

In the matter of the determination of ownership of several islands in Peleliu State described as *Tabkusik* (Lot R-808); *Breu* (Lot R-809); *Ngeruchehtang* (Lot R-811); *Ngerkesiull* (Lot R-812); *Ruriid* (Lot R-813); *Tngebard* (Lot R-814); *Ngkeuall* (Lot R-815); *Oimaderuul* (Lot R-816); *Melekluu* (Lot R-827); and *Ngrungor* (Lot R-828),

**LUILL CLAN,
NGERDELOLK HAMLET,
CHILDREN OF MERSAL,
TELUNGALK RA EDARUCHEI,
DAVE NGIRAKED,
PELELIU STATE PUBLIC LANDS
AUTHORITY,**

Claimants.

LC/R 09-476
LC/R 09-477
LC/R 09-487
LC/R 09-488
LC/R 09-489
LC/R 09-490
LC/R 09-491
LC/R 09-492
LC/R 09-493
LC/R 09-494

Land Court
Republic of Palau

Decided: December 29, 2010

[1] **Land Commission/LCHO/Land Court:** Return of Public Lands

There are three requirements under 35 PNC § 1304(b) that a claimant must meet in order to

prevail on his or her claim. To successfully prove a claim for the return of public lands, claimant must show that (1) the claimant is a citizen who filed a timely claim, on or before January 1, 1989; (2) the claimant is either the original owner of the claimed property or a proper heir of the original owner; and (3) the claimed property became public land as a result of a wrongful taking (through force, coercion, fraud, or without just compensation or adequate consideration) by a foreign government.

[2] **Land Commission/LCHO/Land Court: Return of Public Lands**

At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence, that they satisfy all requirements of the Land Registration Act.

Counsel for Luill Clan: Theodore Aitaro
Counsel for Ngerdelolk Hamlet: Obak Isao Singeo
Counsel for Children of Mersai: Rosemary Mersai
Counsel for Telungalk ra Edaruchei: Itaru Kishigawa
Counsel for PSPLA: Lalii Chin

The Honorable ROSE MARY SKEBONG,
Associate Judge:

INTRODUCTION

These cases involve ten uninhabited islands located off the shores and within the territorial waters of Peleliu State. They are claimed to be public lands by the Peleliu State Public Lands Authority. With the agreement

of the parties, the cases were consolidated for hearing, which was held on July 6 and July 7, 2010. The parties submitted written closing arguments. The last brief to be submitted was filed on September 8, 2010, by Telungalk ra Edaruchei.

SUMMARY OF THE CLAIMS

A. Luill Clan

Luill Clan claims the islands of Ngeruchebtang, Ngerkesiul, Ruriid, and Ngerungor (also called Bachediil). Felix Gaag, on behalf of the clan, filed claims on June 22, 1988, for Ngerkesiul and Ruriid; and Mikiwo Gibson filed claims on December 30, 1988, for Ngeruchebtang and Ngerungor, in addition to the two for which Gaag had filed claims.

Gaag’s claim states that “a irechar ra kmal irechar etiang a mle klokklam makim claim er chelchang” – long ago, in very ancient days, this was our property so we claim it now. Gibson’s claim states no basis for Luill’s claim of ownership to the four islands.

Luill Clan’s claim was pursued at the hearing by “Iderrech” Ted Aitaro. Aitaro, age 74, testified that traditionally, the islands of Peleliu were divided into “ngos” (east) and “ngebard” (west), and that under this traditional division, Luill Clan owned the islands on the east while Ngesiliong Clan owned the islands on the west. Thus, Luill’s traditional ownership included Ngeruchebtang, Ngerkesiull and Ruriid. According to Aitaro, his father told him that people who used these islands under Luill’s

control, had to obtain permission from the clan. He said that his father bore the clan's chief title "Iderrech."

Dick Ngotel, another member of Luill Clan, also testified. He said that Ngeruchehtang Island was given out by Obak, but Ngerkesiull, Ruriid and Bachediil remained under Luill Clan's ownership and control.

