where Fuana Ngiratechekii resides. The site for Iteliang Lineage is tucked behind Ellen’s Laundromat.
2. The male title of Terekieu Clan is *Tucherur*. The female title is *Uodelchadra-Terekieu*. Since the Japanese period, the title *Tucherur* as well as ownership and control of Terekieu Clan’s lands have been in dispute. Because of these unresolved disputes within Terekieu Clan, ownership of some of the lands owned or associated with the clan was not registered in the Tochi Daicho. These include Tochi Daicho lots 584 and 579 which remained blank.
3. Tochi Daicho records show that Barau of Iteliang Lineage held the title *Tucherur* during the Japanese period. Specifically, Tochi Daicho lots 803 and 804 were registered in the name of Barau Tucherur. Tochi Daicho lot 826 was listed as owned by Terekieu with Barau Tucherur as trustee. Tomomi Watanabe Exhibit E, on the other hand, states that Kloteraol

¹¹ Additional factual findings and inferences are made while discussing the merits of the claims in light of the applicable legal standards for claiming lands.

Ngiraungiltekoi held the title *Tucherur*. His nephew Rechuld, at some point, also bore the title *Tucherur*.

4. Barau Tucherur claimed that Rechuld Tucherur was not a member of Terekieu Clan and that Rechuld Tucherur wrongfully registered clan lands in his name. Rechuld Tucherur was found by Associate Justice Foster to be an *ochell* of Okelang Clan. His uncle Kloteraol Ngiraungiltekoi bore the title *Obechad* of Okelang Clan.
5. All three men, Barao Tucherur, Kloteraol Ngiraungiltekoi, and Rechuld Tucherur, claimed to own or control Terekieu Clan's lands including those in this case, namely, lots 40313, 40314, 40315, and 40316.
6. After Rechuld Tucherur died, Wilheml Rengiil became *Tucherur*. See, Terekeiu Exhibit S. His sister Brenda Ngirmeriil held the title *Uodelchad-ra-Terekieu*. Their titles were challenged by Bilung Gloria Salii and John C. Gibbons, who claimed to be chiefs of Terekieu but lost by a judgment rendered by Associate Justice Foster in 2011.
7. Worksheet lots 40313, 40314, 40315, and 40316 were together claimed by Barau Tucherur in the 1950's as G-10, formerly Tochi Daicho 584¹² called *Ngerkeailked*. On the other hand, Kliu Beouch, mother of claimant Tomomi Watanabe, claimed that



Figure 3 The lots that are collectively called **Osare** are bounded by the dark boundary line. This image was also scanned from Ngeltengat Exhibit A and software was used by the Court to emphasize the outside boundaries of the claimed lots.

this land is *Iteliang* which she earned as *ulsiungel* from *Tucherur* Kloteraol Ngiraungiltekoi. Rechuld Tucherur prepared a statement on December 20, 1987 in support of Tomomi's claim that *Iteliang* was *ulsiungel* earned by Kliu Beouch from Kloteraol Ngiraungiltekoi. Brenda Ngirmeriil claimed at the hearing before this Court that G-10 is called *Terekieu*, the original house site for Terekieu Clan. Given the conflicting Palauan names, the Court will refer to these four worksheet lots as G-10. See, Figure 3 above.

8. Worksheet lots 40308, 40309, 40310, 40311, 40312, 40317, 40318 and 40318A are parts of Public Parcel No. 21 for which

¹² See Tochi Daicho Map admitted as Tomomi Watanabe Exhibit D; Terekieu Clan Exhibit R; and KSPLA Exhibit 25.

no claims were filed with the Palau District Land Office in the 1950's.¹³ These lots are part of the area called *Osare* or *Osarei* and may have been registered as part of Tochi Daicho 591 listed under the Nanyo Takushoku Company. Collectively, these worksheet lots will be referred to as *Osare*. See, Figure 4.

9. **Gayleen T. Sakuma**: the claim was filed on January 6, 2003 with the Land Court. It is stated in the form that the lot claimed is worksheet lot 40318 and the basis is that it is owned by Dirchomtilou Dibeche Mariur. Despite notices being served, the claimant never appeared at the scheduled hearings. The claim fails for lack of sufficient proof.
10. **Hanako Ngeltengat**: the claim was filed on July 26, 1988 with the Land Claims Hearing Office as a claim for public land. Hanako stated in her claim form that she claims "Osarei" and that it belonged to her father but was taken for "Skenjio". Claimant Hanako died before the hearing and was represented by her sister Fuana Ngiratechekii.

