MIKEL RECHETUKER MAIDESIL, Appellant

v.

ERUNGEL REMENGESAU, TRUSTEE FOR UCHELKUMER CLAN, Appellee

Civil Action No. 1-73

Trial Division of the High Court

Palau District

February 12, 1974

Appeal from district land commission determination. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that clan land could not be given to individual as *ulsiungel* by the principal titleholder of the clan without consent of the senior members of the clan.

1. **Palauan Custom—"Ulsiungel"**

   Ulsiungel is a gift of land for services performed by the donee for the donor while the donor was ill.

2. **Palauan Land Law—Clan Ownership—Transfer**

   Clan land could not be given to individual as *ulsiungel* by the principal titleholder of the clan without consent of the senior members of the clan.

3. **Deeds—Witnesses**

   Irrespective of whether deed was an invalid fraud due to apparently forged witness signatures, the deed was of no validity where the witnesess signed with no knowledge or understanding of the contents.

Assessor:	SINGICHI IKESAKES, *Associate Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Counsel for Appellant:	JOHN O. NGIRAKED
Counsel for Appellee:	BAULES SECHELONG

TURNER, *Associate Justice*

The Palau District Land Commission, in its determination of ownership dated December 14, 1972, held that the land in question, known as Tebedall, designated as Tochi Daicho lot No. 1525, located in Meyungs, Arakabesan Island, is owned by Uchelkumer Clan and that Erungel Re-

mengesau, the principal title bearer of the clan, is the trustee.

The appellant, whose claim to individual ownership of the land was rejected by the land registration team and the Land Commission, filed a timely notice of appeal, which had been prepared for him by the Koror office of Micronesian Legal Services. Because of management policy by the Legal Services it did not represent the appellant after preparation of his Notice of Appeal. Mention is made of these circumstances because of the questionable tactic of preparing pleadings without further counseling of a client, particularly when, as in the present case, the pleadings do not meet the requirement of the law.

Because of the special circumstances of this case and because counsel for the appellant at the appeal hearing had been retained at the last minute before the hearing, the Court did not dismiss the appeal for failure to comply with appellate procedural requirements. All counsel should now take heed that similar failure in the future will result in dismissal of an appeal.

This Court made a detailed analysis of the requirement for appeal and review of Land Commission determinations in *Ngirchongor Kumangai v. Isako M. Ngiraibiochel*, 6 T.T.R. 217, decided June 7, 1973. It is not necessary for this decision to review all of the suggestions made by the Court to perfect an appeal.

It is noted, however, that the instruction to the Land Commission and its registration team given in the *Kumangai* decision have been complied with in a completely satisfactory manner by the Commission and team in the present case. The record submitted on appeal was carefully prepared and complete in detail. The record was sufficiently adequate to preclude the need for receiving further testimony and evidence.

The serious error in this appeal was the manner in which it was made to this Court by the appellant.

The statute authorizing appeal from a Commission determination, 67 TTC § 115, provides that an appeal "shall be effected" in the same manner as an appeal from a District Court decision in a civil action. Rule 21, Rules of Civil Procedure, requires that the notice of appeal contain "a concise statement of the grounds" on which an appeal is brought. The necessity for such a rule is illustrated by the present case.

The land registration team made extensive and detailed findings of fact. It considered each of the several reasons advanced by Mikel why he should be found to be the individual owner of the land rather than the Uchelkumer Clan. The registration team rejected each of these reasons advanced in support of appellant's claim.

Which of these rejected reasons, if any of them or what other reason appellant may have for a reversal or modification of the Commission determination or a remand of the case for further proceedings is not shown by the pleadings. It was not until counsel began his argument at the appeal hearing that either the court or counsel for appellee were apprised of the grounds for appeal. Normally, this is entirely too late to be permissible.

There is another sound reason why the notice of appeal should state the grounds upon which relief is sought. It will require appellant counsel, in this case the members of the Koror office of Micronesian Legal Services, to examine the basis of the appeal to determine whether there is a substantial question to be determined upon appeal. If the reason for the appeal is not valid the appeal is frivolous and the aggrieved party should be told so to avoid cost to him and needless imposition upon the Court, the Land Commission, and the appellee and his counsel.

