

In the matter of the determination of ownership of land known as *Siob* identified as Tochi Daicho 2129 and now depicted as worksheet lots 02E004-019, 02E004-020, 02E004-021, 02E004-022, 02E004-023, 02E004-024, 02E004-030, 02E004-031, 02E004-032, 02E004-033, 02E004-034, 02E004-035, 02E004-036, and 02E004-037 in Ngkeklau County, Ngaraard State

**BEKURROU RECHEYUNGEL,
YOSTERU SUNGINO,
NGARAARD STATE PUBLIC LANDS
AUTHORITY,**

Claimants.

LC/E 01-00713

Land Court
Republic of Palau

Decided: January 15, 2014

[1] **Property:** Assignment of Interest

One cannot convey or assign a greater interest in property than one holds in the first place.

Counsel for Recheyungel: Asap Bekurow, Pro Se
Counsel for Sungino: Yukiwo P. Dengokl
Counsel for NSPLA: William Ridpath

The Honorable C. QUAY POLLOI, Senior Judge:

Introduction

This case concerns ownership of the land described in the caption above. The dispute is between Ngaraard State Public Lands Authority and claimants Yosteru Sungino and Bukurrow Recheyungel, both deceased. After hearing from the parties and considering the evidence submitted, and for the reasons stated below, ownership is awarded to Ngaraard State Public Lands Authority.

Summary of Adjudication

Ismael Sungino

Mr. Ismael Yosiyuki Sungino (“Ismael”),¹ testified that he is 75 years old and the younger brother of the late Claimant Yosteru Sungino who recently died.² Ismael testified that the land being claimed is called *Siob*, located at *Iou el Beluu* in Ngkeklau County, Ngaraard State. He explained that the whole of *Iou el Beluu* belongs to the people of Oikull who purchased it from the chief of Ngkeklau a long time ago after they fled from Airai because of warfare. Later, at the request of the Ngiraked of Airai, the people of Oikull returned to Airai but at least one of them, named Ebilklou, remained because of

¹ The Court uses first names to minimize confusion among the three Sungino’s mentioned in this Decision, namely, Yosteru Sungino, Ismael Sungino, and Francisco Sungino.

² The Court takes judicial notice of judicial records showing that Yosteru Sungino was born on October 10, 1921 and died on November 14, 2011. He was 90 years old.

marriage to a man from Ngkeklau. Ebilklou had a son named Bekeruul and two daughters named Ereong and Such. Ereong came to be in charge of *Iou el Beluu*. Ereong and her husband Siliang had children including Omlei, Sechedui, and Ngirailemesang. Omlei is the mother of claimant Yosteru Sungino. The people of Oikull who remained merged into Obeketel Lineage which goes into Kermong Clan of Ngkeklau.

When the Japanese came, they allowed people to register lands that they actually used while unused portions, such as forests, were registered as government property. *Iou el Beluu* was among those registered as government property. People were then allowed to enter the government lands and use them, so the descendants of the Oikull people signed up for the *Iou el Beluu* area. These included Lik, the father of Max, and Blesoch, the son of Bekeruul. Both Lik and Blesoch's lots are on either side and adjacent to *Siob*, the land claimed by Yosteru Sungino.

Ereong and Siliang cultivated *Siob* and planted coconut and betelnut trees. Meanwhile, Claimant Yosteru Sungino continually served his grandparents Ereong and Siliang and was like a son to them. Because of Yosteru's good deeds, both Siliang and Ereong, while still living, gave out *Siob* to Yosteru. Finally, Ismael testified that Ngirailemesang, a biological son of Ereong and Siliang and biological uncle of Yosteru, knew of this conveyance. That is why Ngirailemesang never contested Yosteru's decades of cultivation and use of *Siob*.