The basis of the claim is that Telotongang, who was Ibedul, lived at *Osarei* and was also referred to as Ngirchosarei. He lived on the land because he owned it while married to a woman named Tmikou Petoï, the mother of Ngirur. In turn, Ngirur was the parent of Ngiratechekii, the father of claimant Hanako Ngeltengat and her sister

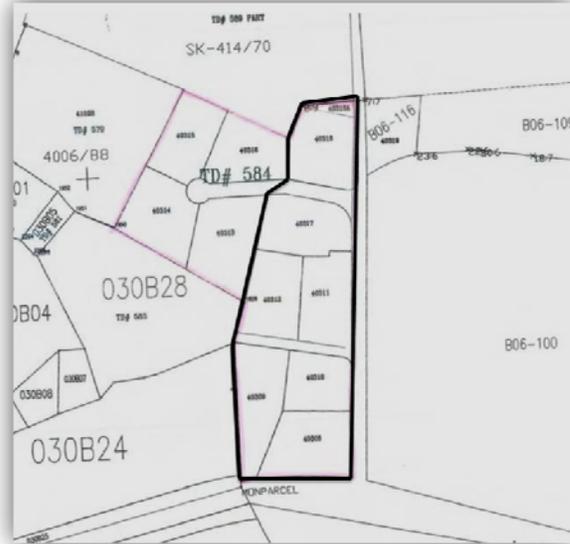


Figure 4 Worksheet lots 40313, 40314, 40315 and 40316 enclosed by the dark lines and together referred to by the Court as G-10. The image was scanned from Ngeltengat Exhibit A and the boundary lines were emphasized by the Court using software.

Fuana Ngiratechekii. When Ibedul Ngirchosarei Telotongang died, *Osarei* was given out as *chelbechiil* to Tmikou Petoï. It was Tmikou Petoï who was the *original owner* of the land when it was wrongfully taken by the Japanese.

The foregoing claim fails because, even if the land was simply taken for Skenjio without just compensation or adequate consideration, there is inadequate proof that the land belonged to Ibedul Ngirchosarei Telotongang and then went to his wife Tmikou Petoï as *chelbechiil*. The evidence submitted was the testimony of an interested witness, Fuana Ngiratechekii, which was not corroborated. Indeed, it was directly contested by the other claimants such as Terekieu Clan, which claimed that it owned the land since time immemorial and continued to own the land

¹³ See, modern worksheet map admitted as Ngeltengat Exhibit A in conjunction with Trust Territory claims map admitted as Terekieu Exhibit H which shows no claims into Public Parcel No. 21.

immediately before it was taken by the government. Given the conflicting claims and the lack of corroboration for Hanako Ngeltengat's claim, there is little upon which this Court can find it more likely than not that Hanako Ngeltengat's predecessors, as opposed to the other claimants, owned the land immediately before it became public land.

11. **Tomomi Watanabe:** The claimant has two claim forms. One is an unsigned, undated, unfiled, and unacknowledged Land Commission form. The Land Commission pre-dated the Land Claims Hearing Office, so it can be assumed that the document was prepared and filed before the deadline date of January 1, 1989. It is then a timely filed claim for public land.

The second claim form was filed with the Land Claims Hearing Office on May 21, 1990. As this was filed after January 1, 1989, it can only be considered as a superior title claim.

The basis of the claim is that worksheet lots 40313, 40314, 40315, and 40316 together comprise Tochi Daicho 584 called *Iteliang*. It is claimed that *Iteliang* was originally owned by Kloteraol Ngiraungiltekoi who bore the title *Tucherur*. Kloteraol Ngiraungiltekoi leased the land to a Japanese national named Nakasone and also gave the land as *ulsiungel* to Kliu Beouch, the mother of claimant Tomomi Watanabe. Finally, it is claimed that the land never became public land and that if it did become public land, it was wrongfully taken.

As both a superior title claim and as a claim for the return of public lands, the claim of Tomomi Watanabe fails for the following reasons. It is asserted that worksheet lots 40313, 40314, 40315, and 40316, together comprise Tochi Daicho 584 owned by Kloteraol Ngiraungiltekoi. This is not the case. Tochi Daicho 584 is blank. Thus, there is little basis to support the claim that the land was originally owned by Kloteraol Ngiraungiltekoi. Kloteraol's claim of ownership also conflicted with Barau Tucherur's claim of ownership to the same lot. It is apparent that, as between the two men, it was disputed as to who owned Tochi Daicho 584. Because there is insufficient proof that Kloteraol Ngiraungiltekoi owned the land or otherwise had sufficient authority to devise the same—as opposed to Barau Tucherur or the other claimants here—there is little basis upon which this Court can find that Kloteraol Ngiraungiltekoi owned the land or otherwise had authority to convey the land as *ulsiungel* to Kliu Beouch.

