

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 12 ROP 186 (Tr. Div. 2005)

**AIRAI STATE PUBLIC LANDS AUTHORITY,
Plaintiff,**

v.

**AIMELIIK STATE GOVERNMENT, AIMELIIK STATE PUBLIC LANDS AUTHORITY,
HENARO ANTONIO, ANDRES MADRAISAU, and ULAI TELLTULL,
Defendants.**

CIVIL ACTION NO. 98-357

Supreme Court, Trial Division
Republic of Palau

Decided: April 27, 2005

⊥187

KATHLEEN M. SALII, Associate Justice:

PROCEDURAL BACKGROUND

Airai State Public Lands Authority (“Airai”) sued Aimeliik State Government and Aimeliik State Public Lands Authority (“Aimeliik”) and their lessees, Henaro Antonio, Ulai Teltull, and Andres Madraisau (“lessees”) for, *inter alia*, trespass into Airai’s boundaries. Airai moved for partial summary judgment, arguing that regardless of where the boundary is, the parcels of land occupied by Aimeliik’s lessees were located within the boundary of Airai State. The Court granted Airai’s motion on December 13, 2001, applying the holding from *Peleliu State v. Koror State*, 6 ROP Intrm. 91 (1997), that state boundaries are confined to the boundaries of the original municipalities as described in the municipal charters, and concluding, based on a report from the Bureau of Lands and Survey (BLS), that the parcels occupied by the lessees were located within Airai State. Trial was set for the remaining issues.

At trial, Aimeliik was allowed to present evidence, including additional information from the BLS, to establish what it claimed to be the boundary within the area previously determined to belong to Airai, but Airai was not prepared to litigate the location of the boundary line since the pretrial order granted partial summary judgment in favor of Airai on this issue. The Court then, in its findings and conclusions, *sua sponte* reconsidered and vacated its partial summary judgment order in favor of Airai and entered judgment in favor of Aimeliik. On appeal, the Appellate Division remanded the case, holding that the parties should have been given notice of the Court’s intention to vacate the summary judgment order and been allowed to present additional evidence regarding the motion.

FACTS

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 12 ROP 186 (Tr. Div. 2005)

The issue for the trial following the Appellate Division's remand was the location of the Airai-Aimeliik boundary based on their respective charters. Specifically, as between two specific points on Exhibit 1,¹ which of the two lines -- identified as JM-1 connected to JM-2 or JM-1 connected to JM-3 -- serves as the line of demarcation between Airai and Aimeliik. JM-1 to JM-3, Airai's purported boundary, places the area occupied by Aimeliik's lessees within Airai State. JM-1 to JM-2, Aimeliik's purported boundary, places the same area within Aimeliik State.

Although there was much testimony about where the first marker was placed, it was previously established in the first trial, and the Court finds no reason to disturb that finding, that JM-1, the first Japanese marker, is located along the point identified as Rael Kedam, which is interpreted to be the ridge line and which the parties agree is near the highest point of the hill. The parties, and their respective municipal charters, disagree on where the point opposite JM-1 is located.

¶188

The area in dispute is described in Aimeliik's Municipal Charter, issued in 1958, as follows:

. . . thence up the Ngimet River to Rael Kedam and proceeding in a southerly and westerly direction to the former hamlet of Tebadel on the shore of Chomebael lagoon; then to a point in Chomebael lagoon known as Bsachelimeliik and westerly south of Ngerchebal islets though Oidesebgong Reef to the western limits of territorial waters in the Philippine Sea.

Airai's Municipal Charter, issued in 1963, describes its boundaries as follows:

The Municipality of Airai, the geographic of which are described as:

starting at the northerly tip of Koror Renrak Dock (known as Babelthuap Dock) E 445, 950M. N813,470M, and project a line approximately N 370° W 8400M to an isolated coral reef in Komebail Lagoon E 441,890 N 820,220 point 2;
From point 2 approximately S 74° E 8550M to Mount Arurukoku (Ngategum Peak)
E 449,140M N 817,870M point 3;
From point 3 approximately N 31° E 2150M to Mount Yekigaroto E 450,280M, N 819, 730M point 4;
From point 4 along the crest of the ridge on a random course in an approximate N 70° E 2280 meters along the crest of the ridge to a hill of no name E 452,810M,
N 820,880M point 5;

¹Admitted at the first trial, Ex. 1 is Worksheet No. 99-M-002A ("worksheet") which was part of an Investigative Report conducted by the Bureau of Lands and Surveys pursuant to a court order. This exhibit plotted the boundaries of the two states based on their municipal charters. A duplicate of Ex. 1 was used at the trial on remand. Although nearly identical, the Court looks to the original Ex. 1 based on the simple fact that the colors of the various lines, as described in the notes and legends on the map, are accurately reflected thereon, while the reproduction of the same exhibit does not reflect all the lines in the colors described.

