1. That the land shown as Lot No. 81, comprising of 2,500 *tsubo*, more or less, as depicted in Palau District Land Office Map No. B 1, is the property of the Ebai, also spelled Ibau, Clan, represented by its title bearer, Siksei.

2. That the defendants have no right, title or interest in the land in question, and shall forthwith vacate the premises.

3. That plaintiff shall have costs as allowed by law.

KUBARII NGIRUDELSANG, Appellant

v.

IMEONG ETIBEK, Appellee

Civil Action No. 592

Trial Division of the High Court

Palau District

June 12, 1973

Appeal from Palau Land Commission title determination. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, reversed where presumption that Tochi Daicho registration was correct had not been overcome, yet title had been found to lie elsewhere than as shown by the Tochi Daicho survey.

1. **Palau Land Law—Japanese Survey—Presumptions**

   Registration in the Tochi Daicho land survey is presumed correct, and where there was nothing in the record to overcome the presumption, land registration team and Palau District Land Commission improperly found title to lie elsewhere.

2. **Palau Land Law—Clan Ownership—Title**

   Court would not, upon reversal of Palau District Land Commission title determination, name appellant, a strong female member of the clan title was found to lie in, as trustee, where under Palauan custom, clan land is administered by the strongest male and it is for the clan to decide whether the land will be administered by someone other than the strongest male.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Appellant:	ITELBANG LUII
Counsel for Appellee:	JOHN O. NGIRAKED

TURNER, *Associate Justice*

This is an appeal from a title determination of the Palau District Land Commission. Unlike the recent decision in *Ngirchongor Kumangai v. Isako M. Ngiraibiochel*, 6 T.T.R. 217, in which the standing of the appellant as a party to judicial review was a primary issue, the present case was contested in a hearing before the land registration team, and it is clear the appellant is an aggrieved party with right of appeal.

The land in question consists of lots numbers 1528 and 1463, registered in the Japanese Tochi Daicho survey and compiled in 1938–1941. This was the twentieth decision in the first title determination area in Palau and some of the errors of omission and commission in the land registration team record may fairly be said to stem from the inexperience of the participants in administration of a new land title procedure. However, procedural error was not the basis of this appeal, and it became all too apparent at the appeal hearing the registration team overlooked and totally disregarded both Palauan customary land law and the precedent found in many High Court land decisions.

The appellant based his objection to the title determination on the ground the administrative group made a decision contrary to custom. If, in fact, the registration team considered the impact of custom upon the contest, it completely failed to indicate it in its opinion. In its "Finding of Fact" the team held that during the time of the Japanese survey, before any land could be transferred from or to a clan, lineage or individual, "at least two representatives

from each clan or lineage" must approve the transfer. Palauan customary land law and the High Court decision on the point are to the contrary.

As to transfer of clan land this court said in 1953 in *Ngirchongerung v. Ngirturong*, 1 T.T.R. 68, 70:—

> ". . . if at the time of the purported gift this was clan land, the chief of the clan had no authority to dispose of it without the consent of the clan."

Appellee claimed, according to the registration team record, that Mengerekur was the clan chief and gave him the land. Under the custom the chief could not do this without consent of the clan members. To the same effect as to lineage land is *Arbedul v. Ngirturong*, 1 T.T.R. 66.

More recently this court said in *Armaluuk v. Orrukem*, 4 T.T.R. 474, 475:—

> "Under Palauan custom, owership of land by a lineage or family, requires unanimous consent of the senior family members before it may be transferred."

Of course, the same rule applies when clan land is attempted to be transferred.

Even if its "rule of two approvals" was appropriate to Tochi Daicho registration, the registration team record was in conflict with this conclusion because the findings state that the clan titleholder transferred the land to appellee. This conflict can be attributed to careless preparation of the factual basis of the decision. It is reasonable to assume future "findings" in support of a title determination will be more carefully drawn, and will conform to the law, including customary land law.

[1] But even if the registration team findings on the evidence were accurate, the conclusion reached is contrary to law expressed in the Palau court decisions for more than twenty years. It has been held so many times that citation is scarcely necessary that registration in the Tochi Daicho

is presumed to be correct. *Ngirudelsang v. Itol*, 3 T.T.R. 351, 355, states the rule and lists most of the previous decisions to the same effect. There was no showing in the record to overcome the Tochi Daicho registration. Without such showing, the registration team was bound by the listing.

