

Takawo v. Sechelong, 1 ROP Intrm. 130 (Tr. Div. 1984)

**TECHEKII TAKAWO,
Plaintiff,**

v.

**BAULES SECHELONG, TAURENGEL
OTOBED and URIIK MAUI,
Defendants.**

CIVIL ACTION NO. 133-82

Supreme Court, Trial Division
Republic of Palau

Memorandum of findings of fact and conclusions of law
Decided: July 4, 1984

BEFORE: LOREN A. SUTTON, Associate Justice.

BACKGROUND

This matter is a dispute over ownership of a piece of Palauan Money known as Okulamalk.

Plaintiff claims that she is the natural daughter of Chief Maderngbuked, of Ngaraard, now deceased; that some years ago her father told her that he used Palauan Money left her by her stepfather, Idelkei, to satisfy a customary obligation but that he had replaced her piece with one worth more, Okulamalk[;] and that Okulamalk was hers and would pass to her possession, or to that of an uncle under Palauan custom, upon his death. The plaintiff contends that upon Chief Madrangebuked's death she advised the Defendant, Baules Sechelong, who was designated Administrator of The Estate, of her claim to ownership of Okulamalk and of her father's promise. She further contends that she relied upon Baules Sechelong to put forward her claim at Chief Madrangebuked's Cheldechuduch but that he did not and instead gave Okulamalk to Defendant Uriik Maui. She asks for possession of Okulamalk and for such damages as its detention has caused as well as punitive damages in the amount of \$5,000.00.

The Defendants' claim that they were never told by Chief Madrangebuked of any promise to Plaintiff that Okulamalk was hers and that to the contrary Chief Madrangebuked specifically told Defendant Baules Sechelong that Okulamalk was to be used as Elbechiil (widows money) for his wife at his death.

¶131 Defendant Baules Sechelong contends that Okulamalk was owned by himself and that he gave it to Chief Maderngbuked at the Chief's request and received another piece in return, Ngerudel. He contends further that Chief Madrangebuked's primary concern just prior to his death was that his wife receives sufficient Elbechiil. After some negotiation pursuant to Palauan

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custom Defendant Uriik Maui gave Palauan Money for Elbechiil and Defendant Sechelong contends that he then gave Defendant Maui Okulamalk as a replacement. Finally Defendant Sechelong asserts that as Administrator of The Estate he had no responsibility to present Plaintiff's claim to Okulamalk at the Cheldechcheduch under Palauan custom and that as she did not do so through the proper representatives she waived her claim.

FINDINGS OF FACT AND LAW

The Court, based upon testimony and the evidence presented FINDS the following law and facts:

That Chief Madergebuked had every intention to and in fact did promise Okulamalk to Plaintiff as a replacement for her money some years prior to his death. That he did so pursuant to Palauan custom which dictates that if the father spends money left a child by another he is obligated to replace it with a piece of equal or greater value either prior to his death or at his Cheldechcheduch. That his assignment of Okulamalk to Plaintiff prior to his death was a binding obligation.

The Court further finds that under Palauan custom the Defendant, Uriik Maui as Chief Mdrangebuked's sister's child, was obligated to pay Elbechiil and that such obligation does not include any right on her part to receive replacement money.

Accordingly, based upon these findings of law and fact the Court HOLDS that the binding promise to Plaintiff that Okulamalk was hers will be upheld and that whether or not Chief Madergebuked determined at the end of his life to renege on that promise, out of concern that the Elbechiil for his widow would not be paid, the Plaintiff has a right in both equity and under Palauan custom to rely thereupon.

The obvious result, it seems to the Court, is equitable and leaves none in a lesser position than before. The Defendant, Sechelong, has willingly divested himself of ownership of Okulamalk by giving it to Defendant Maui and received Ngerudel in return. He has also fulfilled his obligation to the deceased Chief Madergebuked by efficiently and honestly insuring at the Cheldechcheduch that the widow received sufficient Elbechiil and by planning and executing L132 Chief Mdrangebuked's Cheldechcheduch in the customary manner.

Defendant, Uriik Maui, was, under Palauan custom, obligated as Chief Mdrangebuked's niece to pay Elbechiil and there exists no customary right on her part to receive a replacement for such payment. The ruling of this Court therefore simply places her in the position of having properly fulfilled her customary obligation to the decedent, Chief Madergebuked, absent the windfall she received when the Defendant Sechelong gifted her with Okulamalk.

The Defendant, Taurengel Otobed, neither loses nor gains except that the Court hereby Holds, based upon the evidence, that there was no conspiracy to deprive the Plaintiff of her money and the Defendant, therefore stands in the same position he held prior to this action.

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The Plaintiff is made whole by the return of Okulamalk which fulfills her father's promise and returns to her that which is rightfully hers.

It is to be hoped that this matter may now be permanently laid to rest and that the members of Tublai Clan will reach reconciliation and indeed become unified and strengthened as Chief Maderngbuked would certainly wish and as Defendant Sechelong fervently advised at the close of the Cheldechuduch.

Judgment is for the Plaintiff. Costs of Suit to be paid by the Defendants in the following manner: One half by Defendant, Sechelong, one half by Defendant, Maui. Defendant Otobed will bear no costs. Defendant Uriik Maui is ORDERED to present Okulamalk forthwith to the Clerk of Court and said Clerk to give it up to Plaintiff or her authorized agent upon demand.

Plaintiff's prayers for damages for retention of Okulamalk and for punitive damages are denied as no evidence is found to be present which either establishes Monetary damages as the result of Okulamalk not passing directly to Plaintiff on Chief Madrangebuked's death or that any of the defendant acted out of malice or with evil intent.