

Acting High Chief Reklai v. Isimang, 1 ROP Intrm. 30 (Tr. Div. 1982)
**ACTING HIGH CHIEF REKLAI, Polycarp Basilius, Representing Uedes Clan of
Melekeok Municipality, and HIGH CHIEF REKLAI LOMISANG
Plaintiffs,**

v.

**ISIMANG, MOSES MEKOLL, MAD ONGEAOL, KERAI, BROBESONG, MARSIL,
NGIRMANG, REKEMESIK SULIAL, ORUKEI, RENGULBAI, and KITALONG
SECHARULEONG
Defendants.**

CIVIL ACTION NO. 144-80

Supreme Court, Trial Division
Republic of Palau

Judgment

Decided: March 12, 1982

BEFORE: ROBERT A. HEFNER, Associate Justice.

This case presents unique and unprecedented circumstances in respect to Palauan custom as it applies to the removal or attempted removal of one of the two paramount chiefs of Palau.

Palau has had two paramount chiefs for many years. The Ibedul is the Chief for the Southern part (Koror and South) and the Reklai the Northern part (Babeldaob and North).

The Reklai is chosen from the first clan of Melekeok which is the Uedes Clan.

After the death of the former Reklai, the appointment of Reklai Lomisang was made in the latter 1960's. He served as such uncontested until the events which caused this lawsuit.

It appears clear that by June of 1980 several things had developed in so far as the status of the Reklai was concerned. His health was poor and he was unable to attend meetings and perform his usual obligations. "Acting" Reklais were appointed to fill the void.

In addition, the Reklai or those acting for him had **131** engaged in certain matters dealing with a coconut plantation, land for an Airstrip and the handling of various funds for the people of Melekeok, such as war claims awards, ocheraol and other public funds.

The matter was brought to a head on June 28, 1980, when two meetings were held, one in Melekeok and one in Koror. At this time Plaintiffs' Exhibit 1 was prepared and signed by 8 members of the Council of Chiefs and 4 members of the Ngaruchob.

The Council of Chiefs consists of the eleven chiefs (Rubaks) of Melekeok and is known

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as the Ngara Bai Melekeok. The Ngaruchoh is a Council of lesser chiefs and are primarily messengers and have no power to remove or appoint the Reklai or have a say in the affairs of the Reklai.

The Reklai did not receive any notice of the June 28, 1980 meetings and did not attend them. It was only after the preparation and execution of Plaintiffs' Exhibit 1 that he learned of the document. The document was also distributed to others in Palau, Guam, Saipan and on the west coast of the U.S. primarily to members of the Uedes Clan.

It is unclear as to what transpired shortly after June 28, 1980 but by July 4th, Termeteet claimed the title of Reklai. There is a dispute as to whether the eldest female members of Uedes Clan appointed Termeteet.

In any event, the Reklai and Uedes Clan represented by Polycarp Basilius as Acting High Chief Reklai filed suit on July 3, 1980, against the 12 persons signing Plaintiffs' Exhibit 1. The complaint sounds in various torts but essentially is based on libel and defamation.

After the plaintiff rested, the defendant moved to dismiss on various grounds. The Court granted the motion in part and denied it in part.

All common law claims based on libel or defamation were dismissed, as well as the claim of Uedes Clan for its "slander of title." What remained in the suit was the claim under Palauan custom for compensation if disrespect is shown the Reklai.

There is some testimony that two former Reklais had been removed or suspended but the circumstances are different than those presented here.

Two conflicting views of Palauan custom are presented. The first, by the plaintiffs, is that the Reklai 132 cannot be removed by a majority of the Ngara Bai Melekeok but only by the eldest female members of the Uedes Clan, known as Ourot and after removal a new Reklai is appointed by the eldest female members of Uedes Clan.

On the other hand, the defendant asserts that the majority of the Ngara Bai Melekeok has the authority to remove the Reklai and since 8 of the 11 members signed Plaintiffs' Exhibit 1, this was done. It is agreed that the female members of the clan appoint a replacement.

This case does not present the issue of who presently bears the title of Reklai. All that is at issue is whether compensation should be paid for any disrespect shown to the Reklai by the defendants. The posture of this case therefore dictates that this Court in this case not make a determination as to who is the present holder of the title. It also appears that the final resolution of the procedure for the removal of the Reklai (whether by just a majority of the Council of Chiefs or whether by the Ourot or death) would not properly be decided in the context of this case. However, it is concluded that since there is such a sharp dispute as to how the Reklai is to be removed, the Court determines that the procedure used by the defendants cannot be used against them because there is no showing of bad faith on their part in assuming that a majority of

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the Council of Chiefs could not remove the Reklai. This assumption is understandable and could very well be the procedure although the Court makes no such decision herein.

However, one largely uncontradicted fact does appear from all the testimony. Under Palauan custom the Reklai must be given notice of a meeting of the Council of Chiefs[,] and he cannot be ignored particularly if it is his actions which are being questioned.

That notice of clan actions and decisions must be made with due regard for the interests of its members is well recognized in Palau. *Lalou v. Aliang*, 1 TTR 290 (Tr. Div. 1955); *Gibbons v. Kisaol*, 1 TTR 219 (Tr. Div. 1955) and; *Delemel v. Tulop*, 3 TTR 469 (Tr. Div. 1968).

Certainly if notice of clan matters are to be given, it follows that notice to the Reklai of a meeting to remove him was required under Palauan custom.

The Court does not fault the defendants from assuming that a majority of the Ngara Bai Melekeok could remove the Reklai, but the Court does find that they violated Palauan custom by not notifying him of the meeting and giving him a chance to attend the meeting and explain his actions. There is **L33** some indication in the record that the Reklai may have had an explanation for some or all of the concerns raised by the defendants[,] but without notice he had no opportunity to answer his critics. Thus it is concluded the removal or purported removal of the Reklai without any notice whatsoever to him is a violation of Palauan [custom] and is a blatant act of disrespect for which Palauan custom requires compensation be paid.

Damages are another difficult issue as traditionally, Palauan money is paid by the offender. The plaintiff seeks U.S. dollars and the measure of damages in such currency is somewhat inconsistent with the concept of payment for the offense of disrespect.

Nevertheless the Court must assume the task of concluding this matter and assesses what it feels is sufficient compensation for the act of disrespect. There is testimony that a KLUK of Palauan money was extracted for a sign of disrespect in the past. Using this somewhat as a guideline and considering all of the factors in this case, the Court concludes and it is adjudged that each individual defendant pay to the Reklai Lomisang a Kluk of Palauan money or in the alternative the sum of \$500.00 U.S. currency.