Severino Ikeya

Mr. Ikeya testified that he was the land registration of Ngaraard State before he retired. He testified that he was involved with the monumentation of *Siob*. He was asked if

he could identify on the map the worksheet lots that together form *Siob*. He explained that it is hard for him to do so because all of the lines appear in black and that it would be best if the aerial photo of *Siob* is printed in one color and the lots resulting from the more recent ground survey of *Siob* are printed in another color. He proceeded to try to identify the specific lot numbers that may constitute *Siob* as per the past ground survey with the claimants. Mr. Ikeya also testified that he associated *Siob* with Tochi Daicho 2129, the largest government lot in southern Ngaraard with over 2 million tsubo and borders neighboring states. As to other claimants of *You el Beluu*, Mr. Ikeya stated that they claimed private Tochi Daicho lots. Finally, he stated that he has no knowledge of a homestead program during the Japanese administration

Francisco Sungino

Mr. Francisco Sungino ("Francisco") testified that he is 67 years old and currently resides at Ngkeklau. He explained that he is the oldest male son of claimant Yosteru Sungino. He further explained that when he became aware of his surroundings, his father Yosteru was already using *Siob* and continued to use it exclusively with his children. As a child, Francisco saw that there were already mature betelnut and coconut trees on the land which they harvested. They would usually go to *Siob* on a bamboo raft when the tide is high in the morning and work on the land all day and then return in the late afternoon when the tide is high again. Over the years, as they harvested on the land, they also planted new seedlings that grew up and from which they have been harvesting up to the present time.

Francisco further testified that his father Yosteru said that Siliang gave *Siob* to him because Yosteru was like a son to Siliang.

Yosteru always provided for his grandparents by giving fruit bats, pigeons, and other provisions so *Siob* was given to Yosteru as an *ulsiungel*. Yosteru also told Francisco that the reason why the land is called *Siob* is because it is derived from a Japanese word that describes the size or area of a land. Siliang's land from the government was 7 chiob.

Francisco went on to testify that *Siob* is in *Iou el Beluu* and that the lands of Belesoch, Moi, and Max are all in *Iou el Beluu* except that the southern part of Max's lot enters into Ngerbesang. During the monumentation of the lots, Max's and Moi's children were present. Finally, Max, Moi, and Belesoch are also from Oikull.

Asap Bukurow

Mr. Asap Bukurow ("Asap") testified that he is 48 years old and resides at Idid Hamlet. He explained that he is the son of the late Bekurrow Recheyungel who filed a claim to the land at issue. Bekurrow filed his claim to pursue ownership by Obeketel Lineage. Asap testified of the story about the people of Oikull coming to Ngkeklau. He explained that the people of Oikull traveled up the east coast and rested at Ngkeklau. There they asked chief Kloulubak for a place to settle and gave out a piece of money as payment. Kloulubak then took the leader of the group up to a place called *Osisang* and looking south from there, Kloulubak said that the people of Oikull will own the land towards the south all the way to Ngiwal and to Ngardmau. This entire area – which includes the lands at issue in this case – is what Bekurrow claims for Obeketel Lineage.

Be that as it may, Asap clarified that his father's claim is not intended to conflict with what was given out to Yosteru because *Siob* is for Yosteru. His father's claim is

intended for the rest of the land that should belong to Obeketel Lineage through the sale from Kloulubak to the people of Oikull. When asked if the land was taken by force, Asap explained that his father told him that the Japanese had people stake out their lands but then the Japanese would limit people's claims to those that they were settled on or using. The rest of the lands, such as forests, were then registered as government land.

Mario Retamal

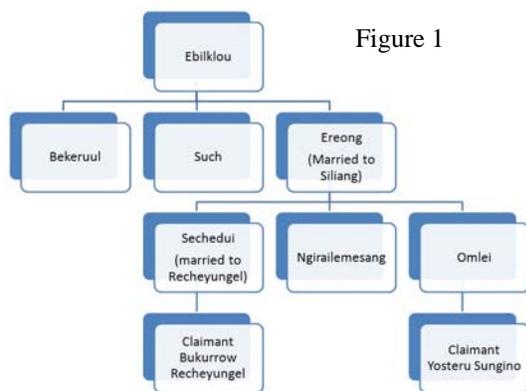
Mr. Retamal testified that he is the national surveyor for Palau. He submitted maps that were labeled and admitted as Court Exhibits 3, 4, 5, 6, 7. On Court Exhibit 3, Mr. Retamal explained that lot 38-2091, bounded by blue lines, is the result of the aerial photo. Court Exhibits 6 and 7 are copies of that aerial photo map. Mr. Retamal further explained that all of the lots that appear on Court Exhibit 3 are the lots at issue in this case except that lot 02E004-025 has been adjudicated.

