Ordered, adjudged and decreed:—

1. That plaintiff shall have and recover from the defendant the sum of $578.33, together with interest on said sum at the rate of 6% per annum from date of Judgment until paid.

2. That no costs are assessed.

LLECHOLECH, Plaintiff

v.

JOSEPH BLAU and TMOL ILILAU, Defendants

Civil Action No. 517

Trial Division of the High Court

Palau District

March 28, 1974

Ejectment action involving dispute over ownership of Tochi Daicho lots. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where, in return for caring for him, which defendant did for eight years, landowner told defendant to build his house on landowner's land, plant coconut trees and join the clan landowner derived his title from, and landowner instructed defendant to have all his lands, and defendant entered the land, built on it and planted coconut trees, an inter vivos gift of the land occurred.

1. **Palauan Land Law—Clan Ownership—Reversionary Rights**

   Land a clan transfers to an individual does not, under Palauan custom, revert to clan upon individual's death.

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

   Under Palauan custom, clan land may be transferred to an individual only upon approval of all adult "strong" members of the clan.

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

   Instrument purportedly limiting clan's transfer of its land to individual to a life estate was not effective where two "strong" members of the clan, the person the land was transferred to and the person entering the instrument in evidence in ownership dispute, had not approved the instrument, for the approval of all "strong" members was required.

4. **Deeds—Grantor's Interest**

   Deed of land to plaintiff by relatives of owner of the land, four or more years after owner's death, was not effective, because the relatives had no interest in the land.

5. Deeds—Recordation—Ineffective Deeds

Recordation of ineffective deed does not give it any effectiveness.

6. Deeds—Recordation—Necessity

Failure to record an effective and valid land transfer does not make it ineffective.

7. Contracts—Statute of Frauds

There is no statute of frauds in the Trust Territory, and a transfer of land may be oral and still be effective.

8. Deeds—Recordation—Necessity

A land transfer need not be recorded to be effective; the only purpose of the recordation statute is to protect purchasers against prior transfers. (57 TTC § 11202)

9. Palauan Custom—"Ulsiungel"

That for the last eight years of his life, two persons cared for a person who gave them a gift of *ulsiungel*, that is, land given in gift inter vivos for favors, services, or care and support rendered the donor, was adequate to justify the gift.

10. Palauan Custom—"Ulsiungel"

Where, in return for caring for him, which defendant did for eight years, landowner told defendant to build his house on landowner's land, plant coconut trees and join the clan landowner derived his title from, and landowner instructed defendant to have all his lands, and defendant entered the land, built on it and planted coconut trees, an inter vivos gift of the land occurred.

11. Civil Procedure—Complaint—Issues Raised

Where complaint and answer dealt primarily with disputes over ownership of one parcel of land, plaintiff could not complain that Master to whom the case was referred decided ownership of seven parcels, because question of ownership of the seven parcels was injected into the case by plaintiff, who claimed their ownership in his complaint for ejectment from one parcel.

Counsel for Plaintiff: ROMAN TMETUCHL
Counsel for Defendants: JOHN O. NGIRAKED

TURNER, *Associate Justice*

This case involves ownership of Tochi Daicho designated Lots Nos. 2, 15, 65, 102, 396, 396-2 and 431 located in Okemii Hamlet of Melekeok Municipality. The Tochi

Daicho listing shows the land was individually owned by Mengort Madraiou.

Llecholech, Blau and Mengort were half-brothers, having the same mother but different fathers. The defendant, Joseph Blau, is the adopted son of Blau, who was the half-brother of the plaintiff and of the former landowner Mengort.

The dispute was ordered referred to a Master for hearing and report. Hearing was held by Francisco Morei, Associate Judge of the Palau District Court, and he made his report to this Court November 15, 1973. Hearing on the findings of fact and conclusions of the Master, with the parties and their counsel present, was held before this Court January 14, 1974. In addition, counsel for plaintiff filed an extensive brief and memorandum of law objecting to conclusions of the Master finding for the defendants.

