

**NGERTELWANG CLAN by TMEWANG NGIRAKED, ADELBAI
YECHADERTELWANG, and MEKESONG EBILEDIL,
Appellants and Cross-Appellees**

v.

BAULES SECHELONG, Appellant and Cross-Appellee

Civil Action No. 582

Trial Division of the High Court

Palau District

August 29, 1973

Appeals from District Court judgment relating to entitlement to title of Yechadertelwang of the Ngertelwang Clan. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held evidence showed defendant was entitled to the title.

1. Palau Custom—Clans—Removal of Title Bearers

Under Palauan custom, a Yechadertelwang of the Ngertelwang Clan may properly be replaced when he fails to meet his clan responsibilities and participate in municipal council affairs.

2. Palau Custom—Clans—Appointment of Title Bearers

Members of the Tmeleu Clan of Palau are entitled to participate in the appointment of Ngertelwang Clan title bearers, as it appears the Tmeleu Clan members are also members of the Ngertelwang Clan.

Assessor: PABLO RINGANG, *Presiding
Judge, District Court*

Interpreter: AMADOR NGIRKELAU

Reporter: ELSIE CERISIER

*Counsel for Appellants—
Appellees Tmewang Ngiraked,
Adelbai and Mekesong:* JOHN O. NGIRAKED

*Counsel for Appellee—
Appellant Baules Sechelong:* JONAS OLKERIIL

TURNER, Associate Justice

These are cross-appeals by plaintiffs and defendant from the District Court judgment relating to entitlement to the principal title of Yechadertelwang of the Ngertelwang

Clan, Airai Municipality, Palau District. Plaintiff Adelbai claimed the title as against the defendant Baules Sechelong who has held the office and exercised its powers since July, 1969.

The District Court held neither plaintiff nor defendant bore the title because the proceedings under which each of them claimed the title were insufficient under the custom. The Court ordered that the senior male and female members of both Ngertelwang Clan and the royal Airai Clan of Tmeleu meet and appoint a title bearer for Ngertelwang Clan within three months of the date of its judgment.

Both appellants based their appeals in part on identical grounds. Both said:—

“The trial court erred in analyzing Palauan customs regarding appointments to bear titles.”

This is a most unusual reason for appeal from a District Court. Many times appeals from the High Court to the Appellate Division from decisions touching upon traditional law rests upon a claim the trial judge failed to understand or follow custom. This ground is asserted even though the High Court trial judge has the benefit of the advice and guidance of a District Court judge as an assessor “to sit with him at the trial of any case to advise him in regard to the local law and custom which may be involved. . . .” 5 TTC § 353.

In these appeals the Micronesian trial judge, who sits as an assessor in the High Court, is charged with failure to understand or follow the custom, which is indeed a switch in appellant complaints.

The Adelbai appeal also alleges the trial court’s order providing for the inclusion of members of the Tmeleu Clan in the selection of the title bearer is contrary to the evidence. The Baules appeal did not challenge this order. It claimed the Court did not follow the evidence regarding the applicable custom for appointment of title bearer.

On appeal this court had the advantage of the transcript of the trial testimony and permitted Baules to call a witness to testify concerning his relationship to earlier title bearers of Ngertelwang Clan, thus supplying an omission in the trial record. The court also entered in the record and heard counsel concerning an affidavit from members of the Tmeleu and Ngertelwang Clans wherein the clan members stated they met and appointed Baules in conformity with the judgment order of the trial court. In addition to the new evidence, the Court also heard extensive analysis and explanation of the trial evidence by counsel representing both sides. Although the appeal hearing did not amount to a trial de novo, the Court considered both the evidence and the law in the record, as authorized by 6 TTC § 355 (2).

By the affidavit, containing 10 signatures from members of both clans, Baules has become the Ngertelwang Clan title bearer in conformity with the District Court judgment order. However, this result does not solve the questions raised by both parties on appeal.

Adelbai's complaint based upon custom is twofold. He first claims that his appointment made at the funeral ceremony of the former title bearer could not be upset by a subsequent appointment by Ibul, a female title holder, who is now deceased. The trial court held this was not an appointment but a temporary designation in that the token or symbol of title was delivered to Adelbai to be held in trust by him until a permanent appointment was made.

Baules claimed the permanent appointment of himself by Ibul and that the appointment was announced and approved at the traditional feast prepared by Ibul and approved by those present in accordance with custom. The number three title bearer of the Clan Ngiraked Tmewang was present and the announcement of the selection was made by the successor to Tmewang, Ngiraked Matlab who

also signed the affidavit of appointment. (Defendant's Exhibit A on appeal.)

[1] Baules also pointed out he has served on the municipal council, an office attached to village-clan title bearer, since his appointment in 1969. It also appears, for whatever it may be worth, that even if the appointment of Adelbai at the funeral meeting was intended to be permanent it was proper to replace him because of his failure to meet his clan responsibilities and participate in council affairs.

Finally, Baules bolsters his claim by showing clan membership from two lines, both maternal and paternal. Also Ibul, who appointed him, was a strong maternal line-member whereas Mekesong, sister of Adelbai, was not a strong member of the clan because she was of the paternal line.

The evidence, as presented at the appeal hearing, is compelling that Baules was appointed in 1969, contrary to the trial court finding, but that in any event, he was again appointed in conformity with the trial court order in November, 1972.

The only question about the court ordered appointment is whether or not it was proper for members of Tmeleu Clan to participate with Ngertelwang Clan members in making the appointment. There was a great deal of testimony upon the origins and relationships of the two clans both at the trial and at the appeal hearing.

[2] Adelbai's argument that the two clans were separate entities was contradicted by his own witnesses, the transcript shows. It appears members of Tmeleu Clan are also members of Ngertelwang Clan, and may therefore participate in appointment of Ngertelwang title bearers. This is in conformity with the trial court's finding and order.

Baules is a member of Tmeleu Clan in the maternal line and a member of Ngertelwang Clan in both maternal and

paternal lines. His qualification to bear the title is not subject to challenge irrespective of the means by which he was appointed to that position.

It is unnecessary to affirm or modify the judgment appealed from as the result now reached is appropriate to supplement the trial decision. It is therefore,

Ordered, adjudged and decreed:—

That Baules Sechelong bears the title of Yechadertelwang of Ngertelwang Clan, Airai Municipality, Palau District.

KARU LENEKAM, Plaintiff

v.

LIBAIE LIDRIK & LAJIL LIDRIK, Defendant

Civil Action No. 3-73

Trial Division of the High Court

Marshall Islands District

September 21, 1973

Complaint to recover from *dri jermal* the *alab's* share from Monbukwor and Lomej Wato, Ailinglaplap Atoll, Marshall Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that when *alab* died his nephew became *alab* and uncle's children were required under Marshallese custom to pay the nephew the *alab's* share of copra sale proceeds.

1. Marshalls Land Law—Lineage Ownership—Inheritance

Generally, under Marshallese custom, succession to title and interest in land proceeds horizontally within the *bwij*, not vertically, to the youngest member of the *bwij* in the same generation as the prior titleholder, and title does not descend to a titleholder's children until all members of one or more *bwij* have died.

2. Marshalls Land Law—"Alab"—Succession

Upon death of *alab*, his nephew was entitled to the title and to the *alab's* share of proceeds of copra sales made by decedent *alab's* children as *dri jermal*, who had refused to give nephew the *alab's* share.