

Kubarii v. Olkeriil, 3 ROP Intrm. 39 (1991)
**IN THE MATTER OF THE APPEAL FROM THE
DECISION OF THE LAND CLAIMS HEARING OFFICE**

**KOTARO KUBARII and HAINRIK ARBEDUL,
Appellants,**

v.

**NGEAOL OLKERIIL,
Appellee.**

CIVIL APPEAL NO. 7-91
Consolidated Civil Action Nos. 48-90 and 74-90

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: August 14, 1991

Counsel for Appellants: J. Roman Bedor, T.C.

Counsel for Appellee: Moses Uludong, T.C.

BEFORE: ARTHUR NGIRAKLSONG, Associate Justice; ROBERT HEFNER, Associate Justice; and EDWARD C. KING, Part Time Associate Justice

PER CURIAM:

Appellant Arbedul¹ appeals from the decision of the Trial Division affirming the decision of the Land Claims Hearing Office (LCHO) awarding certain lands in Ngchesar State to appellee. Appellant argues that the LCHO discriminated against him as an **L40** adopted child of the original owner of the land in question (Arbedul Sr.) and that the relatives of Arbedul Sr. had no authority to distribute his land to his natural daughter, appellee, during the *cheldech duch* which took place after his death.

BACKGROUND

The parties do not dispute that the lots in question, Nos. 606, 610, 680, 692 and 693, were registered in the Tochi Daicho as the individual properties of Arbedul Sr. and that he therefore owned them in fee simple. Arbedul Sr. was the natural father of appellee and adoptive father of appellant.

¹ Only appellant Arbedul filed a notice of appeal to the Court. The Trial Division's decision as to Kotaro Kubarii, therefore, is final.

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Arbedul Sr. died intestate on February 18, 1947. The LCHO found that sometime after his death, the land was awarded to Olkeriil and her brother Dudul² at Arbedul's *cheldecheduch* and that appellant was given children's money. The Trial Division affirmed the LCHO's rulings. Only the Summary and Adjudication of the LCHO was designated as the record on appeal. Therefore, the Trial Court and this Court are confined to that record.

Arbedul contends that the LCHO improperly admitted a cassette tape of the *cheldecheduch*. Appellant may not raise such a claim at this point in the proceeding. The cassette tape which contained Olkeriil's statement was admitted as part of the record without objection. Any objections were therefore waived. It is also noted that the tape was not the only evidence upon which the LCHO based its correct determination. Several other witnesses testified as to what occurred at the *cheldecheduch*.

¶41 Appellant argues that 39 PNC §102 mandates that the lands be devised to Arbedul's oldest living male child whether natural or adopted who, in this case, would be appellant. Section 102, formerly section 801 of the Palau District Code, was not in effect at the time of Arbedul's death or at the time of the *cheldecheduch*. We hold that the law of succession as prescribed by § 102 does not apply retrospectively. Ownership of the land vested in Arbedul Sr.'s heirs before the enactment of the statute. *Cf. Lekeok v. Ilanglang*, 7 TTR 27, 32-33 (Trial Div. 1974) (court applied former section 801 because it was enacted before the death of decedent land owner).

Appellant argues that, as a matter of law, the people at the *cheldecheduch* had no authority to grant appellee title to the lots in question because Palauan customary law has no command over individually owned land. In support of this contention, he cites *Wantanabe v. Ngirumerang*, 6 TTR 269 (Tr. Div. 1973), *aff'd* Sept. 1975 and *Ngiruchelbad v. Merii*, 1 TTR 367 (Tr. Div. 1958), *aff'd* 2 TTR 631 (App. Div. 1961). We have reviewed these cases and find them not to be persuasive or applicable.

We therefore hold that the individually owned land of Arbedul Sr. was effectively transferred by the senior family members according to Palauan custom at an *cheldecheduch*.

In support of appellant's argument, his counsel purportedly set forth in full 39 PNC § 102(c) but blatantly misquoted the language in an obvious attempt to mislead opposing counsel and this Court. Properly quoted, subsection (c) provides in relevant part:

¶42 In the absence of instruments and statements provided for in subsection (b) above, lands held in fee simple, which were acquired by the owner as a bona fide purchaser for value, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if the male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted

Appellants's counsel: (1) omitted the word "legitimate"; (2) omitted and made no indication of his omission of the words "which were acquired by the owner as a bona fide purchaser for

² Dudul is deceased.

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value”; and (3) highlighted the terms “oldest living male child” and “natural or adopted” without indicating that the emphasis did not exist in the original version. We find this egregious conduct sanctionable and exercising our inherent powers, *Chambers v. Nasco, Inc.*, 111 S.Ct. 2123 (1991), we hereby order appellant’s counsel, Roman Bedor, to pay \$200.00 to the appellee within thirty (30) days of the date of the issuance of this opinion.

For the foregoing reasons, the decision of the Trial Division is affirmed.