seals on the papers, which, if they had been official Japanese land documents, would have been present.

[2] It is apparent that if the Court did grant the motion to vacate the judgment and held a trial, plaintiffs would be no better off than they are now, unless the testimony was changed. Plaintiffs would be unable to say what effect the Japanese papers given to defendant had upon the title to the land and, of course, defendant presumably would continue denying he had received any such papers. Without substantially more, such evidence would not meet plaintiff's burden of proving title to the land in question.

It is, therefore,

Ordered:—

Plaintiff's motion for relief from the stipulated judgment entered in the above entitled case August 13, 1969, is denied.

KOICHI WATANABE, Plaintiff

v.

NGIRUMERANG, Defendant

Civil Action No. 439

Trial Division of the High Court

Palau District

June 27, 1973

Ejectment action in which title was ultimately decided. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that in the Palauan Islands, a clan or lineage has no interest in or control over land individually owned by its members, upon their death.

1. Civil Procedure—Unrequested Relief or Decisions

Where, in the past, members of defendant's lineage had lost an ejectment action against plaintiff regarding land plaintiff, by present action, sought to have defendant, who was in privity with plaintiffs in prior action as they were of the same lineage, ejected from, court could and would, on basis of evidence submitted, and regardless of the label given the com-

plaint, settle the ownership question by treating the action as one for quiet title.

2. **Palau Land Law—Individual Ownership—Decedents' Estates**

A clan or lineage in the Palauan Islands has no control over individually owned land of a member of the clan or lineage upon the death of the individual, and the individual may do what he wishes with the land without approval of or interference by the clan or lineage.

3. **Courts—High Court**

The Trial Division of the High Court is bound by the rulings of the Appellate Division.

Assessor:	SINGICHI IKESAKES, *Associate Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Plaintiff:	JOHN O. NGIRAKED
Counsel for Defendant:	ROMAN TMETUCHL

TURNER, *Associate Justice*

Although the complaint was brought for ejectment, the trial resolved itself into a quiet title action. Plaintiff is the agent, under a written power of attorney, of the claimant as individual owner of the land in question. Defendant claims a portion of the land, that on which his house is located, as individual owner on the basis of a purchase from the Olengebang Lineage.

[1] The present case is the second time these parties (or those in privity) have brought ejectment. The first complaint, filed in 1961, was *Kabriela and Rechuldak v. Koichi*, Palau Civil Action No. 208, not reported. The plaintiffs represented the Olengebang Lineage and sought to eject Koichi. They were denied relief. In the present case Koichi seeks to eject the defendant, who claims title from the lineage. Two ejectment actions between the same parties over the same land is two too many. On the basis of the evidence submitted, this court can treat the present action as one for quiet title and thus resolve the many years of

conflict. Defendant attempted to partially avoid the adverse judgment against the lineage by asserting the judgment in Civil Action No. 208 applied to only part of the land—that portion occupied by the present plaintiff.

The former judgment did not quiet title to the land, or any part of it, but held the plaintiff lineage is "not entitled to the possession of that part of Umang's land now occupied or used by the defendant (the present plaintiff), nor can they interfere with such occupation and use by the defendant." We deem it appropriate now to settle the question of ownership, regardless of the "label" given to the complaint.

[2] It also is appropriate in this decision to again emphasize, as this Court and the appellate division have done in the past, that a clan or lineage has no control over individually owned land upon the death of the individual. The Tochi Daicho land registration showed Umang to be the individual owner of Lot 862, comprising 485 *tsubo*, the land in question. The defendant and his witnesses from the lineage do not dispute this individual ownership.

Plaintiff urged that his principal, Dembei, who was the adopted and only son of Umang, inherited the land; that Umang had announced that Dembei would have the land on his death. The witnesses for the lineage did not dispute Umang's announcement; they insisted it was not effective.

Defendant's principal witness in this regard was a member of the Palau Land Commission registration team. If his views, as expressed on the witness stand, prevail in land title determinations, the Palau Land Commission is confronted with serious problems.

Prior to World War II, said this land title expert witness, land in the Palau Islands was not transferred from one individual by will to another individual. In the present case, Umang, the individual owner, died in 1944, which

was technically not prior to World War II. As it shall appear, the timing is not significant.

The defendant's land registration witness said that, instead of transfer by will from one individual to another, when an owner died his clan or lineage members disposed of his land during the funeral meeting. This was precisely the position of the Olengebang Lineage in the present case, and was urged by defendant to justify the effectiveness of his land purchase from the administrator for the lineage of the land in question. Defendant also introduced a deed to prove the purchase. Other defense witnesses said the administrator for the lineage sold the land with an after the fact acquiescence, if not prior consent, of the adult senior members of the lineage, with the exception, of course, of plaintiff's principle, Dembei.