Kalbesang Soalablai, age 59, was called as a rebuttal witness for Luill Clan. Kalbesang, who is Renguul of Ngerdelolk, testified that the islands claimed by Luill Clan were originally owned by Ngchemiangel, but were taken by Ngerdelolk when it defeated Ngchemiangel in war. He said that the islands were placed under the control of Luill Clan until such time as the Ngerdelolk chiefs decided to distribute them. He said that the four chiefs responsible to make the distribution included Obak, Iderrech, Itpik and Idesiari, and that no single one of them can distribute the properties alone. He said that the chiefs have not declared distribution of the islands. According to Kalbesang, the Japanese took control of the islands, but he did not know the circumstances of the taking.

B. Ngerdelolk Hamlet

Obak Isao Singeo filed claims for Ngeruchehtang and Tngembard. The claim he filed on December 20, 1988, states that, "tial yuns a kloklel a beluu ra Ngerdelolk" – this island is the property of Ngerdelolk. The second claim that he filed on December 30, 1988, states that, "Obak a mengkar aikal yuns" – Obak is the trustee for these islands.

At the hearing, Singeo, age 72, testified that Ngeruchehtang was owned by his clan of Ucheliou, and so he claimed it for that clan. Singeo testified that only Tngembard belonged to Ngerdelolk Hamlet, and that it was under the control of Chief Obak of Ucheliou Clan. He said that no one used the island of Tngembard.

C. Children of Mersai

The Children of Mersai claim ownership of the island of Ngeruchehtang. Their claim was filed by Luke Mersai on July 1, 1991. Rosemary Mersai pursued the claim at the hearing.

Rosemary, age 64, testified that Obak Kloulubak gave Ngeruchehtang to her mother, Tamae Mersai because she was Kloulubak's daughter. She testified that after Kloulubak conveyed Ngeruchehtang to her mother, her parents began to plant coconut trees on the island. She said that her uncle, Idechong, had a boat, and took her parents on trips to the island to clear it of the wild jungle growth before they planted coconut trees. She said that she accompanied her parents on these trips, which took place from 1958 to 1961. She said that the conveyance by Obak took place about two years before they started working on the land.

D. Telungalk ra Edaruchehei

Uchelmekediu Ichiro Loitang claimed Tabkusik and Breu on behalf of Telungalk ra Edaruchehei on December 30, 1988. He claimed that these two islands were part of Ngercheu.

At the time of the hearing, Itaru Kishigawa appeared for the lineage. Kishigawa, age 75, testified that his mother and grandmother told him from an early age on, that the small islands of Tabkusik and Breu were part of Ngercheu, which was owned by Edaruchei. The two small islands are just off the shores of Ngercheu, and accessible by foot during lowtide.

According to Kishigawa, Delemel raised pigs on Tabkusik in the past, through permission from Samoang. Samoang and his grandmother, Rsuuch, were ngalk dos – children of sisters. He also testified that Al Oiterong obtained permission from Ngichomtilou to build a house on the same island of Tabkusik. He said that there is nothing on Breu.

Rebecca Koshiha, age 56, also testified in support of Telungalk ra Edaruchei's claim. She said that Samoang was her great grandmother. She testified that Tabkusik, Breu and Mesmurs are part of Ngercheu, which has traditionally belonged to Edaruchei. She said that in 2006, Edaruchei was awarded Certificate of Title No. LC 085-06 for ownership of Ngercheu Island.

Ted Aitaro also testified as witness for Telungalk ra Edaruchei. He said that to his knowledge, Tabkusik and Breu were part of Ngercheu Island. Aitaro testified that in 1944, just at the onset of war, he was part of a group of students who went to Ngercheu to build a school building. He said that Uchelmekedi lived on Ngercheu at the time. He saw a ulengang (worship shrine) on the island and learned then about Okiu a mechuu, the sacred spirit of the people of Edaruchei.