Additionally, worksheet lots 40313, 40314, 40315, and 40316 were also previously identified as one lot in the 1950's and designated as G-10. Neither Kloteraol Ngiraungiltekoi nor Kliu Beouch staked a claim for G-10 before the Palau District Land Office—only Barau Tucherur did so. Then, in 1971, Kliu Beouch sued Iblai Sasao over *Iteliang*, Tochi Daicho 579. *See*, Figure 2 above. Yet, Kliu did not do anything about G-10 that her daughter Tomomi now claims as *Iteliang*, Tochi Daicho 584. Then in 1974, Tomomi Watanabe herself prepared a Land Acquisition record for *Osare*, Tochi Daicho 583, also adjacent to G-10. She

did not then prepare a claim for neighboring G-10. It is inferred from Kliu and Tomomi's past conducts that they have no valid claim of ownership to G-10.

It is also noted that the statement of Rechuld was submitted to support Tomomi Watanabe's claim. *See*, Tomomi Watanabe Exhibit E. In the statement, Rechuld says that Kloteraol Ngiraungiltekoi was his maternal uncle who bore the title *Tucherur* and that he gave the land *Iteliang* as *ulsiungel* to Kliu Beouch. Even if that were true, Rechuld does not describe or otherwise identify the location of *Iteliang*, while G-10 is claimed by the other claimants as being *Ngerkeialked* or *Terekieu*. Thus, this Court cannot find it more likely true that G-10 is *Iteliang* which was given as *ulsiungel*, particularly when Kliu Beouch had already been determined to own *Iteliang*, Tochi Daicho 579, which is adjacent and west of G-10. *See*, Findings of Fact Nos. 16, 17, 18, and 19 as well as Figure 2 *supra*.

Because there is insufficient evidence to find that Kloteraol Ngiraungiltekoi owned G-10 in the first place, because there is insufficient evidence to find that G-10 is *Iteliang*, because Kliu Beouch and Tomomi Watanabe claimed lands adjacent to G-10 and could have claimed G-10 at that time but did not do so until much later in time, and because Kliu Beouch had already gained ownership to a neighboring lot called *Iteliang*, Tomomi Watanabe's claim through her mother Kliu Beouch fails both as a return-of-public-lands claim and as a superior title claim.

12. **Terekieu Clan**: The first claim for the clan was filed in 1974 with the Land

Commission. A second claim was filed on November 30, 1988 with the Land Claims Hearing Office. Terekieu Clan claims G-10 and *Osare* on separate grounds. As to G-10, it is claimed that it represents Tochi Daicho 584. Although the Tochi Daicho listing for lot 584 is blank, it is claimed that the land truly belongs to Terekieu Clan. As to *Osare*, it is claimed that the land originally belonged to Terekieu Clan but was taken by force and without just compensation and then registered as part of Tochi Daicho 591 under the Japanese Government.

Turning first to G-10, ownership of the land was disputed between people purporting to be chiefs or otherwise having control or authority over Terekieu Clan. Barau Tucherur, Kloteraol Ngiraungiltekoi, and Rechuld Tucherur all claimed to be chief *Tucherur*. They also claimed the G-10 area for themselves and otherwise tried to exert control over the land. During the Tochi Daicho registration from 1938-1941, the G-10 lot was likely identified as Tochi Daicho 584 but ownership and other details remained blank. Although Barau Tucherur, Kloteraol Ngiraungiltekoi, and Rechuld Tucherur were jockeying over ownership and control of the land, they all assert that they own G-10 through Terekieu Clan.

Then, while ownership of G-10 remained unregistered in the Tochi Daicho, in about 1943 or otherwise soon before World War II, G-10 somehow came to be owned by either a Japanese national, a Japanese government corporation, or the Japanese government. This change of ownership notwithstanding, the Tochi Daicho was not

amended to reflect the change.¹⁴ Then, after World War II, that ownership likely vested in the Alien Property Custodian through the September 27, 1951 vesting order.¹⁵ See Findings of Fact No. 6 regarding the vesting order.

The facts show that there are at least two ways that G-10 went from Terekieu Clan to a Japanese entity and then to the Trust Territory Government. First, Rechuld Tucherur purportedly leased the lot to Nakasone. A lessee, however, only has possessory but not ownership interest in property. Consequently, the leasehold interest is not likely the reason why ownership of the land became vested with the Alien Property Custodian.

The second explanation for how the land became public land is that Barau Tucherur purportedly sold the land to Hosino, a Japanese national, for 3,000 yen but only 2,000 yen was received. Hosino may have been acting for himself or for the Nambo Company. Either way, the Court finds that this is likely the reason why after World War II the land became considered public land.

