

**In the matter of ownership of land identified as Tochi Daicho lot 587 listed under Nanyo Takushoku Company, now depicted as worksheet lot 182-12045, called *Ebau* located in Iyebukel Hamlet, Koror State.**

**TROLII KARMELONG,  
TADAO ANDREAS,  
VALERIA TEMENGIL,**

vs.

**KOROR STATE PUBLIC LANDS  
AUTHORITY,**

**Claimants.**

LC/B 10-0032

Land Court  
Republic of Palau

Decided: June 6, 2014

Appearances:

Raynold B. Oilouch, Esq. for Valeria  
Temengil  
Debra Lefing, Esq. for KSPLA

The Honorable C. QUAY POLLOI, Senior  
Judge:

**I. INTRODUCTION**

This matter came to a hearing on May 8, 2014. Two witnesses testified for the claim of Valeria Temengil, these being the claimant herself and her older sister Akemi Anderson.

Four sets of documents were submitted as Temengil Exhibits 1 to 4. KSPLA did not present any witnesses but submitted 10 sets of documents as KSPLA Exhibits 1 to 10. Written closing arguments were due on June 3, 2014 after which the matter came under advisement. Having considered all of the evidence and submissions, the Court makes the following factual findings, conclusions of law, and determination of ownership.

**II. FINDINGS OF FACT**

Based upon the preponderance of the evidence, the following facts are found:

1. The land at issue is now identified as worksheet lot 182-12045. Traditionally, however, the land was called *Ebau* and was the seat of the chief title *Mad-ra-Ebau*, successor to chief *Rangem* of Tmng Clan. *Ebau* was originally owned by Tmng Clan.
2. The chief of Tmng Clan is *Rangem*, and his counterpart is *Uodelchad-ra-Tmng*. During the Japanese period, Miskol was *Rangem* and his sister Omrekongel was *Uodelchad-ra-Tmng*. Omrekongel had a son named Trolii. Together, *Rangem* Miskol and *Uodelchad-ra-Tmng* Omrekongel, as senior strong members of Tmng Clan, gave out the land *Ebau* to Trolii in 1930 as his individual property.<sup>1</sup>
3. From 1938 to 1941, the Tochi Daicho land registration process took place in Palau.

<sup>1</sup> See, Temengil Exhibit 1, Statement of Trolii before D.W. LeGoullon which was witnessed and thus validated by Miskol, Omrekongel, and Barau Tucherur.

4. Before 1940, Trolii leased out *Ebau*. In or before 1940, Japanese nationals<sup>2</sup> sought to purchase *Ebau*. Trolii refused to sell. The Japanese nationals then turned to Trolii's uncle *Rangem Miskol*.
5. *Rangem Miskol*, who was mentally slow and did not have any children, was coerced into agreeing to the sale otherwise the land would be taken without compensation, as was the case for the land *Ollaol* there in Iyebukel. The purchase price for *Ebau* was 500 yen in the form of a Japanese Postal Savings Bond. No direct payment was given to *Rangem Miskol* or his nephew and landowner Trolii. As a result of this transaction, the land became listed as Tochi Daicho 587 owned by the Nanyo Takushoku Company.
6. From 1944 to 1945, World War II directly affected Palau.<sup>3</sup> After the war, Trolii's wife Dirraklei and her relatives farmed on *Ebau*.
7. On September 27, 1951, ownership of all lands previously owned by Japanese nationals, Japanese government corporations, or the Japanese government was vested in Alien Property Custodian of the Trust Territory Government. This is how *Ebau* became considered public land.
8. On July 26, 1954, at age 40, Trolii filed his claim for *Ebau* as Claim No. 40 before the Palau District Land Office.
9. On November 27, 1954, D. W. LeGoullon, District Land Title Officer, issued a Notice of Hearing for *Ebau* and stated that the hearing date would be December 8, 1954.
10. On or after December 8, 1954, D. W. LeGoullon issued his decision in which he found that *Ebau* belonged to Tmng Clan before it was taken by the Japanese government in 1940 after payment of 500 yen in the form of Postal Savings. LeGoullon recommended that *Ebau* be released to the Trust Territory of the Pacific Islands.
11. In the mid to late 1950's, a wooden *bai* was built on *Ebau* at the request of Rechesengel which request was granted by Trolii.
12. On January 8, 1957, LeGoullon issued Determination of Ownership and Release No. 40 awarding *Ebau* to the Trust Territory of the Pacific Islands.
13. In the 1960's or early 1970's the wooden *bai* on *Ebau* had deteriorated. The *bai* was

<sup>2</sup> It is unclear whether the Japanese nationals were private persons or government representatives. The limited evidence suggests that they were government representatives. That is, the payment made was in the form of a Japanese Postal Savings Bond which appears to be a government savings bond. Also, the ownership registration is in the name of Nanyo Takushoku Company which could well be a government corporation. Finally, D. W. LeGoullon's November 27, 1954 Notice of Hearing states that "[t]he tract is on record as land formerly belonging to the Japanese Government."