In addition to the ownership dispute between plaintiff and defendants a third party, Mad Kdesau, also spelled Tkedesau, appeared as a witness at the Master's hearing and claimed the land in behalf of the Kerurau Clan. The claim was based on the theory that the clan, when it distributed clan land to its members including the seven parcels to Mengort at the time of the Tochi Daicho survey and ownership listing, intended that the land should be returned to the clan on the death of the individual owner. In support of this theory Kdesau offered an instrument bearing the "chops" of all persons who were said to have attended the clan meeting when the distribution was made, except the chops of both Mengort and Kdesau.

[1–3] The Master refused to recognize the instrument as a valid condition of the transfer to Mengort. We agree. There are at least two primary reasons why a clan transfer to an individual does not revert to the clan upon the individual's death under Palauan custom. The first of

these is that clan land may be transferred to an individual only upon the approval of all adult "strong" members of the clan. Neither Kdesau nor Mengort agreed to a "life estate" transfer by putting their chops on the instrument offered by Kdesau.

Kdesau must be familiar with this rule of traditional land law because he relied upon it in *Elechus v. Kdesau*, 4 T.T.R. 444, 448.

The other reason why Kdesau's theory the land reverted to the clan on Mengort's death is contrary to Palauan land law is illustrated in and has been decided by a long series of decisions of this Court beginning with *Ngiruhelbad v. Merii*, 1 T.T.R. 367, Civil Action No. 44, decided in 1958, and affirmed by the appellate division in 2 T.T.R. 631. One of the recent decisions was *Obkal v. Armaluuk*, 5 T.T.R. 3, in which the court said:—

> "Were it not for the court's desire to emphasize the principles applicable to individual land ownership concepts and to give further evidence to those clan or lineage traditionalists who resort, usually as a matter of self-interest, to the theory of the inalienable right of the clan or lineage to control land no matter what the abstract or chain of title shows, we need not have considered the merits of this case at all."

[4] Plaintiff largely based his case before the Master on a claim analogous to the one advanced in behalf of the clan by Kdesau. Plaintiff submitted a "Deed of Transfer" to himself, dated in 1969, more than four years after the death of Mengort. The "deed" was signed by the "relatives" of Mengort. This instrument was no more effective than the clan instrument purportedly limiting the clan transfer to Mengort for his life. Plaintiff's deed could not be effective as a transfer because the "relatives" of plaintiff had no interest in the land which they could transfer. A grantor may not transfer an interest he does not have. The most to be said for the deed is that it constituted a waiver of any

claim the "relatives" might have in the land. Such waiver was meaningless if the relatives had no rights and, of course, a waiver cannot also be a transfer.

[5, 6] The fact the plaintiff recorded this "deed of transfer" with the Clerk of Courts does not give it any additional effectiveness. The plaintiff argued that defendants' failure to record a deed to them prevented a valid transfer from Mengort to defendants. This, of course, is not the law.

[7, 8] There is no statute of frauds requiring a writing for a transfer of land in the Trust Territory. An oral transfer is effective and there need be no recordation of an oral transfer. The only purpose of the recordation statute, 57 TTC § 11202, is to protect a purchaser against an alleged prior transfer. It is not true, as plaintiff argues, that to be "effective" a transfer must be recorded.

This court said in *Kaminanga v. Sylvester*, 5 T.T.R. 312, 317:—

"Actual notice, when proved, may be substituted for the statutory notice established by the recording statute."

The primary issue of law in this case is the conclusion of the Master that Mengort gave the land in question to the defendants as *ulsiungel*, which pertains to a gift of land as compensation for services. See Palau Land Tenure Patterns, Shigeru Kaneshiro, p. 317. Plaintiff's counsel gave this definition of *ulsiungel*: ". . . a gift inter vivos in consideration for favors rendered, services administered, and care and support given to the donor . . . ."

[9] Plaintiff's extensive and vigorous objection to the Master's finding that the transfer from Mengort to defendants because of *ulsiungel* was founded upon a dispute against the evidence upon which the conclusion was made. The evidence supports the Master's finding that the two defendants took care of Mengort for the last eight years

of his life. Such service and care adequately justifies a gift of *ulsiungel.*

The plaintiff further argues, and properly so, there must be a gift established by the evidence. To merely say a person acquired land as *ulsiungel* does not, as plaintiff argues, "immunize the transaction from having to meet the legal requirements of land transfer and execution of gift."