¹⁴ This is not an isolated incident. In at least one other instance, land owner Ngiraked sold his Tochi Daicho lots 870 and 871 before September 3, 1940 but the Tochi Daicho listings were not amended to reflect this change of ownership. See, “Decision” in *Katey O. Giraked, et al v. KSPLA*, LC/B 08-0184, 0187, & 0188 (Land Court 2014).

¹⁵ After World War II, a schedule of lands listing lands owned by the Japanese was given to the United States Department of the Navy by the Japanese Government. See, *Id.* It is likely the case that the foreign ownership of G-10 was on this schedule of lands and that is why its ownership became vested with the Alien Property Custodian of the Trust Territory Government pursuant to the 1951 vesting order.

For the following reasons, the public land G-10 shall be returned to Terekieu Clan. While there is little doubt that Terekieu Clan originally owned the land—even those who were jockeying for control stake their claims through Terekieu Clan—there is reason to doubt whether Barau Tucherur validly sold the land. Ownership and control over the land—and Terekieu Clan in general—was much disputed before and after World War II. Barau Tucherur claimed to have sold G-10 to Hosino. Rechuld Tucherur claimed to have leased G-10 to Nakasone. Kloteraol Ngiraungiltekoi claimed to have given G-10 as *ulsiungel* to Kliu Beouch. Whatever the case may have been, the dispute between these persons was not resolved for a proper ownership registration to be listed in the Tochi Daicho. The only unintended beneficiary of this dysfunctional intra-clan debacle became the Trust Territory government.

In the end, although some compensation was paid by Hosino to Barau Tucherur, and assuming that Barau Tucherur had authority to sell the land in the first place and further assuming that such payment can be considered payment to Terekieu Clan, it was not full payment. The evidence shows that only 2,000 of the 3,000 yen was paid. As that was not payment in full, just compensation was not received by Terekieu Clan. Consequently, the land must be returned.

As to *Osare*, the Court finds it more likely than not that it became part of Tochi Daicho 591 listed under the Nanyo Takushoku Company which later became identified as Public Parcel No. 21. See, Terekieu Exhibit H. During the Japanese period and afterwards, Barau Tucherur,

Kloteraol Ngiraungiltekoi, and Rechuld Tucherur were vying for ownership and control over G-10. They, however, did not act the same regarding neighboring *Osare* which was immediately adjacent to and east of G-10. Additionally, Barau Tucherur and Rechuld Tucherur also made claims in the 1950's to Claim No. 127, the site of what is now Harris Elementary School. They, however, did not also lay claim to *Osare* that was part of Public Parcel No. 21. By the conduct of these earlier members—or claimed members—of Terekieu Clan, the Court finds that said clan does not own *Osare*.

13. **Koror State Public Lands Authority:**

Although KSPLA may have for years maintained lease lots on G-10, the land was, as explained above, previously taken from the original owner Terekieu Clan without just compensation. Accordingly, pursuant to Article XIII, Sec. 10 of the Constitution, G-10 must be returned.

On the other hand, it is more likely than not that *Osare* became part of Tochi Daicho 591, a land listed as owned by the Nanyo Takushoku Company in the Tochi Daicho and later identified as part of Public Parcel No. 21. Barau Tucherur and Rechuld Tucherur disputed ownership of G-10 and Claim No. 127 but did not also file claims for or otherwise fight over *Osare*.

It was only much later in time, in the 1970's and 80's, that claims were filed for *Osare* by Imerab Rengiil and Hanako Ngeltengat. As to Imerab Rengiil for Terekieu Clan, the actions of Barau Tucherur as to *Osare*, or more precisely, the lack thereof, undermines and disproves

Imerab's claim. As to Hanako Ngeltengat, insufficient evidence was provided to prove that Ibedul Telotongang Ngirchosarei owned the land in the first place. Additionally, insufficient evidence was provided to show that *Osare* was taken by force, coercion, or fraud, or without just compensation or adequate consideration. Therefore, *Osare* remains public land owned by KSPLA.

V. Conclusion

For the reasons stated above, it is hereby determined as follows:

1. Terekieu Clan owns the G-10 lots, namely, worksheet lots 40313, 40314, 40315, and 40316.
2. KSPLA owns the *Osare* lots, namely, worksheet lots 40308, 40309, 40310, 40311, 40312, 40317, 40318, and 40318A.
3. The rest of the claimants, and those claiming through or under them, have no ownership interests in the foregoing lots.
4. Appropriate determinations of ownership shall issue forthwith consistent with this Decision.