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 12 ROP 186 (Tr. Div. 2005)
From point 5 along the highest crest of a ridge on a random course in an approximate
S 55° E 8400M direction to a point projected in the same bearing on the outside at
the outer Goraklbad reef E 459,740M N 816,400 south of Namelakl Passage point
6;
From point 6 along the outside of the outer reef in a random course across
Goraklbad Passage and along the outside of the outer Augupelu Reef to its S.W.
most point,
point 7;
From point 7 along the western edge of Augupelu Reef in a random course to the
N.W. most point of Augupelu Reef point 8 approximately;
From point 8 due approximately north 4150M to the Eastern most tip of Eitelbong
Rock Island E 447,590M, N 810,000 point 9;
From point 9 along the western edge of Toagel Mid Channel to the point of
beginning
on an approximate bearing of N 25° W 3940M.

ANALYSIS

At the first trial, Aimeliik called several witnesses -- Abina Etpison, Demei Obak, Kiueluul Mekemad, Paulino Eriich, and Minoru Ueki -- who testified in support of its contention that the proper boundary line is JM-1 to JM-2. Their statements are set forth **L189** in more detail in the Court's prior decision and will not be recounted here, but the Court reaffirms its decision to accept the testimony of these witnesses as credible.

In the face of the testimony of Aimeliik's witnesses, Airai's arguments that the boundary line should be JM-1 to JM-3 are unpersuasive. During the first trial, Airai argued that the boundary-line description in its charter is more detailed and therefore more accurate than the description in Aimeliik's charter. Relying on the testimony of Airai's own witness, Thomas O. Remengesau, who was with the Island Affairs Office for Palau District under the TTPI High Commissioner's Office at the time Palau's municipalities were drafting their charters, this Court found that the description of municipal boundaries in Aimeliik's charter is adequate and no more reliable than the description in Airai's charter.

Airai also maintains, as it did during the previous trial, that because its charter was issued in 1963, five years after Aimeliik's charter was issued, Airai's charter prevails. Airai urges the Court to apply the reasoning of the doctrine of repeal by implication. Under this doctrine, commonly used to reconcile two conflicting statutes addressing the same subject matter, the statute enacted later in time prevails. *See* 73 Am. Jur. 2d. *Statutes* § 279 (2001). As Airai concedes, however, this doctrine is generally disfavored, and the Court believes it to be particularly inappropriate here. There is no basis for allowing one municipality to alter the content of another's charter merely by enacting a later charter.

Airai next contends that leaders from Airai and Aimeliik agreed, sometime in 1976 or

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 12 ROP 186 (Tr. Div. 2005) 1977,² to change the municipality boundaries. In support of this assertion, Airai called as witnesses Roger Iluches (“Iluches”), Roman Remoket (“Remoket”), Rechuld Raymond Rebluud (“Rebluud”), Rdechors Santos Ngirasechedui (“Ngirasechedui”), Obak ra Debkar Clarence Kitalong (“Kitalong”), Rurcherudel Iechad Yaoch (“Yaoch”), Jonathan Meluat (“Meluat”), and Simeon Eberdong (“Eberdong”). With the exception of Remoket, the witnesses testified that sometime in either 1976 or 1977, a meeting was called on a Friday at the Bai ra Ngerusar. This meeting was to be the culmination of discussions between the rubaks of the two respective municipalities to finalize the boundaries in order to submit their municipal charters to the Trust Territory High Commissioner for approval.³ The meeting at the Bai ra Ngerusar was attended by representatives from Airai who included Rechebal Ngirkiklang Beouch, Belechel Ngiruchelbad, Teriong Beouch, Baules Sechelong, Idengiong Renguul, Cristobal Tkoel, Ngirureor Rengulbai Ngirdimau, as **L190** well as Ngirasechedui and Yaoch. Representatives from Aimeliik who attended this meeting included Rengulbai Brikul, Siksei Ngiruchelbad, Sechalraimul Ngiriou, a man named Kailang, and Meruk Rengulbai, who was with the Land Registration Team. Representatives from the Land Commission who attended this meeting included Senior Land Commissioner Ichiro Dingilius, a man named Ngiraiobei who was the Commission’s investigator, staff members Irene and Oyaol, and Isao Sato and Iwetechong from Land Management.

