

Espangel v. Diaz, et al., 3 ROP Intrm. 240 (1992)
ESEBEI ARBEDUL ESPANGEL,
Plaintiff-Appellee,

v.

NICHOLAS DIAZ, et al.,
Defendants-Appellants.

CIVIL APPEAL NO. 4-89
Civil Action No. 98-88

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: November 13, 1992

Counsel for Appellee: Yoshiharu Ueda

Counsel for Appellants: Douglas F. Cushnie

BEFORE: LOREN A. SUTTON, Associate Justice; ROBERT A. HEFNER, Part-Time Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice

PER CURIAM.

BACKGROUND

This appeal arises out of a trial court decision holding that appellee Esebei Arbedul was vested with the traditional title of Espangel, the highest ranking male title of the Omrekongel Clan in Ngerkebesang, and that the removal of the title and its bestowment on appellant Diaz was improper.

This title dispute began in March 1987 when appellants attempted to remove the title of Espangel from appellee who was appointed to bear the title in 1968. Until the time of this dispute, Esebei Arbedul had held the title of Espangel without **1241** interruption for 19 years.

In March 1987 appellant Diaz, his mother Sechedui, and several people met to discuss clan land that had been allegedly sold by appellee. The group sent a messenger to call on appellee to attend the meeting but he could not attend. The same group attempted a second meeting, and appellant Diaz and a companion were sent to get appellee, but he said he was busy and did not attend. Thereafter, Ngirchongor bestowed the title Uodelchad on Sechedui and Sechedui and Meklechel, with no notice, ceremony or other action to remove the title from appellee, appointed appellant Diaz as Espangel. Shortly thereafter, the group went to Esebei's house where Sechedui informed Esebei that he no longer bore the title of Espangel. An

Espangel v. Diaz, et al., 3 ROP Intrm. 240 (1992)

installation dinner followed and the Council of Chiefs accepted appellant as Espangel as their friend.

Appellant raises the following issues on appeal: 1) Whether the court had subject matter jurisdiction to determine the existence of Palauan custom and its application to the removal of clan titles; and 2) Whether the Court should abstain from exercising jurisdiction over this matter.

ANALYSIS

The threshold issue before the court is that of the court's subject matter jurisdiction to decide under Palauan custom if the title Espangel has been properly removed from Esebei Arbedul.

The starting point in our analysis must be the Constitution of **1242** the Republic of Palau. Section 1 and Section 5 of Article X of the Palau Constitution, which vests judicial power in a Supreme Court, National Court, and such inferior courts as may be established by law, specifically state that such power shall extend to all matters in law and equity.

In *Gibbons and Andrew v. Gov't of the Republic of Palau, et al.*, 1 ROP Intrm. 634 (App. Div. June 1989), the Court stated that the "jurisdictional language of the Palau Constitution expresses the intent of the framers that this Court exercise jurisdiction over any and all matters which traditionally require judicial resolution." The extremely broad language of Art. X, Sec. 5 compels this court to assert subject matter jurisdiction in order to determine the applicability of Palauan customary law.

Appellants contend that there's nothing inherent in Art. X that provides this Court with the power to examine and adjudicate matters exclusively within custom. In support of its contention, appellants rely on Article V, Sec. 1 of the Palau Constitution which provides that the government shall take no action to prohibit or revoke the role of a traditional leader as recognized by custom and tradition.

Additionally, appellants interpret Article VIII, Sec. 6 together with 1 PNC Sec. 302 to clearly provide that the courts of Palau have no jurisdiction in matters exclusively customary. Section 302 provides in part that the recognized customary law of the Republic shall have the full force and effect of law so far as such customary law is not in conflict with legal authority. **1243** Therefore, appellants assert, if the court does exercise jurisdiction over matters of customary laws it destroys the custom. Appellants, however, fail to cite any legislative report establishing the statutory intent of 1 PNC Sec. 302 or any persuasive authority interpreting or explaining Art. V, Sec. 1 as a prohibition of the court's jurisdiction in local customary matters. Furthermore, appellant's reliance on this provision is misplaced because a statutory declaration that customary practice has the full force and effect of law places it within the scope of "all matters in law and equity" of Article X, Sec. 5.