[1] Appellant's argument at the appeal hearing was that the land in question was given to his father by the clan trustee as *ulsiungel*, which under the custom is a gift of land for services performed by the donee for the donor when the donor was ill or infirm. The same claim was made to the land registration team and rejected.

[2] Even if Sachebid, the female principal titleholder of the clan, wanted to give the land as *ulsiungel* to appellant's father, she could not have done so because it was not her land to give. The land belonged to the clan and was registered as clan land in the Tochi Daicho. Sachebid, as titleholder was shown in the Daicho as trustee for the clan.

This Court has ruled many times as to how clan or lineage land may be transferred to an individual. The decisions made during the more than twenty years that this question has arisen in litigation were recently reviewed in another appeal from a land commission determination, *Kubarii Ngirudelsang v. Imeong Etilbek*, 6 T.T.R. 235. In that decision, the Court criticized the land team because it did not follow customary land law and the decided cases. The decision was reversed because of that failure.

In a series of decisions in 1953 this Court announced its finding as to the Palauan custom pertaining to transfer of clan land to an individual. In *Ngirchongerung v. Ngirturong*, 1 T.T.R. 68, 70, the court said:—

". . . if at 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."

This rule was clarified to require that the senior members of the clan or lineage must unanimously consent before a transfer is effective. *Armaluuk v. Orrukem*, 4 T.T.R. 474, 475.

In the present case the registration team carefully adhered to the traditional law when it rejected appellant's

claim. The registration team held that because the land was registered in the Tochi Daicho as belonging to the Uchelkumer Clan with Sachebid as trustee it followed that Sachebid could not transfer the land "unless the senior members of the Uchelkumer Clan agree to transfer this land (as) Mikel's own property."

The appellant also recognized the necessity of clan approval and to bolster his claim presented an instrument purporting to transfer the land to him. The registration team made a careful investigation of the document, including a trip to Peleliu to interview alleged signatories.

The team found that three of the persons purportedly signing the instrument denied the signatures were made by them and they had no knowledge about the instrument. Two persons testified they signed the deed. One of these two was the appellant's mother and the other a close relative. It is apparent the appellant attempted to perpetrate a fraud upon the Land Commission and by his appeal upon this Court.

[3] Counsel for appellee pointed out that by the holding of this Court in *Gibbons v. Bismark*, 1 T.T.R. 372, the purported deed was of no validity even if there had not been forged signatures on it because signatures were made without knowledge or understanding of the content or intent of a land transfer instrument.

It also is noted there were two other claimants to the land in addition to appellant. They did not appeal the rejection of their claims and they are now precluded from challenging the determination.

Ordered, adjudged and decreed:—

That the determination of ownership dated December 14, 1972, by the Palau District Land Commission that the land known as Tebedall in Meyungs, Arakabesan Island, designated Tochi Daicho lot No. 1525 is owned by the

Uchelkumer Clan, Erungel Remengesau as trustee, is affirmed.

GEORGE N. MARKET, INC., Plaintiff

v.

PELELIU CLUB and its BOARD OF DIRECTORS, represented by MITSUO SOLANG, president, Defendants

Civil Action No. 34-73

Trial Division of the High Court

Palau District

February 19, 1974

Action for balance due on mutual and open account. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held defendant club admitted the debt where its president, in a letter to plaintiff, stated he shared plaintiff's concern with the amount owed and that it had been unpaid for four years.

1. **Action on Account—Statute of Limitations**

   Where plaintiff entered charges for merchandise sold defendant, credited defendant with payments received, and, at the end of each year, prepared a statement of indebtedness remaining for the year, there was a mutual and open account and statute of limitations providing that for an action for balance due on a mutual and open account, the cause of action accrues at the time of the last item in the account applied, not general six-year statute of limitations, so that items entered by plaintiff more than six years before suit and claimed by plaintiff were not barred. (6 TTC § 307)

2. **Evidence—Declarations Against Interest**

   In action for balance due on mutual and open account, letter from president of defendant club to plaintiff, stating he shared plaintiff's concern with the amount of money the club owed plaintiff and that the amount had been unpaid for four years, was a clear and unqualified acknowledgment of the debt.

3. **Interest—Accounts Due**

   Where, in action for balance due on mutual and open account, plaintiff's annual statement of account notified defendant that interest would be charged on the unpaid balance, interest would be allowed by the court.