Iluches was the Field Recorder for the Airai Municipality Land Registration Team between 1975-1977, and Rebluud was with the Land Registration Team for Airai between 1975-1980. Ngirasechedui and Yaoch attended the meeting and the monumentation in their capacities as representatives of the municipality, and Meluat was with the Land Commission. Their testimony established that after gathering to meet at the Bai, the group left to identify the first boundary marker, which was located on the tallest hill between the two districts, a hill or mountain called Medeuchèos. The witnesses indicated on Plaintiff’s Trial Exhibit 2 that Medeuchèos is located in the same general location as the area previously noted as Rael Kedam on Exhibit 1, the general vicinity of JM-1.

The testimony further established that it was the understanding of those who went to Medeuchèos that the parties would walk towards the seashore in a southwesterly direction to the point by the seashore and place the next marker. Because it was getting late on a Friday afternoon, however, everyone agreed to meet at Ngerderar the following Monday and proceed from there to lay down the marker by the seashore. According to Airai’s witnesses, none of Aimeliik’s representatives showed up at Ngerderar on Monday morning, though Aimeliik’s witness testified that the Aimeliik representatives were unaware of a continued meeting on Monday. Those from Airai who were present on Monday waited as long as they could but

²Plaintiff’s supplemental written closing argument makes several references to a meeting between the two former municipalities as having taken place in 1967. However, the evidence at trial is that this meeting occurred some time in either 1976 or 1977.

³ Aimeliik’s charter had been approved by the High Commissioner in 1958, and Airai’s charter had been approved in 1963. The Court thus takes the testimony to be a clarification of the respective boundaries of the two municipalities as identified in their approved charters. There was conflicting testimony as to the actual purpose of the meeting, with a witness testifying that the purpose was to determine boundaries between public lands and private lands, and another witness testifying that because the boundaries had been previously established, it was merely a “sightseeing” trip.

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 12 ROP 186 (Tr. Div. 2005) because the tide was getting low, they went into the channel. By lunchtime, no one from Aimeliik showed up, so after the group had lunch, the decision was made to place a panel marking the boundary and tell Aimeliik's representatives of the location of the panel, and if they objected, they could inform Airai of their disagreement with the placement of the marker. This channel where the parties went in on their way to place the second marker, according to Airai's witnesses, is called Taoch ra Tebadel and is identified as JM-3.

Airai relies on the evidence of this meeting to argue two things -- that Aimeliik agreed to change the boundaries described in its charter and that the place called Tebadel is located at JM-3 and connects to JM-1 to form the new boundary.

Airai's witnesses, Rebluud, Ngirasechedui, and Kitalong testified that, contrary to what Aimeliik contends, Tebadel is NOT at the point indicated as JM-2, but is instead located in Ngerchemel, Airai. They contend that Tebadel is the area from where the people of Ngeruluobel hamlet of Airai leave when going out to sea. Airai's witnesses further testified that the area marked as JM-2 is actually a place called Orakitaoch, located near the present-day location of John Thing's residence.

When looking at Exhibit 1, however, the triangulation of points 1, 2, and 3 of Airai's boundary as described in its Charter and which are connected by a red line as plotted by BLS, it becomes clear that none of the points testified to by Airai's witnesses fall L191 within these three points. The Court points this out in light of the testimony of Airai's witnesses that they did not rely on the description of its boundaries as set forth in its municipal charter when it went out to the field in 1976 or 1977.

Aimeliik continues to assert that Tebadel is actually located at JM-2, but Airai claims that Aimeliik should be estopped from making this argument because, according to Airai, there was no testimony or evidence presented by Aimeliik to dispute that a marker was placed at the bottom of the mountain ridge at the area known as Tebadel by the seashore, in a southwesterly direction from Medeuchèos. Even conceding Airai's directions as to where the marker was placed, however, Aimeliik's argument is a valid interpretation of the evidence. If the parties who met at the mountain ridge were in agreement that the next marker would be placed at the seashore, heading in a southwesterly direction, at an area called Tebadel, such location could be at either JM-2 as argued by Aimeliik or at JM-3 as argued by Airai. Both locations are in a southwesterly direction from the mountain ridge and are located by the seashore. And as the Court queried at one point during the trial, is it possible for one location to have two different names or for two different locations within the same general vicinity to share a similar name? Both parties know of a place called Tebadel. Airai contends that Tebadel is located where JM-3 is located, while Aimeliik contends that it is located where JM-2 is located.

Whether Tebadel is a channel or an ancient village, and whether it is located at JM-2 or JM-3, are questions that need not be definitively answered to resolve this case because the Court is not convinced that Aimeliik representatives agreed to change the municipality boundaries. Airai's evidence that Aimeliik intended to repeal the portion of the Aimeliik Charter which establishes its boundaries, and that Aimeliik was aware of and agreed to a change in its boundary

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 12 ROP 186 (Tr. Div. 2005) with Airai, is based on the lack of any objection by Aimeliik's representatives to the placement of the markers in 1976-77, long after the respective charters were established. But, the undisputed evidence establishes that none of Aimeliik's representatives accompanied Airai's representatives to the seashore, and there were no subsequent meetings between the two municipalities to confirm the placement of markers other than the one placed on the ridge.