Findings of Fact

1. The worksheet lots at issue are lot numbers 02E004-019, 02E004-020, 02E004-021, 02E004-022, 02E004-023, 02E004-024, 02E004-030, 02E004-031, 02E004-032, 02E004-033, 02E004-034, 02E004-035, 02E004-036, and 02E004-037.
2. The late claimant Yosteru Sungino and his witnesses refer to the lots at issue as *Siob*.
3. *Siob* is located within a larger area of Ngkeklau County called *Iou el Beluu*.
4. In the distant past, *Iou el Beluu* was under the jurisdiction of chief Kloulubak of Ngkeklau.
5. In the distant past, the people of Oikull fled their village in Airai and stopped over

at Ngkekklau. There, they gave a piece of money to chief Kloulubak who then gave out *Iou el Beluu* to these people of Oikull.

6. At a later point, some of the Oikull people returned to Oikull while others remained at Ngkekklau including a woman named Ebilkou.
7. Ebilkou gave birth to a son named Bekeruul and two daughters named Such and Ereong. Ereong was married to Siliang and gave birth to Sechedui, Ngirailemesang, and Omlei. Sechedui married Recheyungel and they had a son named Bukurrow Recheyungel who filed a claim in this case, claiming for Obeketel Lineage. Sechedui's sister Omlei gave birth to Claimant Yosteru Sungino. Through their deeds, these people of Oikull gained membership into Obeketel Lineage. Through their membership in Obeketel Lineage, they became members of Kermong Clan of Ngkekklau. See, Figure 1 [] for a graphic depiction of the descendants of Ebilkou.



8. During the Japanese administration of Palau, *Siob* and other lands in *Iou el Beluu* of Ngkekklau became listed as government lands.
9. Through the Japanese government, Ereong

and Siliang took possession of *Siob* and cultivated the land up to World War II.

10. Because of his good deeds to his grandparents, Ereong and Siliang gave out *Siob* to their grandson Yosteru.
11. From the time Ereong and Siliang gave *Siob* to Yosteru, it has been cultivated and utilized by Yosteru and his sons and relatives, a period well over 50 years.
12. Yosteru filed a claim for *Siob* on or about September 8, 1975, the date of a Land Acquisition Record on file.
13. On the 1975 Land Acquisition Record on file, Yosteru indicates that, as to the Tochi Daicho owner, it is a “lease” for Siliang.
14. On the 1975 Land Acquisition Record on file, the sketch shows Siliang’s lease, Recheiungel’s adjacent lease, Alic Max’s adjacent lot, Recheiungel’s adjacent lot, and another adjacent lot listed as government property.
15. On or about 1976, Yosteru’s claim for *Siob* was monumented and photographed during the aerial photo survey and later identified as lot 38-2091 comprised of 22,374 square meters.
16. Yosteru again filed a claim for *Siob* on May 6, 1980, claiming lot 38-2091 and indicated that it is listed in the Tochi Daicho as owned by “Palau chio” and on paragraph 8 of the claim, it is stated that, “The land was leased by Siliang, my father-in-law, when he dead, I continued to lease the land from government.”
17. On August 12, 1980, Yosteru – then 59 years old – appeared before a land registration team and claimed *Siob*, lot 38-2091, as his personal property that was cultivated by his grandfather Siliang and

then him for over 50 years with coconuts planted on it and that the Japanese instructed Siliang to cultivate the land and it would belong to him and that Siliang later gave *Siob* to him, Yosteru, so he has been cultivating it for the last 36 years or since about 1944.

18. Sometime in 2002, *Siob* was again monumented by Yosteru Sungino, Ismael Sungino, Francisco Sungino, and Dulei Subris to include the worksheet lots listed in findings of fact #1 above.
19. Yosteru Sungino passed away on November 14, 2011 at age 90.
20. No one has objected to or interfered with Yosteru and his relatives' use of the land since they began using it.

