

Ngeltengat v. Ngiratecheboet, 4 ROP Intrm. 240 (1994)
HANAKO NGELTENGAT,
Appellant,

v.

OMIL NGIRATECHEBOET,
Appellee.

CIVIL APPEAL NO. 6-87
Civil Action No. 10-83

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: August 8, 1994

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: Francisco Armaluuk

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
PETER T. HOFFMAN, Associate Justice

PER CURIAM:

Appellant Hanako Ngeltengat appeals the trial court's judgment affirming the Palau Land Commission's determination that Appellee Omil Ngiratecheboet owns a parcel of land in Ngchemiangel Hamlet, Aimeliik State, known as Yilchutem.¹

Omil is one of five children of Simang, who died in March, 1944. At Simang's eldecheducu Yilchutem was given to his children. One of Simang's children, Udui, died within months of Simang's death. The trial court found that two other children, Itab and Paul, were adopted out shortly thereafter, Itab to Simang's sister Ibiochel and Paul to Simang's sister Dilbedul. Omil and the fifth child, Bars, continued to live with Simang's widow, Babelsau.

¶241 In the mid-1960's Paul needed money to pay off his debts. When his siblings refused to help him he and his mother decided they would sell Yilchutem to raise money. They approached Hanako, Simang's niece (Ibiochel's daughter), who alleges that she agreed to pay off Paul's debts, totaling approximately \$400, at various Koror commercial establishments in exchange for the property. Following this, and for the next 20 years, Hanako visited Yilchutem several times a year to harvest coconuts, taro, and betelnuts, which had been planted by Simang's family. Omil and her relatives also harvested crops on the land. Neither Hanako nor Omil has ever lived on the property.

¹ This appeal was submitted to a different appellate panel but never acted upon.

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Yilchutem was monumented and set for formal hearing by the Land Commission in 1980. After taking evidence, the Aimeliik Land Registration team concluded that Paul and his mother did not have authority to sell or mortgage Yilchutem without the consent or knowledge of Omil, Omil's mother, and Omil's maternal uncle. It therefore denied Hanako's claim and found in favor of Omil.² Two years later the Land Commission issued a Determination of Ownership in which it recognized Omil as the owner in fee simple of Yilchutem.

On appeal, and after a trial *de novo*, the trial court affirmed, finding that the transaction between Paul and Hanako was intended to be a mortgage, that is, a loan of money with Yilchutem pledged as security, rather than a sale of the property, and that **1.242** Hanako's rights were terminated upon Omil's offer to repay Hanako when Omil learned about the loan.

On appeal to this Court the parties debate whether, under Palauan custom, Paul was adopted out to Dilbedul, and, if so, whether he thereby lost his rights to Yilchutem. We need not reach these issues, however, because, regardless of their resolution, Paul had no authority to unilaterally sell or mortgage Yilchutem. *See Rengulbai v. Solang*, Civil Appeal No. 40-91, slip op. at 5 (December 17, 1993) (for a transfer of property to be effective, it must be agreed to by all the heirs who share ownership). Thus, Paul's purported sale of Yilchutem to Hanako, who knew that the land belonged to Simang's children, was ineffective.

Hanako argues that Paul had sole ownership of the land and therefore authority to sell or dispose of it pursuant to 39 PNC § 102(c). This argument has no merit because neither this statute nor its predecessor, PDC § 801, were in effect when Simang died. Therefore, they do not apply.

The trial court's judgment is AFFIRMED.

² Paul and Itab, who were aware of Omil's claim, did not file claims to Yilchutem.