Another reason to reject Airai's claim that Aimeliik representatives agreed to alter their boundaries comes from the 1958 Koror Municipal Charter and its amendment thereto, submitted as Aimeliik Exhibits E and E1. The respective charters of Koror and Aimeliik contained an overlapping area at one time. The amendment to the Koror Municipal Charter, approved on May 24, 1958, resolved the Koror-Aimeliik boundary dispute by acquiescing to the boundaries as described in the Aimeliik Municipal Charter. A straightforward reading of the amended preamble to the Koror Municipal Charter supports the inference that the appropriate leaders of each municipality met to discuss the overlapping boundary and resolved the dispute among themselves prior to forwarding the Charter to the High Commissioner for approval. No such meeting of the leaders of Airai and Aimeliik was recorded to support Airai's argument that Aimeliik acquiesced to the boundaries as set by Airai.

Thus, Airai has not introduced evidence sufficient to establish that the line from JM-1 to JM-3 represents the boundary between it and Aimeliik. As the Court opined in its earlier decision, to accept Airai's **L192** argument would allow a municipality to modify its boundaries by simply and conveniently establishing its coordinates and submitting the same to the High Commissioner for approval, without prior consultation with and acquiescence of the adjacent municipality. This result would create confusion and conflict, as evidenced by this lawsuit, which could be avoided, as was the case between Koror and Aimeliik when they submitted their respective charters after consultation on overlapping boundaries.

On a final note, even if the court were to find that Airai's boundary is from JM-1 to JM-3, including that area which Aimeliik argues was historically part of Aimeliik municipality, the doctrine of acquiescence supports Aimeliik's argument that it has exercised its right of possession and control over the disputed area since 1958, the year it adopted its municipal charter. The doctrine of acquiescence, generally stated, provides that a long and continued acquiescence of the possession of the territory has controlling effect in the determination of the boundary dispute. *Massachusetts v. New York*, 46 S. Ct. 357, 363 (1926). A right in the alleged boundary between states may be acquired by one state and lost by another by open, long-continued and uninterrupted possession of the territory. *Michigan v. Wisconsin*, 46 S. Ct. 290, 294 (1926).

There is no dispute that since Aimeliik municipality adopted its charter in 1958, it has continued to exercise its control and dominion over that property from JM-1 to JM-2 as being within its boundaries. The best evidence of this is the fact that Abina Etpison, who has been a member of the Aimeliik State Legislature for at least fifteen (15) years, testified at the prior trial that he also bears the title of Erchur of Imul hamlet. Imul hamlet includes the area where, today, Keiko Tsao, Dr. Minoru Ueki, Ngiratrang Kyota, Teruo Rengulbai, Paulino Eriich, Henaro Antonio, Belechel Ngirngebedangel, and Andres Madraisau live or have farms. With the

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 12 ROP 186 (Tr. Div. 2005)
exception of Antonio and Madraisau, all the individuals who reside in Imul hamlet consider themselves to be from Aimeliik and are registered voters of Aimeliik. Antonio and Madraisau are married to women from Aimeliik, and it is through their wives that they obtained permission, from Aimeliik, to occupy the lands they currently occupy.

This evidence that all of the individuals residing within the disputed area consider themselves to be from Aimeliik or are married to residents of Aimeliik is, in the Court's opinion, one of the most significant indications that Aimeliik considers that area, which falls within JM-1 to JM-2, to be part of Aimeliik municipality. Thus, even if the boundaries changed as Airai suggests, Aimeliik sufficiently occupied and controlled the land with Airai's acquiescence to justify drawing the current boundary line from JM-1 to JM-2.

CONCLUSION

Based on the foregoing analysis, taking into consideration evidence presented at both trials, the Court is of the opinion that Aimeliik has the better argument that its boundary which is adjacent to Airai's boundary, as set forth in the 1958 Aimeliik Municipal Charter, is that point running from JM-1 to JM-2 on Worksheet No. 99-M-02A, previously identified as Exhibit 1. Accordingly, based on this discussion, the Court holds that the areas occupied by Defendants Antonio, Madraisau and Teltull are properly located within Aimeliik's boundaries.

¶193

For the reasons set forth above, the Court finds that Defendants are entitled to judgment against Plaintiff that the areas currently occupied by Henaro Antonio, Andres Madraisau and Ulai Teltull are located with Aimeliik State based on the boundaries established in the 1958 Aimeliik Municipal Charter. A separate judgment in accordance herewith will be issued.