Conclusions of Law

Claim of Yosteru Sungino

Yosteru claims through Siliang. Testimony and documentary evidence indicates that Siliang's interest was either through a homestead or a lease. Did Siliang have a homestead? Siliang gained possession of *Siob* during the Japanese administration. Inconclusive evidence was provided to show that Siliang did have a homestead. In fact, the term "homestead" does not appear in any of Yosteru's claims and only came out through the testimony of Yosteru's younger relatives at the hearing. Even then, the testimony about a "homestead" was somewhat tentative and speculative such as Mr. Ismael Sungino's guessing that Siliang's ownership of *Siob* was not registered in the Tochi Daicho perhaps because World War II happened. Thus, there is no reliable basis, and it would be a tenuous stretch, for this Court to find that Siliang had a homestead from the Japanese government.

Even if Siliang did have a homestead, no reliable evidence was submitted to prove the specific conditions of the homestead. Certainly, during the Trust Territory period, a homestead program was established whereby a homesteader could acquire title to government land if he met certain conditions. *See*, 67 TTC §301. But no evidence was submitted to show that a similar legal framework was in effect during the Japanese period when Siliang gained possession of *Siob*. Since the conditions of the purported homestead are unknown, this Court has no basis upon which it can conclude that Siliang met the conditions and thereby acquired title to government land. Accordingly, Yosteru's claim for ownership through Siliang's purported homestead cannot prevail.

Did Siliang have a lease? As stated in findings of fact numbers 13, 14, and 16 above, there are several instances where Yosteru indicates that he is claiming Siliang's lease. The preponderance of that evidence from the clamant himself shows that it is more likely true that Siliang did have a lease. What does this mean for Yosteru?

A lease is defined as a "contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. rent. The lease term can be for life, for a fixed period or for a period terminable at will." *Black's Law Dictionary*, 8th ed. (2004). "The rights of a lessee and a lessor in the property that is subject to a lease are divided; the lessee has possessory interest, and the lessor has the reversionary interest." 49 Am. Jur. 2d §1 (2006).

[1] Under a lease, Siliang had the right to occupy and use *Siob*. He had no ownership interest under the lease because ownership

remained with the government. Consequently, when Siliang gave *Siob* to Yosteru, he could only give Yosteru the same right to occupy and use *Siob*. It was impossible for Siliang to grant ownership to Yosteru because one cannot convey interests in land that one does not have in the first place. *See generally, Ngiraidong v. Koror State Gov't*, 18 ROP 217, 219 (2011). Given the foregoing, Yosteru's claim for ownership cannot prevail.

Claim of Bekurrow Recheyungel

Asap Bekurrow explained at the hearing that *Siob* is for Yosteru and his father's claim is not intended to conflict with Yosteru's claim. Accordingly, as to *Siob*, it is exempted from the claim of Bekurrow Recheyungel.

Claim of Ngaraard State Public Lands Authority

The private claimants testified that *Siob* became government land during the Japanese administration. As to Bekurrow Recheyungel, minimal evidence was provided to prove a wrongful taking as well as meeting the other statutory elements required for claiming public lands. Mr. Asap Bukurrow also exempted his father's claim as to *Siob* in deference to Yosteru Sungino's claim.

Yosteru Sungino did not raise or otherwise prove a wrongful taking theory. He focused on a homestead claim. That was not adequately proven. On the other hand, as explained above, he had a lease and, as a matter of law, one's possessory interest under a lease cannot rise to an ownership interest. Accordingly, ownership is awarded Ngaraard State Public Lands Authority.

Conclusion

For all of the reasons stated above, lots 02E004-019, 02E004-020, 02E004-021, 02E004-022, 02E004-023, 02E004-024, 02E004-030, 02E004-031, 02E004-032, 02E004-033, 02E004-034, 02E004-035, 02E004-036, and 02E004-037 are owned by Ngaraard State Public Lands Authority. Appropriate determinations of ownership shall issue forthwith consistent with this Decision.