Plaintiff relies upon *Rechemang v. Belau,* 3 T.T.R. 552, a case which involved the same parties as the present controversy, but concerned different land, in which the court held that there was not a gift causa mortis, as that term is defined at 3 T.T.R. 558.

[10] In the present case there was no gift causa mortis which, if effective, takes place at the death of the donor. The evidence clearly supports the Master's conclusion there was an inter vivos gift, consummated and thus not revocable, long prior to Mengort's death. The Master said:—

> "During Mengort's last eight years staying with Joseph Blau he told Joseph Blau to build his house on the land now in dispute (Lot No. 102 containing 950 *tsubo*) and also directed him to plant coconut trees on his lands. Joseph Blau planted about 30 coconut trees on the land in dispute and about 200 on the other of Mengort's land. He also instructed Joseph Blau to become a member of Kerurau Clan (the source of Mengort's individual title to the lands) and to have all of his lands . . . ."

Mengort's admonition to Blau to become a member of the clan and to build his house on the land has particular significance under Palauan custom. It is said that one who receives *ulsiungel* must meet his obligation to the clan or lineage or run the risk of being dispossessed of the land and that the same result would occur if the recipient failed to live on the land. See Palau Land Tenure Patterns, p. 317.

When the defendants entered Mengort's lands, built homes on it, and planted coconuts on it, the conclusion is inevitable the inter vivos gift was consummated by delivery

of the land to the defendants who accepted it and worked it. Plaintiff did not dispute this evidence. Plaintiff brought his complaint to court six years after Mengort died. Defendants had occupied, planted and otherwise used the land for at least eight years prior to Mengort's death without objection from plaintiff.

The evidence supports a finding that there was a gift from Mengort to Joseph Blau which was consummated by delivery and acceptance before Mengort's death.

For plaintiff now to object to either a *ulsiungel* gift or to the generosity of the giver did not strike a sympathetic response with the Master nor does it with the Court. Mengort was alone and dying of leprosy in Ngiwal until the defendants brought him home to Melekeok and took care of him the remainder of his life. The plaintiff and his children lived in Melekeok but did not look after the old man. Nor did they interfere with defendants' use of the land. Who are we to say at this late date that Mengort was not justified in giving his land to his nephew, by adoption, Joseph Blau as against other nephews and nieces of his half-brother, the plaintiff?

[11] Plaintiff's final complaint to the purported holding against him is that the Master's finding was "extremely generous toward defendant for recommending that ownership of (seven parcels) be confirmed in defendant, Joseph Blau, when both the complaint and answer . . . spoke of and contemplated a single lot." Plaintiff may not complain because the Master decided ownership of all seven lots when plaintiff himself injected the ownership of all seven into the case.

It is true the complaint asks to eject both defendants from the lot No. 102 where they each were building two houses. The complaint also refers to the other six lots. It said:—

"2. That these premises are part of the same as were conveyed to the plaintiff by Deed dated November 9, 1969 and recorded in Book VIII, p. 139 in the office of the Clerk of Courts on March 26, 1970."

It is the obligation of the Court to decide all of the issues between litigants. When ownership of one lot is specified in the complaint and plaintiff then claims ownership of six more lots, all of which defendant disputes in his answer, the Court is obliged to do "complete justice" and decide the ownership of all the lots. The argument of plaintiff advances that this was a "procedural irregularity" is rejected.

Upon the evidence and the applicable law of Palauan custom it is the Court's conclusion the Master's recommendation should be adopted.

Ordered, adjudged and decreed:—

1. That plaintiff is denied relief.

2. That the defendant Joseph Blau is the individual owner by *ulsiungel* gift from Mengort Madraiou of the following Tochi Daicho designated lots in Melekeok Municipality:—

Lots No. 2, 113 *tsubo;* No. 15, 4,165 *tsubo;* No. 65, 222 *tsubo;* No. 102, 950 *tsubo;* No. 396, 1,450 *tsubo;* No. 396-2, 260 *tsubo;* and No. 431, 122 *tsubo.*

3. The claim of Mad Kdesau in behalf of the Kerurau Clan is denied.

4. The so-called "Deed of Transfer" dated November 9, 1969, and recorded with the Clerk of Courts is vacated and held to be without force and effect.

5. That the defendant Tmol Ililau may build his house on Lot No. 102, with the consent of the defendant Blau.

6. No costs are assessed.