<sup>3</sup> This fact is found in scholarly publications such as James E. Davis & Diane Hart, *Government of Palau: A Nation that Honors Its Traditions* (2002); see also, Elizabeth D. Rechebei & Samuel F. McPhetres, *History of Palau: Heritage of an Emerging Nation*, Ministry of Education (1997).

dismantled and used as firewood by Trolii. *Ebau* was then vacant and unused for years.

14. On June 12, 1975, 61-year old Trolii filed his claim for *Ebau* before the Land Commission.
15. Before 1980, Trolii authorized his daughter Valeria Temengil to build her house on *Ebau*.
16. On October 9, 1980, John O. Ngiraked, as Chairman of the Palau Public Lands Authority, issued a Land Use Permit for Valeria Andreas to build a dwelling house on *Ebau*. Valeria Andreas is Valeria Temengil.
17. In 1981, Valeria Temengil built her house on *Ebau*.
18. On November 29, 1988, 74-year old Trolii filed his claim for *Ebau* before the Land Claims Hearing Office. In this claim, Trolii stated in paragraph 13 that Valeria Temengil would inherit the land.
19. On November 26, 1989, Trolii died at 75-years old.
20. On August 25, 2006, Valeria Temengil filed her own claim for *Ebau*.
21. On May 8, 2014, over seven years after Valeria Temengil filed her claim and in less than 4 hours, the claims were finally heard before this Court.

### III. CONCLUSIONS OF LAW

1. *Ebau* is considered public land. The only issue is whether this public land should be

returned.<sup>4</sup> A party who filed a claim for the return-of-public-lands concedes that the land became public land. *See, Palau Pub. Lands Auth. v. Tab Lineage* 11 ROP 161 (2004). To prevail on the claim, the party must show that: (1) he or she is a citizen who filed a claim by January 1, 1989; (2) that he or she is either the original owner or one of the original owner's proper heir; and (3) the land at issue became public land through a wrongful taking (*i.e.*, force, coercion, or fraud, or without just compensation, or adequate consideration). *See, 35 PNC §1304(b)*. Under this legal standard, the government does not have the burden to prove how the land became public land. Instead, the burden is on the private claimant to prove the elements listed above. *See, Masang v. Ngirmang*, 9 ROP 125, 128 (2002).

2. Trolii Karmelong filed his claim on November 29, 1988. It is a timely-filed claim. KSPLA did not dispute his citizenship, and the Court finds and concludes that he is a Palauan citizen.
3. Although Tmng Clan previously owned *Ebau*, Trolii was the original owner of the land when it was taken during the Tochi

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<sup>4</sup> Valeria Temengil's claim that was filed on August 25, 2006 could be considered a superior title claim. However, at the hearing she did not pursue or preserve a superior title claim. Her counsel in his written closing readily admitted that the land is public land. This being the case, the Court will not make any superior title analysis nor will it address any KSPLA defenses against a superior title claim for none was pursued or preserved by Valeria Temengil or her counsel.

Daicho registration process. Specifically, in 1930, *Rangem* Miskol and *Uodelchad-ra-Tmong* Omrekongel, as strong senior members of Tmong Clan, gave *Ebau* to Trolii. Thus, immediately before the Tochi Daicho registration in 1938-1941, Trolii was the original owner of *Ebau*.

4. Trolii did not want to sell *Ebau*. His uncle *Rangem* Miskol was then coerced to sell *Ebau* for 500 yen in the form of a Postal Savings Bond. This is how *Ebau* became registered as Tochi Daicho 587 listed under Nanyo Takushoku Company. Neither Trolii nor his uncle *Rangem* Miskol received actual yen as payment. Any value of the postal savings bond, if it did have value, did not inure to benefit Trolii.
5. Trolii continued to claim *Ebau* in the 1950's before D. W. LeGoullon and in the 1970's before the Land Commission. Trolii also filed a claim for public land with the Land Claims Hearing Office on November 29, 1988. In paragraph 13 of this claim, Trolii stated that Valeria Temengil would inherit the land. The following year, Trolii died.
6. Trolii's daughter Valeria Temengil filed her own claim on August 25, 2006.
7. The phrase "proper heir" is not to be strictly read in the context of intestacy law. It could simply mean that a claimant "show a true relationship to the original landowner." *Markub v. Koror State Pub. Lands Auth.*, 14 ROP 45, 49 (2007). Here, the original landowner is Trolii who stated

that Valeria Temengil would inherit the land. Valeria Temengil, as a daughter of Trolii, has a true relationship to the original landowner Trolii. Therefore, Valeria Temengil is a proper heir for purposes of 35 PNC §1304(b).

8. Because Miskol was coerced to sell *Ebau*, because Miskol was not the actual owner, because the actual owner Trolii did not want to sell and did not receive any payment, and because any value of the Postal Savings Bond did not inure to benefit Trolii, the land must be returned. Because claimant Valeria Temengil is a proper heir of the original owner Trolii, the land shall be awarded to Valeria Temengil.

#### IV. DETERMINATION

For the reasons stated above, Tochi Daicho 587, Worksheet Lot 182-12045, land called *Ebau*, is hereby determined to be owned by Valeria Temengil. An appropriate determination of ownership shall issue forthwith consistent with this Decision.