E. Dave Ngiraked

Dave Ngiraked filed claims for individual ownership of Ngkewall, Oimaderuul and Melekluu Islands on December 29, 1988. He states on his application that he claims as an individual from Peleliu - "ak chad ra Peliliou e claim." Ngiraked failed to appear at the hearing, although the record shows that he was served with notice of the hearing.

F. Peleliu State Public Lands Authority

PSPLA claimed the rock islands of Peleliu through a claim filed by former Governor Timarong Sisior on December 21, 1988. The authority was represented at the hearing by Palau Public Lands Authority's legal counsel, Lalii Chin, Esq. Two members of PSPLA's administrative board testified.

Ebert Mabel is 74 years old and bears the 8th ranking chief title of Ngerkeukl. Mabel testified about his knowledge of the islands subject of the hearing. According to him, Tabkusik and Breu were public property of Peleliu. Unlike Ngercheu, which required permission by the Ngercheu people before anyone can use it, Tabkusik and Breu could be used by anyone from Peleliu without having to obtain permission or consent from anyone. Mabel also testified that Ngeruchebtang, Ngerkesiull, Ruriid and Tngebard were public lands, and no one needed to ask for permission to go to these islands. With regard to Melekluu, Ngkeuall and Oimaderuul, Mabel testified that these three islands were also public lands that were leased to people of Teliu and Ngerkeukl Hamlets for coconut farming.

According to Mabel, the rock islands and rocky ridges (“rois”) of Peleliu, historically, were public lands and used by the general populace of Peleliu.

Temmy Shmull, age 62, is also a member of PSPLA. He testified that the general information and knowledge he obtained when he was growing up was that the elbacheb (rock islands) belonged to Peleliu, and that anyone from Peleliu could go to the elbacheb and take for their use whatever resources were found there, without acquiring consent from anyone. He said that the elbacheb were public lands for the general public use.

BURDEN OF PROOF

Claims for public lands or lands claimed to be public lands come under the provisions of Article 13, Section 10 of the Palau Constitution which state that “the national government shall . . . provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.” This constitutional provision is implemented by the enabling statute found in 35 PNC § 1304(b).

[1] There are three requirements under 35 PNC § 1304(b) that a claimant must meet in order to prevail on his or her claim. To successfully prove a claim for the return of public lands, claimant must show that (1) the claimant is a citizen who filed a timely claim, on or before January 1, 1989; (2) the claimant

is either the original owner of the claimed property or a proper heir of the original owner; and (3) the claimed property became public land as a result of a wrongful taking (through force, coercion, fraud, or without just compensation or adequate consideration) by a foreign government.

[2] At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence, that they satisfy all requirements of the Land Registration Act.¹ Claimants must meet all three requirements in order to succeed in regaining the land.

FINDINGS OF FACT

The court makes the following findings of fact based on the record and preponderance of the evidence adduced at the hearing.

1. All claimants, except for the children of Mersai, filed timely claims for the return of public lands under 35 PNC 1304(b).
2. The claim for Ngeruchehtang filed by the children of Mersai on July 1, 1991, missed the deadline of January 1, 1989, for filing claims to public lands. Under 35 PNC 1304(b), this claim is, therefore, forfeited as an untimely-filed claim. Moreover, the record clearly indicates that Obak may have conveyed a homestead of Ngeruchehtang to Tamae. A memorandum from the Palau District Land Title Officer to the TT Deputy High Commissioner requested permission to

¹ *Palau Public Lands Authority v. Ngiratrang*, 13 ROP 90, 93 (2006).

grant a homestead entry permit for Ngeruchebtang to Obak's daughter, Tamae.²

3. Luill Clan failed to produce sufficient evidence to prove that it owned Ngeruchebtang, Ngerkesiul, Ruriid, and Bachediil. The clan's claims and testimonial evidence are so full of unexplained contradictions as to render the claim of ownership without credibility. For starters, Gaag claimed that the clan owned Ngerkesiul and Ruriid, only. Mikiwo Gibson added Ngeruchebtang and Ngerungor. Although no one explained who Gaag and Gibson are in relation to Luill Clan, the Court presumes that they were authoritative figures in the clan. If so, then why would their knowledge about clan ownership not be the same? Adding to this puzzle, Dick Ngotel (also presumed to be an elder clan member) testified that Ngeruchebtang was given out by Obak (whoever he is in relation to Luill), but the clan retained the other three islands. Again, the information from the clan members themselves is not consistent, and therefore, lacks credibility.