It is noted these same lineage people have repeatedly advanced their position in prior cases, and each time their theory has been rejected by this court. The same senior "administrator" for the lineage, who purportedly conveyed to defendant, and the land registration team member who was a witness in the present case were the plaintiffs in *Obkal and Rechuldak v. Armaluuk*, 5 T.T.R. 3. The court said:—

> "The main thrust of the plaintiff's claim was that the transfer was conditional; that is to say it was Derbai's property as listed (in the Tochi Daicho) but subject to reversion and control by the lineage."

The land in that case was transferred to Derbai by Umang, the original owner of the land in the present case. This court said in *Obkal* at 5 T.T.R. 5:—

> "The primary concern of the court, however, is to attempt to settle once and for all the plaintiff's theory—compounded of equal parts of self-interest, traditional custom, and real property law followed in Palau beginning with the Japanese administration—

that even though land is individually owned, the clan or lineage has a reversionary interest and control over it."

The decision concludes (and it occurs that this opinion could almost be substituted in its entirety for the present case):—

"This court has rejected this theory now advocated by the plaintiffs each time it has been presented."

And it is rejected again now.

The entire theory of defendant's and the lineage's case was presented to this court in an almost identical set of facts in *Ngiruhelbad v. Merii*, 1 T.T.R. 367, 369, where the court said:—

"The plaintiff claims that even a person's individual land in the Palauan Islands, if it came from a lineage or clan of which the person was a member should be controlled after his death by the matrilineal lineage or clan from which the land came, and that the senior members of that group should decide what part, if any, of such land should go to the children or widow of the deceased."

The Land Commission registration team member also expressed the belief wills were not effective in Palau until the Palau Congress adopted Resolution No. 28 in April, 1957. The trial court in *Ngiruhelbad* rejected both the theory of reversion to lineage or clan control urged by the plaintiffs and also declined to hold that until 1957 property could not be passed by will. The case was appealed on both points.

On appeal, the appellate division, at 2 T.T.R. 631, affirmed the trial court holding, and said at 634:—

"To clarify the issue presented here let us assume, without so holding, that appellant's statement of the law is correct under old Palauan custom. The question then presented is whether or not this old custom still has force and effect."

The appellate court then examined the growth of individual land ownership as introduced in German times and carried

on in the Japanese administration with its Tochi Daicho listing of individual ownership. The court then concluded,

"We have set out the chain of authority here to show that old Palauan custom is not, and has not been for more than sixty years, the sole criterion to be considered concerning title to and transfer of land."

[3] We must also note at this point that the trial division is bound by the rulings of the appellate division. In any event, this court agrees that individual ownership means just that, and the owner may do with the land as he wishes without interference or approval of the lineage or clan. The proposition was succinctly put in *Elechus v. Kdesau*, 4 T.T.R. 444, 450:—

". . . we are bound by the effect of the Tochi Daicho listing that it was transferred to the defendant as his individual land. This action cuts off the interests of the clan and lineage members."

To the same effect is *Orrukem v. Kikuch*, 2 T.T.R. 533.

So we conclude from the settled law pertaining to transfer of individually owned land that Umang could, and, under the evidence, did give the land in question to his son Dembei, without any right of control or interference by the Olengebang Lineage, or anyone else. Because it was Dembei's land, the lineage, through Obkal, had no right to sell any part of it to the defendant, and the attempted sale was without effect and gave defendant no interest in any portion of the land.

We do not pass upon the question of defendant's entitlement to recover his $800.00 purchase price because the question was not raised by him.

It must follow from what has been said the land in question is owned by Dembei. He or his agent may remove the defendant from the land, as he has no interest in it. Therefore, it is

Ordered, adjudged and decreed:—

1. That Lot 862, as listed in the Tochi Daicho, comprising 485 *tsubo*, bounded on the north by the land of Tellames, on the east by government road, on the south by government road, and on the west by the land of Roduk and Tellei, is individually owned by Dembei, adopted son of Umang, and that plaintiff Koichi Watanabe is his duly appointed representative in control of the land.

2. That the defendant and all those claiming through him have no interest in any part of the land.

3. That defendant shall have ninety (90) days from date of entry of judgment to remove himself and his effects from the land, and that any property remaining after that period shall be deemed forfeited to plaintiff.

4. No costs are awarded.

SINGEO TECHONG, and Others, Plaintiffs

v.

PELELIU CLUB and NGARABLOD ASSOCIATION, and Others, Defendants

Civil Action No. 518

Trial Division of the High Court

Palau District

July 9, 1973

Action for amounts claimed due. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that statute of limitations had run out but the claims would be allowed where defendants acknowledged that some sum, though not that claim, was owed.

1. Action on Account—Admissions

An admission of "some" indebtedness without naming an amount is an admissible admission against interest, going to prove the fact of indebtedness, and justifies the court in ruling the amount to be one dollar less than the amount claimed.