Appellants also claim that the surrounding circumstances of Diaz' appointment as Espangel is not inconsistent with any statutory provision. Thus, Art. V, Sec. 1 must be read to

Espangel v. Diaz, et al., 3 ROP Intrm. 240 (1992)

mean that this court cannot take any action to deny a traditional leader his rights as given him under the custom and as recognized by his peers. On the contrary, the circumstances of Diaz' appointment are questionable. Diaz was not appointed by the ourrot female clan members in accordance with Palauan custom, and as such his appointment as Espangel is null and void.

Two conflicting views of Palauan custom are presented. The first, by the appellant, is that the Espangel can be removed by a majority of the Council of Chiefs. On the other hand, appellee asserts that the title of Espangel cannot be removed from him by the Council of Chiefs but only by the ourrot members of the clan, and that only the ourrot may thereafter appoint a replacement. Appellee's view is in accord with the court's conclusion of law in 1244 *Tet ra Ollei Uehara, et al. v. Obeketang, et al.*, 1 ROP Intrm. 267 (Tr. Div. Nov. 1985). Under Palauan custom, a male title holder of a clan must be appointed by the senior female members of the clan, and the appointment must be consented to by the council of chiefs.

Appellee cites *Basilus v. Rengiil*, 2 TTR 430 (1960) in support of court intervention. In that case, the court stated that in a dispute as to the existence or effect of local customs, custom becomes a mixed question of law and fact if the court is not satisfied as to its existence or applicability. Under the holding of *Basilus*, this court has subject matter jurisdiction of this case where there are conflicting views of Palauan custom as applied to the removal of traditional clan titles.

Appellant's cite *Burford v. Sunoil*, 319 U.S. 315, 87 L.Ed. 1424, 63 S.Ct. 1098 (1943), for their proposition that intervention by this court into the purely customary affairs of the Council of Chiefs of Arkebesang and Omrekongel Clan would have an impermissibly disruptive effect on their policies, the law, and the existence of custom.

In matters involving custom, the court is faced with a difficult and sensitive choice: "May the court in the exercise of its constitutional powers and authority, but within the context of the very influences that serve to degrade and diminish customary processes, take over and supervise the conduct of these processes in order to quiet controversy, bring peace, and settle differences among participants in traditional customary matters?" *Ichiro Blesam, Representing himself as Obaklchol v. Ilab Tamakong and* 1245 *Gillian T. Tellames*, 1 ROP Intrm. 578, 581 (App. Div. Mar 1989). The court in that case answered the question in the affirmative.

Similarly, in this case the court must intervene in the interest of justice and maintaining the peace when the matter is presented to the courts by one or more of the interested parties. *Delemel v. Tulop*, 3 TTR 525 at 530 (1968). This is precisely the situation in the present case. The parties are before the court because the matter cannot be resolved by the traditional leaders and, in the interest of justice, the court has an obligation to determine whether appellee Esebei has been wrongfully deprived of his vested rights to the title Espangel.

Due process is primarily that kind of procedure which is suitable and proper to the nature of the case, and sanctioned by established customs and usages. *Sherer v. Laguna Beach*, 13 Cal App 2d 396, 57 P2d 157 (1936). The court in *Acting High Chief Reklai, et al. v. Isimang, et al.*, 1 ROP Intrm. 30 (Tr. Div. March 1982) recognized this constitutional requirement in customary

Espangel v. Diaz, et al., 3 ROP Intrm. 240 (1992)

proceedings, stating: “Certainly if notice of clan matters [is] to be given, it follows that notice to the Reklai of a meeting to remove him was required under Palauan custom”. Citing *Lalou v. Aliang*, 1 TTR 290 (1955), the Court emphasized that notice must be given to clan members with due regard to their interests where clan actions are concerned. The application of this principle to the facts in the case at bar dictates that under Palauan custom, the Espangel must be given notice of the meeting of the Council of Chiefs and he cannot be ignored, particularly if his actions, the **L246** purported sale of clan lands, are being questioned. The removal of the title Espangel from appellee amounts to a deprivation of a vested right. *Ngiraiechol v. Inglai Clan*, 3 TTR 525, 530 (1968); 16B Am. Jur. 2d *Constitutional Law* Sec. 813.

CONCLUSION

The court had jurisdiction to adjudicate this matter. Its conclusions that the removal of the title Espangel from appellee without notice was violative of custom and constituted a deprivation of appellee’s property right to the title, and that appellant Diaz’ subsequent appointment as Espangel also violated custom, was not clearly erroneous. The judgment of the Trial Court is, therefore, AFFIRMED.