The other problem with Luill's claim is that, other than declaring that the clan traditionally owned the islands *ra irechar ra kmal irrechar*, the clan produced no real proof of such ownership. Ted Aitaro's testimony that people who wanted to use the islands sought permission from the clan, was uncorroborated and very weak. Indeed, the clan's own witness, Kalbesang Soalablai, contradicted Ted Aitaro's claim that these islands were distributed to Luill Clan. Kalbesang Soalablai's testimony was that the islands

² Memorandum dated July 1, 1961, from George B. Harris, Jr. contained in Case File No. LC/R 09-0487.

were placed under Luill's control while awaiting for the four chiefs to decide how they would be distributed. This testimony negates a finding that Luill owned the islands outright. Therefore, Luill Clan's claim for the return of Ngeruchebtang, Ngerkesiul, Rudiid and Bachediil is denied for insufficiency of proof of ownership.

4. Ngerdelolk Hamlet also failed to present sufficient evidence to prove its ownership of Ngeruchebtang and Tngebard islands. With regard to Ngeruchebtang, Obak Isao Singeo filed a timely claim for Ngerdelolk, but changed his mind and claimed it for Ucheliou Clan at the hearing. Under 35 PNC § 1304(b), Ucheliou Clan did not file a claim during the filing of claims period, and forfeits out. Conjunctively, by testifying that Ngeruchebtang belonged to Ucheliou Clan, Obak Isao Singeo defeated Ngerdelolk Hamlet's claim of ownership. As to Tngebard, the mere statement that the land belonged to Ngerdelolk Hamlet was not sufficiently convincing. Accordingly, Ngerdelolk Hamlet's claim for Ngeruchebtang and Tngebard Islands is denied.

5. Dave Ngiraked's claim for Ngkewall, Oimaderuul and Melekluu Islands fails for complete lack of proof.

6. Telungalk ra Edaruchei's claim for Tabkusik and Breu islands as part of Ngercheu Island was not sufficiently proven. While there is proof that Edaruchei own Ngercheu,³ Itaru Kishigawa's testimony that his ancestors

³ It is noted that under Certificate of Title No. LC 085-06, Ngercheu Island is awarded to Ngercheu Clan. However, this is not an issue instantly because the ownership of Ngercheu is not at issue in this case.

told him that they also owned the smaller islands was disputed by witnesses for PSPLA. Without corroboration, this is a self-serving statement and unreliable. Kishigawa's testimony that Edaruchei consented for Delmel and Oiterong to use Tabkusik Island provides some evidence of ownership, but was not corroborated, and not very persuasive. It is found, therefore, that Telungalk ra Edaruchei's evidence was not sufficient to prove that it owned Tabkusik and Breu as part of Ngercheu Island.

CONCLUSION AND DETERMINATION

None of the claimants for the ten (10) islands herein sufficiently proved the three statutory requirements of timeliness of claim, ownership immediately prior to a taking by the government, and a wrongful taking by the government. The burden of proof is on the claimants at all times, and failure to prove all three requirements defeats the claims. Failure of proof means that the claimed islands remain public lands.

Accordingly, it is hereby determined that the islands described herein remain public lands under the administration of the Peleliu State Public Lands Authority. Appropriate Determinations of Ownership consistent with this decision shall be issued and served on all named parties.⁴

⁴ The land known as *Elochel*, Lot No. 003 R 07 (Case No. LC/R 10-0011) was heard with the 10 islands herein, but will be addressed in a separate decision.