At the appeal hearing counsel for appellee conceded the land registration team and the Land Commission erred in issuing its title determination that the land was owned by the Uchularael lineage of the Tikei Clan and appellee, bearer of the principal male title of Spesungel, was the trustee. Appellee's counsel was inclined to pass off the error as due to inexperience of the registration team. The record shows, however, that the appellee testified at the registration team hearing that during the Tochi Daicho survey "Mengerekur transferred that said land to me."

If that claim had been correct, it would have been so registered in the Daicho. Instead, the Daicho showed it was Tikei Clan land administered by appellee, the clan title bearer. Until a showing of transfer has been made, in full accordance with Palauan custom, the title should remain as listed in the Daicho.

[2] The appellant, a strong female member of the clan and a member of Emaubelau Lineage, rather than appellee's Uchularael Lineage, asked the court to name her trustee of the land for the clan on the theory appellee, by making his claim to the registration, had forfeited his right to be trustee. This may be true, but it is a matter for the clan to decide. It was said on this point in *Metecherang v. Sisang*, 4 T.T.R. 469, 472:—

> "Kiuelul's failure to administer the land for the benefit of the lineage is sufficient to warrant his removal by the lineage members as the administrator . . . . Whether the plaintiff becomes the administrator as she seeks to be in this action or whether the senior strong members select someone else is a lineage and clan problem to be settled by them."

The rule thus applied pertained to lineage land whereas the present case involves administration of clan land. The rule, however, is equally applicable.

Under Palauan custom, clan or lineage land is administered by the strongest male member, normally the title bearer. The strongest female member usually administers the clan or lineage *taro* patches. It would be improper for the court to upset this custom. If the senior members of the Tikei Clan want someone else to administer their clan lands, they may make the change and have it recorded in a certificate of title issued by the Land Commission.

This is the first determination of title by the Land Commission this court has found necessary to reverse. The court is authorized under 6 TTC § 355, applicable to Land Commission appeal decisions, to reverse the determination and remand it for entry of judgment. In this situation, the new judgment should not be a new title determination which would set a new appeal period in operation. Any appeal from a Trial Division judgment must be made to the Appellate Division of the High Court.

Necessary statutory procedure will be complied with by issuance of a certificate of title, in accordance with 67 TTC § 117. It is, therefore,

Ordered, adjudged and decreed:—

1. That the Palau District Land Commission issue its certificate of title showing that the real property located in Delebechel, Arakabesang Island, and described as Lot 004 A 01; Tochi Daicho Nos. 1528 and 1463; House Lot and Garden Land known as Blebaol, as shown on the Division of Lands and Surveys Official Cadastral Plat No. 004 A 00, dated August 6, 1972, is private land, and that Tikei Clan is the owner of this fee simple, and Imeong Etibek, bearer of the clan title, Spesungel, is trustee of the land for the clan.

2. Appellant is awarded her costs in accordance with law.

ADALBERT OBAK, Plaintiff

v.

MIYUKI TULOP and SITO SINGEO, Defendants

Civil Action No. 447

Trial Division of the High Court

Palau District

June 18, 1973

Action for damages. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held bailee of auto for bailee's sole benefit, and intoxicated person bailee allowed to operate the auto, liable for damage resulting from accident which occurred when intoxicated person was driving.

1. **Negligent Driving—Bailed Autos**

   Where owner of auto, and his companions, had been drinking and all but one, who wished to go home, were apparently substantially under the influence, and owner gave the one who wished to go home permission to take the auto, a bailment was created, and where bailee allowed a third companion to drive him home and the third companion had an accident after letting bailee off, the third companion was liable for his negligence and the bailee was liable for negligently allowing an intoxicated person to drive.

2. **Bailments—Duty Owed**

   The duty owed under a bailment for the sole benefit of the bailee is greater than ordinary care.

3. **Torts—Damages—Before and After Value**

   In suit for negligent damage to auto, measure of loss was difference in "before and after" value.

4. **Torts—Damages—Before and After Value**

   In action for negligent damage to 1968 auto which cost $2,200 new and was damaged beyond repair eight months after purchase, $300 salvage value would be deducted from value of auto, as depreciated, at time of accident, even though plaintiff had given the wrecked car away rather than selling it, and damages would be set at $1,100.

5. **Torts—Damages—Temporary Replacements**

   In suit for negligent damage to auto, cost of car rental from time auto was damaged beyond repair to time new one was purchased could not be